

Kentucky Department of Education Version of **AIA** Document A132™ – 2009

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition



This version of AIA Document A132™–2009 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A132–2009 does not imply the American Institute of Architects' endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A132–2009 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 A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition — KDE Version," or "AIA Document A132™–2009 — KDE Version."

Kentucky Department of Education Version of AIA Document A132™ – 2009

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

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

BETWEEN the Owner:
(Name, legal status, address and other information)
Hardin County Board of Education
65 W A Jenkins Rd
Elizabethtown, KY 42701

and the Contractor:
(Name, legal status, address and other information)
Lake Cumberland Glass LLC
110 Powell Rd, PO Box 560
Russell Springs, KY 42642

for the following Project:
(Name, location and detailed description)
East Hardin Middle School
810 New Glendale Rd Elizabethtown, KY 42701

The Construction Manager:
(Name, legal status, address and other information)
Alliance Corporation
116 E College Street
Glasgow, KY 42141

The Architect:
(Name, legal status, address and other information)
JRA Architects
3225 Summit Square, Suite 200
Lexington, KY 40509

The Owner and Contractor agree as follows.



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

This document is intended to be used in conjunction with KDE versions of AIA Documents A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™–2009 — KDE Version is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 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 Modifications, 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.)

N/A

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

N/A

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

§ 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.)

Project Substantial Completion: October 31, 2020

Project Final Completion: November 30, 2020

Portion of the Work

Substantial Completion Date

Bid Package 084: Aluminum Framed Entrances & Storefront, Glazed

Aluminum Curtain Wall

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

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

§ 3.4 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 Five Hundred Dollars (\$500.00), 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 a Stipulated Sum in accordance with Section 4.2 below, less the Owner's direct Purchase Orders, if any, for Project materials or equipment.

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§ 4.2.1 The Stipulated Sum shall be

(\$388,316.00), subject to additions and deletions as provided in the Contract Documents.

	Amount
Base Bid	\$ 681,415.00
Sum of Accepted Alternates	\$ 0.00
Total Construction Cost (the sum of base bid amount plus sum of accepted alternates)	\$ 681,415.00
Sum of Owner's direct Purchase Orders	\$ 293,099.00
Contract Sum (total construction cost less Owner direct Purchase Orders)	\$ 388,316.00

(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	

§ 4.2.3 Unit prices, if any:

(Identify and state the unit price, and state the 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.)

N/A

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 4.2.4 Allowances included in the Stipulated 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.)

N/A

Item	Price
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ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and upon certification of the Project Application and Project Certificate for Payment or Application for Payment and Certificate for Payment by the Construction Manager and Architect and issuance 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:

as per the meeting schedule to be distributed at the preconstruction meeting.

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§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the designated day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the designated day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Construction Manager receives the Application for Payment.

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

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 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 and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4.2 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.

§ 5.1.4.3 Subject to the 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 total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of the General Conditions;
- .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 five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.1.4.4 The progress payment amount determined in accordance with Section 5.1.4.3 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 five percent (5%) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and
- .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 the General Conditions.

§ 5.1.4.5 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.

§ 5.2 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 of AIA Document A232-2009 — KDE Version, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 (Not Used)
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment: and
- .4 Neither the final payment nor any part of the remaining retained percentage of all payments shall become due until the Contractor delivers to the Owner an affidavit that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the work have been paid or otherwise satisfied and Consent of Surety to make final payments is received.

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 A232-2009 — 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.)

N/A

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A232-2009 — 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 A232-2009 — KDE Version.
- ☒ Litigation in a court of competent jurisdiction where the Project is located.
- ☐ Other: (Specify)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232-2009 — KDE Version.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232-2009 — KDE Version; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A232-2009 — KDE Version.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232-2009 — KDE Version or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

Init.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the 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)

John Stith, COO
Hardin Co Board of Education
65 W A Jenkins Rd
Elizabethtown, KY 42701

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

Melvin Riddle
Lake Cumberland Glass
110 Powell Rd
PO Box 560
Russell Springs, KY 42642

§ 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:

N/A

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 A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition — KDE Version.

§ 9.1.2 The General Conditions are, AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition — KDE Version.

Init.

§ 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.)

See attached Exhibit 1

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.)

See attached Exhibit 1

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:

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

See attached Exhibit 1

Number	Title	Date
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Init.

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§ 9.1.6 The Addenda, if any:

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

See attached Exhibit 1

Number	Date	Pages
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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 are:

- .1
- .2
- .3
- .4 Other documents, if any, listed below:
(List here any additional documents which are intended to form part of the Contract Documents. AIA Document A232–2009 — 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

Init.

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A232-2009 — KDE Version.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A232-2009 — KDE Version. Either list insurance and bond information here or refer to an exhibit attached to this Agreement.)

See attached Exhibit 2

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

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

OWNER (Signature)

Teresa Morgan, Superintendent

(Printed name and title)

CONTRACTOR (Signature)

Lake Cumberland Glass LLC

(Printed name and title)

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ADDENDA

Addendum 1	March 18, 2019
Addendum 2	March 18, 2019
Addendum 3	March 30, 2019
Addendum 4	April 4, 2019
Addendum 5	March 12, 2019

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General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

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

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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 which 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; and
- .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 submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect 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 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 Construction Manager, the Construction Manager's consultants, 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.

§ 11.4 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. The Contractor shall furnish a performance and payment bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of the contract and the payment of all persons performing labor on the project under the contract and furnishing materials, equipment or supplies in connection with the contract, including security for the payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law. The performance and payment bond (AIA Document A312-2010) shall be executed by a Surety Company authorized to do business in the Commonwealth of Kentucky, and the contract instrument of bonds must be countersigned by a duly appointed and licensed agent resident of Kentucky.