



AIA[®] Document G701/CMa[™] – 1992

Change Order - Construction Manager-Adviser Edition

OWNER ☒
 CONSTRUCTION MANAGER ☐
 ARCHITECT ☐
 CONTRACTOR ☐
 FIELD ☐
 OTHER ☐

PROJECT (Name and address):
 SPOTTSVILLE ELEMENTARY RENOVATION/ADDITION
 9190 US 60 EAST
 SPOTTSVILLE KY 42458

CHANGE ORDER NUMBER: 26-1
INITIATION DATE: 2-16-2018

TO CONTRACTOR (Name and address):
 STATE ELECTRIC COMPANY, INC.
 140 COLLEGE STREET
 CROFTON KY 42217

PROJECT NUMBERS: CMA-KDE-000664 / 15-016
CONTRACT DATE: 2-16-2018
CONTRACT FOR: BID PACKAGE #26 ELECTRICAL

THE CONTRACT IS CHANGED AS FOLLOWS: Contract being set up for accounting and tracking purposes related to default of Bid Pkg 15 Contractor PPML. Hanover Insurance, Bonding Company for PPML, tendered completing contractor to board and agreed to pay board \$148,058.65 for the difference between quote from completing contractor and board funds remaining allocated for electrical work for bid package 15.

The original Contract Sum was	\$0.00
Net change by previously authorized Change Orders	\$0.00
The Contract Sum prior to this Change Order was	\$0.00
The Contract Sum will increased by this Change Order in the amount of	\$148,058.65
The new Contract Sum including this Change Order will be	\$148,058.65

The Contract Time will not be affected by this change.
 The date of Substantial Completion as of the date of this Change Order therefore is 11/14/2018

NOT VALID UNTIL SIGNED BY THE CONTRACTOR AND CONSTRUCTION MANAGER.

Codell Construction
CONSTRUCTION MANAGER (Firm Name)
 4475 Rockwell Rd., Winchester, KY 40392
ADDRESS

RBS DESIGN GROUP
ARCHITECT (Firm Name)
 723 HARVARD DRIVE OWENSBORO, KY 42301
ADDRESS

BY (Signature)

 (Typed Name) **DATE:**

BY (Signature)

 (Typed Name) **DATE:**

STATE ELECTRIC COMPANY, INC.
CONTRACTOR (Firm Name)
 140 COLLEGE STREET CROFTON, KY 42217
ADDRESS

HENDERSON COUNTY BOARD OF EDUCATION
OWNER (Firm Name)
 1805 SECOND STREET HENDERSON, KY 42420
ADDRESS

See attached Tender Agreement and Completion Certificate

BY (Signature)

 (Typed Name) **DATE:**

BY (Signature)

 (Typed Name) **DATE:**

CONTRACT COMPLETION AGREEMENT

This Contract Completion Agreement ("Completion Agreement") for Spottsville Elementary School- Spottsville, Kentucky Bid Package #15: Electrical (the "Project") is made and entered into this 16 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, Bid Package #15: Electrical (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. 1030511 (collectively, the "Bonds"), each in the penal sum of \$1,172,452.00; 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 15 - Electrical

647,205.64	SEC Completion Price as of 16Feb18
213,701.35	Bal of Wesco DPO as of 16Feb18
16,878.08	Bal of Cummins DPO as of 16Feb18
11,523.14	Bal of Priority One DPO as of 16Feb18

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 \$889,308.21 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: Lisa Baird

Title: Chair, Board of Education

Date: 2/16/2018

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: Matt L. Crick
Title: President
Date: 2/15/18

THE HANOVER INSURANCE COMPANY

By: William E. Siffert III
Officer Title: Bond Claim Counsel
Date: 2/16/18

HENDERSON COUNTY BOARD OF EDUCATION

By: _____
Title: _____
Date: _____

TENDER AND RELEASE AGREEMENT

THIS TENDER AND RELEASE AGREEMENT regarding Henderson County Board of Education, Spottsville Elementary School, Bid Package #15: Electrical ("Agreement") is made and entered into this 16 day of February, 2018, by and between the Henderson County Board of Education (the "Board"), and The Hanover Insurance Company ("Hanover") (collectively, the "Parties").

RECITALS

WHEREAS, PPMI Construction Company ("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, Bid Package #15: Electrical (the "Project") in accordance with the terms and provisions of the Prime Contract, including all documents forming a part of the Prime Contract.

WHEREAS, Hanover, as surety for PPMI, executed Performance and Payment Bonds in favor of the Board, Bond No. 1030511 (collectively, the "Bonds"), each in the penal sum of \$1,172,452.00.

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

WHEREAS, on July 28, 2017 by email, U.S. mail and certified mail Hanover provided the Board with a copy of PPMI's Voluntary Letter of Default and Termination. Further, on August 2, 2017, Hanover and Board representatives met on site to inspect the Project and to discuss plans on how best to proceed under the provisions and conditions of the Performance Bond, to arrange for the completion of all required work that remains to be performed under the

Prime Contract.

WHEREAS, the Parties agree that the following is an accounting under the Prime Contract and sets forth the remaining contract balance including for the direct purchase orders ("DPOs") as set forth:

BP 15 - Electrical

PPMI Contract

744,848.22	Original Contract Value
-	Approved Change Orders
744,848.22	Current Contract Value
245,701.23	Paid for Work thru 19Jun17 - Pay App 8
499,146.99	Remaining Contract Balance

Direct Purchase Orders

189,885.05	Wesco - Lighting
75,156.51	Wesco - Gear
134,161.00	Wesco - Electrical Material
399,202.56	Total Wesco DPO ("Direct Purchase Order")
185,501.21	Paid thru 31Dec17
213,701.35	Remaining Wesco DPO Balance
16,878.08	Cummins DPO
-	Paid thru 31Dec17
16,878.08	Remaining Cummins DPO Balance
11,523.14	Priority One Fire & Security DPO
-	Paid thru 31Dec17
11,523.14	Remaining Priority One DPO Balance

WHEREAS, PPMI is unable to complete its obligations under the Contract and Hanover has tendered to the Board a completion contractor, State Electric Company, Inc. ("State Electric" or the "Completion Contractor"), and arranged for the Board to enter into an agreement with State Electric ("Completion Agreement"), under which State Electric will: (a) complete the remaining work to be performed under the Prime Contract for the following pricing:

BP.15 - Electrical

647,205.64	SEC Completion Price as of 16Feb18
213,701.35	Bal of Wesco DPO as of 16Feb18
16,878.08	Bal of Cummins DPO as of 16Feb18
11,523.14	Bal of Priority One DPO as of 16Feb18
<hr/>	

(the "Completion Price"), (b) warrant all of its and PPMI's work including any work which could be considered latent defective work, and (c) furnish to the Board performance and payment bonds issued by Great American Insurance Company, which bonds will guarantee State Electric's performance and the payment of all labor, services, materials, equipment or supplies furnished by or through State Electric.

WHEREAS, Hanover has agreed to pay the Board the difference between the Remaining Contract Balance in PPMI's Contract of \$499,146.99 and State Electric's Completion Price of \$647,205.64 as a cash settlement of the Board's claims which have been asserted against Hanover's Performance Bond associated with the Project.

WHEREAS, the tender proposal and cash settlement offer set forth in this Agreement is acceptable to the Board, and the Parties desire to document the terms of their agreement as set forth in this Agreement.

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

TERMS OF AGREEMENT

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.

2. Work Performed by Former Contractor. The Board agrees that, as of the date of this Agreement, all work performed on, and materials incorporated into, the Project by PPMI with respect to Bid Package #15: Electrical are to the best of the Board's actual knowledge in accordance with the Contract terms and are acceptable to the Board, except for such latent conditions resulting from omissions, oversights and errors by PPMI, if any, that ordinarily would not be discoverable by inspection at this stage of the construction, and have not been discovered by or made known to the Board. As of the date of this Agreement, the Board has no actual knowledge of any latent defects in the work performed by PPMI on the Project.

3. Completion Agreement. Surety hereby tenders the services of State Electric to the Board, a contractor acceptable to the Board and the Board agrees to contract directly with State Electric for completion of the Project.

4. Entry Into Completion Agreement. The Board will finalize and enter into a Completion Agreement with State Electric for the completion of the Project in compliance with the "Contract Documents", as defined herein, on or about the date of this Agreement for a Completion Price of \$647,205.64 (not including the DPOs as set forth above) subject to adjustments as provided in this Agreement. As used in this Agreement, the term "Contract

Documents" means: (i) the Completion Agreement, (ii) the bid package and all of the bid documents described in the original bid package and any current or pending Change Orders; (iii) the Completion Contractor's Bid Proposal dated August 17, 2017; (iv) PPMI's Contract with the Board, including all drawings, specifications, forms, addenda and documents forming a part of the Contract, and any modifications to the Contract, and (v) this Agreement.

5. Accounting of Contract Balance. The Parties agree that the contract accounting resulting in the Balance of the Contract Price is as follows:

BP 15 - Electrical

PPMI Contract

744,848.22	Original Contract Value
-	Approved Change Orders
744,848.22	Current Contract Value
245,701.23	Paid for Work thru 19Jun17 - Pay App 8
499,146.99	Remaining Contract Balance

Direct Purchase Orders

189,885.05	Wesco - Lighting
75,156.51	Wesco - Gear
134,161.00	Wesco - Electrical Material
399,202.56	Total Wesco DPO ("Direct Purchase Order")
185,501.21	Paid thru 31Dec17
213,701.35	Remaining Wesco DPO Balance
16,878.08	Cummins DPO
-	Paid thru 31Dec17
16,878.08	Remaining Cummins DPO Balance
11,523.14	Priority One Fire & Security DPO
-	Paid thru 31Dec17
11,523.14	Remaining Priority One DPO Balance

The Board shall devote the Remaining Balances as set forth in this paragraph to the completion of the Project.

6. Payment by Surety. In exchange for this Agreement and the Board's partial release of Hanover under Hanover's Bond No. 1030511, Hanover shall pay the Board \$148,058.65 (which amount represents the difference between the Remaining Contract Balance in PPMI's Contract of \$499,146.99 and State Electric's Completion Price of \$647,205.64) within fourteen (14) days of the execution of this Agreement. The Board hereby reduces the present penal amount of Hanover's Performance Bond from its stated penal limit of \$1,172,452.00 to the reduced amount of \$283,143.85, which represents the original amount of the bond (\$1,172,452.00) less the Balance of the Contract Price including balance of the remaining DPOs (\$741,249.56) and less the Settlement Payment (\$148,058.65).

7. Bonds from Completion Contractor. State Electric shall provide payment and performance bonds as required by the Contract Documents, naming the Board and Hanover as dual obligees, in the amount of the Completion Price agreed to by State Electric.

8. Project Administration. After the Board's execution of the Completion Agreement, administration and inspection of the Project will remain with the Board and its construction professionals, agents and inspectors in accordance with the terms of the Contract.

9. The Board's Release of Hanover. In exchange for the agreements set forth herein and the payment referenced in paragraph 6 above, the Board hereby releases, acquits and forever discharges Hanover and its officers, directors, shareholders, employees, parent companies, sibling companies, affiliated companies, reinsurers, successors and assigns, agents, consultants and attorneys of and from any and all claims, rights, demands and/or causes of action of whatsoever

kind or nature that the Board has or may ever claim to have, now or in the future, against Hanover under and/or by reason of its Performance Bond 1030511 furnished to the Board; provided however, that it is expressly understood and agreed by and between the Parties that the foregoing Release is qualified and limited by the following exceptions:

- A. The Board expressly agrees to accept the performance bond being furnished by State Electric through its surety as the sole performance bond pertaining to State Electric's scope of work for the Project;
- B. Hanover shall remain liable on its Payment Bond, as specified in paragraph 10 of this Agreement.
- C. This release shall not apply to any claims made by any other Prime Contractors of the Board that relate to any damages such Prime Contractors or their subcontractors allegedly incurred as a result of PPMI's default including, without limitation any delay claims. It is understood and acknowledged by the Parties to this Agreement that Hanover reserves any and all rights and defenses available to Hanover at law, by statute, by contract, under its Bonds or otherwise, resulting from any such claims brought by any contractors or subcontractors of PPMI.
- D. It is acknowledged by the Parties that the Board reserves all rights to assert a claim for liquidated damages against Hanover, but only if provided for by contract, as a result of PPMI's failure to reach substantial completion of the Project on or before June 12, 2018 and that Hanover reserves all rights and defenses to any such claim for liquidated damages.

Upon execution of the Completion Agreement by State Electric, the Board agrees that Hanover is

released from all obligations concerning PPMI's performance of the Contract except as set forth in this Agreement. The Board's sole remedy for any breach by State Electric of its performance obligations and/or breach under the Completion Agreement is against State Electric or State Electric's surety. The Board shall make no further demands and assert no further liability on Hanover in its capacity as surety for PPMI except as set forth in this Agreement. It is acknowledged by the Parties that Hanover will not and does not assume responsibility for the completion contractor, State Electric's work, for payments of any kind under the Completion Agreement, or for previous payments made by the Board to PPMI under the Contract.

10. Continued Effect of Surety's Payment Bond. Hanover acknowledges and agrees that the payment bond it furnished for the Project remains in full force and effect in accordance with its original terms, except that it is expressly agreed by and between Hanover and the Board that the Payment Bond does not apply to or cover the Completion Contractor or any of its subcontractors and suppliers for any work performed and/or materials delivered after the date of this Agreement.

11. The Board's Assignment of Claims Against Former Contractor. In further consideration for Hanover's payment to the Board, the Board hereby transfers, quitclaims and assigns to Hanover, its successors and assigns any and all rights, demands, claims and/or causes of action that the Board now has against PPMI arising out of, as a result of and/or on the basis of the default and breach by PPMI of the original contract for the Project, and the Board gives Hanover, its successors and assigns full power and authority for its own use and benefit, but at its own cost, to ask, demand, collect, receive, compound and/or release, and in its name or otherwise, to prosecute and withdraw any claims, suits or proceedings at law or in equity as against PPMI in its efforts to obtain recovery upon its rights under said assignment. Except as specifically provided in

this paragraph, the Board represents and warrants that it has not sold, assigned, granted, conveyed or transferred to any person, firm, or entity any of the claims, demands or causes of action referred to in this Agreement that it now owns or holds, or has owned or held, or may own or hold against Former Contractor or Hanover.

12. Notices. Any notices required to be given by the terms of this Agreement, the Bonds or the Prime 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 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

13. No Third Party Beneficiaries. The Parties do not intend by any provision of this 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.

14. Reservation of Rights. By this Agreement, Hanover does not waive PPMI's rights, claims or defenses (whether related to the Project or not) that PPMI may have against any person, firm or entity including, without limitation, the Board. The Board likewise reserves all rights, claims and defenses it may have against PPMI. Moreover, nothing in this Agreement shall be deemed to waive, alter, limit, modify or abridge any of Hanover's rights, claims or defenses (whether related to the Project or not) against any person, firm or entity under the Bonds, the law, agreements of indemnity, or otherwise. All of the rights, claims and defenses referenced in this paragraph are expressly reserved.

15. Continued Effect of Agreement of Indemnity. The Agreement of Indemnity between Hanover and PPMI (and certain individuals identified therein), and any amendments or modifications thereto, remain in full force and effect, and nothing in this Agreement shall be deemed to waive, alter, limit, modify, or release any of Hanover's rights, claims, defenses or anything whatsoever under such Agreement of Indemnity.

16. General Provisions.

- (a) This Agreement contains contractual obligations and not mere recitals.
- (b) This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.
- (c) Facsimile and electronic signatures may be treated as originals for all

purposes.

- (d) The remedies of the Parties hereto provided herein are cumulative and concurrent, and may be pursued singly, successively or together, at the sole discretion of the aggrieved party, and may be exercised as often as occasion therefor shall arise.
- (e) This Agreement shall be construed and enforced in accordance with the laws of the State of Kentucky. Neither party in any arbitration, mediation, or litigation arising out of this Agreement shall be entitled to recover from the non-prevailing party its attorneys' fees incurred therein and on appeal therefrom.
- (f) This Agreement constitutes the complete and final expression of the agreement of the Parties relating to the subject matter contained herein and supersedes all previous contracts, agreements, and understandings of the Parties, whether oral or written.
- (g) If any provision or term of this Agreement is deemed to be illegal or unenforceable in any respect, such provision or term shall not affect any other provision or term hereof, and this Agreement shall be construed as if the provision or term had never been contained herein.
- (h) The Parties agree to cooperate fully to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms, conditions, and intent of this Agreement.

- (i) The Parties agree to bear their own attorneys' fees and costs incurred in all matters that led to the entry of this Agreement.
- (j) This Tender and Release Agreement is binding upon the Parties and their respective successors, assigns and privies.
- (k) This Agreement shall not in any way be amended or modified without the written consent of both Parties.
- (l) The Parties acknowledge that they are and have been represented by counsel in connection with the negotiation of this Agreement, that the provisions of this Agreement and the legal effect thereof have been fully explained to them, and that they have entered into this Agreement freely and voluntarily and without coercion or undue influence.

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.

**HENDERSON COUNTY BOARD OF
EDUCATION**

By: Lisa Baird

Name: Lisa Baird

Title: Chair, Board of Education

HANOVER INSURANCE COMPANY

By: _____

Name: _____

Title: _____

- (c) Each Party agrees to bear their own attorneys' fees and costs incurred in all matters that led to the entry of this Agreement.
- (d) This Termination and Release Agreement is binding upon the Parties and their respective successors, assigns and privies.
- (e) This Agreement shall not in any way be amended or modified without the written consent of both Parties.
- (f) The Parties acknowledge that they are and have been represented by counsel in connection with the negotiation of this Agreement, that the provisions of this Agreement and the legal effect thereof have been fully explained to them, and that they have entered into this Agreement freely and voluntarily and without coercion or undue influence.

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.

HENDERSON COUNTY BOARD OF
EDUCATION

By: _____

Name: _____

Title: _____

HANOVER INSURANCE COMPANY

By: William E. Sanford

Name: William Sanford

Title: Bond Claim Counsel