KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF FACILITIES MANAGEMENT
AMENDMENT TO
GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION
AIA A201/CMa-1992

ARTICLE 1
GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents

Insert the following in first sentence: "...Conditions of the Contract, Instructions to Bidders (General, Supplementary)" Delete last sentence in its entirety.

1.1.5 The Drawings

Add the following paragraph: "The drawing dimensions shall have precedence over scaled measurements and details over general drawings. The requirement specifications rule over the drawings."

Add the following paragraph: "Figured dimensions on the drawings are reasonably accurate and should govern in setting out the work. However, should the Contractor discover discrepancies or inaccuracies, it shall be the Contractor's responsibility to bring them to the attention of the Architect before making any changes. Changes shall be made only with the approval of the Architect."

1.1.8 Add Definitions:

Wherever used in these General Conditions or in other contract documents, the following terms have the meaning indicated which are applicable to both the singular and plural thereof:

Owner means the local board of education, or its authorized representative: the superintendent or other board designee. (Ref: Article 2.1)

Architect means the person, company or corporation, either architect, engineer or design consultant, named in the contract documents. (Ref: Article 4.1)

Contractor means the person, company or corporation with whom the Owner has executed the contract or may be one whose sole undertaking is the sale of materials. (Ref: Article 3.1)

Subcontractor means the person, company or corporation having a direct contract with the Contractor for the performance of a part of the work. (Ref: Article 5.1)

Contract means the bid price offer of the Contractor as officially accepted by the Owner, evidenced by the executed Owner/Contractor Agreement of contract. (Ref: Article 1.1.2)

Contract Documents means the Agreement between the Owner and Contractor, the Performance and Payment Bond, the General, Supplemental and Special Conditions, the Drawings, the Specifications, all Addenda issued prior to and all modifications and Change Orders issued after execution of the contract. The contract documents define the contract and include all items necessary for the proper execution and completion of the work. The contract documents are complementary. Whatever is required by one shall

be as binding as if required by all. (Ref: Article 1.1.1)

Work means and comprises the completed construction required by the contract documents. Including but not limited to labor, material, equipment, supplies, superintendency, plant and equipment to perform and complete the contract in an expeditious, orderly and workmanlike manner. (Ref: Article 1.1.3)

Contract Sum means the sum stated in the contract including any authorized adjustments thereto; it is the total amount payable by the Owner to the Contractor for the performance of the work under the contract documents. (Ref: Article 9.1)

Contract Completion Time means the number of calendar days to complete the work as specified in the contract documents. (Ref: Article 8.2)

Calendar Day means a day of twenty-four hours measured from midnight to the next midnight. (Ref: Article 8.1.4)

Change Order means a written order to the Contractor signed by the Owner, issued after the execution of the contract, authorizing a change in the work or an adjustment in the contract sum or the contract time. (Ref: Article 7.2)

Shop Drawings mean drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work. (Ref: Article 3.12)

Written Order means a field order issued by the Architect which clarifies or interprets the contract documents or orders minor changes in the work which does not require a change order. (Ref: Article 7.3)

Project means all required construction described in or reasonably inferred by the plans, specifications, and other related bid documents. (Ref: Article 1.1.4)

Provide as used through the specifications shall mean furnish, install, and pay for.

Construction Manager means the person or entity retained by the Owner to provide on-site coordination and services as outlined in the Owner-Construction Manager Agreement. The term Construction Manager means the Construction Manager or the Construction Manager's authorized representative. (Ref: Article 4.2)

Furnish means supply and deliver to project site, ready for unloading, unpacking, assembly, installation, etc., as applicable in each instance, except as otherwise defined in greater detail.

Install means, except as otherwise defined in greater detail, to describe operations at project site including unloading, storage, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, furnishing, curing, protecting, cleaning and similar operations, as applicable in each instance.

Installer means the entity (person or firm) engaged by Contractor or its subcontractor for performance of a particular unit of work at project site, including installation, erection, application and similar required operations. It is a general requirement that such entities (Installers) be expert in operations they are engaged to perform.

Owner Furnished - Contractor Installed (OFCI) means equipment or components of a system that are purchased by the Owner and furnished to the Trade Contractor for installation in the project. The Contractor shall receive, store, protect, install, connect, and test each item unless otherwise indicated.

Contractor Furnished - Contractor Installed (CFCI) means equipment or components of a system that are purchased, furnished, and installed by the Contractor.

Owner Furnished - Owner Installed (OFOI) means equipment or components of a system that are purchased, furnished, and installed by the Owner or his vendors.

1.2 EXECUTION, CORRELATION, AND INTENT

1.2.6 Insert paragraphs: "The Contractor shall make a thorough examination of the site and study all drawings and specifications and all conditions relating to the erection of the work and if any materials or labor evidently necessary for the proper and complete execution of the work, which are not specifically mentioned although reasonably inferred therefrom, shall be included in the work.

Anything called for in the specifications and not shown on the drawings or shown on the drawings and not called for in the specifications, shall be included in the Contractor's work, the same as if included in both. In the event of a doubt arising as to the true intent and meaning of the drawings or specifications, the Contractor shall report it at once to the Architect. The Architect shall furnish with reasonable promptness, additional instructions, by means of drawings or otherwise necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the contract documents, true developments thereof and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions. If the Contractor proceeds contrary to the above instructions, all such labor and material costs shall be provided at the Contractor's expense."

1.2.7

a. This section of the contract is the description of individual breakdowns for Bids to be submitted by Contractors and Material Suppliers.

b. All Bidders shall consult the Instruction to Bidders, General and Supplementary Conditions, all Plans, Specifications and Addenda for items relating to their Bids.

c. Each individual Contractor will be responsible for the regrading or patching of areas disturbed by the processing of their work. The regraded areas shall be brought to proper subgrade or finish grade elevations depending on condition prior to the start of their work and properly compacted if required. Patched areas shall match pre-existing conditions.

d. **Kentucky Sales Tax** does apply to all materials purchased for this Project, except those materials purchased directly by the Owner with an approved Purchase Order in accordance with KRS 139.495(1) after appropriate Advertisement for Bids.

e. A Material Supplier is a person or organization who has a direct Purchase Order responsibility to the Owner. Purchase Order amount as bid will include all costs of delivery to the job site. Material Supplier assumes all responsibility for materials until delivery is accepted by the Owner. Material Supplier will guarantee all materials furnished under a purchase order to be in accordance with the requirements of the contract documents. This guarantee shall extend through the construction period and one (1) year from the date of substantial completion upon final acceptance by the Owner of the Project. The designated Contractor or Subcontractor responsible for installation of Purchase Order material or equipment is to supervise and accept delivery, unload, handle, store, layout and install the items. Upon delivery, the designated contractor is to verify product suitability, quantity, quality and condition as soon as it can be ascertained and shall accept care, custody and control responsibility as if it were his own purchase. Any damage or loss after acceptance will be the responsibility of the designated contractor or subcontractor.

f. A Material Supplier can be paid by one payment upon satisfactory completion of the requirements of the Purchase Order with the Owner. This would include the delivery of materials and satisfactory

verification of these materials and compliance with the closeout procedures as outlines in these specifications (except those referred to in Paragraph 9 hereof).

g. All Contractors and/or Material Suppliers will be required to execute and furnish Bonds as stated in the Project Manual in the amount of one hundred percent (100%) of the Contract or Purchase Order sum. This Bond shall be executed by a Surety Company authorized to do business in the Commonwealth of Kentucky. The Bonding Company's premium shall be paid by the Contractor and/or Material Supplier.

h. Protection of the Work of Others - Contractors shall consider protection of finished work of prime importance. Care shall be taken by Contractors not to damage completed work of other Contractors, and to provide adequate protection for their own completed work. Any Contractor moving men and/or transporting materials across floors, grades, roofs or other vulnerable surfaces and through existing areas, shall provide adequate surface protection to prevent damage to existing surfaces. Any cost of damages will be borne by the Contractor causing said damage at the cost of replacement by the Contractor who installed the material.

i. General Construction and Concrete, Masonry, Plumbing, HVAC & Electrical Contractors will provide with their bid a breakdown of major material items (excluding sales tax). This breakdown shall include description of the item, name of the manufacturer, name of the supplier, and the amount of the supplier's quote. The Owner will issue a Purchase Order direct to the supplier for these materials. The following is to be provided:

1. Within four (4) days from the Bid Date, the low bidder will be required to furnish the Owner with a Letter of Authorization executed by the Supplier of the items listed on the bid breakdown, stating the authorization given to the Contractor to quote the materials listed and that the Supplier will furnish the listed materials to the Owner under the Owner's standard **Purchase Order Agreement** for the amount stated on the Contractor's bid breakdown. Failure of any Contractor to provide this written authorization will cause forfeiture of the bid security. The specimens of the letter and purchase order are to be included with the **Form of Proposal**.

2. The Contractor shall also guarantee and warrant to the Owner that all materials listed in the breakdown to be purchased directly by the Owner by **Purchase Order** as described in Item A above shall fully conform to the requirements of the Contract Documents and that the quantity of such material is sufficient to complete this Bid Division. The **Performance and Payment Bond** required of the Contractor shall be in the combined amount of the materials designated in its bid to be acquired by Purchase Order by the Owner and all remaining items of cost specified in the respective Bid Division. Contractor will provide an invoice from the supplier to the Owner with Contractor's Application for Payment.

3. The Material Supplier will be paid the full amount of their invoice. The retainage whereif would otherwise be withheld from invoices submitted by and paid to a supplier of materials shall be withheld from the approved payment request of Contractor, so that the total retainage at all times for payments to Contractor, and to designated suppliers, is 10% of the first combined $1,000,000.00 and 5% thereafter, as provided for in Article 9 of the General Conditions. Upon completion, acceptance and approval for final payment of Contractor's work, and approval of material provided by added designated supplier for final payment, Contractor shall be entitled to the full retainage withheld.

j. Lockers, Library, Kitchen, Shop, Technology, Science or other major equipment bid divisions will provide with their bid a breakout price for the material portions of the bid (excluding sales tax). An award based on the low bid will be the lump sum price for the base bid (total of the breakout prices). The Owner will issue a purchase order for the material and a contract for the labor and incidental

materials. Retainage will be held on both the Purchase Order and the Contract in accordance with the General Conditions.

k. The language of the Bid Divisions is designed to outline and define the work in general to be included in a particular Bid Division and to prevent overlapping and conflicting requirements within other Bid Divisions. No Bidder shall use the omission of any item from this language as a basis for a claim for additional cost when such item is specified and shown on the drawings to be a part of a complete and workable system.

l. It shall be the responsibility of the bidder to determine which Bid Division or combination of Bid Divisions the Bidder desires to Bid.

m. The Construction Manager will establish an overall construction schedule based on the milestone dates. Each Contractor shall cooperate with the Construction Manager to establish realistic delivery dates, manpower requirements and time frames from the schedule of the job. A copy of the schedule shall be displayed at the job site. The Construction Manager shall update this schedule periodically if required and establish new milestone dates. It shall be each Contractor's responsibility to keep himself advised of the job progress and the effects upon his work. Any Contractor found to be negligent in the performance of their portion of the work can be charged with liquidated damages in the amount of $_____ per day for the duration of the delay period. This amount applies to each bid division and will not be proportioned if more than one Contractor is proven at fault in causing the delay. A Contractor shall not be entitled to extra compensation for being required to perform this work later than as scheduled at the time of the original scheduled or updated schedules.

n. The milestone dates established by the Construction Manager will govern the final project schedule. Contractors and Material Suppliers will indicate by bidding the project that they have the ability to meet the milestone dates indicated. The implementing of liquidated damages as indicated in the paragraph above will be based on the milestone dates indicated and the overall final construction schedule.

1.2.8 Add the following paragraph: "The drawings and specifications are intended to be fully explanatory and supplementary. However, should anything be shown, indicated or specified on one and not the other, it shall be done the same as if shown, indicated or specified in both.

1.2.9 Add the following paragraph: "Should any error or inconsistency appear in the Drawings or Specifications, the Contractor, before proceeding with the work must make mention of the same to the Architect for proper adjustment and in no case proceed with the work in uncertainty or with insufficient drawings."

1.2.10 Add the following paragraph: "All branches of the work shown on the plans or specified, whether specifically mentioned or not, shall be executed in strict compliance with all local or state regulations and codes, and shall be in compliance with all National Codes when same have jurisdiction."

ARTICLE 2
OWNER

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.4 Add sentence: "Owner's response shall be provided within two (2) working days from date of inquiry."

2.2.8 Add paragraph: "Unless otherwise provided in the contract documents, the Contractor will be furnished,

free of charge, all copies of drawings and specifications reasonably necessary for the execution of the work. The Contractor shall keep one copy of all drawings and specifications on the site, in good order, available to the Architect and/or his representatives. All drawings, specifications and copies thereof furnished by the Architect are the property of the Owner. They are not to be used on other work. See Article 1.3 of the document."

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.2 Add the following paragraph: "All notices (relating to any part of this contract) to Contractors from the Owner shall be in writing and considered delivered and the service thereof completed, when the notice is posted, by registered mail, to the Contractor at his last address or delivered in person to the Contractor or his authorized representative on the work."

ARTICLE 3
CONTRACTOR

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR

3.2.4 Add the following paragraph: "The Contractor and each subcontractor shall be responsible for verification of all measurements at the site before ordering any materials or doing any work. No extra charge or compensation shall be allowed due to difference between actual dimensions and dimensions indicated on the drawings. Any such discrepancy in dimension which may be found shall be submitted to the Architect for his consideration before the Contractor proceeds with the work in the affected areas."

3.2.5 Add the following paragraph: "Plans and specifications for this project are shown specified structural, architectural, mechanical and electrical entities, diagrams and devices for each item. The mention of acceptable bidder does not necessarily imply that their particular "standard" product is totally adaptable to details shown. Therefore, the cost of deviations, extensions or adjustments required for the low Bidder's product must be included in the General Contractor's bid. No additional cost will be considered."

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.5 Add paragraph: "Supervision is the responsibility of each individual contractor and this section does not refer to the supervisory responsibility of the Construction Manager."

3.3.6 Add the following paragraph: "The Workmanship shall be of the highest quality, in every respect, as usually recognized in the building industry. Poor or inferior workmanship (as determined by the Architect, Engineers, or inspecting authorities) is to be removed and replaced to conform to the highest quality standards of the trades concerned, or otherwise corrected."

3.3.7 Add the following paragraph: "The General Contractor shall layout the work and be responsible for all lines, levels and measurements of all work executed under this Contract; he shall verify the figures."

3.3.8 Add the following paragraph: "The General Contractor and all subcontractors and other on-site contractors shall cooperate and coordinate their work to expedite the progress of the project. All subcontractors shall review and refer to the drawings and specifications of other trades involved with their particular work before proceeding. Any work involved which conflicts with another trade and had not been brought to the attention of the Architect prior to installation shall be removed at no additional cost to the Owner."

3.14 CUTTING AND PATCHING

3.14.3 Add the following paragraph: "The General Contractor shall repair and/or replace, at no expense to the Owner, any sections of existing roads, drives, streets, sidewalks, curbs, utilities, buildings, and other structures damaged by reason of work performed under this Contract or incidental thereto, whether by his own forces or by his subcontractors or by his materials suppliers."

3.14.4 Add the following paragraph: "Utility services to existing facilities shall not be interrupted unless absolutely necessary. Interruptions shall be of minimum duration and shall be scheduled to cause the least possible inconvenience. In all cases, the Owner shall be notified well in advance of anticipated interruption of utilities."

3.18 INDEMNIFICATION

Delete in its entirety.

ARTICLE 4
ADMINISTRATION OF THE CONTRACT

4.6 ADMINISTRATION OF THE CONTRACT

4.6.10 Add the following paragraph: "Bidders, before submitting proposals, shall visit and examine the site to satisfy themselves as to the nature and scope of the new construction and any difficulties attending the execution. The submission of a proposal will be construed as evidence that a visit and examination have been made. Later claims for labor, equipment, or materials required or difficulties encountered which could have been foreseen had such an examination been made will not be recognized."

4.8 RESOLUTION OF CLAIMS AND DISPUTES

Delete references to "arbitration" and include "mediation".

4.8.5 Add the following paragraph: "Contractor is hereby put on notice that it is his contractual obligation to adjust all differences between his several subcontractors. Attempts to have the Architect and/or Owner settle disputes between Prime Contractor and his subcontractors, or between subcontractors, will not be given consideration."

4.9 ARBITRATION

4.9.1 Delete in its entirety and replace with Mediation:

Revise the paragraph to read: "...shall be subject to and decided by mediation in accordance with the current procedures of the Mediation Center of Kentucky, 201 West Short, Suite 310, Lexington, Kentucky, or other non-profit mediation councils approved by the Division of Facilities Management."

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.5 Insert paragraphs: "The Owner, without invalidating the contract, may as the need arises, order changes in the work by deletion or modification. All such changes to the work shall be authorized by change order and be executed under the conditions of the original contract. Contract amount and time of completion shall be adjusted at the time of ordering such change. The value of any such change in work shall be determined in one or more of the following methods:

A. By mutual acceptance of a lump sum;

B. By unit prices named in the contract or subsequently agreed upon.

If neither of the above methods are mutually agreed upon, the Owner may direct the Contractor to proceed with the change in the work, for which the Contractor shall be paid the net cost of said work, plus fifteen percent (15%) of such cost.

The Contractor shall keep and present in such form as the Architect may direct, a correct account of all items comprising the net cost of such work, together with vouchers, including the cost to the Contractor of all materials used, of all labor, common and skilled, foremen and the fair rental of all machinery together with reasonable transportation cost of machinery not on the site.

The Contractor shall not include the net cost of the change of work, any cost for rental of small tools, or any portion of the time of the Contractor, or his superintendent or any allowance for the use of capital, insurance or bond premium, or any actual or anticipated profit, or job or office overhead, not previously mentioned, these items being considered as being covered by the added fifteen percent (15%). Pending final determination of value, partial payments on accounts of changes in work may be made on recommendation of the Architect.

The Architect may authorize minor changes in the work, not involving extra cost, and time extensions, and not inconsistent with the purpose of the work.

If the Contractor claims that any instructions by the Architect involves additional cost, the Contractor shall give the Architect written notice thereof within a reasonable time, after the receipt of such instructions and before proceeding to execute the change in work.

Any proposed change in work involving a change in excess of $2,500 shall be submitted to the Commissioner of Education for approval prior to authorization by the Owner."

ARTICLE 8
TIME

8.2 PROGRESS AND COMPLETION

8.2.4 Add Paragraphs:

"A. The Contractor shall begin the work within _____ days of commencement as specified in the contract for the project. The Contractor shall carry the work forward expeditiously with adequate forces and management processes for achieving completion of the work within the contract time. All time stated in the contract documents are of the essence of the contract."

"B. The contract time, unless otherwise provided, is the period of time specified in the contract

documents for substantial completion, as defined hereinbelow, including authorized adjustments thereto."

8.3 DELAYS AND EXTENSIONS, OF TIME

8.3.4 Add paragraphs: "It is agreed that time is of the essence for each and every portion of this contract, and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

a. To any preference, priority or allocation order duly issued by the government;
b. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather;
c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) or (b) of this Article.

Provided further that the Contractor shall, within fifteen (15) days of the occurrence of the event, notify the Architect and Construction Manager in writing. Notice of the extent of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless the Architect and Construction Manager ascertains more accurate data. Any change in the contract time resulting from any such claim shall be incorporated in a change order. In no event shall any delays or extensions of time be construed as cause or justification for payment of extra compensation to the Contractor."

8.3.5 Add Paragraphs: "Liquidated Damages"

"A. It is mutually understood and agreed by and between parties of this contract, in execution of same, that time is of essence of the contract. It shall be each Contractor's responsibility to keep himself advised of the job progress and the effects upon his work. In event that Contractor fails to substantially complete work to be performed under this contract by and at applicable completion time bid in Proposal, including any extension of time granted under General Conditions, Contractor shall pay to Owner $_____ per calendar day because of delay in completing such Bid Division as and for liquidated damages, such as Owner's increased overhead and cost of additional architectural and Construction Manager supervision and not as penalty, for each and every calendar day, that the Contractor shall be in default. If completion dates overlap, liquidated damages shall continue at the established $_____ per day. The amount does not increase by $_____ per day with the overlap of a phase."

"B. Liquidated damages will be waived for and during extent of delay caused by Contractor's inability to obtain material or equipment by reasons such as Federal embargoes, priority orders, or other restrictions imposed by the United States Government, provided that adequate evidence is presented by Contractor to prove such delay and to enable Owner to determine with exactness the extent and duration of such delay for each item of material and equipment involved."

"C. Owner shall have right to deduct liquidated damages from money in its hands otherwise due, or to become due, to Contractor or to sue for and recover compensation for damages for nonperformance of this Contract at time stipulated herein."

"D. The Architect and/or Construction Manager will perform periodic inspections during construction, a pre-final inspection, an Owner's final inspection and one punch list follow-up inspection. Should the Contractor require additional inspections due to inability to complete the work or the punch list (no matter the reason), the Owner will withhold additional funds as "liquidated damages" to compensate the Architect and/or Construction Manager for these additional services. Charges will

be computed at a rate of 3.5 times the direct hourly rate of the Architect's and/or Construction Manager's employee plus travel cost, telephone and printing costs."

ARTICLE 9
PAYMENTS AND COMPLETION

9.6 PROGRESS PAYMENTS

Insert the following paragraphs:

"**Payment to the Contractor**

The Owner will make payment to the Contractor by either one payment upon completion of the project and acceptance by the Owner, or the Contractor may apply for partial payments less ten percent (10%) retainage on the amount of work performed or materials furnished for the work in accordance with the conditions and the following procedures:

A. Schedules - Prior to submitting the first payment application, the Contractor shall submit a schedule of values of the work and a progress schedule in form and substance satisfactory to Construction Manager and the Architect for approval. The schedule of values shall include quantities and prices aggregating the contract price and shall subdivide the work into component parts. An approved copy of the Schedules will be provided to the Contractor which will be the basis for progress payments during construction. The schedule of progress shall indicate the starting and completion dates of the various stages of the work.

B. Application for Progress Payment -

(1) Not more often than once a month, the Contractor shall submit to the Architect a signed application for payment for the work completed as of the date of the application and accompanied by such data and schedules as the Architect may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work, but delivered and suitably stored at the site or at another location agreed to in writing, the application for payment shall also be accompanied by such data, satisfactory to the Owner, as will establish Owner's title to the material and equipment and protect the Owner's interest therein, including applicable insurance. Each subsequent application for payment shall include an affidavit from the Contractor stating that all previous progress payments received on account of the work have been applied to discharge, in full, all of the Contractor's obligations reflected in prior applications for payment.

(2) Upon certificate of substantial completion of the work, the Contractor may make application for the balance of the contract funds less a five percent (5%) retainage. Upon completion of all punch list items, the Contractor may make application for the remaining five percent (5%) retainage. The Owner cannot release this payment until notification of approval and authorization of payment has been received from the Chief State School Officer.

C. Contractor's Warranty of Title - The Contractor warrants and guarantees that title to all work, materials, and equipment covered by any application for payment, whether incorporated in the project or not, will pass to the Owner at the time of payment free and clear of all incumbrance.

D. Approval of Payments -

(1) The Architect will, within ten (10) days after receipt of each application for payment, either indicate written approval of payment and present the application to the Owner, or return the application to the Contractor indicating in writing reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the application. The Owner, provided no exception is taken to the application for payment submitted by the Architect, will issue payment on the date listed on the contract agreement. A reasonable delay, not to exceed ten (10) days, on the part of the Owner in making payment to the Contractor for any given payment shall not be grounds for breach of contract. The Architect may refuse to approve the whole or any part of the Contractor's application for payment, if in his judgement, it would be incorrect to make such presentation to the Owner.

(2) Neither the final payment nor any part of the remaining retained percentage 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 payment is received.

E. Retainage Reduction - On contracts exceeding one million dollars ($1,000,000.00) the Owner will retain ten percent (10%) of the amount of each request for payment up to one million dollars ($1,000,000.00) and five percent (5%) on each request for payment above one million dollars ($1,000,000.00), provided the work is in place and satisfactory progress is being made. Contractor's request for reduction in retainage shall be submitted along with the Surety's written consent to the Architect for review and recommendation. If progress falls behind the approved schedule, the full ten percent (10%) retainage may be reinstated.

F. The making of final payments shall constitute a waiver of all claims by the Owner except those arising from:

(1) Unsettled liens;
(2) Faulty or defective work appearing during one-year warranty period;
(3) Failure of work to comply with the requirements of the contract documents;
(4) Terms of any special warranties required by the contract documents.

G. The acceptance of final payment by the Contractor shall constitute a waiver of all claims except those previously made in writing and identified by the Contractor as unsettled at the time of final application for payment.

H. Contractor's Payment to Subcontractor - The Contractor shall promptly pay each subcontractor upon receipt of payment from the Owner the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner."

9.8 SUBSTANTIAL COMPLETION

9.8.4 Add the following:

A. "The date of substantial completion shall be that date certified by the Architect and Construction Manager, in accordance with the following procedures that the work is sufficiently complete to occupy or utilize as defined above:

(1) During construction, when the Contractor considers the work is substantially complete, as hereinbefore defined, the Contractor shall submit a written declaration of consideration to the Architect and a request for an inspection. The declaration and request shall be accompanied by a Contractor prepared list of those items of work still to be completed or corrected. The failure of the contractor to include any item or items on such a list shall not alter the responsibility of the Contractor to complete all work in accordance with the contract documents.

(2) The Architect shall, within a reasonable time after receipt of notification from the Contractor of declaration of substantial completion and request for inspection, make such inspection.

(3) If, after making inspection, the Architect does not consider the work substantially complete, the Architect will notify the Contractor, in writing, giving the reasons.

(4) If the Architect considers the work substantially complete, the Architect will complete and follow the procedures of the "**Final Approval and Payment Application**" (BG 4, May 1993) in notifying the Kentucky Department of Education, Division of Facilities Management, for the necessary inspection. The Architect will also notify the Department of Housing, Building, and Construction and any other agencies which have statutory authority and approval. The Architect will prepare a Certification of Substantial Completion which shall establish the date of substantial completion and the responsibilities between the Owner and the Contractor for security, maintenance, heat, utilities, and insurance. If not otherwise provided for in the contract documents, and a tentative list of items to be completed or corrected and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in the certificate.

B. Substantial Completion of the work shall mean when the work is sufficiently complete, so that the Owner may occupy or utilize the work for the use for which it is intended. The ability to occupy and utilize shall require the written approval of the Kentucky Department of Education, Division of Facilities Management, as well as, an occupancy permit by the Department of Housing, Building, and Construction and any other agencies which have statutory authority and approval requirements.

C. Final Completion - The Architect, upon receipt of written notice from the Contractor that the work is complete and is ready for final inspection and acceptance, will promptly make such inspection, and when the Architect finds the work completed and acceptable under the contract documents and the contract fully performed, the Architect will so notify the Owner in writing and promptly certify the final Certificate for Payment. The Owner will then complete his portion of the "Final Approval and Payment Application" (Form BG-4, May 1993) and forward to the Kentucky Department of Education, Division of Facilities Management, with the Architect's notification that all items of the punch list have been completed. Upon receipt of these two documents of certification, the Commissioner of Education will give written final approval to each separate contract of the project and authorize the Owner to make final payment."

ARTICLE 11
INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.2.1 The Insurance required by Subparagraph 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 $100,000

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 $ 5,000

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 insureds on the Contractor's Liability Policy.

6. Excess Liability Umbrella Form:

a. General Aggregate $1,000,000

b. Each Occurrence $1,000,000

11.1.4 Add the following paragraphs: "Insurance

The Contractor shall not commence work under this contract until obtaining all insurance required under the conditions of the contract, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained. The Contractor shall furnish the Owner with satisfactory evidence that he has secured and will maintain the required insurance coverage until beneficial occupancy by the Owner or final acceptance of the Project."

11.1.5 Add the following paragraph: "The Owner may be responsible for providing Builders' Risk Insurance, including the perils of fire, extended coverage, vandalism and malicious mischief in an amount of not less than one hundred percent (100%) of the insurable value of all the work, and the coverage written on the completed value form, including extended coverage endorsement form, and malicious mischief endorsement form, or on the "All Risk" completed value form, with a company authorized to do business in Kentucky. Such insurance shall be for the benefit of the Contractor, Owner, and all subcontractors engaged by the Contractor on this project, as their respective interests may appear. The Builders' Risk Insurance must be dated and in force by the date indicated in the Work Order to begin work. The insurance coverage required by the contract document shall be in compliance with the laws of the state and shall be placed with a licensed resident local agent in Kentucky who represents insurance companies authorized to do business in the Commonwealth of Kentucky."

11.1.6 Add: "The contract amount shall be the insurable value unless otherwise noted."

11.1.7 Add: "There shall be an endorsement in each of the above policies reading as follows: "It is hereby agreed that in event of a claim arising under this policy, the company will not deny liability by reason of the insured being a state, county, municipal corporation or governmental agency."

11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.3 Add the following: "**Guaranty Bonds**

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 A312-1984) 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."

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.4 Add the following: "**Concealed Conditions**

Should concealed conditions encountered in the performance of the work below the surface of the ground, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, or should unknown physical conditions below the surface of the ground, or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract be encountered, the contract sum shall be equitably adjusted by change order upon claim by either party made within twenty days after the first observance of the condition."

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.6 INTEREST

Delete in its entirety.

13.8 COMPLIANCE WITH PREVAILING WAGE LAW (KRS 337.551)

NOTE: See Instructions to Bidders A701-1987, KDE Amendment 10.2 minimum wage rates for determinations applicable to the project.

Add the following: Full compliance by the Contractor and subcontractors as to their duties prescribed by the "Act Relating to Contracts for Public Works," KRS 337.505 to 337.550, is required in the performance of work under this contract.

Wage and Hours (KRS 337.550)

A. The Contractor and subcontractors shall pay all laborers, workmen and mechanics performing work under this contract not less than the rate of wages set forth in the prevailing wage schedule incorporated in the contract conditions as determined by the Kentucky Department of Labor in accordance with the provisions of KRS 337.505 through KRS 337.550.

B. The Contractor shall post and keep posted in a conspicuous place or places at the site of the work a copy or copies of prevailing rates of wages and the working hours as prescribed in the contract documents.

C. Any laborer, workman, or mechanic working in excess of eight (8) hours per day or forty (40) hours per week, except in cases of emergency, shall be paid not less than one and one-half (1 1/2) times the basic hourly rate of pay as fixed by law for all overtime worked. The determination of when an emergency exists shall be made by the Owner as provided by law.

D. Pursuant to acts of the legislature of the Commonwealth of Kentucky providing for the establishment of prevailing wage rates, the Contractor and each subcontractor engaged in construction on the site shall submit to the Owner one (1) signed copy of the weekly payroll within seven (7) days after closing date of payroll period.

E. The Contractor shall be responsible for the filing of the weekly payroll forms of the subcontractors.

F. The copies of all weekly payrolls herein provided for shall included the names and addresses of the workmen. The address must be shown the first week employee works on the project. Address need not be shown on subsequent payrolls unless it is changed. Payrolls must reflect workmen's trade or occupation, the number of hours worked per day, the rate of wages paid and the total amount paid and shall be prepared on Payroll Form No. E-100d provided by the Kentucky Department of Labor or upon the Contractors own form if the proper information is contained and approval is given by the Owner.

G. The said payrolls shall be signed by the Contractor, a proper official of the firm or company or by a duly authorized employee."

13.8 CONFLICT OF INTEREST: GRATUITIES AND KICKBACKS: USE OF CONFIDENTIAL INFORMATION (KRS 45A.455)

Add the Following:

A. It shall be a breach of ethical standards for any employee to participate directly or indirectly in any proceeding or application; request for ruling or other determination; claim, or controversy; or other particular matter pertaining to any contract, or subcontract, any solicitation or proposal therefore, in

which to his knowledge:

(1) He, or any member of his immediate family has a financial interest therein; or
(2) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
(3) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a part. Direct or indirect participation shall include, but not be limited to, involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

B. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specifications or purchase standard, rendering of advise, investigations, auditing, or in any other advisory capacity in any proceeding or application, request for filing, or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefore.

C. It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher their subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

D. The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency contract and solicitation therefore.

E. It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person."