



FLOYD COUNTY BOARD OF EDUCATION  
Anna Whitaker Shepherd, Superintendent  
442 KY RT 550  
Eastern, KY 41622  
Telephone (606) 886-2354 Fax (606) 886-4550  
www.floyd.kyschools.us

Linda C. Gearheart, Board Chair - District 1  
William Newsome, Jr., Vice-Chair - District 3  
Dr. Chandra Varia, Member - District 2  
Keith Smallwood, Member - District 4  
Steve Stone, Member - District 5

**Consent Agenda Item (Action Item):** Consider/Approve General Warranty Deed between the Floyd County Board of Education and Floyd County Fiscal Court for Track No. 204, pending KDE approval.

**Applicable State or Regulations:** General Powers and Duties of Board

**Fiscal/Budgetary Impact:**

**History/Background:**

June 28, 2004

Contract # W91237-6-04-0042 for Relocation, Rearrangement or Alteration of Facilities (LUMP SUM) was executed.

**Recommended Action:** To approve Deed as presented, pending KDE approval.

**Contact Person(s):** Linda Hackworth, 606-874-9569

N/A  
Principal

Linda Hackworth  
Director

Anna W. Shepherd  
Superintendent

**Date:** July 19, 2022

**GENERAL WARRANTY DEED  
U.S. ARMY CORPS OF ENGINEERS  
LEVISA FORK VALLEY, FLOYD COUNTY, KENTUCKY  
TOWN OF MARTIN NON-STRUCTURAL PROJECT  
TRACT NO. 204**

THIS DEED, made this \_\_\_\_\_ day of July, 2022, by and between the FLOYD COUNTY BOARD OF EDUCATION a/k/a THE BOARD OF EDUCATION, FLOYD COUNTY, KENTUCKY, acting through its authorized agent, Anna Shepherd, Superintendent, whose address is 442 KY Route 550, Eastern, Kentucky 41622, Grantor, and the FLOYD COUNTY FISCAL COURT, whose address is 149 South Central Avenue, Suite 9, Prestonsburg, Kentucky 41653, Grantee;

WITNESSETH: that for an in consideration of the mutual promises, undertakings, and requirements set forth in that certain Contract for Relocation, Rearrangement or Alteration of Facilities entered into between the United States of America and the Floyd County Board of Education known as Contract No. W91237-6-04-0042; the terms of said agreement are incorporated herein by reference, the Grantor does hereby GRANT, BARGAIN, SELL, and CONVEY unto the Grantee and its assigns, forever, the fee simple title to the following described land, and further in consideration of the above specified sum, the said Grantor does hereby REMISE, RELEASE and FOREVER QUITCLAIM unto the Grantee all their rights, titles and interest in and to the banks, beds and waters of any streams bordering the said land hereby conveyed, and also all interest in alleys, roads, streets, ways, strips, gores or railroad rights-of-way abutting or adjoining said land and in any means of ingress or egress appurtenant thereto.

The land is described as follows:

Rev.  
8-7-2003  
H. P. C.

TRACT: 204  
OWNER: Floyd County Board of Education  
ACRES: 1.74

Levisa Fork Valley  
Floyd County, Kentucky  
Town of Martin  
Nonstructural Project  
Fee Excluding Minerals

### **LEGAL DESCRIPTION**

TRACT NO. 204

A certain tract of land situate in the Commonwealth of Kentucky, Floyd County, Town of Martin, on Beaver Creek, a tributary of the Levisa Fork of the Big Sandy River, and more particularly described as follows:

#### **PARCEL NO. 1:**

Twenty-five lots comprising the whole of Block E in the new Martin Addition to the Town of Martin, Kentucky, also a strip of land at the back of said lots, extending from same to the fence above the old county road.

Reference to the above-mentioned lots and streets are shown on a map entitled: "New Martin, Smalley - Kentucky, Scale 1"=50', Oct 7 - 1922," by Townsel Combs, Engineer, Langley, Kentucky, filed for record October 7, 1922 in the Office of the County Court Clerk, Floyd County, Kentucky, presently located in File Cabinet Slot No. 424.

#### **PARCEL NO. 2:**

All of Cross Street, being 25 feet in width by 200 feet in length, that adjoins Lots Nos. 1 and 16 of Block E.

Reference to the above-mentioned lots and streets are shown on a map entitled: "New Martin, Smalley - Kentucky, Scale 1"=50', Oct 7 - 1922," by Townsel Combs, Engineer, Langley, Kentucky, filed for record October 7, 1922 in the Office of the County Court Clerk,

Floyd County, Kentucky, presently located in File Cabinet Slot No. 424.

Page 2 of 2

TRACT NO. 204

Town of Martin, Floyd County, Kentucky

**PARCEL NO. 3:**

That portion of Elm Street, being 25 feet in width by 25 feet in length, that adjoins Cross Street.

Reference to the above-mentioned lots and streets are shown on a map entitled: "New Martin, Smalley - Kentucky, Scale 1"=50', Oct 7 - 1922," by Townsel Combs, Engineer, Langley, Kentucky, filed for record October 7, 1922 in the Office of the County Court Clerk, Floyd County, Kentucky, presently located in File Cabinet Slot No. 424.

Said tract contains 1.74 acres, more or less.

It is the intent of the foregoing description to include the same land as that described in the following deeds:

a. a deed from Townsel Combs and Octavia Combs, his wife; Tilden Osborne and Jennie Osborne, his wife; Clayborn Bailey and Lora J. Bailey, his wife; C. A. Preston and Fannie Preston, his wife; W. S. Frazier and Mary Frazier, his wife; C. A. Cline and Myrtle Cline, his wife; Jacob Crisp and Cynthia Crisp, his wife; W. L. Stumbo and Anna Stumbo, his wife; M. V. Allen and Lizzie Allen, his wife; Logan Dingus and Sydney Dingus, his wife; S. D. Osborne and Myrtle Osborne, his wife; W. G. Jarrell and Frankie Jarrell, his wife; A. J. Cox and Nora Cox, his wife; Edward Stumbo and Esther Stumbo, his wife; S. R. Pace and Dena Pace, his wife; L. P. Mayo and Fannie Mayo, his wife; to the Floyd County Board of Education, dated July 14, 1923, filed for record \_\_\_\_\_, and recorded in Deed Book 65, Page 423; and

b. a deed from the Town of Martin to the Board of Education, Floyd County, dated July 22, 1939, filed for record December 18, 1939, and recorded in Deed Book 112, Page 453.

The above-mentioned instruments are of record in the Office of the County Court Clerk, Floyd County, Kentucky.

The above described land is conveyed subject to existing easements for public roads and highways, public utilities, railroads and pipelines; coal, oil, gas, and other minerals outstanding in third parties, if any, furthermore, this transfer is subject to any out-conveyances, easements, restrictions, and reservations contained in duly recorded instruments, and to matters visible upon inspection or physical examination of the property.

No building or habitable structure shall be built below one foot above the 1977 Flood or below one foot above the 100-Year Flood Elevation, whichever is greater. This shall be a covenant running with the land and shall inure to the Grantee, its successors, and assigns.

Said land is being acquired in connection with the Floyd County Non-Structural Flood Control Project for the FLOYD COUNTY FISCAL COURT by the U.S. Army, Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2290.

TO HAVE AND TO HOLD said premises with the privileges and appurtenances thereunto belonging unto the Grantee, the FLOYD COUNTY FISCAL COURT, and its assigns, forever.

The Grantor, for themselves, their heirs, Executives, administrators, and assigns, does hereby covenant with the Grantee, the FLOYD COUNTY FISCAL COURT, and its assigns, that they will forever warrant and defend the same with the appurtenances thereunto belonging unto the Grantee, the FLOYD COUNTY FISCAL COURT, and its assigns, against the lawful claims and demands of all persons, whomsoever; provided further that the Grantor, for themselves, their heirs, Executives, administrators, and assigns, does hereby covenant and warrant with the Grantee, the FLOYD COUNTY FISCAL COURT, its successors and/or assigns, that to the best of the Grantor's knowledge, information and belief, said land is not contaminated with any hazardous substance (as that term is defined by Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601) of any kind and that no such hazardous substance has been processed, utilized, stored, buried, drained, released, or otherwise placed in or on said land and, further, that as between the FLOYD COUNTY FISCAL COURT, successors and/or assigns, and the Grantor, the Grantor, for themselves, their heirs, Executives, administrators, and assigns, shall be solely responsible for and bear any clean up or response costs required by any Federal or State law or regulation or necessary to protect health, safety, or the environment.

IN WITNESS WHEREOF, the Grantor has hereunto subscribed their name on the day and year first written above.

FLOYD COUNTY BOARD OF  
EDUCATION

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By: ANNA SHEPHERD

Its: Superintendent

ACKNOWLEDGEMENT

STATE OF KENTUCKY

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, a Notary Public, this \_\_\_\_\_ day of July, 2022, by ANNA SHEPHERD, Superintendent of the Floyd County Board of Education, Grantor.

(SEAL)

NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

CERTIFICATE OF CONSIDERATION

We, FLOYD COUNTY BOARD OF EDDUCATION, Grantor, and FLOYD COUNTY FISCAL COURT, Grantee, do hereby certify, pursuant to KRS Chapter 382, that the above stated consideration is the true, correct and full consideration paid for the property herein conveyed. The land is currently assessed in the name of Floyd County Board of Education and there are no delinquencies.

FLOYD COUNTY BOARD OF  
EDUCATION

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By: ANNA SHEPHERD

Its: Superintendent

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FLOYD COUNTY FISCAL COURT,  
By: STEVEN CHARLES RHODES,  
JR.,  
Chief, Real Estate Division,  
Levisa Fork Valley, Floyd County,  
Kentucky,  
Town of Martin, Non-Structural Project

ACKNOWLEDGEMENT

STATE OF KENTUCKY

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, a Notary Public, this \_\_\_\_\_ day of July, 2022, by ANNA SHEPHERD, Superintendent of the Floyd County Board of Education, Grantor.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF WEST VIRGINIA

COUNTY OF CABELL

The foregoing Certificate of Consideration was sworn to and acknowledged before me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by FLOYD COUNTY FISCAL COURT, by STEVEN CHARLES RHODES, JR., Chief, Real Estate Division, Levisa Fork Valley, Floyd County, Kentucky, Town of Martin, Non-Structural Project, Grantee.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

THIS INSTRUMENT WAS PREPARED BY:

\_\_\_\_\_  
Justin E. Lester  
Assistant District Counsel  
U.S. Army, Corps of Engineers  
502 Eighth Street  
Huntington, West Virginia 25701-2290

## Hackworth, Linda (MAINT)

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**From:** Shaw, Jonathan <jshaw@psbb-law.com>  
**Sent:** Saturday, July 16, 2022 1:56 PM  
**To:** Hackworth, Linda (MAINT)  
**Cc:** Shepherd, Anna (Floyd Co Superintendent)  
**Subject:** "Caution: External Email" RE: "Caution: External Email" FW: Contact info  
**Attachments:** Contract for Relocation, Rearrangement of Alteration.pdf; Special Mtg March 21-2007132.pdf; School Relocation Deed 204 ToM.docx

### External Email Notice

Caution: This message originated from outside the Floyd County School's Organization. Be aware of the sender and any suspicious links.

Attached is what I have been able to locate on our end on this one. The deed should be ok to approve and execute.

Jonathan C. Shaw J.D., M.B.A.  
Attorney

PORTER, BANKS, BALDWIN      SHAW, PLLC  
ATTORNEYS AT LAW

327 Main Street  
P.O. Drawer 1767  
Paintsville, KY 41240  
Phone: 606-789-3747 Ext. 146  
Fax: 606-789-9862  
E-Mail: [jshaw@psbb-law.com](mailto:jshaw@psbb-law.com)  
Internet: <http://www.psbblaw.com/>

*Please note that our email domain has changed, please update your contacts to reflect my new email address: [jshaw@psbb-law.com](mailto:jshaw@psbb-law.com).*

*Protecting our clients' interests for over a century*

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Contract No. W91237-6-04-0042  
(Negotiated)

CONTRACT FOR RELOCATION, REARRANGEMENT  
OR  
ALTERATION OF FACILITIES  
(LUMP SUM)

OWNER AND ADDRESS:                      Floyd County Board of Education  
   106 North Front Street  
   Prestonsburg, KY 41653

CONTRACT FOR:                              Relocation of Floyd County Alternative  
   School to Accommodate the Town of Martin  
   Nonstructural Project

AMOUNT:                                      Cost to Design and Construct Relocated  
   Alternative School, Demolish and  
   Remove Existing Alternative School, and  
   Convey Relocation Site

LOCATION:                                      City of Martin, Floyd County, Kentucky

WORK TO BE PERFORMED BY:              Government Contractor

PAYMENTS:                                   None Under This Contract

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are 95% chargeable to Allotment No. 96X3122, Construction General and are 5% chargeable to Allotment No. 96X8862, Contributed Funds.

CONTRACT FOR RELOCATION, REARRANGEMENT  
OR  
ALTERATION OF FACILITIES  
(LUMP SUM)

THIS CONTRACT, entered into this 28<sup>th</sup> day of June 2004, between the UNITED STATES OF AMERICA (hereinafter called the "Government"), represented by the District Engineer executing this contract, and the FLOYD COUNTY BOARD OF EDUCATION, a public body organized and existing under the laws of the Commonwealth of Kentucky, with its principal office and place of business in the City of Prestonsburg, Kentucky, (hereinafter called the "Owner");

WITNESSETH, that;

WHEREAS, the Government has, under authority of the Energy and Water Development Appropriation Act of 1981 (Public Law 96-367), as amended by Section 367 of the Water Resources Development Act of 1999 (Public Law 106-53); and the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 2001 (Public Law 106-377), undertaken the development of a flood protection project known as the Town of Martin Nonstructural Flood Control Project (hereinafter called the "Project"); and

WHEREAS, the Government and the Floyd County Fiscal Court (hereinafter called the "Sponsor") entered into a Project Cooperation Agreement on 4 June 2001 whereby the Sponsor provided 5% of the cost of the Project and provides all lands, easements, rights-of-way, relocation and dredged material disposal sites. By Memorandum of Agreement executed 4 June 2001, the Government agreed to perform all relocations and to acquire all lands, easements, rights-of-way and dredged material disposal areas on the Sponsor's behalf and in the Sponsor's name; and

WHEREAS, the Project is broken into four phases, Phase II of which includes acquisition and vacation of all lands in downtown Martin, KY that are within the limits of the 100-year flood elevation and located east of State Route 1428, demolition and removal of the existing structures, and placing fill with wick drains to raise the lands to an elevation above the 100-year flood elevation; and

WHEREAS, the Owner is the holder of certain interests in land on which the Owner has constructed and is operating and maintaining certain facilities, consisting of an alternative school, also known as Opportunities Unlimited, (designated in Government records as Tract No. 204), which is located within the 100-year flood elevation in the area of the Phase II Redevelopment Site; and

WHEREAS, it is necessary in the construction, completion and enjoyment by the Government of said Project that the aforementioned title, rights and privileges of the Owner be acquired and that said facilities of the Owner be relocated; and

WHEREAS, the Owner is willing to convey, to the Sponsor, all of its right, title and interest in and to said lands and/or rights of way in consideration of the construction by the Government of the relocated facilities hereinafter set forth in ARTICLE 2 and in such a manner as to facilitate the construction, development, and use of the said Project; and the Owner agrees that said consideration constitutes full, just and complete compensation for the acquisition by the Government of the Owner's rights and property;

NOW, THEREFORE, in consideration of the faithful performance of each party of the mutual covenants and agreements hereinafter set forth, it is mutually agreed as follows:

**ARTICLE 1. Project Participation and Contract Scope.**

a. The Owner's existing alternative school is located within the 100-year flood elevation and is a mandatory acquisition for the Phase II Redevelopment Site. The Owner will convey this property to the Sponsor. In this case, the cost of acquisition is the relocation of the Owner's existing alternative school. The Government will arrange for the conveyance to the Owner of the Sponsor's lands located in the Phase I Redevelopment Site that are necessary for construction of the relocated facility. The Government will arrange for the design and construction of the relocated facility, and demolition and removal of the existing school. A description of work for the relocated Floyd County Alternative School to be built by the Government is provided in ARTICLE 2, below.

b. This contract comprises a complete settlement for all work required in connection with the relocation of the Floyd County Alternative School to accommodate the construction of the Project's Phase II Redevelopment Site and acquisition of necessary real estate interests.

**ARTICLE 2. Statement of Maps, Plans and Specifications.**

a. The map attached hereto and made a part hereof, marked "Exhibit A," entitled "Beaver Creek, Town of Martin Nonstructural Project, Martin, Kentucky, Relocated Floyd County Alternative School," dated May 2004, shows the general location and layout of the proposed relocated school facility. The map attached hereto and made a part hereof, marked "Exhibit B," entitled "Beaver Creek, Town of Martin Nonstructural Project, Martin, Kentucky, Existing Floyd County Alternative School To Be Relocated," dated May 2004, shows the general location of the existing school facility.

b. The following is a description of the items of work shown, generally, on Exhibits A and B to be accomplished by the Government pursuant to this contract:

Item BOE-1. The work consists of the conveyance of a sufficient amount of the Sponsor's real estate located within the Phase I Redevelopment Site to the Owner necessary for operation of the relocated school. This relocated school first floor elevation will be at least 710 Elevation which is approximately 50 feet above the 100-year flood. The Government will arrange for architectural-engineering services for the design of a relocated school with an estimated gross square footage of 28,675 square feet that will contain a minimum of 20,000 net square feet of assignable space. The assignable space will contain three standard academic classrooms, two emotional behavior disorder classrooms, science room with lecture laboratory, one computer laboratory, a library/media center, kitchen, combination cafeteria-gymnasium-multipurpose room, wellness program room, counseling suite with curriculum resource room, and administrative suite. An open-air, wood frame shelter that is approximately 570 square feet will be provided for outdoor curriculum purposes. Adequate parking will be provided for between 35 and 45 standard-sized vehicles and two standard-sized school buses that are about 36 feet long. The facility design will include necessary active and passive security measures and will address applicable life safety issues. The relocated school facility will be a two-story, masonry structure designed and built in accordance with applicable and appropriate Kentucky planning and programming guidance. The Government will construct said relocated school facility within the Project Phase I Community Redevelopment Site. The Government will construct an access road, which will become property of the Sponsor, and arrange for extension of utility services necessary for the operation and maintenance of the relocated school.

Item BOE-2. The work consists of the demolition and disposal of the existing alternative school facility. All hazards will be removed and all holes and cavities filled.

c. The following is a general description of the Owner's real estate interests shown, generally, on Exhibit B, that the Owner will convey to the Sponsor pursuant to this agreement:

Tract No. 204 – 1.81 Acres, in fee (less minerals)

### ARTICLE 3. Obligations of the Owner.

The Owner shall:

a. And does hereby approve the general scope of the proposed Floyd County Alternative School and the placement of the relocated facility on the Project Phase I Community Redevelopment Site as previously outlined in Article 2.

b. Within 30 calendar days after receipt thereof, review and approve or comment on, in writing, the preliminary and final plans and specifications, prepared by the Government for the relocated Floyd County Alternative School. Failure to submit written approval or comments within 30 calendar days shall be deemed approval of the plans and specifications.

c. And does hereby grant to the Government, its officers, agents, assigns and contractors or subcontractors, right-of-entry upon and use of the Owner's lands as may be necessary or convenient in connection with the work to be performed, here unto.

d. Without additional consideration, by instrument prepared by the Government, convey to the Sponsor by general warranty deed, all right, title, and interest in and to the Owner's real property associated with the existing alternative school to be relocated located on Project real estate Tract No. 204, and deliver to the Sponsor releases from all liens and encumbrances on the Owner's right, title, and interest conveyed to the Sponsor.

e. Upon notification of completion of construction of the relocated alternative school facility, participate in the final inspection and, if constructed in accordance with this contract, accept the work in accordance with ARTICLE 8 herein. Should minor deficiencies in the facilities be found during final inspection, such deficiencies shall be remedied by the Government and thereafter all responsibility for maintenance shall belong to the Owner.

f. Upon completion and acceptance of the relocated alternative school facility, move personal property (non-fixtures) from its existing facility into the relocated facility and vacate the existing facility within 30 calendar days.

#### **ARTICLE 4. Obligations of the Government.**

Subject to the availability of funds, the Government shall:

a. Arrange for the conveyance from the Sponsor or the Government to the Owner of all necessary lands and/or interests in land necessary for construction, operation, and maintenance of the relocated school facility as described in ARTICLE 2, herein. The Owner agrees to accept title to said lands by quit claim deed from the Government.

b. Arrange for the design of the relocated school by a qualified Architect-Engineer (A-E). A-E qualification shall include, but not be limited to:

- A knowledge of current applicable statutes and codes related to educational building projects in Kentucky.
- The ability to prepare and submit, to appropriate Federal, State, and Local approval agencies, all necessary documents in proper form and in a timely manner.
- Experience in designing school projects in Kentucky that are of a comparable nature to the proposed relocated school.

c. Submit to the Owner preliminary and final plans and specifications for review, comment, and approval. The Owner's comments will be answered in writing or incorporated into the plans and specifications. Preliminary plans will consist of schematic and design development plans and will include, but not limited to, floor plans, site plan with a building footprint, sections and elevations, parking areas, site utilities and roadways. All areas will be identified by function with overall dimensions and square footage area tabulations of all net program spaces as shown on the plan. Schematic plans will include the calculations for building efficiency and unassigned space percentages along with the gross area amount.

d. Advertise for bids and award a construction contract or contracts that shall provide for all services, labor, materials, tools, and equipment, necessary to perform the work in accordance with the approved final plans and specifications prepared by the Government's A-E.

e. Arrange for construction of an access road and utility extensions to the relocated school.

f. Notify the Owner, in writing, when the construction contract or contracts have been awarded, and furnish information as to the name and address of the contractor or contractors to whom award is made, the date of the award and the length of time provided for completion of said contract or contracts. The Owner shall be notified as to the name, address and telephone number of the Government's Resident Engineer in charge of the work.

g. Notify the Owner, in writing, as to the time and place for the pre-construction conference so that appropriate representatives of the Owner can attend.

h. And does hereby grant to the Owner, its representatives, employees, agents, contractors or subcontractors right of entry upon the construction work limits as deemed necessary by the Owner for the sole purpose of inspection as work progresses, subject to the condition that the Owner, its representatives, employees, agents, contractors or subcontractors will conduct said inspections in such a manner which will not occasion damage to the Owner's facilities or Government property, or interfere with the Government's performance of any obligation herein assumed or provided for.

i. Notify the Owner, in writing, as to the date and time of the final inspection for acceptance of the facilities constructed hereunder so that appropriate representatives of the Owner can participate.

j. Upon completion and occupancy of the Floyd County Alternative School, arrange for the demolition and disposal of the existing school complex, removing all hazards and filling all holes and cavities.

k. Provide to the Owner one set of "as-built" drawings, or electronic files of said drawings, of the relocated school facility.

#### **ARTICLE 5. Ownership and Conduct of the Work.**

a. The facilities constructed hereunder shall be the property of the Owner.

b. The Government may award other contracts for additional or other work in conjunction with the same project or in the same vicinity. The Owner shall conduct operations so as to cooperate fully with any such work being performed by the Government and/or Government contractors and shall carefully fit its own work to that provided under other contracts as directed by the District Engineer. The Owner shall not commit or permit any act

which may interfere with performance of any such work by the Government and/or any Government contractor.

ARTICLE 6. Interference.

The Owner agrees that, so long as the Project is operated or maintained for the purpose as described herein, the facilities as relocated, rearranged or altered pursuant to this contract shall not be so further altered or modified nor other facilities constructed by the Owner, so as to interfere with the operation of the Project.

ARTICLE 7. Inspection and Acceptance.

The Owner shall have the right to inspect the work to be performed hereunder at any time during its progress and to make final inspection upon completion thereof. Failure of the Owner to object within 30 calendar days after final inspection shall indicate satisfactory performance of the contract by the Government.

ARTICLE 8. Release.

The Owner agrees, on completion of the alteration or relocation work provided for herein, to accept said substitute facilities as full and just compensation for any and all damages that have been caused to the facilities altered or relocated hereunder and does hereby release the Government from any and all causes of action, suits-at-law or equity or claims or demands, and from any liability of any nature whatsoever for and on account of any damages to said rights of way and facilities relocated or altered hereunder, or in any way growing out of the construction, operation, and maintenance of the Project; provided, however, that nothing contained herein shall be construed to release the Government from liability for damages to the Owner's facilities or for personal injury arising out of the Project caused by the negligent or willful acts of the Government, its contractors, or agents.

ARTICLE 9. Assignment of Warranty Rights.

The Government hereby agrees to assign its rights to any supply or extended warranty it may receive in connection with the following facets of the relocated Floyd County Alternative School: (1) its HVAC system and related components, materials, and accessories; (2) its roof and related components, materials, and accessories; (3) its hot water system and related components, materials, and accessories; and (4) kitchen appliances and fixtures, and their related components, materials, and accessories.

This assignment in no way guarantees that the Government will acquire any particular kind of warranty, or any warranty at all, for the relocated Floyd County Alternative School. This

assignment does not constitute a Government warranty. The Government takes no responsibility for investigation of potential warranty problems or for warranty enforcement.

This assignment does not include the Government's *warranty of construction* for this or any other item of work for the Project.

#### ARTICLE 10. Condemnation.

Should it be determined for any reason that the right, title and interest of the Owner in and to the lands referred to in ARTICLE 2.b., above, shall be acquired by condemnation, or other judicial proceedings, the Owner shall cooperate in the prosecution of the proceedings and this agreement shall, without more, constitute a stipulation which may be filed in the proceedings and be final and conclusive evidence of the proper award to be made in such proceedings. In the event this contract is filed in such proceedings, it shall constitute an appearance and waiver of all rights to service or summons or other process, and the right to appointment of commissioners or a jury to determine the award.

#### ARTICLE 11. Covenant Against Contingent Fees. (APR 1984)

a. The Owner warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

b. "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by the Owner for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by the Owner and subject to Owner's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

ARTICLE 12. Gratuities. (APR 1984)

a. The right of the Owner to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Owner, its agent, or another representative-

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

b. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

c. If this contract is terminated under paragraph (a) above, the Government is entitled-

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Owner in giving gratuities to the person concerned, as determined by the agency head or a designee.

d. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE 13. Definitions.

"District Engineer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the District Engineer acting within the limits of their authority as delegated by the District Engineer.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

FLOYD COUNTY BOARD OF EDUCATION

By

  
PAUL W. FANNING, Ed. D.  
Superintendent

UNITED STATES OF AMERICA

By

\_\_\_\_\_  
WILLIAM C. BULEN  
Colonel, Corps of Engineers  
District Engineer

(TYPE OR PRINT ALL NAMES UNDER ALL SIGNATURES)

CERTIFICATE

I, Linda W. Grater, certify that I am the Notary Public for the Floyd County Board of Education herein, that Paul W. Fanning who signed this Contract on behalf of the Board was then Superintendent of said Board; that said contract was duly signed for and on behalf of said Board by authority of its governing body and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of this Board  
this 28<sup>th</sup> day of June 2004.

Linda W. Grater, State at Large  
Commission expires November 21, 2007.

(SEAL)

(TYPE OR PRINT ALL NAMES UNDER ALL SIGNATURES)

TO KY SR 80

BEAVER

CREEK

MAIN STREET

outside  
classroom

ITEM BOE-1

NOTE: CONSTR  
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OF THE

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FLOYD CO

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HABIT

MAY 2004

CONTRACT

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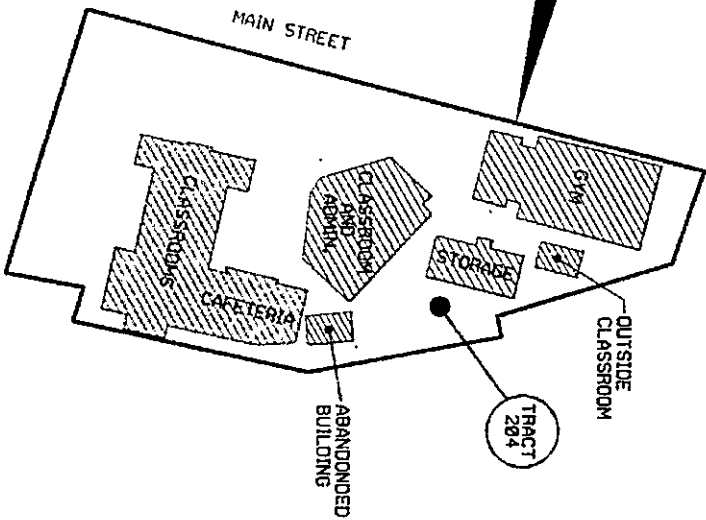
BEAVER STREET

CROSS STREET

FARMERS STREET

MAIN STREET

ITEM BOE 2  
EXISTING ALTERNATIVE  
SCHOOL TO BE RELOCATED



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