

Todd County Schools Misc. HVAC Renovation 2016

Todd County Public Schools
205 Airport Road
Elkton, Kentucky 42220

Project Specifications

June 2016
BG 16-173

Architect / Engineer:

SR Engineering
2137 Glen Lily Rd
Bowling Green, KY 42101
(270) 842-5184

General Index – Project Specification
Todd County Schools – HVAC Renovation 2016
Elkton, KY

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Section 000100

Invitation to Bid

The Todd County Board of Education will receive sealed bids for the construction of the Todd County Schools – Misc. HVAC Renovation (Bid #16-173), located in Elkton, Kentucky. Bids will be received at the Todd County Board of Education, 205 Airport Road, Elkton, Kentucky 42220, where bids will be publicly opened and read aloud. **All bids must be received on or before 2:00 p.m. (local time), Aug ?, 2016.**

Copies of plans and specifications may be obtained via e-mail from SR Engineering. Please contact 270-842-5184 and request PDF drawings and specifications.

The Form of Proposal must be requested from the Engineer, SR Engineering, 2137 Glen Lily Rd, Bowling Green, KY 42101 (phone 270-842-5184, fax 270-782-6654). All bids shall be submitted only on the Form of Proposal and in a sealed envelope. The sealed envelope shall have the Project Name clearly marked, along with the respected bidder's information.

Plans and Specifications may be examined at the following locations:

- Office of the Engineer, SR Engineering, 2137 Glen Lily Rd, Bowling Green, KY 42101 (phone-270-842-5184)

SR Engineering is the Engineer of Record for this project, acting as agent for the Owner and acting in the Owner's behalf in soliciting your proposal. Each successful Bidder shall execute a Contract directly with the Owner and not the Engineer.

Each Proposal shall be accompanied by a certified check, cash, or bidders bond, executed by the Bidder and Surety Company, IN THE SUM OF NOT LESS THAN FIVE PERCENT (5%) OF THE AMOUNT OF THE BASE PROPOSAL. The bid security is required as a guarantee that if the Proposal is accepted, a Contract will be immediately entered into and the performance of it properly secured.

Proposal Forms must be properly filled out and submitted in duplicate. No qualify letters or statements will be considered. No bidder may withdraw a Bid submitted for a period of sixty (60) days after the date for the opening of the Bid.

In the event the Bidder to whom the Contract is awarded fails to execute a satisfactory Contract and 100% Performance and Payment Bond, he shall be eliminated and shall forfeit his certified check, cash, of his Bid Bond and shall be liable for the loss incurred by the Owner by such failure.

Any Bid which is not received on a timely basis of in the proper form shall be returned unopened.

A pre-bid conferenced will be held at Todd County Public Schools Maintenance Department on Aug. ?, 2016 at 10:00 a.m. local time.

(End of Invitation to Bid)

Section 001010

Supplementary Instructions to Bidders

The following Supplementary Instructions to Bidders modify or add to the AIA Document A701-1997 Instructions to Bidders and KDE Amendment AIA 701-1987 of Division of Building and Grounds, Kentucky Department of Education, copies of which are bound into the Project Specifications. Where any article of the Instructions is modified or any Paragraph, Subparagraph, or Clause thereof is modified or deleted by these supplements, the unaltered, the unaltered provisions of that Article, Paragraph, Subparagraph, or Clause shall remain in effect.

ARTICLE 3 BIDDING DOCUMENTS

3.2 INTERPRETATION OF BIDDING DOCUMENTS

Add the following sub-paragraphs:

3.2.4 WORK REASONABLE INFERRED, BUT NOT PARTICULARLY DELINEATED OR SPECIFIED:

The Contractor shall study all drawings and specifications and all conditions relating to the erection of the work, and if any material or labor evidently necessary for the proper and complete execution of the work, which are not specifically mentioned and included in the drawings and specifications, although reasonable inferred therefrom, unless eliminated by special mention, or if any error or inconsistency appear therein, or in the event of a doubt arising as to the true intent and meaning of the drawings or specification, he shall report it to the Engineer at least ten (10) days in advance of the date for receiving the bid. The Engineer will then issue an addendum containing the proper information to all Contractors to assure fair competition.

In case the contractor fails to make such report and the Engineer is not otherwise advised of such doubtful matter, the Contractor is hereby made responsible for the furnishing of the necessary labor and material reasonable inferred or evidently necessary for the proper execution and completion of the work; for any additional work involved in the correction of apparent errors of inconsistencies by the Engineer, and all such labor and materials shall be provided at the Contractor's expenses and under no condition will any such labor and material be allowed as an extra.

3.2.5 DISCREPANCIES: Anything called for in specifications and not shown on the drawings or shown on the drawings and not called for in the specification shall be included in both. Where the detail and general drawings do not agree, the Contractor shall notify the Engineer at least ten (10) days before the date of the receipt of bids and the Engineer will issue an Addendum to all Contractors as to which of the two methods of constructions shall be followed. Failure to make this determination shall make the Contractor subject to furnishing either method, as may be later called for by the Engineer. In case of discrepancies between the various parts of the plans and specifications, the Contractor shall furnish either method as may be determined by the Engineer.

3.3 SUBSTITUTIONS

Add the following paragraph to the front end of 3.4.3:

3.4.3 Examine bidding documents carefully prior to date for receipt of bids, make written request to Engineer for true meaning of any part of contract documents, for interpretation and correction of any ambiguity, inconsistency, or therein. All interpretations and corrections will be included in an addendum issued by Engineer. Contractor's written questions can be sent by photo facsimile to the Engineer for interpretation. Only a written interpretation or correction by addendum shall be binding. No Bidder shall reply upon interpretation or corrections given by any other method.

ARTICLE 5 CONSIDERATION OF BIDS

5.3 ACCEPTANCE OF BID (AWARD)

5.3.4 Time limit for Execution of Contract Documents: In the event that a bidder's proposal is accepted by the Owner and such bidder shall fail to execute the contract and to furnish satisfactory performance bond within ten (10) calendar days from the date of notification for the award of contract, the Owner may at its option, determine that the awardee has abandoned the contract. Thereupon, the proposal shall become null and void and guarantee, which accompanied it, shall be forfeited to and become all property of the Owner as liquidated damages from such failure. If the bidder shall execute the contract and furnish satisfactory bond, the bid guarantee will be returned to the bidder by the Owner.

ARTICLE 6 POST-BID INFORMATION

6.1 CONTRACTORS QUALIFICATION STATEMENT

6.1.1. The listing of more than one subcontractor in a work category shall invalidate bid.

ARTICLE 12 POST BID REVIEW AND MATERIAL SUBMITTAL

12.1.1. Prime Bidders; change the words "Prime Bidders" to "Mechanical and Electrical Contractor Bid Packages."

(End of Supplementary Instruction to Bidders)

BG No. 16-173 _____

Date: _____ To: (Owner) __Todd County Public Schools _____

Project Name: _____ Bid Package No. _____

City, County: _____

Name of Contractor: _____

Mailing Address: _____

Business Address: _____ Telephone: _____

Having carefully examined the Instructions to Bidders, Contract Agreement, General Conditions, Supplemental Conditions, Specifications, and Drawings, for the above referenced project, the undersigned bidder proposes to furnish all labor, materials, equipment, tools, supplies, and temporary devices required to complete the work in accordance with the contract documents and any addenda listed below for the price stated herein.

Addendum _____ (Insert the addendum numbers received or the word "none" if no addendum received.)

1. North Todd County Elementary School:

BASE BID: For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum price of:

_____ Use Figures

_____ Dollars & _____ Cents
Use Words Use Words

2. South Todd County Elementary School:

BASE BID: For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum price of:

_____ Use Figures

_____ Dollars & _____ Cents
Use Words Use Words

3. Todd County Middle School:

BASE BID: For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum price of:

_____ Use Figures

_____ Dollars & _____ Cents
Use Words Use Words

4. Todd County Central High School:

BASE BID: For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum price of:

_____ Dollars & _____ Cents
Use Figures Use Words Use Words

6. Combination Bid:

List of Schools: _____

BASE BID: For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum price of:

_____ Dollars & _____ Cents
Use Figures Use Words Use Words

LIST OF PROPOSED SUBCONTRACTORS:

List on the lines below each major branch of work and the subcontractor involved with that portion of work. If the branch of work is to be done by the Contractor, so indicate.

The listing of more than one subcontractor in a work category shall invalidate the bid.

The listing of the bidder as the subcontractor for a work category certifies that the bidder has in current employment, skilled staff and necessary equipment to complete that category. The architect/engineer will evaluate the ability of all listed subcontractors to complete the work and notify the owner. Listing of the bidder as the subcontractor may invalidate the bid should the architect's review indicate bidder does not have skilled staff and equipment to complete the work category at the time the bid was submitted.

A maximum of 40 subcontractors will be acceptable with each bid. Do not add supplemental sheets for subcontractors to this document.

The bidder shall submit the list of subcontractors with the bid.

	<u>BRANCH OF WORK</u> (to be filled out by the Architect)	<u>SUBCONTRACTOR</u> (to be filled out by the contractor)
1.	Mechanical	
2.	Electrical	
3.	PIPE FITTER	
4.	TEST AND BALANCE	
5.	CONTROLS	
6.		
7.		
8.		
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17.		

	<u>BRANCH OF WORK</u> (to be filled out by the Architect)	<u>SUBCONTRACTOR</u> (to be filled out by the Contractor)
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LIST OF PROPOSED SUPPLIERS AND MANUFACTURERS:

List on the lines below each major material category for this project and the suppliers and manufacturers involved with that portion of work. Listing the supplier below means the Contractor is acknowledging authorization from the Supplier to include the Supplier in this bid.

The listing of more than one supplier or manufacturer in a material category shall invalidate the bid.

A maximum of 40 suppliers and manufacturers will be acceptable with each bid. Do not add supplemental sheets for suppliers to this document.

The bidder shall submit the list of suppliers and manufacturers within one (1) hour of the bid.

	<u>MATERIAL DESCRIPTION BY SPECIFICATION DIVISION AND CATEGORY</u> (to be filled out by the Architect or Contractor)	<u>SUPPLIER</u> (to be filled out by the Contractor)	<u>MANUFACTURER</u> (to be filled out by the Contractor)
1.	BOILER		
2.	CHILLER		
3.	PACKAGED RTU		
4.	PUMPS		
5.	FAN COIL UNITS		
6.	VALVES AND FITTINGS		
7.			
8.			
9.			
10.			
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12.			
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16.			
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18.			

	<u>MATERIAL DESCRIPTION BY SPECIFICATION DIVISION AND CATEGORY</u> (to be filled out by the Architect or Contractor)	<u>SUPPLIER</u> (to be filled out by the Contractor)	<u>MANUFACTURER</u> (to be filled out by the Contractor)
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UNIT PRICES:

Indicate on the lines below those unit prices to determine any adjustment to the contract price due to changes in work or extra work performed under this contract. The unit prices shall include the furnishing of all labor and materials, cost of all items, and overhead and profit for the Contractor, as well as any subcontractor involved. These unit prices shall be listed in units of work.

A maximum of 40 unit prices will be acceptable with each bid. Do not add supplemental sheets for unit pricing to this document.

The bidder shall submit the list of unit prices within one (1) hour of the bid.

	<u>WORK</u> (to be filled out by the Architect)	<u>PRICE / UNIT</u> (to be filled out by the Contractor)	<u>UNIT</u> (to be filled out by the Contractor)
1.			
2.			
3.			
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12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			

	<u>WORK</u> (to be filled out by the Architect)	<u>PRICE / UNIT</u> (to be filled out by the Contractor)	<u>UNIT</u> (to be filled out by the Contractor)
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DIRECT MATERIAL PURCHASES:

Indicate on the lines below those materials to be purchased directly by the Owner with a Purchase Order to be issued by the Owner to the individual suppliers. The value of the direct Purchase Order cannot be less than \$5,000. Following the approval of bids, the Contractor shall formalize this list by completing and submitting the electronic Purchase Order Summary Form provided by KDE. Listing the supplier below means the Contractor is acknowledging authorization from the Supplier to include the Supplier in this bid.

A maximum of 50 POs will be acceptable with each bid. Do not add supplemental sheets for additional POs to this document.

The bidder shall submit the list of Purchase Orders within four (4) days of the bid.

	<u>SUPPLIER</u> (to be filled out by the Contractor)	<u>PURCHASE ORDER DESCRIPTION</u> (to be filled out by the Contractor)	<u>PURCHASE ORDER AMT.</u> (to be filled out by the Contractor)
1.			
2.			
3.			
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9.			
10.			
11.			
12.			
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14.			
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19.			

	<u>SUPPLIER</u> (to be filled out by the Contractor)	<u>PURCHASE ORDER DESCRIPTION</u> (to be filled out by the Contractor)	<u>PURCHASE ORDER AMT.</u> (to be filled out by the Contractor)
20.			
21.			
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44.			

	<u>SUPPLIER</u> (to be filled out by the Contractor)	<u>PURCHASE ORDER DESCRIPTION</u> (to be filled out by the Contractor)	<u>PURCHASE ORDER AMT.</u> (to be filled out by the Contractor)
45.			
46.			
47.			
48.			
49.			
50.			

TIME LIMIT FOR EXECUTION OF CONTRACT DOCUMENTS:

In the event that a bidder's proposal is accepted by the Owner and such bidder should fail to execute the contract within ten (10) consecutive days from the date of notification of the awarding of the contract, the Owner, at his option, may determine that the awardee has abandoned the contract. The bidder's proposal shall then become null and void, and the bid bond or certified check which accompanied it shall be forfeited to and become the property of the Owner as liquidated damages for failure to execute the contract.

The bidder hereby agrees that failure to submit herein above all required information and/or prices can cause disqualification of this proposal.

Submitted by:

NAME OF CONTRACTOR / BIDDER: _____

AUTHORIZED REPRESENTATIVE'S NAME: _____
Signature

AUTHORIZED REPRESENTATIVE'S NAME (printed): _____

AUTHORIZED REPRESENTATIVE'S TITLE: _____

NOTICE: Bid security must accompany this proposal if the Base Bid price is greater than of \$25,000.

This form shall not be modified.

Section 002010

Supplemental Form of Proposal

SUPPLEMENTAL FORM OF PROPOSAL FOR BID BREAKOUT ITEMS

Bid breakout items as listed under “Special Instructions” must be listed and submitted with the bid.

Provide list of manufacturers and suppliers for each item

<u>Description</u>	<u>Manufacturer</u>	<u>Supplier</u>
Air Cooled Chiller		
Pumps / Pump Accessories		
Temperature Controls		
Piping / Piping Accessories		
Testing & Balance		

(End of Section 002010)

Board of Education: _____

BG# _____

District PO Number: _____

(THIS PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES AND SHIPPING PAPERS)

Project Name: _____

Kentucky Sales Tax
Exemption Number: _____

Bid Package No.: _____

Date of Order: _____

Specification Section:
(IF APPLICABLE) _____

Vendor Name: _____

Material Description
/ Category: _____

Vendor Address: _____

Facility Name: _____

Requested By: _____

Vendor Phone: _____

AUTHORIZATION

THE ATTACHED TERMS & CONDITIONS ARE HEREBY
ACKNOWLEDGED AND MADE PART OF THIS ORDER.

Vendor Email: _____

Bill To: _____

Owner Authorized Name: _____

Bill to Address: _____

Owner Authorized Signature: _____

Owner Authorization Date: _____

Ship To: _____

Ship to Address: _____

Vendor Authorized Name: _____

Vendor Authorized Signature: _____

Attention of: _____

Vendor Authorization Date: _____

The following project contacts must be notified 48 hours in advance of delivery to jobsite.

Contact Name	Phone Number	Contact Name	Phone Number

Furnish the necessary materials to complete the following bid package(s) / specification section(s) in its entirety. All materials shall be in accordance with the requirements of the Contract.

ITEM NO.	QUANTITY	ITEM DESCRIPTION	UNIT PRICE	TOTAL
		Bid Package(s):	L. S.	
		Specification Section(s):	L. S.	
		SPECIMEN COPY ONLY		

TERMS & CONDITIONS OF PURCHASE ORDER

1. Drawings, catalogs, cut sheets, or samples shall be submitted for approval.
2. All invoices shall be sent to the contractor/subcontractor designated on the purchase order for approval. No invoices shall be sent directly to the Board of Education (Owner) for payment.
3. All invoices shall reference the purchase order number.
4. No change in, modification of, or revision of this order shall be valid unless in writing and signed by the Owner.
5. Vendor agrees to observe and comply with all applicable federal, state and locals laws, rules, ordinances and regulations in performance of this order.
6. Vendor shall not assign this order or any right hereunder without first having obtained the written consent of the Owner.
7. Deliveries are to be made in accordance with the Owner's schedule, as directed by the General Contractor (GC), Construction Manager (CM) or Qualified Provider (QP).
8. The Owner may cancel this purchase order in whole or in part in the event that the vendor fails or refuses to deliver any of the items purchased, within the time provided, or otherwise violates any of the conditions of this purchase order, or if it becomes evident that the vendor is not providing materials in accordance with the specifications or with such diligence as to permit delivery on or before the delivery date.
9. The vendor agrees to deliver the items to the supplied hereunder free and clear of all liens, encumbrances and claims.
10. If any of the goods covered under this purchase order are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this order, the Owner, in addition to the other rights which it may have under warranty or otherwise, shall have the right to reject the same or require that such articles or materials be corrected or replaced promptly with satisfactory materials or workmanship.
11. By acknowledging receipt of this order, by performing the designated work or any portion thereof, or by shipping the designated goods, the vendor agrees to the terms and conditions outlined.
12. This purchase order shall be governed in all respects by the laws of the Commonwealth of Kentucky.
13. In the event the quantities of materials supplied via this purchase order are insufficient to complete the work, the GC, CM or QP shall, at no expense to the Owner, provide such materials as necessary to complete the work.
14. In the event that at the completion of the work the vendor has not submitted invoices totaling the value of this purchase order, this purchase order shall be considered complete and closed.

Section 003000

Supplementary Conditions

PART 1 GENERAL

1.01 RELATION TO GENERAL CONDITIONS

- A. The following supplements modify, change, delete from or add to the Commonwealth of Kentucky, Department of Education, Division of Facilities Management, General Conditions of the Contract for Construction AIA A132-2009.
- B. Where an article of the "General Conditions" is modified or a paragraph or clause thereof is modified or deleted by these supplements, the unaltered provisions of that article, paragraph, subparagraph or clause shall remain in effect.

1.02 DEFINED CHANGES TO SECTION 00500a

ARTICLE 1 GENERAL PROVISIONS

- 1.1.8 In the definition of "Contractor" after the work "contract" add "and/or Purchase Order."

ARTICLE 3 CONTRACTOR

- 3.3.1.1 It shall be the sole responsibility of the Contractor to coordinate and schedule their subcontractors, suppliers, or vendors to perform the Work outlined in the Contractor's Contract Package. At no time will the Engineer take responsibility for communicating with a Contractor's subcontractors, suppliers, or vendors.
- 3.5.2 The Contractor warrants to the Owner and Engineer that the materials and equipment furnished under Owner Issued Purchase Orders issued through the Contractor as outlined in Paragraph 3.6 shall comply with the requirements as outlined in Paragraph 3.5.1.
- 3.6.2 The Owner, at his discretion, may take advantage of their sales and use tax exemption status. Should the Owner choose to do so, then those items which they wish to purchase directly shall be distinctly called for in the bid documents. The "Lump Sum Price" provided by the Contractor shall be the cost basis of the Owner issued purchase order. Any unspent funds in the purchase order shall revert to the Owner.
- 3.9.2 At the sole discretion of the Owner and/or Engineer, the removal of any of the Contractor's management team may be required, when, in the sole opinion of the Engineer or the Owner, said person is causing disruption to the Project's progression, morale, and/or coordination.
- 3.9.3 School Calendar: Last day of school May 26th and First day of school August 4th. All work to be completed by August 1st 2016.

- 3.9.4 Code of Conduct: All contractors with identified shirts with logo of their company and name. No alcohol on property, No smoking on school property, No fire arms on School property, No foul language. No direct contact with any students. All contractors to be verified as per KRS 160.380 (No workers with felony sex crimes allowed on school property).
- 3.9.5 All furniture and equipment in the classrooms shall be relocated to the corners of the room or in the hallway to avoid damaging of any equipment. Install plastic over to protect any computers from dust. Protect floors as per drawing notes with plastic and Plywoods.
- 3.9.6 Every day clean areas of work and report if any items damaged.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

- 4.6.21 “Conflicts in the Contract Documents.” If there is conflict with in or between the Contract Documents involving quality or quantity of Work required, it is the intention of the Contract that Work of the highest quality or greatest quantity indicate or specified shall be provided. Whether or not the word “all” is used, coverage is intended to be complete, except where partial coverage is specifically and expressly noted. In all cases where an item is referred to as singular in number, it is intended that reference shall apply to as many such items as required to complete the Work. The precedence of the Contract Documents is as follows:

- a) The Contract Agreement
- b) The Addendum of Addenda
- c) Division 0 and Division 1
- d) Technical Specifications Division 2 through Division 16, inclusive
- e) Contract Drawings
- f) Approved Submittals

No verbal agreement or conversation with any officer, representative, agent, or employee of the Owner and/or Engineer either before or after execution of this Contract shall affect or modify the terms or obligations herein contained.

ARTICLE 7 CHANGES IN THE WORK

- 7.3.3.1 “mutual acceptance of a lump sum price properly itemized and supported by sufficient substantiating data to permit evaluation conforming to the requirements of 7.3.6.1 through 7.3.6.6.”
- 7.3.6.1 “cost of all labor plus a maximum labor burden of 25% to cover the costs for social security, Medicare, unemployment insurance, workman’s compensation, liability insurance, along with any and all fringe benefits required by agreement or custom.”
- 7.3.6.4 “cost of permit fees, and sales, use or similar taxes related to Changes in the Work; and”

- 7.3.6.6 The maximum markup for the contractor's overhead and profit shall not exceed 15% and shall be deemed to include all home and/or branch office costs associated with the changes in his work as outlines in the change directive, performance and payment bond costs along with a reasonable profit.

ARTICLE 8 TIME

8.3 DELAYS AND EXTENSIONS OF TIME

"Liquidated Damages"

- a. It is mutually understood and agreed by and between parties of this Contract Agreement, in execution of same, that time is of the essence of this contract. In the event that a Contractor fails to substantially complete the Work to be performed under this Contract by and at applicable Contract Completion time described in the Contract Documents, including any extensions of time granted under the General Conditions, the Contract shall pay to the Owner \$500.00 per calendar day because of delay in completing such Contract Package as and for liquidated damages, such as Owner's increased overhead and cost of additional architectural/engineering and supervision and not as a penalty for each and every calendar day, that Contractors shall be in default. If completion dates overlap, liquidated damages shall continue at the established \$500.00 per calendar day. The amount does not increase by \$500.00 per day with the overlap of a phase.
- b. Claims for extension of time and/or relief from liquidated damages, except for weather related claims, must be made in the time allowed. Claims for an extension of time due to unusual inclement weather shall be made in writing not later than the 10th day of the month following the month in which the delay occurred.
- c. Claims for extension of time or relief from liquidated damages shall be stated in numbers of whole or half calendar days. The actual dates on which the delays(s) occurred must be stated. In case of claims for extension of time because of unusual inclement weather, such unusual inclement weather prevented the execution of major items of the work on normal working days. Calendar days shall be computed by multiplying normal workdays (5 days per week) by a factor of 1.4.
- d. Unusual inclement weather as used herein means unusually severe weather is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. Normal weather shall be determined based on records for the station of the United States Environmental Data Service nearest the site. Time extension shall be considered based on the "actual number" of days of 0.10" tenth of an inch in precipitation as follows:

January-8	May-6	September-9
February-5	June-3	October-7
March-4	July-8	November-4
April-8	August-5	December-9

- e. The time extension(s) for changes in the Work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The Change Order granting the time extension may provide that the contract completion

date will be extended only for those specific elements so delayed and that the remaining work will not be altered and may further provide for an equitable re-adjustment of liquidated damages pursuant to the new Contract Completion Time.

- f. Owner shall have the right to deduct liquidated damages from money in its hands otherwise due, or to become due, to Contractor or to sue and recover compensation for damages for non-performance of this contract at time stipulated herein.
- g. The Engineer will perform periodic inspections during construction, a punch list inspection, and Owner's final inspection and one punch list follow-up inspection. Should the Contract require additional inspections due to the inability to complete the Work or the punch list (no matter the reason), the Owner will withhold additional funds as 'liquidated damages' to compensate the Engineer for these additional services. Charges will be computed at a rate of 3.5 times the direct hourly rate of the Engineer's employees plus travel cost, telephone, and printing cost.

ARTICLE 9 PAYMENTS AND COMPLETION

- 9.3.4 "The Kentucky Fairness in Construction Act, KRS 371.400 to 371.990, applies to this construction contract, and where there is a conflict between the terms and conditions of these contract documents and the provisions of the Kentucky Fairness in Construction Act, the latter shall prevail."

ARTICLE 11 INSURANCE AND BONDS

- 11.1.8 "Notice of Cancellation" "The issuing insurance company shall provide written notice by the mail, thirty (30) days before the expiration date of cancellation of any policy in effect. This notice shall be provided to the Owner and the Construction Manager."
- 11.1.2.1. Liability coverage for the Construction Manager will be provided (subject to customary exclusions for Professional Liability), by endorsement as Additional Insured on all of the Contractors Liability Policies.
- 11.3.1.3.1 The Owner shall obtain Property Insurance with deductibles not to exceed \$1,000.00 per occurrence. Each Contractor shall be responsible for the first \$1,000.00 per occurrence of his claim.

ARTICLE 13 MISCELLANEOUS PROVISIONS

- 13.2.1 The Contractor shall not assign this Agreement or its proceeds nor subcontract the whole or any part of the Contractor's Work without prior written approval of the Owner. No assignment by contractor or any right here under shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of the Contractor under this Contract.
- 13.2.2 If the Owner gives its consent to assignment of the Contract, in whole or in part, the Contractor shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Contractor from engaging subcontractors to perform a portion of the Work hereunder. However, Contractor shall be and remain as fully responsible for all persons directly or indirectly employed

by such subcontractors, as Contractor is for its own acts and omissions and those of its agents, servants and employees.

- 13.2.3 Nothing herein shall prevent any guarantor or surety of the Contractor from enforcing any right hereunder after acknowledgment of its obligation in guarantor or surety. Any attempted enforcement of such rights in the absence of an express acknowledgement shall constitute an admission by any guarantor or surety of its obligation under its agreement of guarantee or suretyship.

(End of Supplementary Conditions)

KENTUCKY LABOR CABINET
PREVAILING WAGE DETERMINATION
CURRENT REVISION
LOCALITY NO. 003

CHRISTIAN, LOGAN & TODD COUNTIES

Determination No. CR 10-003

Date of Determination: October 26, 2015

Project No. 110-B-00075-15-1
Type: X Bldg HH

This schedule of the prevailing rate of wages for Locality No. 003, which includes Christian, Logan and Todd Counties, has been determined in accordance with the provisions of KRS 337.505 to 337.550. This determination shall be referred to as Prevailing Wage Determination No. CR 10-003.

Apprentices shall be permitted to work as such subject to Administrative Regulations. Copies of these regulations will be furnished upon request to any interested person.

Overtime is to be computed at not less than one and one-half (1 1/2) times the indicated BASE RATE for all hours worked in excess of eight (8) per day, or in excess of forty (40) per week. However, KRS 337.540 permits an employee and employer to agree, in writing, that the employee will be compensated at a straight time base rate for hours worked in excess of eight (8) hours in any one workday, but not more than ten (10) hours worked in any one workday, if such written agreement is prior to the over eight (8) hours in a workday actually being worked, or where provided for in a collective bargaining agreement. The fringe benefit rate is to be paid for each hour worked at a straight time rate for all hours worked. Fringe benefit amounts are applicable for all hours worked except when otherwise noted. Welders will receive rate for craft in which welding is incidental.

No laborer, workman or mechanic shall be paid at a rate less than that of the General Laborer except those classified as bona fide apprentices registered with the Kentucky State Apprenticeship Supervisor unless otherwise specified in this schedule of wage rates.

NOTE: The type of construction shall be determined by applying the following definitions.

BUILDING CONSTRUCTION

Building construction is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving.

HIGHWAY CONSTRUCTION

Highway construction includes the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction. It includes all incidental construction in conjunction with the highway construction project.

HEAVY CONSTRUCTION

Heavy projects are those projects that are not properly classified as either "building" or "highway". For example, dredging projects, water and sewer line projects, dams, flood control projects, sewage treatment plants and facilities, and water treatment plants and facilities are considered heavy.



Anthony Russell, Commissioner
Department of Workplace Standards
Kentucky Labor Cabinet

CLASSIFICATIONS

RATE AND FRINGE BENEFITS

CHRISTIAN AND TODD COUNTIES:

ASBESTOS/INSULATION WORKERS:	BASE RATE	\$21.10
	FRINGE BENEFITS	5.63

LOGAN COUNTY:

ASBESTOS/INSULATION WORKERS:	BASE RATE	\$12.59
	FRINGE BENEFITS	2.00

BOILERMAKERS:	BASE RATE	\$27.15
	FRINGE BENEFITS	13.54

BRICKLAYERS:	BASE RATE	\$25.37
	FRINGE BENEFITS	10.94

REFRACTORY/ACID BRICK:	BASE RATE	\$37.00
	FRINGE BENEFITS	10.94

CARPENTERS:

Carpenters:	BUILDING	BASE RATE	\$22.23
		FRINGE BENEFITS	13.29

Piledrivermen:	BUILDING	BASE RATE	\$22.73
		FRINGE BENEFITS	13.29

Carpenters:	HEAVY & HIGHWAY	BASE RATE	\$19.95
		FRINGE BENEFITS	5.43

Piledrivermen:	HEAVY & HIGHWAY	BASE RATE	\$20.70
		FRINGE BENEFITS	5.43

Divers:	HEAVY & HIGHWAY	BASE RATE	\$31.05
		FRINGE BENEFITS	5.43

CEMENT MASONS:	BASE RATE	\$ 10.04
	FRINGE BENEFITS	0.00

CLASSIFICATIONS

RATE AND FRINGE BENEFITS

ELECTRICIANS:	*BASE RATE	\$30.01
	FRINGE BENEFITS	15.65

*When workmen are required to work on light towers, radio antennas, high bridges, structural steel, or any work of a similar hazardous nature, when no safety scaffold is used under the workmen, the wage scale for the first fifty (50) feet above the ground shall be the regular Journeyman rate. On work over the first fifty (50) feet above the ground as stipulated, the rate of pay shall be one and one-half (1 ½) times the regular Journeyman scale. Such rate is to be paid only to the workmen actually performing the work at such heights. Structural steel is defined to mean open, unprotected, unfloored raw steel.

ELEVATOR CONSTRUCTORS:	BASE RATE	\$34.00
	FRINGE BENEFITS	9.41

GLAZIERS:	BASE RATE	\$19.11
	FRINGE BENEFITS	4.09

Add \$.35 for glaziers working on a scaffold 30 ft. or more above ground or any permanent part of a structure

IRONWORKERS:	BASE RATE	\$27.56
	FRINGE BENEFITS	20.57

LABORERS/BUILDING

GROUP 1:

General laborers, watchman, water boy, wrecking labor on building and structures, clearing of right-of-way and building site, carpenter tender, deck hand flagging traffic, truck spotters and dumpers, axe and cross cut saw filer, concrete puddlers and form strippers, asbestos abatement laborers, toxic waste removal laborer, lead abatement laborer and industrial deep cleaning:

BUILDING	*BASE RATE	\$20.30
	FRINGE BENEFITS	11.48

GROUP 2:

All power driven tools, hod carriers, mason tenders, finishing tenders, mortar mixers, jack hammer, vibrators, soil compactors, wagon drill, core drill, test drill, well drill, concrete pump machine, tunnel boring machine, men in tunnel and crib ditch work, signal men, riprap rock setters and handlers, asphalt rakers, tampers and smoothers, pipe layers, grout pump man, chain saw, pipe clearing, doping and wrapping, swamper and straight cable hooking, cement guns, grade checkers machine excavating, tool room checkers, batch plant scale man, sand hog free air, sand hog compressed air, cutting torch man on salvage work, road form setters, brick slingers, hand spikers, power buggy, handling of creosote material, sandblasters, curing of concrete and apply hardener, air and gas tampers, concrete saw, power post hole diggers and green cut men on concrete work, pavement breakers, multi-craft tender:

BUILDING	*BASE RATE	\$20.50
	FRINGE BENEFITS	11.48

CLASSIFICATIONSRATE AND FRINGE BENEFITSLABORERS:BUILDING (CONTINUED):GROUP 3:

Powderman and Blaster:	BUILDING	*BASE RATE	\$21.50
		FRINGE BENEFITS	11.48

*Add the following amounts to the laborers' base rate: (\$1.00) for work with toxic waste, Level A; (\$.50) for work with toxic waste, Level B; and (\$.25) for work with toxic waste, Level C and chemically treated materials. There is no additional amount for work with toxic waste, Level D

LABORERS: HEAVY HIGHWAYGROUP 1

Aging and curing of concrete (any mode or method), asbestos abatement worker, asphalt plant laborers, asphalt laborers, batch truck dumpers, carpenter tenders, cement mason tenders, cleaning of machines, concrete laborers, demolition laborers, dredging laborers, drill helper, environmental laborer - nuclear, radiation, toxic and hazardous waste - Level D, flagmen, grade checkers, all hand digging and hand back filling, highway marker placers, landscaping laborers, mesh handlers and placers, puddler, railroad laborers, rip-rap and grouters, right of way laborers, sign, guard rail and fence installers (all types), signal men, sound barrier installer, storm and sanitary sewer laborers, swampers, truck spotters and dumpers, and wrecking of concrete forms:

HEAVY & HIGHWAY	BASE RATE	\$23.31
	FRINGE BENEFITS	11.85

GROUP 2

Batter board men (sanitary and storm sewer), brickmason tenders, mortar mixer operator, scaffold builders, burner and welder, bushhammers, chain saw operator, concrete saw operators, deckhand scow man, dry cement handlers, environmental laborers - nuclear, radiation, toxic and hazardous waste - Level C, forklift operators for masonry, form setters, green concrete cutting, hand operated grouter and grinder machine operator, jack hammers, lead paint abatement, pavement breakers, paving joint machine, pipe layers-laser operators (non-metallic), plastic pipe fusion, power driven Georgia buggy or wheelbarrow, power post hole diggers, precast manhole setters walk-behind tampers, walk-behind trenchers, sand blasters, concrete chippers, surface grinders, vibrator operators, wagon drillers:

HEAVY & HIGHWAY	BASE RATE	\$23.56
	FRINGE BENEFITS	11.85

GROUP 3

Asphalt luteman and rakers, gunnite nozzleman, gunnite operators and mixers, grout pump operator, side rail setters, rail paved ditches, screw operators, tunnel laborers (free air), and water blasters:

HEAVY & HIGHWAY	BASE RATE	\$23.61
	FRINGE BENEFITS	11.85

GROUP 4

Caisson workers (free air), cement finishers, environmental laborer - nuclear, radiation, blasters, and tunnel muckers (free air), directional and horizontal boring, air track drillers (all types), powderman and blasters, troxler and concrete testers:

HEAVY & HIGHWAY	BASE RATE	\$24.21
	FRINGE BENEFITS	11.85

October 26, 2015

CLASSIFICATIONS

RATE AND FRINGE BENEFITS

MARBLE, TILE & TERRAZZO SETTERS:

BASE RATE	\$22.64
FRINGE BENEFITS	6.10

MARBLE, TILE & TERRAZZO FINISHERS:

BASE RATE	\$15.42
FRINGE BENEFITS	5.42

MILLWRIGHTS:

BASE RATE	\$23.65
FRINGE BENEFITS	14.26

OPERATING ENGINEERS/BUILDING

CLASS A-1:

Operating Engineers possessing 3rd party certification NCCCO (National Commission for the Certification of Crane Operators or OECP (Operating Engineers Certification Program) shall be paid the minimum wage rate per hour on the following equipment: Cableway, carrydeck crane, clamshell, crane, derrick, derrick boat, dragline, hoist (1 drum when hoisting engine (2 or more drums), hydraulic boom trucks, orangepeel bucket, overhead crane, piledriver, truck crane, hoist, tower cranes (French, Germand and other types), hydrocran.

BUILDING

BASE RATE	\$30.31
FRINGE BENEFITS	14.40

CLASS A:

Auto Patrol, Batcher Plant, Bituminous Paver, Cableway, Carrydeck Crane, Central Compressor Plant, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching and Trenching Machine, Dragline, Dredge Operator, Dredge Engineer, Elevating Grader and all types of Loaders, Heavy Equipment Robotics Operator/Mechanic, Hoe-Type Machine, Hoist (1 drum when used for stack or chimney construction or repair), Hoisting Engine (2 or more drums), Horizontal Directional Drill Operator, Hydraulic Boom Trucks, Locomotive, Mechanically Operated Laser Screed, Motor Scraper, Carry-all Scoop, Bulldozer, Heavy Duty Welder, Mechanic, Orangepeel Bucket, Overhead Crane, Piledriver, Power Blade, Motor Grader, Roller (bituminous), Scarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, Highlift, Forklift (regardless of lift height and except when used for masonry construction), Telescoping Type Forklift, All types of Boom Cats, Core Drill, Hopto, Tow or Push Boat, A-Frame Winch Truck, Concrete Paver, Gradeall, Hoist, Hyster, Pumpcrete, Ross Carrier, Boom, Tail Boom, Rotary Drill, Hydro Hammer, Mucking Machine, Rock Spreader attached to equipment, Scoopmobile, KeCal Loader, Tower Cranes (French, German and other types), Hydrocrane, Backfiller, Gurries, sub-Grader, Tunnel Mining Machines including Moles, Shields, or similar types of Tunnel Mining Equipment:

BUILDING

*BASE RATE	\$29.19
FRINGE BENEFITS	14.40

*Operators on cranes with boom between one-hundred fifty feet (150') and two-hundred twenty-five feet (225') including jib, shall receive one dollar (\$1.00) above base rate. Operators on cranes with boom 225' and over including jib, shall receive one dollar and fifty cents (\$1.50) above base rate. All cranes with piling leads will receive (\$1.00) above base rate regardless of boom length.

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OPERATING ENGINEERS: BUILDING (CONTINUED):CLASS B:

All Air Compressors (over 900 cfm), Bituminous Mixer, Joint Sealing Machine, Concrete Mixer (under 21 cu. ft), Form Grader, Roller (rock), tractor (50 HP and over), Bull Float, Finish Machine, Outboard Motor Boat, Flexplane, Fireman, Boom Type Tamping Machine, Truck Crane Oiler, Greaser on Grease Facilities servicing Heavy Equipment, Switchman or brakeman, Mechanic Helper, Whirley Oiler, Self-Propelled Compactor, Tractair and Road Widening Trencher and Farm Tractor with Attachments (except backhoe, highlift and endloader), Elevator (regardless of ownership when used for hoisting any building materials), Hoisting Engineer (1 drum or buck hoist), Forklift (when used for masonry construction Firebrick Masonry Excluded), Well Points, Grout Pump, Throttle-Valve Man, Tugger, Electric Vibrator Compactor and Caisson Drill Helper:

BUILDING	BASE RATE	\$26.11
	FRINGE BENEFITS ¹	14.40

CLASS C:

Bituminous Distributor, Cement Gun, Conveyor, Mud Jack, Paving Joint Machine, Roller (earth), Tamping Machine, Tractors (under 50 HP), Vibrator, Oiler, Concrete Saw, Burlap and Curing Machine, Hydro-Seeder, Power Form handling Equipment, Deckhand Steersman, Hydraulic Post Driver and Drill Helper:

BUILDING	BASE RATE	\$25.25
	FRINGE BENEFITS	14.40

OPERATING ENGINEERS/ HEAVY HIGHWAYCLASS A-1:

Operating Engineers possessing 3rd party certification NCCCO (National Commission for the Certification of Crane Operators or OECP (Operating Engineers Certification Program) shall be paid the minimum wage rate per hour on the following equipment: Cableway, carry deck crane, cherry picker, clamshell, crane derrick, derrick boat, dragline, hoist engine (2 or more drums), hydraulic boom truck, hydrocrane, orangepeel bucket, overhead crane, piledriver, rough terrain crane, tower cranes (French, German and other types, truck crane:

HEAVY HIGHWAY	BASE RATE	\$31.08
	FRINGE BENEFITS	14.40

CLASS A:

A-Frame Winch Truck, Auto Patrol, Backfiller, Batch Plant, Bituminous Paver, Bituminous Transfer Machine, All types of Boom Cats, Bulldozer, Cableway, Carry-All Scoop, Carry Deck Crane, Central Compressor Plant Operator, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Paver, Truck-Mounted Concrete Pump, Core Drills, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching and Trenching Machine, Dragline, Dredge Operator, Dredge Engineer, Earth Movers, Elevating Grader and all types of Loaders, Grade-All, Gurries, Heavy Equipment Robotics Operator/Mechanic, Highlift, Hoe-Type Machine, Hoist (two or more drums), Hoisting Engine (two or more drums), Horizontal Directional Drill Operator, Hydraulic Boom Truck, Hydrocrane, Hyster, KeCal Loader, Letourneau, Locomotive, Mechanic, Mechanically Operated Laser Screed, Mechanic Welder, Mucking Machine, Motor Scraper, Orangepeel Bucket, Piledriver, Power Blade, Pumpcrete, Push Dozer, Rock Spreader attached to Equipment, All Rotary Drills, Roller (bituminous), Scarifier, Scoopmobile, Shovel, Side Boom, Subgrader, Tailboom, Telescoping Type Forklift, Tow or Push Boat, Tower Cranes (French, German and other types), Tractor Shovel, Truck Crane, Tunnel Mining

OPERATING ENGINEERS/HEAVY HIGHWAY/ CONTINUED:CLASS A (CONTINUED):

Machines including Moles, Shields, or Similar types of Tunnel Mining Equipment:

HEAVY & HIGHWAY	**BASE RATE	\$29.95
	FRINGE BENEFITS	14.40

**Operators on cranes with booms one hundred fifty feet (150') and over including jib shall receive (\$1.00) above base rate.

CLASS B:

All Air Compressors (over 900 cu. ft. per min.), Bituminous Mixer, Boom Type Tamping Machine, Bull Float, Concrete Mixer (under 21 cu. ft.), Dredge Engineer, Electric Vibrator Compactor/Self-Propelled Compactor, Elevator (one drum or buck hoist), Elevator (regardless of ownership when used to hoist building material), Finish Machine, Firemen, Flex-Plane, Forklift (regardless of lift height), Form Grader, Hoist (one drum), Joint Sealing Machine, Mechanic Helper, Outboard Motor Boat, Power Sweeper (riding type), Roller (rock), Ross Carrier, Skid Mounted or Trailer Mounted Concrete Pumps, Skid Steer Machine with All Attachments, Switchman or Brakeman, Throttle Valve Man, Tractair and Road Widening Trencher, Tractor (50 HP and over), Truck Crane Oiler, Tugger, Welding Machine, Well Points, and Whirley Oiler:

HEAVY & HIGHWAY	BASE RATE	\$27.26
	FRINGE BENEFITS	14.40

CLASS B2:

Greaser on Grease Facilities servicing Heavy Equipment, All off Road Material Handling Equipment Including Articulating Dump Trucks:

HEAVY & HIGHWAY	BASE RATE	\$27.68
	FRINGE BENEFITS	14.40

CLASS C:

Bituminous Distributor, Burlap and Curing Machine, Caisson Drill and Core Drill Helper (track or skid mounted), Cement Gun, Concrete Saw, Conveyor, Deckhand Oiler, Grout Pump, Hydraulic Post Driver, Hydro Seeder, Mud Jack, Oiler, Paving Joint Machine, Power Form Handling Equipment, Pump, Roller (earth), Steermen, Tamping Machine, Tractors (under 50 H.P.) and Vibrator:

HEAVY & HIGHWAY	BASE RATE	\$26.96
	FRINGE BENEFITS	14.40

*Both Building and Heavy Highway employees assigned to work below ground level are to be paid ten percent (10%) above base wage rate. This does not apply to open cut work.

PAINTERS / BUILDING:

Drywall Finishers & Plasterers:		BASE RATE	\$26.30
		FRINGE BENEFITS	12.71
Brush, Roller & Paperhangers:		BASE RATE	\$26.05
		FRINGE BENEFITS	12.71
Spray, Sandblast, Power Tools, Waterblast & Steam Cleaning, Brush & Roller of Mastics, Creosotes, Kwinch Koate & Coal Tar Epoxy:		BASE RATE	\$27.05
		FRINGE BENEFITS	12.71
Spray of Mastics, Creosotes, Kwinch Koate & Coal Tar:		BASE RATE	\$ 28.05
		FRINGE BENEFITS	12.71

PAINTERS / HEAVY HIGHWAY:

Drywall Finishers & Plasterers:	HEAVY HIGHWAY	BASE RATE	\$27.45
		FRINGE BENEFITS	12.71
Brush, Roller & Paperhangers:	HEAVY HIGHWAY	BASE RATE	\$27.20
		FRINGE BENEFITS	12.71
Spray, Sandblast, Power Tools, Waterblast & Steam Cleaning, Brush & Roller of Mastics, Creosotes, Kwinch Koate & Coal Tar Epoxy:	HEAVY HIGHWAY	BASE RATE	\$28.20
		FRINGE BENEFITS	12.71
Spray of Mastics, Creosotes, Kwinch Koate & Coal Tar:	HEAVY HIGHWAY	BASE RATE	\$ 29.20
		FRINGE BENEFITS	12.71

PLUMBERS & STEAMFITTERS:	BASE RATE	\$34.36
	FRINGE BENEFITS	15.82

ROOFERS: (Excluding Metal Roofs)	BASE RATE	\$10.00
	FRINGE BENEFITS	.02

SHEETMETAL WORKERS: (Including HVAC and Metal Roofs)	BASE RATE	\$25.91
	FRINGE BENEFITS	8.06

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<u>CLASSIFICATIONS</u>	<u>RATE AND FRINGE BENEFITS</u>
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SPRINKLER FITTERS:	BASE RATE	\$31.35
	FRINGE BENEFITS	17.87

TRUCK DRIVERS / BUILDING:

Light Teamster, all trucks and autos, up to but not including 5 tons:

BUILDING	BASE RATE	\$13.80
	FRINGE BENEFITS	2.08

Heavy Teamster, all trucks 5 tons and over, including special equipment such as euclids, winch trucks, boom trucks, demster dumpsters, crawler type trucks, tractor-trailer trucks, low-boys, distributor trucks, water tank trucks, fork lifts, buses, tandem dump trucks, ambulances, all ready mix trucks, and truck mechanics:

BUILDING	BASE RATE	\$14.45
	FRINGE BENEFITS	2.08

Greasers, tire changes, mechanic helpers, material checkers and warehouse:

BUILDING	BASE RATE	\$14.40
		2.08

TRUCK DRIVERS / HEAVY HIGHWAY:

Greaser and tire changer:

HEAVY & HIGHWAY	BASE RATE	\$16.34
	FRINGE BENEFITS	7.04

Truck Mechanic:

HEAVY & HIGHWAY	BASE RATE	\$16.57
	FRINGE BENEFITS	7.04

Driver-Single axle dump & flatbed, terrain vehicle when used to haul materials; semi-trailer or pole trailer when used to pull building materials & equipment, tandem axle dump, distributor, and mixer trucks (all types):

HEAVY & HIGHWAY	BASE RATE	\$16.64
	FRINGE BENEFITS	7.04

Driver-Euclid, other heavy earthmoving equipment & lowboy, articulator, cat truck & 5 axle vehicle, winch truck & A-Frame truck when used in transporting materials, ross carrier, fork lift truck when used to transport building materials, and drivers on pavement breaker:

HEAVY & HIGHWAY	BASE RATE	\$16.65
	FRINGE BENEFITS	7.04

**END DOCUMENT CR 10-003
OCTOBER 26, 2015
PAGE 9 of 9**

KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF FACILITIES MANAGEMENT

MATERIAL SUPPLIER AUTHORIZATION

702 KAR 4:160

MAY 1993

DATE: _____

(Name of Owner)

RE:

Gentlemen:

In the bid submitted by _____ for Bid Division No. _____ of the
_____ Project, the undersigned is listed as the supplier for certain materials
designed therein, at a cost of \$ _____.

Base Bid:	\$ _____
Alternate # _____	\$ _____
Alternate # _____	\$ _____
Alternate # _____	\$ _____

This is to acknowledge and authorize that:

1. _____ was authorized to make the representation to the
Owner that the undersigned will provide the materials designated in said bid, for the price stated therein; and
2. If _____ is awarded a contract for Bid Division No. _____ of
such Project, the undersigned will enter into a Purchase Order with the Owner, on the standard Purchase Order
included in the information to Bidders, to supply such materials for the price stated, and will guarantee and
warrant performance to provide that such materials fully comply with the contract documents relating thereto; and
3. This commitment, acknowledgement, and authorization cannot be revoked during the time allowed by you to
accept the bid of _____ or during any extended time for
acceptance agreed to by _____.

Sincerely,

Name: _____

Address: _____

Telephone Number: _____

Signature

Title

State of _____ County of _____

Subscribed and sworn to before me this _____ day of _____ 19 _____

_____ My Commission Expires _____

Review for basic compliance with Contract Documents:

BY: (Construction Manager) _____

BY: (Architect or Engineer) _____

KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF FACILITIES MANAGEMENT

CERTIFICATE OF PRODUCT COMPLIANCE
FOR PROPOSED SUBSTITUTED PROJECTS

702 KAR 4:160

MAY 1993

TO: _____

I, _____, being a duly authorized representative of
(name)

_____ the manufacturer, and/or
(company name)

distributor and/or sales representative of _____,
(product name)

do hereby certify that the above named product complies in strict accordance with the Contract Documents for the

construction of _____ located in
(project name)

_____, and that the product is compatible
(project address)

and fit for the intended use and incorporation into this project.

Further, I understand that the Architect and Owner may rely on this certification.

(Signed)

(Date)

Attached is supporting information.

SPECIAL CONDITIONS

Index:

1. Definitions
2. General
3. Engineer's Work Product
4. Administration of the Contract
5. Conflicts
6. Workmanship
7. Drawings and Specifications
8. Division of Specifications
9. Allocation of Work
10. Notice and Service Thereof
11. Codes and Ordinances
12. Substantial Completion, Final Completion and Subsequent Reviews
13. Storage of Materials
14. Layout of Building
15. Damaged Facilities
16. Unit Prices
17. Rules of Measurement
18. Interruption of Utilities
19. Contractor Coordination
20. Miscellaneous Provisions
21. The Kentucky Fairness Construction Act

1. DEFINITIONS

- a. The term “OWNER” as used throughout these documents means the Todd County Board of Education, Elkton, KY 42220.
- b. The term “ENGINEER” as used throughout these documents means SR Engineer, 2137 Glen Lily Road, Bowling Green, KY 42101.
- c. The term “PLANS” and “DRAWINGS” are used interchangeably and are construed to have the same meaning.

2. GENERAL

- a. These specifications and drawings accompanying them describe the work to be done and the materials to be furnished for the Todd County Middle School - HVAC Renovation.
- b. Should any error or inconsistency appear in the Drawings or Specifications, the Contactor, before proceeding with the work, must make mention of the same to the Engineer for proper adjustment and in no case proceed with the work in uncertainty or with insufficient drawings.
- c. The work under this contract does not include any items marked “NIC” on the drawings (not in contract).
- d. Contractors shall follow sizes in specifications or figures on drawings, in preference to scale measurements and follow detail drawings in preference to general drawings.
- e. Where is obvious that a drawing illustrates only a part of a given work, of a number of items, the remainder shall be deemed repetitious and so constructed.

3. ENGINEER’S WORK PRODUCT

- a. The Engineer’s work product is prepared and produced for the sole and exclusive benefit of the Owner. Any real or inferred benefits to third parties is hereby expressly disclaimed.

4. ADMINISTRATION OF THE CONTRACT

- a. The Engineer will perform certain administrative functions of the construction contract. Nothing contained in these contract documents, nor any other oral or written agreements, memoranda, or communications shall create any express or implied contractual relationship between the Engineer and the Contractor.
- b. The Engineer may make periodic visits to the work site in accordance with the conditions of his contract with the Owner. The purpose of these visits and observations is to endeavor to guard against defects and deficiencies, not to supervise the Contractor’s work.
- c. The Engineer makes no express or implied representations of guaranteeing the Contractor’s work.
- d. The Engineer is not a specialist in construction methods, techniques, sequences or procedures and therefore assumes no responsibility for the construction operations and safety program.

5. CONFLICTS

- a. If there is any conflict in the General Conditions with the Special Conditions, the Special Conditions shall govern.

6. WORKMANSHIP

- a. The workmanship shall be of the highest quality, in every respect, as usually recognized in the building industry. Poor or inferior workmanship (as determined by the Construction Manager, Architect, Engineers or inspecting authorities) is to be removed and replaced to conform to the highest quality standards of the trades concerned, or otherwise corrected.

7. DRAWINGS AND SPECIFICATIONS

- a. The drawing dimensions shall have precedence over scaled measurements and details over general drawings. In case of conflicts between Drawings and Specifications, the more stringent shall apply.
- b. Figured dimensions on the drawings are reasonably accurate and should govern in setting out the work. However, should the Contractor discover discrepancies or inaccuracies, it shall be the Contractor's responsibility to bring them to the attention of the Engineer before making any changes. Changes shall be made only with the approval of the Engineer.
- c. If there is a conflict within or between contract documents involving quality or quantity of work required, it is intention of contract that work of highest quality or greater quantity indicated or specified shall be provided. Whether or not the word "all" is used, coverage is specifically and expressly noted. In all cases where an item is referred to in singular number, it is intended that reference shall apply to as many such items as are required to perform the work.

8. DIVISION OF SPECIFICATIONS

- a. Division of Specifications into sections is done for convenience of reference is not intended to control contractors in dividing work among subcontractors or to limit scope of work performed by any trade under any given section.

9. ALLOCATION OF WORK

- a. Where certain materials are specified to be installed under various headings, it shall be the responsibility of the Contractor to re-allocate such work under the proper subcontractor if the specification is in conflict with local jurisdiction.

10. NOTICE AND SERVICE THEREOF

- a. Any notice to any Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by registered mail, to the said Contractor at his last address, or delivered in person to said Contractor or his authorized representative on the work.

11. CODES AND ORDINANCES

- a. All branches of the work shown on the plans or specified, whether specifically mentioned or not, shall be executed in strict compliance with all local or state regulations and codes, and shall be in compliance with all National Codes, when same have jurisdiction.

12. SUBSTANTIAL COMPLETION, FINAL COMPLETION & SUBSEQUENT REVIEWS

- a. In as much as all parties with and intend to prosecute the work in a diligent and good faith manner, and to complete the work in a timely fashion, the Contractor shall notify the Engineer when the Contractor believes he has attained Substantial Completion. Notification in writing shall be made at least five (5) calendar days prior to the date set to the Substantial Completion review. The Contractor shall comply with the pre-requisite requirements for Substantial Completion as set forth in Section 01650 – Progress Payment and Closeout Procedures.
- b. Review Procedures – Upon receipt of the Contractor's request, the Engineer will either proceed with review or advise Contractor of prerequisites not fulfilled. Following initial review, the Engineer will either prepare a certificate of substantial completion, or advise the Contractor of work which must be performed prior to issuance of the certificate of substantial completion. The Engineer will repeat the review when requested and assured by the Contractor, in writing, that the Work has been substantially completed. Results of the completed review will form the initial "punch list" for final acceptance.
- c. The Engineer will review the work upon the receipt of the Contractor's notice that he believe in good faith that, except for those items whose completion has been delayed due to circumstances that are acceptable to the Engineer, the work has been completed, including punch list items from earlier reviews. Upon completion of review, the Engineer will either recommend final acceptance and final payment or will advise the Contractor of work not completed or obligations not fulfilled as required for final acceptance by issuance of another punch list.
- d. The Contractor, upon completion of all outstanding items set forth on the punch list, shall notify the Engineer of the completion of the work. The Engineer shall verify completion of the work by an on-site review.
- e. In the event that the work should still require further reviews after initial post final review, unless through no fault of the Contractor, the Contractor shall authorize the Owner to deduct from the remaining available construction funds those monies which represent the Architect's normal hourly compensation rates and normal expenses for any additional time and expense expended on this project by the Engineer. Hourly rates and expense reimbursement rates will be governed by those rates stipulated in the Agreement Between the Owner and Engineer. The disbursement of available construction funds by the Owner to the Engineer in the foregoing situation, described therein, shall represent only actual charges associated with the expenditure of the Engineer's time and expense and in no way represent a penalty assessed to the Contractor.
- f. Substantial Completion: The General Conditions are modified as follows: "Substantial Completion" is the point at which, as certified in writing by the Owner and Engineer, the project is at the level of completion, in strict compliance with the contract, where:
 - Necessary approval by public regulatory authorities has been given;

- The Owner has received all required project warranties and documentation; and
 - The Owner may enjoy beneficial use or occupancy and may use, operate, and maintain the project in all respects, for its intended purpose.
- Partial use or occupancy shall not necessarily result in the project being deemed Substantially complete and shall not be evidence of substantial completion.

13. STORAGE OF MATERIALS

- a. Each Contractor providing materials and equipment shall be responsible for the proper and adequate storage of his materials and equipment, and for the removal of same upon completion of his work. Storage of materials at the site shall be confined to areas within the Contract Limits, and the Contractor's designated parking area if necessary, where Designated by the Owner and Engineer.

14. LAYOUT OF BUILDING

- a. Each Contractor shall lay out the work and be responsible for all lines, levels and measurements of all work executed under this Contract; he shall verify the figures before laying out the work and will be held responsible for any error resulting from his failure to do so.
- b. Each Contractor shall be prepared to guarantee each of his subcontractors the dimensions, which they may require for the layout and fitting of their work to the surrounding work.

15. DAMAGED FACILITIES

- a. Each Contractor shall repair and/or replace, at no expense to the Owner, any sections of existing roads, drives, streets, sidewalks, curbs, utilities, buildings and other structures damaged by reason of work performed under this Contract or incidental thereto, whether by his own forces or by his Subcontractors or by his Material Suppliers.

16. UNIT PRICES

- a. The Unit Price for each of the items set forth in the Form of Proposal shall become a part of the Contract.
- b. All Unit Prices are subject to review by the Owner and Engineer prior to being accepted for contract purposes.
- c. All Subcontractors shall be bound by the Unit Prices of each Contractor.
- d. It is mutually understood and agreed that such Unit Prices include all items of costs, overhead and profit for the Contractor and any Subcontractor(s) involved, and that they shall be uniformly without modification for either additions or deductions.
- e. The Rules of Measurement, as specified in Paragraph 17 of this Section, shall apply in the use of Unit Prices.
 - 1. Each Unit Price involving earthwork shall cover, among other things, engineering (surveying) costs and all costs of keeping excavations dry.

17. RULES OF MEASUREMENT

- a. The following Rules of Measurement shall apply in the use of Unit Prices.
 - 1. Except as provision is made hereinafter for arbitrary measurements, the quantity of excavation shall be its in-place volume before removal.
 - 2. No allowance will be made for excavating additional material of any nature taken out for the convenience of the Contractor, beyond the quantity computed under these Rules of Measurement.
 - 3. The quantities of excavation shall be computed from instrument readings in vertical cross sections located at such intervals as will assure accuracy.
 - 4. General excavation for buildings and sections of buildings, bases for equipment, sump pits, etc., involving an area of 200 or more square feet, shall be classified as "Mass Excavation".
 - 5. Excavation for pipes, wall footings, grade beams, column footings and sections of buildings such as bases for equipment, sump pits, etc., involving an area less than 200 square feet, shall be classified as "Trench Excavation".
 - 6. "Mass Excavation" shall arbitrarily be assumed to extend to vertical planes two feet (2') outside wall lines, and to the elevation of plan subgrade.
 - 7. "Trench Excavation" for walls, grade beams and sections of building, such as bases for equipment, sump pits, etc., involving an area less than 200 square feet shall be arbitrarily assumed to extend two feet (2') wider than wall and grade beam thicknesses and outside walls of sections of buildings such as bases for equipment, sump pit, etc., but in no case less than three feet (3') wide sides vertical.
 - 8. "Trench Excavation" for pipes shall arbitrarily be assumed to be two feet (2') wider than the outside diameter of the pipe barrel and with sides vertical.
 - 9. "Trench Excavation" for wall footings and column footings shall be computed as vertical shafts, each with a horizontal cross section identical in shape and size with the plan of the footing.
 - 10. The quantities of form work will be the area of forms in contact with concrete.
 - 11. Concrete quantities shall be computed from plan size or if there are no drawings, from actual measurement of the work ordered and placed, waste excluded.

18. INTERRUPTION OF UTILITIES

- a. Utility services to existing facilities shall not be interrupted unless absolutely necessary. Interruptions shall be of minimum duration and shall be scheduled to cause the least possible inconvenience. In all cases, the owner shall be notified well in advance of an anticipated interruption of utilities.

19. CONTRACTOR COORDINATION

- a. Each Contractor and all Subcontractors and other on-site contractors shall cooperate and coordinate their work to expedite the progress of the project. All Subcontractors shall review and refer to the drawings and specifications of other trades involved with their particular work before proceeding. Any work installed which conflicts with another trade and had not been brought to the attention of the Engineer prior to installation shall be removed and reinstalled at no additional expense to the Owner.

20. MISCELLANEOUS PROVISIONS

- a. None of the Bidding Documents or Contract Documents prepared for this project, including, but not limited to all contracts, drawings, or specifications, shall be construed against the party preparing any document on the ground that the party prepared or drafted the document, or any portion thereof.

21. THE KENTUCKY FAIRNESS IN CONSTRUCTION ACT

- a. The Kentucky Fairness in Construction Act, KRS 371.400 to 371.990, applies to this construction contract, and where there is a conflict between the terms and conditions of these contract documents and the provisions of the Kentucky Fairness in Construction Act, the latter shall prevail.
- b. Compliance with KRS 45A.343: Within 10 days after award of the contract and as required by KRS 45A.343, section (2)(a), each Contractor and all Subcontractors performing work under the contract shall in writing to the Owner reveal any final determination of a violation by the Contractor or Subcontractor within the previous 5 year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the Contractor or Subcontractor. As required by KRS 45A.343, Section (2)(b), Contractors and Subcontractors performing work under the contract shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the Contractor or Subcontractor for the duration of the Contract.

(End of Special Conditions)

Kentucky Department of Education Version of AIA[®] Document A701[™] – 1997

Instructions to Bidders



This version of AIA Document A701[™]–1997 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A701–1997 does not imply the American Institute of Architects’ endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A701–1997 showing additions and deletions by the Kentucky Department of Education is available for review on the Kentucky Department of Education Web site.

Cite this document as “AIA Document A701[™]– 1997, Instructions to Bidders — KDE Version,” or “AIA Document A701[™]–1997 — KDE Version.”

Kentucky Department of Education Version of AIA Document A701™ – 1997

Instructions to Bidders

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

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

ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201™, or in other Contract Documents are applicable to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Form of Proposal for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids. The Base Bid shall include all labor, material, bonds, and the cost of all direct purchase orders for material to be purchased by the Owner

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents.

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

1. The submission of a Bid will be construed as evidence that a site visit and examination of local conditions have been made. Later claims for labor, equipment, or materials required or difficulties encountered which could have been foreseen had such an examination been made will not be recognized.

§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 Copies

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.

§ 3.1.2 (Not Used)

§ 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

§ 3.1.4 The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

§ 3.2 Interpretation or Correction of Bidding Documents

§ 3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect and Construction Manager (if utilized) errors, inconsistencies or ambiguities discovered.

§ 3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect and Construction Manager (if utilized) at least seven days prior to the date for receipt of Bids.

§ 3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

§ 3.3 Substitutions

§ 3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

§ 3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.3 If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

§ 3.3.4 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

§ 3.4 Addenda

§ 3.4.1 Addenda will be transmitted to all who are known by the Architect and Construction Manager (if utilized) to have received a complete set of Bidding Documents.

§ 3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

ARTICLE 4 BIDDING PROCEDURES

§ 4.1 Preparation of Bids

§ 4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

§ 4.1.2 All blanks on the Form of Proposal shall be legibly executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter “No Change.”

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder’s refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the Form of Proposal nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent’s authority to bind the Bidder.

§ 4.2 Bid Security

§ 4.2.1 Each Bid greater than \$25,000 shall be accompanied by bid security in the form of a Bond provided by a Surety Company authorized to do business in the Commonwealth of Kentucky, or in the form of a certified check, and in an amount equal to at least five percent (5%) of the Base Bid amount, pledging that the Bidder will enter into a contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payments of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

§ 4.2.2 If a surety bond is required, it shall be written on AIA Document A310™, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

§ 4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

§ 4.3 Submission of Bids

§ 4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder’s name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation “SEALED BID ENCLOSED” on the face thereof.

§ 4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids as indicated in the Advertisement or Invitation to Bid or any extensions thereof made by Addendum. Bids received after the closing time and date for receipt and opening of Bids will be rejected and returned to the Bidder unopened.

§ 4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

§ 4.4 Modification or Withdrawal of Bid

§ 4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

§ 4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

§ 4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

§ 4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

ARTICLE 5 CONSIDERATION OF BIDS

§ 5.1 Opening of Bids

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud.

§ 5.2 Rejection of Bids

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

§ 5.3 Acceptance of Bid (Award) [Reference: KRS 45A.365]

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

§ 5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

ARTICLE 6 POST-BID INFORMATION

§ 6.1 Contractor's Qualification Statement

§ 6.1.1 Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305™, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

§ 6.1.2 In determining the qualifications and responsibilities of the Bidder, the Owner shall take into consideration the Bidder's skill, experience, facility, previous work standing, financial standing, capacity and ability to handle work in addition to that in progress, and quality and efficiency of construction plant and equipment proposed to be used on the project.

§ 6.2 (Not Used)

§ 6.3 Submittals

§ 6.3.1 Each Bidder shall submit as part of the Form of Proposal a list of subcontractors proposed for each major branch of work itemized and described in the specifications for the Project. The Bidder's listing of a subcontractor for a work category certifies that the subcontractor has in current employment, skilled staff and necessary equipment to complete that category. The Architect and Construction Manager (if utilized) will evaluate the ability of all listed subcontractors to complete the work and notify the Owner. Listing of the Bidder as the subcontractor may invalidate the Bid should the Architect's and Construction Manager's (if utilized) review indicate the bidder does not have skilled staff and equipment to complete the work category at the time the Bid was submitted.

- .1 Changing subcontractors from those listed with the Form of Proposal is prohibited unless the bidder provides grounds for such a change that are consistent with provisions of the Instructions to Bidders. Said change shall be accompanied by a written explanation from the Bidder as well as a written release from the listed subcontractor. All letters shall be on original company stationery with original signatures from an officer in the company legally approved to act for the company. An unjustifiable change of subcontractors may invalidate the Bid. Any change to a proposed person or entity shall be addressed as noted in Section 6.3.3 of these Instructions to Bidders

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

§ 6.4 List of Materials, Suppliers, and Manufacturers

§ 6.4.1 Each Bidder shall submit a complete list of materials/equipment with supplier's and manufacturer's name in the form and manner indicated on the Form of Proposal and in compliance with materials and equipment specified.

§ 6.4.2 In addition to the list furnished with the Form of Proposal, the successful Bidder thereafter known as the Contractor, may be requested within thirty (30) calendar days after award of contract to furnish to the Architect and Construction Manager (if utilized) a more detailed and complete list of the materials and equipment, together with the manufacturer's or maker's name, brand and/or catalogue number, and product data or illustration thereof.

§ 6.4.3 Prior to the award of contract, the Architect and Construction Manager (if utilized) will make a preliminary check of the lists included with the Form of Proposal and advise the Bidder and the Owner of the acceptance thereof, and of such other actions as may be necessary in order to meet the requirements of the contract specifications. Should it develop that any of the materials or equipment named in the list do not meet the requirements of the project specifications, the Bidder shall be required to offer to the Owner other materials or equipment in compliance with the specifications at no change in contract price. Preliminary review and acceptance of the above list shall not relieve the Contractor of furnishing equipment and materials in accordance with the specifications.

§ 6.4.4 Written approval shall be obtained from the Architect regarding any material/equipment, supplier, and manufacturer substitution. Substitutions are permitted in the following instance:

- .1 Failure to comply with contract requirements;
- .2 Failure of the supplier or manufacturer to meet delivery schedules or other conditions of the contract;
- .3 Written release by the supplier or manufacturer.

§ 6.4.5 The Owner reserves the right to reject the bid of any Bidder who fails to furnish the information required under Sections 6.3 and 6.4.

§ 6.5 Unit Prices

§ 6.5.1 Each Bidder shall submit as part of the Bid a list of unit prices as designated on the Form of Proposal.

§ 6.5.2 Unit prices are for changing or adjusting the scope or quantity of work from that indicated by the contract drawings and specifications.

§ 6.5.3 Unit prices shall include all labor, materials, equipment, appliances, supplies, overhead and profit.

§ 6.5.4 Only a single unit price per item shall be given and it shall apply for either more or less work than indicated or specified in the contract documents. In the event the contract is adjusted by unit prices, a change order shall be issued for the change and for the increased or decreased amount.

§ 6.5.5 Unit prices listed by the Bidder and accepted by the Owner shall apply to all phases of work whether the work is performed by the Bidder or by the Bidder's (Contractor's) subcontractors.

§ 6.5.6 For unit prices that apply to a lump sum Base Bid, the Owner reserves the right, prior to an award of contract, to negotiate, adjust and/or reject any price that is determined by the Architect, Construction Manager, or Owner to be excessive or unreasonable in amount.

§ 6.5.7 On line item total sum bids where Bidders are quoting firm unit prices for estimated quantities of units of work, the unit price is the Bid and is not subject to change, either by the Bidder or Owner. The Owner reserves the right to correct mathematical errors in extensions and additions by the Bidder. The Owner's corrected bid sum total shall take preference over the Bidder's computed bid sum total.

§ 6.6 Bid Division, Material Suppliers, and Purchase Orders

§ 6.6.1 This Section applies to projects with or without Bid Division (Multiple Prime Contracts), and those Projects that provide for direct purchase by the Owner of materials and equipment from Material Suppliers.

§ 6.6.2 For Projects with Bid Division: General Construction and Concrete, Masonry, Plumbing, HVAC and Electrical Contractors shall provide with their Bid a breakdown of major material items (excluding sales tax). This breakdown shall include description of the item, name of the manufacturer, name of the supplier, and the amount of the supplier's quote. The Owner will issue Purchase Orders direct to the suppliers for these materials. The following shall be provided:

- .1 Within four (4) days from the Bid Date, the low Bidder shall furnish to the Owner the list of material suppliers of the items listed on the bid breakdown, with authorization given to the Contractor to quote the materials listed and that the Supplier will furnish the listed materials to the Owner under the Owner's standard Purchase Order for the amount stated on the Contractor's bid breakdown. Failure of any Contractor to provide this written list of material suppliers with authorization will cause forfeiture of the bid security.
- .2 The Contractor shall also guarantee to the Owner that materials listed in the breakdown to be purchased directly by the Owner shall comply with requirements of the Contract Documents and that the quantity of such material is sufficient to complete the Bid Division. The Performance and Payment Bonds required of the Contractor shall be in the combined amount of the materials designated in its bid to be acquired by Purchase Order by the Owner and all remaining items of cost in the respective Bid Division. Contractor shall provide an invoice from the supplier to the Owner with Contractor's Application for Payment.
- .3 Material Suppliers will be paid the full amount of their invoices. Retainage that would otherwise be withheld from invoices submitted by and paid to a material supplier shall be withheld from the approved payment request of the Contractor. Refer to General Conditions for further requirements regarding retainage.
 - a Lockers, Library, Kitchen, Shop, Technology, Science or other major equipment bid divisions shall provide with their Bid a breakout price for the material portions of the Bid (excluding sales tax). Award of contract will be based on the lump sum price of the accepted Bid that includes labor and materials. The Owner will issue a Purchase Order for the material and a contract for the labor and incidental materials. Retainage will be held on both the Purchase Order and the Contract in accordance with the General Conditions.
 - b The language of the Bid Divisions is designed to outline and define the work in general to be included in a particular Bid Division and to prevent overlapping and conflicting requirements within other Bid Divisions. No Bidder shall use the omission of any item from this language as a basis for a claim for additional cost when such item is specified or indicated to be part of a complete and workable system.
 - c It is the responsibility of the Bidder to determine which Bid Division or combination of Bid Divisions the Bidder desires to Bid.

§ 6.6.3 For Projects without Bid Division but with direct purchase by the Owner of materials and equipment from Material Suppliers, Contractors shall comply with paragraph 6.6.2 above as applicable to the Project. The Owner will issue Purchase Orders direct to the suppliers for these materials. Award of contract will be based on the lump sum price of the accepted bid that includes labor and materials. Retainage will be held on both the Purchase Orders and the Contract(s) in accordance with the General Conditions.

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 Bond Requirements

§ 7.1.1 Unless stipulated otherwise in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds shall be executed by a surety company authorized to do business in Kentucky.

§ 7.1.2 The cost of such bonds shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.2 Time of Delivery and Form of Bonds

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312™-2010, Performance Bond and Payment Bond — KDE Version. Both bonds shall be written in the amount of the Contract Sum, being the total of the Base Bid, as described in Section 1.5 herein, and all Alternates accepted by the Owner.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101™–2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum — KDE Version, except for those Projects utilizing a Construction Manager the Agreement will be written on AIA Document A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Advisor Edition — KDE Version. Owner-Contractor Agreements shall be valid only after written notice by the Kentucky Department of Education that the proposed Agreements are approved.

ARTICLE 9 PUBLIC WORKS ACT [Reference: KRS 337.505 to 337.550]

§ 9.1 Labor Regulations

§ 9.1.1 Work shall be performed in compliance with applicable provisions of the Kentucky Prevailing Wage Act on Public Works Projects, KRS 337.505 through KRS 337.550.

§ 9.1.2 Prevailing wage rates, included with the Bidding Documents, shall be paid on this Project if required under Section 10.1.1. The stipulated wage rates represent prevailing minimum wage rates of pay allowable and shall not be construed to mean that higher rates may not have to be paid in order to secure labor.

§ 9.1.3 Any Bidder and/or subcontract bidder in violation of any wage or work act provision (KRS 337.510 to KRS 337.550) and under citation by the Kentucky Department of Labor is prohibited by KRS 337.990 from bidding on or working on any and all public works contracts either in their name or in the name of any other company, firm, or other entity in which there is vested interest. No Bid shall be submitted by a prime Bidder or sub-bidder in violation of KRS Chapter 337. The responsibility of the qualifications of the sub-contract Bidder is solely that of the prime Bidder. The rejection of the subcontract Bidder and resubmittal of a qualified subcontract Bidder shall be addressed per the provisions of these Instructions to Bidders relating to subcontract Bidders (subcontractors) and materials.

§ 9.2 Davis-Bacon Act Provisions

Projects funded with Federal Funds shall comply with the Davis-Bacon Act (Subchapter IV of Chapter 31 of the Title 40 of the United States Code). Where the amount received from federal revenue sharing is less than 25 percent of the estimated total construction cost of a public school project, state law and not the federal applies to the wage rate and the prevailing wage scale to be used for the project (OAG 74-329). Refer to Supplementary Conditions for direction regarding application of federal rates, if included in the bidding documents, to this project. In the event both state and federal wage rates apply, the higher of the two rates shall be used to determine labor costs.

ARTICLE 10 TAXES

§ 10.1 Kentucky Sales and/or Use Tax [Reference KRS 139.495(1)]

Bidders are informed that construction contracts of the Commonwealth of Kentucky and political subdivisions are not exempt from the provisions of the Kentucky Sales and/or Use Tax, unless provisions are clearly noted in the bidding documents for the direct purchase of certain materials and equipment by the Owner. Materials and equipment which are to be submitted for direct purchase are as noted by the Architect or Construction Manager in the Form of Proposal and shall be limited to forty (40) items with a minimum price of \$5,000 each. All other materials and equipment shall be included in the Contract Price and are subject to Kentucky Sales and/or Use Taxes. Current Sales and/or Use Tax shall be provided for and included in the bid amount as no adjustment will be permitted nor made after the receipt of bids.

§ 10.2 Federal Excise Tax

The Commonwealth of Kentucky and its political subdivisions are exempt from Federal Excise Tax.

ARTICLE 11 POST BID REVIEW AND MATERIAL SUBMITTAL

§ 11.1 Representative at Bid Opening

§ 11.1.1 Each prime Bidder shall have an authorized representative at the bid opening for submittal of the list of materials and equipment, and the post bid review which follows immediately after the opening and reading of bids.

§ 11.1.2 Following the opening of bids, the three (3) apparent low Bidders shall remain for a post-bid review, and shall submit a completed list of materials, equipment and suppliers within one (1) hour from the close of the reading of the bids. The list of materials and equipment shall be the listing contained in the Form of Proposal.

§ 11.1.3 The post bid review, open to all bidders, will be conducted jointly with representatives of the Architect and Construction Manager (if utilized), Owner, and apparent low Bidder. Preliminary review will be directed toward Bidder's qualifications, list of subcontractors, list of materials and equipment, and unit prices.

ARTICLE 12 EQUAL EMPLOYMENT AND NONDISCRIMINATION

The Commonwealth of Kentucky and its political subdivisions are committed to equal job opportunities on public contracts and prohibited from discrimination based on race, creed, color, sex, age, religion, or national origin.

ARTICLE 13 CONFLICT OF INTEREST, GRATUITIES AND KICKBACKS, USE OF CONFIDENTIAL INFORMATION

[Reference KRS 45A.455]

Conflict of Interest, Gratuities, Kickbacks, and Use of Confidential Information as described in KRS 45A.455 are expressly prohibited. Penalties for any violation under this statute are located in KRS 45A.990.

ARTICLE 14 KENTUCKY FAIRNESS IN CONSTRUCTION ACT OF 2007 [Reference KRS 371.400 to 371.425]

Projects constructed for school districts in the Commonwealth of Kentucky are subject to provisions of the Kentucky Fairness in Construction Act of 2007 as it relates to the right to litigate, the right to delay damages against the Owner, the right to file a mechanic's lien, prompt payment by Owners, amount of retainage that can be withheld and other provisions of the Act.

ARTICLE 15 KENTUCKY PREFERENCE LAW [Reference KRS 45A.490 to 45A.494]

§ 15.1 Projects constructed for school districts in the Commonwealth of Kentucky are subject to provisions of the reciprocal preference for Kentucky Preference for Resident Bidders law, KRS 45A.490 to KRS 45A.494. Reciprocal preference shall be given by public agencies to resident bidders.

§ 15.2 The Kentucky Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this Section shall be given.

§ 15.3 The reciprocal preference as described in KRS 45A.490 to KRS 45A.494 above shall be applied in accordance with Kentucky Administrative Regulation 200 KAR 5:400.

Kentucky Department of Education Version of AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)



This version of AIA Document A201–2007 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A201 does not imply the American Institute of Architects' endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A201–2007 showing additions and deletions by the Kentucky Department of Education is available for review on the Kentucky Department of Education Web site.

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

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Sample

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Owner direct Purchase Orders, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.6 Transmission of Data in Digital Form

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 (Not Used)

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 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 Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for

information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further

warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design

concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment, and, at the discretion of the Owner may be the Owner's representative during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance

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with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design)

proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Proposed Change in the Work equal to or exceeding \$25,000 additive or deductive, shall be subject to approval by the Kentucky Department of Education prior to execution of the Change Order by the Owner.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed fifteen (15%) of the net cost of the change. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be

furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and 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 Contractor's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage as stipulated in Section 9.3.4.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the

Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 When Owner direct Purchase Orders are used, retainage that would otherwise be held on materials and equipment shall transfer to the Contractor, and the material suppliers will be paid the full amount of their invoices. The Owner shall retain ten percent (10%) from each Application for Payment, and an amount equal to ten percent (10%) of approved Purchase Order payments, up to fifty percent (50%) completion of the Work, then provided the Work is on schedule and satisfactory, and upon written request of the Contractor together with consent of surety and the recommendation of the Architect, the Owner shall approve a reduction in Retainage to five percent (5%) of the current Contract Sum plus Purchase Orders. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in Section 9.8. herein. After Substantial Completion, if reasons for reduction in retainage are certified in writing by the Architect, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Owner when deemed reasonable. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents or as required by state law, whichever is more restrictive, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The ability to occupy and utilize the Work or designated portion thereof shall require an

occupancy permit issued by the Kentucky Department of Housing, Building, and Construction and any other agencies that have statutory authority and approval requirements.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

- .1 Upon receipt and approval of the final Application for Payment, for each Contract and Purchase Order, if any, the Architect will prepare, and the Architect and Owner shall complete their portion of the Kentucky Department of Education BG-4 Contract Closeout Form – 2013, and forward the board-approved BG-4 form to the Kentucky Department of Education with a copy of the final Certificate for Payment upon the Board authorizing the BG-4 form, accepting the Work, and approving final payment to the Contractor or Material Supplier.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Such insurance shall be no less than the following amounts:

(1) Public Liability	\$200,000.00 one person/maximum each person \$500,000.00 one accident/maximum each person
(2) Property Damage	\$200,000.00 one accident/maximum \$500,000.00 aggregate

§ 11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than the following limits, or greater if required by law:

- (1) Worker's Compensation:
 - a. State Statutory
 - b. Applicable Federal (e.g., Longshoreman's) Statutory
 - c. Employer's Liability \$500,000
- (2) Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor's Protection; Product Liability and Completed Operations; Broad Form Property Damage):
 - a. General Aggregate (except Products-Completed Operations) \$1,000,000
 - b. Products-Completed Operations Aggregate \$1,000,000
 - c. Personal/Advertising Injury (per person/organization) \$1,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
 - e. Limit per Person Medical Expense \$10,000
 - f. Exclusions of Property in Contractors Care, Custody or Control will be eliminated.
 - g. Property Damage Liability Insurance will provide Coverage for Explosion, Collapse, and Underground Damage.
- (3) Contractual Liability:
 - a. General Aggregate \$1,000,000
 - b. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
- (4) Automobile Liability:
 - a. Bodily Injury \$500,000 Each Person
\$1,000,000 Each Accident
 - b. Property Damage \$500,000 Each Accident, or
a combined single limit of \$1,000,000
- (5) Liability coverage for the Owner, the Architect, the Architect's Consultants and others listed in the Supplementary Conditions will be provided (subject to customary exclusions for professional liability), by endorsement as additional insured's on the Contractor's Liability Policy.
- (6) Excess Liability Umbrella Form:
 - a. General Aggregate \$1,000,000
 - b. Each Occurrence \$1,000,000

§ 11.1.2.2 There shall be an endorsement in each of the above policies reading as follows: "It is hereby agreed that in the event of a claim arising under this policy, the company may not deny liability be reason of the insured being a state, county, municipal corporation or governmental agency."

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or

companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 Boiler and Machinery Insurance

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 Loss of Use Insurance

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 Before an exposure to loss may occur, the Owner shall provide the Architect and the Kentucky Department of Education with certificates of insurance coverage required by this Section 11.3.

§ 11.3.7 Waivers of Subrogation

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 Unless otherwise provided, when the Contract Sum exceeds twenty-five thousand dollars (\$25,000) the Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. A surety company authorized to do business in Kentucky shall execute bonds, and the cost thereof shall be included in the Contract Sum. Unless otherwise provided, the amount of each bond shall be equal to 100% of the Contract Sum plus Purchase Orders, or 100% of the Lump Sum Base Bid plus or minus accepted Alternates, whichever is greater.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the

Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.1 None of the Contract Documents for this project shall be construed against the party preparing documents on the grounds that the party prepared or drafted the document, or any portion thereof.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, 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.

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

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as required by state law, or in the absence of law, at the legal rate prevailing at the time and place where the Project is located.

§ 13.7 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any

other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case

may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Notice of Claims

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation, which shall be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Sample

Kentucky Department of Education Version of AIA[®] Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum



This version of AIA Document A101[™]–2007 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A101–2007 does not imply the American Institute of Architects’ endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A101–2007 showing additions and deletions by the Kentucky Department of Education is available for review on the Kentucky Department of Education Web site.

Cite this document as “AIA Document A101[™]–2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum — KDE Version,” or “AIA Document A101[™]–2007 — KDE Version.”

Kentucky Department of Education Version of AIA® Document A101 – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the _____ day of _____
in the year _____
(In words, indicate day, month and year.)

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

and the Contractor:
(Name, legal status, address and other information)

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

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

The Owner and Contractor agree as follows.



This version of AIA Document A101–2007 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A101 does not imply the American Institute of Architects' endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A101–2007 showing additions and deletions by the Kentucky Department of Education is available for review on the Kentucky Department of Education Web site.

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

Init.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
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9	ENUMERATION OF CONTRACT DOCUMENTS
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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Owner direct Purchase Orders, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

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§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than

() days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work. Either list requirements for earlier Substantial Completion here or refer to an exhibit attached to this Agreement.)

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

Liquidated Damages: As actual damages for delay in completion of Work are impossible to determine, the Contractor and his Surety shall be liable for and shall pay to the Owner the sum of

(\$), not as a penalty, but as fixed, agreed and liquidated damages for each calendar day of delay until the Contract Work is substantially completed as defined in the General Conditions of the Contract for Construction. The Owner shall have the right to deduct liquidated damages from money in hand otherwise due, or to become due, to the Contractor, or to sue and recover compensation for damages for failure to substantially complete the Work within the time stipulated herein. Said liquidated damages shall cease to accrue from the date of Substantial Completion.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be

(\$), subject to additions and deductions as provided in the Contract Documents.

(List the base bid amount, sum of accepted alternates, total construction cost (the sum of base bid amount plus sum of accepted alternates), sum of Owner's direct Purchase Orders. The Contract Sum shall equal the sum of Total Construction Cost, less Owner direct Purchase Orders. Either list this information here or refer to an exhibit attached to this Agreement.)

	Amount
Base Bid	\$
Sum of Accepted Alternates	\$
Total Construction Cost (the sum of base bid amount plus sum of accepted alternates)	\$
Sum of Owner's direct Purchase Orders	\$
Contract Sum (total construction cost less Owner direct Purchase Orders)	\$

Init.

§ 4.2 The Contract Sum is based upon 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 bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires. Either list alternates here or refer to an exhibit attached to this Agreement.)

Number	Item Description	Amount
Total of Alternates		

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable. Either list unit prices here or refer to an exhibit attached to this Agreement.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price. Either list allowances here or refer to an exhibit attached to this Agreement.)

Item	Price
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ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the _____ day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the _____ day of the _____ month. 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 _____ () days after the Architect receives the Application for Payment.

State law (KRS 371.405) requires the Owner to pay undisputed Applications for Payment within forty-five (45) business days following receipt of the invoices. If the Owner fails to pay the Contractor within forty-five (45) business days following receipt of an undisputed Application for Payment, state law requires the Owner shall pay interest to the Contractor beginning on the forty-sixth business day after receipt of the Application for Payment, computed at the rate required by state law.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. 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 Contractor's Applications for Payment.

§ 5.1.5 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.

§ 5.1.6 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 Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of _____ percent (_____ %). 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, General Conditions of the Contract for Construction — KDE Version;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of _____ percent (_____ %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 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 — KDE Version.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-2007 — KDE Version requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007 — KDE Version.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

When Owner direct Purchase Orders are used, retainage that would otherwise be held on materials and equipment shall transfer to the Contractor, and the material suppliers will be paid the full amount of their invoices. The Owner shall retain ten percent (10%) from each Application for Payment, and an amount equal to ten percent (10%) of approved Purchase Order payments, up to fifty percent (50%) completion of the Work, then provided the Work is on schedule and satisfactory, and upon written request of the Contractor together with consent of surety and the recommendation of the Architect, the Owner shall approve a reduction in Retainage to five percent (5%) of the current Contract Sum plus Purchase Orders. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in the General Conditions of the Contract for Construction. After Substantial Completion, if reasons for reduction in retainage are certified in writing by the Architect, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Owner when deemed reasonable. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work.

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

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007 — KDE Version, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect; and
- .3 the Contractor provides the Owner with affidavits that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, and with Consent of Surety for final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 — KDE Version, unless the parties appoint below another individual, not a party to this Agreement, to serve as 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.)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007 — KDE Version, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor 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 — KDE Version
- ☐ Litigation in a court of competent jurisdiction where the Project is located
- ☐ Other: *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007 — KDE Version.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007 — KDE Version.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 — KDE Version or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate required by state law, or in the absence of law, at the legal rate prevailing at the time and place where the Project is located.
(Insert rate of interest agreed upon, if any.)

§ 8.3 The Owner's representative:
(Name, address and other information)

§ 8.4 The Contractor's representative:
(Name, address and other information)

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor — KDE Version.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction — KDE Version.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

(Either list Supplementary and other Conditions of the Contract here or refer to an exhibit attached to this Agreement.)

Document	Title	Date	Pages
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§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

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

Init.

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§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

(Either list the Addenda here or refer to an exhibit attached to this Agreement.)

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following
- .2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 — KDE Version provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

- A. AIA Document A701–1997, Instructions to Bidders — KDE Version
- B. Contractor’s Form of Proposal
- C. KDE Purchase Order Summary Form

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007 – KDE Version.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007 – KDE Version. Either list insurance and bond information here or refer to an exhibit attached to this Agreement.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

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

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

Init.

/

Kentucky Department of Education Version of AIA Document A312™ – 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place
of business)

OWNER:

(Name, legal status and address)

CONSTRUCTION CONTRACT

Date:

Amount:

Description:

(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount:

Modifications to this Bond: ☐ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company: _____

(Corporate Seal)

SURETY

Company: _____

(Corporate Seal)

Signature: _____

Name

and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: _____

Name

and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)



This version of AIA Document A312–2010 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A312 does not imply the American Institute of Architects' endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A312–2010 showing additions and deletions by the Kentucky Department of Education is available for review on the Kentucky Department of Education Web site.

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

§ 16.1 Surety Company shall be licensed to conduct business in the Commonwealth of Kentucky.

§ 16.2 Insurance Agency and Agents issuing bond shall be registered and licensed to conduct business in the Commonwealth of Kentucky with the appropriate Power of Attorney included.

§ 16.3 Bond shall comply with all statutory requirements of the Commonwealth of Kentucky including the Kentucky Unemployment Insurance Law.

§ 16.4 No suit, action or proceeding by reason or any default whatever shall be brought on this bond after two (2) years from the date on which final payment of the contract fall due and provided further that if any alterations or additions which may be made under the contract or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the contract or any other forbearance on the part of either the Owner or the Principal shall not, in any way, release the Principal and Surety, or either of them, their heirs, executors, administrators, successors, or assigns for their liability hereunder. Notice to the Surety of any such alterations, extensions, or forbearance being expressly waived.

This obligation shall remain in force and effect until the performance of all covenants, terms and conditions herein stipulated and after such performance, it shall become null and void.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address _____

Signature: _____

Name and Title: _____

Address _____

Kentucky Department of Education Version of AIA Document A312™ – 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place
of business)

OWNER:

(Name, legal status and address)

CONSTRUCTION CONTRACT

Date:

Amount:

Description:

(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount:

Modifications to this Bond: ☐ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: _____

(Corporate Seal)

SURETY

Company: _____

(Corporate Seal)

Signature: _____

Name

and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: _____

Name

and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)



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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any

Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

§ 18.1 Surety Company shall be licensed to conduct business in the Commonwealth of Kentucky.

§ 18.2 Insurance Agency and Agents issuing bond shall be registered and licensed to conduct business in the Commonwealth of Kentucky with the appropriate Power of Attorney included.

§ 18.3 Bond shall comply with all statutory requirements of the Commonwealth of Kentucky including the Kentucky Unemployment Insurance Law.

§ 18.4 No suit, action or proceeding by reason or any default whatever shall be brought on this bond after two (2) years from the date on which final payment of the contract fall due and provided further that if any alterations or additions which may be made under the contract or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the contract or any other forbearance on the part of either the Owner or the Principal shall not, in any way, release the Principal and Surety, or either of them, their heirs, executors, administrators, successors, or assigns for their liability hereunder. Notice to the Surety of any such alterations, extensions, or forbearance being expressly waived.

This obligation shall remain in force and effect until the performance of all covenants, terms and conditions herein stipulated and after such performance, it shall become null and void.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address _____

Signature: _____

Name and Title: _____

Address _____