

Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections. The Construction Manager shall assist the Architect in preparation of the BG-4, 2013, for submission to the Owner and the Kentucky Department of Education for final payment authorization.

**§ 3.3.26** The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

**§ 3.3.27** The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner through the Architect for review and approval for conformance to the Contract Documents. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

**§ 3.3.29** Prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### ARTICLE 4 ADDITIONAL SERVICES

**§ 4.1 General.** This Article is to be neither included nor excluded in whole or in part. All additional services required, specific to the Project, shall be defined in the Project Request for Qualifications authorized and confirmed in writing by the Owner and accompanied by a board order.

Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. *(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
<b>§ 4.1.1</b> Measured drawings	NOT PROVIDED	
<b>§ 4.1.2</b> Architectural interior design (B252™-2007)	NOT PROVIDED	
<b>§ 4.1.3</b> Tenant-related services	NOT PROVIDED	
<b>§ 4.1.4</b> Commissioning (B211™-2007)	OWNER	
<b>§ 4.1.5</b> LEED® certification (B214™-2012)	NOT PROVIDED	
<b>§ 4.1.6</b> Furniture, furnishings, and equipment design (B253™-2007)	NOT PROVIDED	

**§ 4.2** Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

NA

**§ 4.3** Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

**§ 4.3.1** Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .4 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .7 Assistance to the Initial Decision Maker, if other than the Architect; or
- .8 Service as the Initial Decision Maker.

**§ 4.3.2** To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

**§ 4.3.3** If the services covered by this Agreement have not been completed within **TBD** ( ) months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.

**§ 5.2** The Owner shall establish and update an overall budget for the Project based on consultation with the Architect, the Construction Manager, and the Owner's Fiscal Agent, as applicable, which shall include the Construction Cost, the

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Owner's other costs and reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

**§ 5.3** The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs and as approved by Kentucky Department of Education.

**§ 5.4** The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition — KDE Version. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

**§ 5.5** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

**§ 5.6** Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 5.7** Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.8** The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

**§ 5.9** Unless otherwise provided in the contract documents, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 5.10** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

**§ 5.11** The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services.

**§ 5.12** The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 The Cost of the Work shall be the total construction cost, or to the extent the Project is not completed, the estimated total construction cost recorded on the current BG-1 form to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Construction Manager and Construction Manager's Consultants. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

## ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.



## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction — KDE Version. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Construction Manager 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, the dispute will be resolved in a court of competent jurisdiction.)*

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
- ☒ Litigation in a court of competent jurisdiction where the Project is located
- ☐ Other: *(Specify)*

### **§ 8.3 Arbitration**

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **§ 8.3.4 Consolidation or Joinder**

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

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

**§ 8.3.4.3** The Owner and Construction Manager grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Construction Manager under this Agreement.

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.



§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction — KDE Version, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary.

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 The Construction Manager shall execute and provide the Owner with a notarized Non-collusion Disclosure Affidavit as provided on current KDE form.

#### ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

CM Advisor Fee	\$14,500,000.00 @ 2.0%	\$290,000.00
On-site Expense 18 months @ \$12,000.00		<u>\$216,000.00</u>
	TOTAL	\$506,000.00

**§ 11.1.1 For Preconstruction Phase Services in Section 3.2:**

*(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)*

Ten percent (10%) of Base Fee = \$29,000.00

**§ 11.1.2 For Construction Phase Services in Section 3.3:**

*(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)*

Total Fee \$290,000.00 less pre-construction fee (\$29,000.00) = \$261,000.00

**§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:**

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

NA

**§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:**

*(Insert amount of, or basis for, compensation.)*

NA

**§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus \_\_\_\_\_ percent**

( \_\_\_\_\_ %), or as otherwise stated below:

NA

**§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.**

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate
Thomas E Gumm, Founder/Chairman of the Board	\$150.00
Brandon Akers, President	\$150.00
Tim Geegan, EVP	\$150.00
Matt Gumm, Business Development	\$150.00
Matt Rich, Project Executive	\$150.00
Superintendent	\$75.00
Project Manager	\$75.00
Clerical	\$35.00



## **§ 11.6 Compensation for Reimbursable Expenses**

**§ 11.6.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

**§ 11.6.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the expenses incurred.

**§ 11.6.3** Prior to services being provided or expenditures being made, the Construction Manager shall provide an itemized list of reimbursable expenses for approval by the Board of Education prior to executing the Contract.

## **§ 11.7 Payments to the Construction Manager**

### **§ 11.7.1 (Not Used)**

**§ 11.7.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid

NA ( \_\_\_\_\_ ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. All payments are to be approved by the local Board of Education.

*(Insert rate of monthly or annual interest agreed upon.)*

**§ 11.7.3** The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

**§ 11.7.3.1** Should liquidated damages be assessed and received by the Owner, the Owner shall pay the Construction Manager a prorata share of proceeds based on total amount received for compensation of continued services beyond the original approved Contract time period.

**§ 11.7.4** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

NA

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C132™-2009, Standard Form Agreement Between Owner and Construction Manager as Adviser — KDE Version.
- .2 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

Ryan Martin, Project Executive

\_\_\_\_\_  
(Printed name and title)

Init.



Franklin / Simpson

SECTION 003000  
AFFIDAVIT OF ASSURANCE

The undersigned agent, being duly sworn, states that neither he/she nor his/her firm has any relationship (financial or through kinship) to:

- ☒ Any school board member or the superintendent;
- ☒ Any or all prime contractors or material suppliers when using the construction management method of construction.

The undersigned further states that he/she has not entered into any agreement or collusion with any person relative to the price bid by anyone nor has he/she attempted to induce anyone to refrain from bidding.

Explain below any kinship or financial relationship you may have to any parties as mentioned above on this project.

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This affidavit is subject to KRS 45A.455 prohibition against conflict of interest, and gratuities and kickbacks.

<hr/> <b>Name (Signature)</b> Ryan Martin	<hr/> <b>Project Executive</b> <b>Title</b>
---	--

<hr/> Alliance Corporation	
<hr/> <b>Name of Company</b>	

Subscribed and Sworn to me this  
\_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Signature  
  
My Commission expires:  
\_\_\_\_\_



Notary Seal

Project Name: Simpson County CTE Improvements and Alt. School Addition