

CONTRACT COMPLETION AGREEMENT

This Contract Completion Agreement (“Completion Agreement”) for Spottsville Elementary School- Spottsville, Kentucky Bid Package #25: Intercom, Time Control System (the “Project”) is made and entered into this ____ day of February, 2018, by and between Henderson County Board of Education (the “Board”), The Hanover Insurance Company (“Hanover” or “Surety”) and State Electric Company, Inc. (“State Electric”) (collectively the “Parties”).

RECITALS

WHEREAS, PPMI Construction Company (“PPMI”)(“Former Contractor or PPMI”) and the Board entered into a contract on or about October 24, 2016 (the “Prime Contract”) for PPMI to furnish labor, services and materials to construct the Spottsville Elementary School- Spottsville, Kentucky Bid Package #25: Intercom, Time Control System (the “Project”) in accordance with the terms and provisions of the Prime Contract, including all documents forming a part of the Prime Contract; and

WHEREAS, as a condition precedent to commencing work under the Project and in accordance with the Prime Contract, PPMI was required to obtain Payment and Performance Bonds guaranteeing PPMI’s obligations; and

WHEREAS, Hanover, as surety for PPMI, executed Performance and Payment Bonds in favor of the Board, Bond Nos. 1030513 (collectively, the “Bonds”), each in the penal sum of \$84,625.00; and

WHEREAS, PPMI has advised that it is unable to complete the Project and has tendered to the Board and Hanover a Voluntary Letter of Default, declaring it to be in default of the performance of the Project and Prime Contract; and

WHEREAS, Hanover and the Board have negotiated the completion of all required work

that remains to be performed under the Prime Contract including a tender to the Board of State Electric as a completion contractor to complete the remaining work to be performed under the Prime Contract; and

WHEREAS, State Electric has examined the Prime Contract, the site of the Work to be performed; the relevant plans and specifications; the applicable specifications and the requirements thereunder; and is familiar with the procedures required by the Board for the completion and acceptance of the improvements which are the subject of the Prime Contract; and

WHEREAS, Hanover and the Board have entered into or will enter into a Tender Agreement, the terms of which State Electric desires to perform Hanover's obligations to complete the work under the Prime Contract which Tender Agreement is incorporated by reference; and

WHEREAS, the Board, Hanover and State Electric desire to enter into this Completion Agreement for the purpose of completion of all remaining work on the Project and under the Prime Contract subject to the terms and conditions of this Completion Agreement; and

NOW THEREFORE, in consideration of the agreements and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy being acknowledged, the Parties agree as follows:

TERMS OF COMPLETION AGREEMENT

1. The recitals set forth above are true and correct and are incorporated herein by reference.
2. State Electric agrees to perform the work and supply the necessary materials to complete the entire work and improvements as required by the Prime Contract, all special provisions, change orders and addendums, and all applicable documents, plans and specifications

(the "Completion Contract"). In the event of any conflict between the terms of this Completion Agreement, and the terms of such Completion Contract, the terms of this Completion Agreement shall supersede and control.

3. Hanover has solicited a completion bid from State Electric and State Electric has agreed to complete the Project in accordance with the plans and specifications for the following amounts:

BP 25 - Intercom, Time Control System	
51,263.93	SEC Completion Price as of 16Feb18
42,894.93	Bal of SWC DPO as of 16Feb18
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The Board shall make such payments in accordance with the Prime Contract provision and conditions.

4. For the purposes of payment by the Board, State Electric shall perform the Completion Work with the approval and acceptance by the Board in accordance with the Prime Contract, Completion Contract documents, and any applicable specifications. Final payment to State Electric will be made following the Board's confirmation that all provisions have been met.

5. State Electric shall prepare all applications for payment to the Board. The Board shall make payment to State Electric in conformance with the Completion Contract, the Board specifications and the Board's accounts payable schedule. Hanover shall have no obligation to make payment to State Electric. All payments should be based upon the progress of the work measured by the schedules provided in the Completion Contract documents. Notwithstanding anything to the contrary in any other documents referred to in this Completion Agreement, the

Board shall be entitled to withhold any payments pending the submission of partial or full waivers of lien and/or certificates verifying the receipt of payment for all work performed by all subcontractors up to the date of State Electric's application for partial or final payment in the Board's sole discretion. If State Electric is unreasonably withholding payment to any subcontractor, as determined by the Board, the Board shall be entitled to make such payments directly to any subcontractor as may be necessary to obtain such lien waivers and/or certifications. In the event the Board makes any such payments directly to any subcontractors, the amount of such payment shall be deducted from the total amount due State Electric pursuant to this Completion Agreement and State Electric shall provide a written release to the Board in the amount of any such payments upon ten (10) days written demand. Concurrent with all applications for payment, State Electric shall provide the Board with a sworn certification of all work performed by all subcontractors and the amounts paid to all subcontractors as of the date of application.

6. Until fifty percent (50%) of the Project has been completed in accordance with the Contract, the Board may withhold an amount equal to ten percent (10%) retainage from the amount of any undisputed payment due, and retainage held after fifty-one percent (51%) of the construction project has been completed shall not be more than five percent (5%) of the total contract amount. Payment of any retainage from the Board to State Electric shall not be unreasonably withheld. The Board shall not be required to make final payment prior to completion and acceptance of all of the work and final payment by the Board.

7. State Electric agrees to obtain the required bonds from Great American Insurance Company, a surety acceptable to the Board licensed to do business in Kentucky, in the penal sum

of \$94,158.86 to secure State Electric's performance and payment obligations for the remaining completion work. The Board and Hanover will be made co-obligees on State Electric's bonds. A copy of the form of the required bond is attached as **Exhibit "1"**.

8. State Electric shall provide to the Board the insurance as required in the Completion Contract and shall name the Henderson County Board of Education as the Certificate Holder and it should identify the following as Additional Insureds: Henderson County Board of Education, Codell Construction Company, RBS Design Group, WBW Engineering, American Engineers, Wilkie Structural Engineering LLC and The Hanover Insurance Company. State Electric agrees that any third-party claims against State Electric and/or the Board and/or Hanover shall be properly forwarded by State Electric to State Electric's insurance carrier for the appropriate resolution of said claims. Unresolved claims may affect/delay final payment hereunder.

9. State Electric shall take all necessary precautions for the protection of public and private property. This shall include the location and identification of property markers prior to and during construction. State Electric is responsible for the damage or destruction of property resulting from neglect, misconduct or omission in this manner or method of execution or non-execution of the work, or caused by defective work or the use of unsatisfactory materials and such responsibility shall not be released until the work has been completed and accepted and the requirements of these specifications complied with. Whenever public or private property is so damaged or destroyed, State Electric shall, at its expense, restore such property to a condition equal to that which existed prior to such damage or injury by repairing, rebuilding or replacing it as may be directed, or it shall otherwise make good such damage or destruction in an acceptable

manner. If State Electric fails to do so, the Board will withhold any payouts toward completed work until arrangements are made to correct any damage as described below.

10. Notwithstanding any other provision of this Completion Agreement, it is expressly agreed and understood that State Electric shall comply with all applicable Federal, State, City and other requirements of law, including, but not limited to, any applicable requirements regarding prevailing wages, minimum wage, workplace safety and legal status of employees. State Electric shall also at its expense secure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work, and/or the products and/or services to be provided for in this Completion Agreement.

11. Notwithstanding any other provision of this Completion Agreement, it is expressly agreed and understood that this Completion Agreement shall be conditioned upon and shall not be effective or in force until the execution of a Tender Agreement by the Board and Hanover. If this Completion Agreement is executed by Hanover and State Electric prior to the execution of a Tender Agreement by the Board and Hanover, the effective date of this Completion Agreement shall be the same as the Tender Agreement with the Board. The failure of the Board and Hanover to execute a Tender Agreement shall, at the option of Hanover, render this Completion Agreement null and void and of no effect.

12. State Electric represents it has made a reasonable inspection of the construction site and represents that the contract price (as set forth in paragraph 3 above) is the sole consideration for the construction of the improvements described in this Completion Agreement. As such, State Electric accepts full responsibility and all liability related thereto to complete the Project including all known punch list items for work performed by PPMI and will warrant and

defend all work performed by PPMI as well as State Electric. State Electric agrees to be responsible for any and all defects for work performed by or under PPMI as well as State Electric including any work which could be considered latent defective work. Further, the Board shall not be liable to State Electric for any amount of money over the contract price unless upon a duly executed change order prior to the work performed by State Electric.

13. State Electric shall be responsible for the proper handling and disposal of any construction or demolition debris removed from the construction site, if any, in accordance applicable requirements of law.

14. The terms of this Completion Agreement shall be severable. In the event any of the terms or provisions of this Completion Agreement are deemed to be void or otherwise unenforceable for any reasons, the remainder of this Completion Agreement shall remain in full force and effect.

15. This Completion Agreement shall not be construed so as to create a partnership, joint venture, employment or other agency relationship between parties.

16. The Parties do not intend by any provision of this Completion Agreement to create any third-party beneficiaries nor to confer any benefit upon or enforceable rights or otherwise upon any person, firm or entity other than the Parties hereto.

17. This Completion Agreement shall be subject to and governed by the laws of the State of Kentucky. Neither of the Parties in any arbitration, mediation, or litigation arising out of this Completion Agreement shall be entitled to recover from the non-prevailing party its attorneys' fees incurred therein and on appeal therefrom.

18. No official, director, agent or employee of any party shall be charged personally or

held contractually liable under any term or provision of this Completion Agreement because of their execution, approval or attempted execution of this Completion Agreement.

19. In all hiring or employment made possible or resulting from this Completion Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status, or the presence of any disability, unless based upon a bona fide occupational qualification. This requirement shall apply, but not be limited to: employment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Completion Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status or the presence of any disability. Any violation of this provision shall be considered a violation of a material provision of this Completion Agreement and shall be grounds for cancellation, termination or suspension, in whole or in part, of the Completion Agreement by the Board.

20. To the fullest extent permitted by law, State Electric agrees to and shall indemnify, defend and hold harmless Hanover, the Board, the Board's Construction Professionals and Consultants and the officers, employees, boards and commissions of each and any of them from and against any and all claims, suits, judgments, costs, attorneys' fees, damages or any and all other relief or liability arising out of or resulting from or through, or alleged to arise out of, any negligent acts or omissions of State Electric or State Electric's officers, employees, agents or subcontractors in the performance of this Completion Agreement, or arising out of or in connection with litigation based on any mechanic's lien or other claims, suits,

judgments and/or demands for damages by subcontractors. In the event of any action against Hanover, its officers, employees, agents, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended by legal counsel of Hanover's choosing. The provisions of this paragraph shall survive any expiration and/or termination of this Completion Agreement.

21. This Completion Agreement and each and every portion thereof shall be binding upon the successors and the assigns of the parties hereto; provided, however, that no assignment shall be made without the prior written consent of the other parties.

22. Any notice, request, demand, or other communication made under this Completion Agreement or the Completion Contract shall be made *via* email and certified mail, return receipt requested, postage prepaid to:

To Hanover: The Hanover Insurance Company
Attention William Sanford
Surety Claims Counsel- Bond Claims
440 Lincoln Street
Worcester, MA 01653
(508) 855-2237
Email: wsanford@hanover.com

With a copy to:
Michael J. Weber
Grace Winkler Cranley
Dinsmore & Shohl, LLP
227 West Monroe St., Suite 3850
Chicago, IL 60606
(312) 372-6060
Email: michael.weber@dinsmore.com
grace.cranley@dinsmore.com

To State Electric:

Matt Crick
State Electric Company, Inc.
140 College Street
Crofton, KY 42217
(270) 424-8242
Email: mcrick@stateelectricky.com

To the Board:

Marganna Stanley, Superintendent
Henderson County Board of Education
1805 Second Street
Henderson, KY 42420
marganna.stanley@hendersonkyschools.us

With a copy to:

Elizabeth Bird
Stoll Keenon Ogden PLLC
One Main Street, Suite 201
Evansville, IN 47708
(270) 869-6411
Email: Elizabeth.Bird@skofirm.com

23. Notwithstanding anything to the contrary in this Completion Agreement, with the sole exception of the monies the Board has agreed to pay to State Electric pursuant to Paragraph 3 above, and inclusive of approved change orders, no action shall be commenced by State Electric, any related persons or entities, and/or any of their successors and/or assigns, against the Board or Hanover for monetary damages. State Electric hereby releases the Board and Hanover, their successors, assigns, agents, consultants, attorneys or other persons acting on its behalf from any and all claims whether known or unknown and no action shall be commenced by State Electric, any related persons or entities, and any of their successors and/or assigns against the Board and Hanover. The provisions of this paragraph shall survive any expiration, completion and/or termination of this Completion Agreement.

24. This Completion Agreement is and shall be deemed and construed to be a joint and collective work product of the Board, Hanover and State Electric and, as such, this Completion Agreement shall not be construed against any party, as the otherwise purported drafter of same, by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, of the terms and provisions contained herein. The Parties agree to bear their own attorneys' fees and costs incurred in all matters that led to the entry of this Completion Agreement.

25. This Completion Agreement, the documents it incorporates and its attachments constitutes the entire agreement between the Board, Hanover and State Electric on the subject matter hereof and may not be changed, modified, discharged or extended except by written amendment fully executed by the parties. the Board, Hanover and State Electric agree that no representations or warranties shall be binding upon the other party unless expressed in writing herein or in a duly executed amendment hereof, or change order as herein provided.

26. It is understood that this Completion Agreement may be executed in counterparts by the parties hereto, and that electronically transmitted signatures shall have the same legal effort as original signatures.

**THE SIGNATORIES TO THIS AGREEMENT ACKNOWLEDGE THAT THEY HAVE
READ THE FOREGOING AGREEMENT, FULLY UNDERSTAND ITS TERMS AND
CONDITIONS, AND AGREE TO BE BOUND BY ALL OF ITS TERMS AND
CONDITIONS.**

STATE ELECTRIC COMPANY, INC.

By: _____

Title: _____

Date: _____

THE HANOVER INSURANCE COMPANY

By: _____

Officer Title: _____

Date: _____

HENDERSON COUNTY BOARD OF EDUCATION

By: _____

Title: _____

Date: _____