

**IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
CIVIL DIVISION**

FORT SMITH PUBLIC SCHOOLS

PLAINTIFF

vs.

CASE NO. 66FCV-26-768

TURN KEY CONSTRUCTION MANAGEMENT, INC.

DEFENDANT

ANSWER BY
TURN KEY CONSTRUCTION MANAGEMENT, INC.
TO PLAINTIFF'S COMPLAINT

Defendant Turn Key Construction Management, Inc. ("Turn Key"), by and through its counsel of record, Kutak Rock LLP, and for its Answer to the Complaint by Plaintiff Fort Smith Public School ("Plaintiff" or "the District"), states:

1. Turn Key is without sufficient information to form a belief as to the allegations contained in Paragraph 1 of Plaintiff's Complaint. Therefore, the same are denied.

2. Responding to Paragraph 2 of Plaintiff's Complaint, Turn Key admits that it is a for-profit corporation organized under the laws of Arkansas and that its principle place of business is located in Benton County, Arkansas. To the extent any further response is required, the same are denied.

3. Paragraphs 3 and 4 of Plaintiff's Complaint purport to state legal conclusions rather than facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same are denied.

4. Paragraphs 5, 6, and 7 of Plaintiff's Complaint purport to state legal conclusions rather than facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same are denied.

5. Responding to Paragraphs 8 and 9 of Plaintiff's Complaint, Turn Key admits that it performed work on the Peak Innovation Center located at 5900 Painter Lane, Fort Smith, Arkansas. The remaining allegations of Paragraphs 8 and 9 purport to state conclusions rather than facts upon which relief can be granted; therefore, no further response is required. To the extent further response is deemed required, the same are denied.

6. Responding to Paragraph 10 of Plaintiff's Complaint:

- a. Turn Key admits that there is a document entitled AIA Document A133-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor attached as Exhibit A, which speaks for itself. Turn Key denies any allegations contrary thereto;
- b. Turn Key admits that there is a document entitled AIA Document A201-2017 General Conditions of the Contract for Construction attached as Exhibit B to the Complaint, which speaks for itself. Turn Key denies any allegations contrary thereto;
- c. Turn Key admits that there is a document entitled Guaranteed Maximum Price Amendment Number 1 to that Certain Agreement AIA/A133-2009 Between Fort Smith Public Schools and Turn Key Construction Management, Inc. attached as Exhibit C to the Complaint, which speaks for itself. Turn Key denies any allegations contrary thereto;

- d. Turn Key admits that there is a document entitled Guaranteed Maximum Price Amendment Number 2 to that Certain Agreement AIA/A133-2009 Between Fort Smith Public Schools and Turn Key Construction Management, Inc. attached as Exhibit D to the Complaint, which speaks for itself. Turn Key denies any allegations contrary thereto;
- e. Turn Key admits that there is a document entitled Guaranteed Maximum Price Amendment Number 3 to that Certain Agreement AIA/A133-2009 Between Fort Smith Public Schools and Turn Key Construction Management, Inc. attached as Exhibit E to the Complaint, which speaks for itself. Turn Key denies any allegations contrary thereto;
- f. Turn Key admits that there is a document entitled Guaranteed Maximum Price Amendment Number 4 to that Certain Agreement AIA/A133-2009 Between Fort Smith Public Schools and Turn Key Construction Management, Inc. attached as Exhibit F to the Complaint, which speaks for itself. Turn Key denies any allegations contrary thereto;
- g. Turn Key admits that there is a document entitled AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor attached as Exhibit G to the Complaint, which speaks for itself. Turn Key denies any allegations contrary thereto;
- h. Turn Key admits that there is a document entitled AIA Document A201-2017 General Conditions of the Contract for Construction attached as Exhibit H to the Complaint, which speaks for itself. Turn Key denies any allegations contrary thereto; and

- i. To the extent further response is deemed required, the same are denied.
7. Responding to Paragraph 11 of Plaintiff's Complaint, Turn Key admits only that Exhibits A-H are attached to the Complaint and that each document speaks for itself. Turn Key denies any allegations contrary thereto. To the extent any further response is required, the same is denied.
8. Responding to Paragraph 12 of Plaintiff's Complaint, Turn Key admits only that the quoted language is contained in both Exhibit B and Exhibit H, which are attached to Plaintiff's Complaint and speak for themselves. Turn Key denies any allegations contrary thereto. To the extent any further response is deemed required, the same is denied.
9. Responding to Paragraph 13 of Plaintiff's Complaint, with all of its subparts, Turn Key admits only that Exhibit B and Exhibit H, which are attached to Plaintiff's Complaint, speak for themselves. Turn Key denies any allegations contrary thereto. To the extent any further response is deemed required, the same is denied.
10. Responding to Paragraph 14 of Plaintiff's Complaint, Turn Key admits that it was hired to perform work on the Peak Innovation Project, but denies that the District relied on Turn Key's expertise regarding the work. Turn Key notified the District and other individuals and entities associated with the Project numerous times about its concerns, particularly about drainage and grading. To the extent further response is required, the same is denied.
11. Paragraph 15 of Plaintiff's Complaint purports to state legal conclusions rather than facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same is denied.

12. Other than admitting that its work was completed in late January or early February 2022, Turn Key is without sufficient information to form a belief as to the allegations contained in Paragraph 16 of Plaintiff's Complaint; therefore the same are denied.

13. Turn Key is without sufficient information to form a belief as to the allegations contained in Paragraph 17 of Plaintiff's Complaint, therefore the same is denied and strict proof demanded thereof.

14. Turn Key denies Paragraph 18 of Plaintiff's Complaint and demands strict proof thereof.

15. Turn Key denies Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof.

16. Turn Key denies Paragraph 20 of Plaintiff's Complaint and demands strict proof thereof.

17. Turn Key denies Paragraph 21 of Plaintiff's Complaint and demands strict proof thereof.

18. Turn Key denies Paragraph 22 of Plaintiff's Complaint and demands strict proof thereof.

19. Turn Key denies Paragraph 23 of Plaintiff's Complaint and demands strict proof thereof.

20. Paragraph 24 of Plaintiff's Complaint does not state any facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same is denied.

21. Paragraph 25 of Plaintiff's Complaint purports to state conclusions rather than facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same is denied.

22. Responding to Paragraph 26 of Plaintiff's Complaint, Turn Key admits only that it received letters dated March 17, 2025, and February 25, 2026, from Matthew R. Pearson with Pearson Legal, P.C., which speak for themselves. To the extent the allegations contained in Paragraph 25 are inconsistent with the substance of either of those letters, the same are denied.

23. Responding to Paragraph 27 of Plaintiff's Complaint, inclusive of all of its subparts, Turn Key denies all allegations therein and demands strict proof thereof.

24. Turn Key denies Paragraph 28 of Plaintiff's Complaint and demands strict proof thereof.

25. Turn Key denies Paragraph 29 of Plaintiff's Complaint and demands strict proof thereof.

26. Responding to Paragraph 30 of Plaintiffs Complaint, the construction plans and specifications speak for themselves, therefore no response is required. To the extent the allegations contained in Paragraph 30 are inconsistent therewith, the same are denied.

27. Turn Key denies Paragraph 31 of Plaintiff's Complaint and demands strict proof thereof.

28. Turn Key denies Paragraph 32 of Plaintiff's Complaint and demands strict proof thereof.

29. Responding to Paragraph 33 of Plaintiff's Complaint, Turn Key admits only that it received a letter dated February 25, 2026, from Matthew R. Pearson with Pearson Legal, P.C.,

which speaks for itself. To the extent the allegations contained in Paragraph 33 are inconsistent with the substance of that letter, the same are denied.

30. Turn Key denies Paragraph 34 of Plaintiff's Complaint and demands strict proof thereof.

31. Responding to Paragraph 35 of Plaintiffs Complaint, the contract documents speak for themselves, therefore no response is required. To the extent the allegations contained in Paragraph 35 are inconsistent therewith, the same are denied.

32. Turn Key denies Paragraph 36 of Plaintiff's Complaint and demands strict proof thereof.

33. Turn Key denies Paragraph 37 of Plaintiff's Complaint and demands strict proof thereof.

34. Responding to Paragraph 38 of Plaintiff's Complaint, Turn Key admits only that it received a letter dated February 25, 2026, from Matthew R. Pearson with Pearson Legal, P.C., which speaks for itself. To the extent the allegations contained in Paragraph 38 are inconsistent with the substance of that letter, the same are denied.

35. Turn Key denies Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

36. Responding to Paragraph 40 of Plaintiffs Complaint, the contract documents speak for themselves, therefore no response is required. To the extent the allegations contained in Paragraph 40 are inconsistent therewith, the same are denied.

37. Turn Key denies Paragraph 41 of Plaintiff's Complaint and demands strict proof thereof.

38. Turn Key denies Paragraph 42 of Plaintiff's Complaint and demands strict proof thereof.

39. Responding to Paragraph 43 of Plaintiff's Complaint, Turn Key admits only that it received a letter dated February 25, 2026, from Matthew R. Pearson with Pearson Legal, P.C., which speaks for itself. To the extent the allegations contained in Paragraph 43 are inconsistent with the substance of that letter, the same are denied.

40. Turn Key denies Paragraph 44 of Plaintiff's Complaint and demands strict proof thereof.

41. Responding to Paragraph 45 of Plaintiffs Complaint, the contract documents speak for themselves, therefore no response is required. To the extent the allegations contained in Paragraph 45 are inconsistent therewith, the same are denied.

42. Turn Key denies Paragraph 46 of Plaintiff's Complaint and demands strict proof thereof.

43. Responding to Paragraph 47 of Plaintiff's Complaint, Turn Key admits only that it received a letter dated February 25, 2026, from Matthew R. Pearson with Pearson Legal, P.C., which speaks for itself. To the extent the allegations contained in Paragraph 47 are inconsistent with the substance of that letter, the same are denied.

44. Turn Key denies Paragraph 48 of Plaintiff's Complaint and demands strict proof thereof.

45. Responding to Paragraph 49 of Plaintiffs Complaint, the contract documents speak for themselves, therefore no response is required. To the extent the allegations contained in Paragraph 49 are inconsistent therewith, the same are denied.

46. Turn Key denies Paragraph 50 of Plaintiff's Complaint and demands strict proof thereof.

47. Turn Key denies Paragraph 51 of Plaintiff's Complaint and demands strict proof thereof.

48. Responding to Paragraph 52 of Plaintiff's Complaint, Turn Key admits only that it received a letter dated February 25, 2026, from Matthew R. Pearson with Pearson Legal, P.C., which speaks for itself. To the extent the allegations contained in Paragraph 52 are inconsistent with the substance of that letter, the same are denied.

49. Turn Key denies Paragraph 53 of Plaintiff's Complaint and demands strict proof thereof.

50. Responding to Paragraph 54 of Plaintiffs Complaint, the contract documents speak for themselves, therefore no response is required. To the extent the allegations contained in Paragraph 54 are inconsistent therewith, the same are denied.

51. Turn Key denies Paragraph 55 of Plaintiff's Complaint and demands strict proof thereof.

52. Turn Key denies Paragraph 56 of Plaintiff's Complaint and demands strict proof thereof.

53. Turn Key denies Paragraph 57 of Plaintiff's Complaint and demands strict proof thereof.

54. Responding to Paragraph 58 of Plaintiff's Complaint, Turn Key admits only that it received a letter dated February 25, 2026, from Matthew R. Pearson with Pearson Legal, P.C., which speaks for itself. To the extent the allegations contained in Paragraph 58 are inconsistent with the substance of that letter, the same are denied.

55. Turn Key denies Paragraph 59 of Plaintiff's Complaint and demands strict proof thereof.

56. Turn Key denies Paragraph 60 of Plaintiff's Complaint and demands strict proof thereof.

57. Turn Key denies Paragraph 61 of Plaintiff's Complaint and demands strict proof thereof.

58. Responding to Paragraph 62 of Plaintiff's Complaint, Turn Key incorporates the preceding paragraphs as if set forth word for word herein.

59. Paragraph 63 of Plaintiff's Complaint purports to state legal conclusions rather than facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same is denied.

60. Paragraph 64 of Plaintiff's Complaint purports to state legal conclusions rather than facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same is denied.

61. Turn Key denies Paragraph 65 of Plaintiff's Complaint, inclusive of all of its subparts, and demands strict proof thereof.

62. Turn Key denies Paragraph 66 of Plaintiff's Complaint and demands strict proof thereof.

63. Turn Key denies Paragraph 67 of Plaintiff's Complaint and demands strict proof thereof.

64. Paragraph 68 of Plaintiff's Complaint purports to state legal conclusions rather than facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same is denied.

65. Responding to Paragraph 69 of Plaintiff's Complaint, Turn Key incorporates the preceding paragraphs as if set forth word for word herein.

66. Responding to Paragraph 70 of Plaintiffs Complaint, inclusive of all subparts, the contract documents and associated project documentation speak for themselves, therefore no response is required. To the extent the allegations contained in Paragraph 70 are inconsistent with same, the allegations are denied.

67. Turn Key denies Paragraph 71 of Plaintiff's Complaint and demands strict proof thereof.

68. Turn Key denies Paragraph 72 of Plaintiff's Complaint and demands strict proof thereof.

69. Responding to Paragraph 73 of Plaintiff's Complaint, Turn Key incorporates the preceding paragraphs as if set forth word for word herein.

70. Turn Key denies Paragraph 74 of Plaintiff's Complaint and demands strict proof thereof.

71. Turn Key denies Paragraph 75 of Plaintiff's Complaint and demands strict proof thereof.

72. Turn Key denies Paragraph 76 of Plaintiff's Complaint and demands strict proof thereof.

73. Responding to Paragraph 77 of Plaintiff's Complaint, Turn Key incorporates the preceding paragraphs as if set forth word for word herein.

74. Turn Key denies Paragraph 78 of Plaintiff's Complaint and demands strict proof thereof.

75. Turn Key denies Paragraph 79 of Plaintiff's Complaint, inclusive of all subparts, and demands strict proof thereof.

76. Turn Key denies Paragraph 80 of Plaintiff's Complaint and demands strict proof thereof.

77. Turn Key denies Paragraph 81 of Plaintiff's Complaint, inclusive of all subparts, and demands strict proof thereof.

78. Paragraph 82 of Plaintiff's Complaint purports to state legal conclusions rather than facts upon which relief can be granted; therefore, no response is required. To the extent a response is deemed required, the same is denied.

79. Responding to the Paragraph entitled "RESERVATION OF RIGHTS," upon information and belief, no response is required. To the extent a response is deemed required, the same is denied.

80. Turn Key joins Plaintiff in its demand for a jury trial.

81. Responding to the PRAYER FOR RELIEF contained in Plaintiff's Complaint, inclusive of all subparts, Turn Key denies that Plaintiff is entitled to any money damages, costs, attorney's fees, judgment, or any other relief in law or equity.

82. Turn Key denies each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

83. Turn Key raises and reserves all defenses available to it under Arkansas law and the Arkansas Rules of Civil Procedure 8 and 12, including but not limited to:

- a. Failure to state facts upon which relief may be granted;
- b. Improper venue;
- c. Collateral estoppel;
- d. Judicial estoppel;

- e. Laches;
- f. Waiver;
- g. Set-off;
- h. Release;
- i. Accord and satisfaction;
- j. Statue of frauds;
- k. Statute of Limitations; and
- l. Unclean hands.

84. Pleading affirmatively, the damages alleged by Plaintiff were proximately caused by the acts of third parties over whom Turn Key exercised no dominion or control and had no legal liability, and further, those acts constitute a superseding and intervening cause, thereby relieving Turn Key of any responsibility for any of the claims or damages asserted in the Complaint.

85. Turn Key asserts comparative fault on the part of Plaintiff. For further answer and by way of affirmative defense, Plaintiff's damages, if any, were caused by Plaintiff's actions or inactions.

86. Pleading affirmatively, so as to avoid waiver, Turn Key states that Plaintiff's alleged damages were the result of unrelated, pre-existing, or subsequent conditions unrelated to and not caused by work performed by Turn Key.

87. Affirmatively pleading, Plaintiff's claims are barred, in whole or in part, by its failure to mitigate damages.

88. Pleading affirmatively, Plaintiff's claims are barred for failure to join necessary parties as required by Ark. R. Civ. P. 19.

89. Pleading affirmatively, Turn Key states that at all times relevant to this action, it acted lawfully and in good faith and had reasonable grounds to believe that its conduct with respect to Plaintiff was in full compliance with applicable law and industry standards.

90. Pleading affirmatively, Turn Key states that Plaintiff's alleged damages, if any, were caused by Plaintiff's own actions or omissions, or the actions or omissions of others.

91. Turn Key reserves the right to amend this Answer and to raise such additional defenses, join such additional parties, and assert such additional claims as investigation of the facts alleged herein may warrant.

WHEREFORE, Defendant Turn Key Construction Management, Inc., having fully answered Plaintiff's Complaint, prays that Plaintiff's Complaint be dismissed with prejudice, for its fees and costs incurred herein, and for such further relief as the Court deems proper.

Dated: June 4, 2026

Respectfully submitted,

KUTAK ROCK LLP

/s/ Niki Cung

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*Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 4th day of June 2026, via the Arkansas Judiciary's eFlex System, which shall send notification to counsel of record.

/s/ Niki Cung

Niki Cung