

**AGREEMENT BETWEEN OWNER
AND COMMISSIONING AUTHORITY**

This Agreement is made: July 29, 2025

Between the Owner:

Fayette County Board of Education
c/o Melinda Joseph-Dezarn, AIA, Director
Facility Design & Construction
450 Park Place
Lexington, KY 40509

And the Commissioning Authority:

Zerhusen Holten Commissioning, LLC (ZHCx)
267 Main Street
Florence, KY 41042

For the following Project:

New Henry Clay High School
2100 Fontaine Road
Lexington, KY 40502

The Owner and Commissioning Authority agree as follows:

ARTICLE 1 – SCOPE OF WORK

I. List of Systems to be commissioned

See attached Commissioning Authority's Response to RFP #51-25 dated May 6, 2025, attached to this contract and incorporated herein by reference.

II. Construction Phase Responsibilities

Commissioning Authority shall perform the following responsibilities during the construction of this project:

1. Organize and lead the commissioning team
2. Review shop drawings for components of commissioned systems for compliance with the Owner's project requirements and basis of design. Return comments to the design team.
3. Modify and update the commissioning plan as required based on submittals for shop drawings, equipment, controls, etc.
4. Schedule and lead commissioning meetings to be held during regular construction progress meetings
5. Maintain a tracking system for resolution items including documents and photographs as required
6. Coordinate all activities with the project schedule throughout the construction phase to ensure that commissioning activities are properly coordinated; provide feedback to the designer as required
7. Perform on-site observations during construction and record observations with documents and photographs as required
8. Monitor and verify correct component and equipment installation and document all observations with reports and photographs as required.
9. Witness HVAC equipment and system start-ups and ensure complete documentation. System start-ups are to include all dedicated outdoor air systems (DOAS) and the first two heat pumps to be started to establish the procedure for the remaining heat pumps. Heat pumps shall be of different sizes.
10. Witness domestic hot water equipment and system start-ups and ensure complete documentation.
11. Witness lighting controls and start-ups and ensure complete documentation.
12. Develop all System Verification Checklists for all equipment being commissioned.
13. Verify that Owner training for operating personnel has been satisfactorily completed.

III. Construction Acceptance Phase Responsibilities

Commissioning Authority shall perform the following responsibilities during the construction acceptance phase of this project:

1. Review and inspect on a sample basis the testing, adjusting and balancing work that has been carried out by another agency with respect to air and hydronics. Testing and Balancing will be performed by a TAB contractor hired directly by the Owner. TAB report shall be reviewed by CxA.
2. Conduct functional performance testing of all sub-systems, systems, and interaction between systems, leading to acceptance of the completed work. Document results of all tests witnessed.

IV. Post-Acceptance Phase Responsibilities

Commissioning Authority shall perform the following responsibilities during the construction acceptance phase of this project:

1. Conduct functional performance testing of all sub-systems, systems, and interactions between systems that could not be carried out prior to acceptance due to unsuitable weather conditions or other.
2. Prepare and submit a final commissioning report
3. Provide follow-up for quality of performance during the guarantee period
4. Develop a systems manual which provides future operating staff the information needed to understand and optimally operate the commissioned systems.

ARTICLE 2 - TRANSFER OF COPYRIGHT

The Commissioning Authority acknowledges and agrees that documents or works prepared by, or hereafter to be prepared by, the Commissioning Authority, in whole or in part, in connection with the project, are intended to be the sole property of the Owner. The Commissioning Authority hereby expressly transfers to the Owner the exclusive right to any copyright interest in the documents.

ARTICLE 3 - TERMINATION, SUSPENSION OR ABANDONMENT

In the event of the Owner termination, suspension or abandonment of the project, the Commissioning Authority shall be equitably compensated by the owner for services performed to the date of termination, suspension or abandonment.

Either the Commissioning Authority or the Owner may terminate this Agreement with or without cause after giving no less than seven (7) days written notice to the other party.

In the event of termination, suspension, abandonment or completion of the project, the Consultant shall deliver to the Owner within seven (7) days Documents, whether complete or incomplete, not previously delivered to the Owner during the course of the project. The Owner, as the holder of the exclusive right to any and copyright interest in the Documents, as provided in Article 2, shall have the right to use and reuse any and Documents for any purpose in connection with the project, including, but not limited to, its completion using entities other than the Commissioning Authority, at the Owner's sole discretion and at no additional cost to the Owner.

ARTICLE 4 - MISCELLANEOUS PROVISIONS

This agreement shall be governed by the law of the Commonwealth of Kentucky.

The Owner and Commissioning Authority respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement. Neither party to this Agreement shall assign the Contract as a whole without prior written consent of the other.

The Commissioning Authority, its agents, employees, or consultants shall not harass or discriminate against any person regarding employment because of race, sex, religion, creed, color, genetic information, national or ethnic origin, political affiliation, age or disabling condition, gender identity, or sexual orientation.

During the Commissioning the Consultant will provide certain insurance coverage. These include in part: amounts satisfactory to the Owner, Comprehensive General Liability, Auto Liability, and Worker’s Compensation.

- General Liability -- \$1,000,000
- Auto Liability -- \$300,000 / \$1,000,000; Personal Injury / \$500,000 / \$1,000,000 Property Damage
- Workers Comp -- \$100,000
- Professional Liability / E & O -- \$1,000,000

Owner shall be named as an additional insured on policies of insurance. Insurance policies shall incorporate provisions requiring insurance carriers to notify Owner thirty days (30) prior to canceling, non-renewal, or material modification of the policies. The certificate of insurance to be supplied MUST also name “The Owner Name, its officers, agents and employees” as an additional insured for the general liability and auto liability coverages.

ARTICLE 5 – COMPENSATION AND PAYMENTS

For Commissioning Services and any other services defined in this Agreement as Commissioning Services, Basic Compensation shall be as follows: A fixed fee. Any additional fees for substantial changes of scope must be negotiated and an addendum added to this contract, or with prior agreement of the parties the fee may be established as “NOT TO EXCEED” amount.

TOTAL FEE: \$183,690.00 (One Hundred Eighty-three Thousand, Six Hundred Ninety Dollars)

ARTICLE 6 - OTHER PROVISIONS

(Insert description of other services and modifications to the terms of this Agreement here or as an attachment.)

Commissioning Authority’s Response to RFP #51-25 dated May 6, 2025

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

Melinda Joseph-Dezarn
Director, Facility Design & Construction
Principal/Director’s Approval

Date

Dr. Demetrus Liggins, Superintendent or Designee
BOARD OF EDUCATION OF FAYETTE COUNTY,
KENTUCKY

Date

LEGAL IN: _____
CAB. IN: _____

Chris Zerhusen, CxA, CEM, EMP
ZERHUSEN HOLTEN COMMISSIONING, LLC (ZHCx)

Date

Commissioning Proposal

The New Henry Clay High School and Concession Stand

May 6, 2025



SECTION 019113 – COMMISSIONING

(To Be Bid under separate Contract. The Commissioning Agent will work directly for Fayette County Schools.)

This request is for a proposal for commissioning services for the new Henry Clay High School and Concession Stand as described herein. The Commissioning agent will be contracted directly with Fayette County Public Schools.

Client Contact Information: Melinda Joseph-Dezarn, Director of Planning and Construction
Fayette County Public Schools
400 Springhill Drive
Lexington, KY 40503

Project Address: 2100 Fontaine Road
Lexington, KY 40502

Project Start Date: 6/2025
Expected End Date: 11/2029

The proposal shall be lump sum fee.

The commissioning service fee proposal is \$ 183,690.00

RFP responses to be sent to Melinda Joseph-Dezarn via email on or before 5/6/25.

melinda.josephdezarn@fayette.kyschools.us

Following are five (5) K-12 school projects where the building's envelope was commissioned to have no greater than 0.15 CFM per square feet of building envelope:

While the RFP requests experience specifically with five K–12 projects meeting the 0.15 CFM/sf air leakage threshold, our firm has commissioned building envelopes on numerous facilities of similar complexity and scale. Although not K–12, these projects included envelope testing, blower door testing, thermographic analysis, and successful collaboration with design and construction teams to meet high-performance standards.

We are fully capable of meeting or exceeding the required air leakage performance for the Henry Clay High School project. Our commissioning methodology aligns with ASTM E779 and related standards, and we bring a proven track record of envelope commissioning across educational, civic, and institutional buildings.

The following projects highlight our experience with building envelope commissioning, where the building's envelope had less than 0.15 CFM per square feet of building envelope:

1. Cincinnati Police Department, District 3 Headquarters – Performed by ZHCx.
2. WPAFB NASIC IPC – ZHCx utilized Technical Assurance as a consultant.
3. Camp LeJeune – Performed by Technical Assurance.

Briefly describe the approach your firm will take in commissioning Henry Clay High School and Concession Stand. List challenges and thoughts to overcome. List your firm's goals for the Henry Clay High School Commissioning:

ZH Commissioning approaches every project with a firm commitment to delivering meaningful, results-driven commissioning. For Henry Clay High School, we will apply our proven process that combines technical rigor, field validation, and proactive collaboration with all stakeholders to ensure systems operate as intended, and meet or exceed the Owner's Project Requirements (OPR).

We do not treat commissioning as a paperwork exercise. We assume all systems are "guilty until proven innocent," meaning we physically verify performance through rigorous field testing and hands-on validation—especially for critical elements such as HVAC sequences, lighting controls, and envelope integrity. Our method ensures that issues are caught early, resolved thoroughly, and documented with full transparency.

Commissioning challenges for a project of this scale may include coordination across multiple subcontractors, off-season system performance testing, and meeting aggressive envelope air leakage targets. We address these challenges through:

- Early engagement with the project team and clear expectations set during our commissioning kickoff meeting. Engagement needs to stay consistent throughout the project due to the size and long construction schedule.
- Use of a live, web-based issue tracking log accessible to the full team at all times
- Detailed startup and performance documentation that supports future maintenance and troubleshooting.
- Functional testing procedures designed to simulate real-world conditions and failure modes (e.g., freeze stat validation with freeze spray, not just simulated input).
- ZHCx utilizes a building envelope consultant, Technical Assurance, to perform envelope leakage testing in conjunction with thermal imagery. We understand the importance of having a specialized partner to perform this testing.

Our goals for this project include:

- Validating that the building envelope meets or exceeds the specified air leakage rate (≤ 0.15 CFM/sf), using ASTM E779 and thermographic diagnostics per ISO 6781 and ASTM C1060
- Delivering comprehensive, readable commissioning documentation that the district's facilities team can rely on
- Supporting the project's sustainability, durability, and operational efficiency objectives by ensuring proper integration of geothermal systems, DDC controls, and energy management strategies
- Facilitating a smooth handoff to Fayette County Public Schools through training support, system manual development, and post-occupancy follow-up

Ultimately, we aim to serve not just as a third-party observer, but as an engaged advocate for project success—one who protects the district's long-term interests and ensures quality that lasts well beyond occupancy.