

ORIGINAL

IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING COMPANY,
INC.,

Plaintiff,

v.

OHIO SCHOOL FACILITIES
COMMISSION,
nka Ohio Facilities Construction Commission
Defendant.

:
:
: Case No. 2013-00349
:
: Judge McGrath
:
:
: Referee Wampler
:
:

2014 APR 10 PM 1:24

COURT OF CLAIMS
OF OHIO

**TRANSAMERICA BUILDING COMPANY, INC.'S MEMORANDUM IN OPPOSITION
TO OSFC'S MOTION TO QUASH SUBPOENAS
AND MOTION FOR PROTECTIVE ORDER**

TransAmerica Building Company, Inc. ("TransAmerica") opposes the Ohio School Facilities Commission's ("OSFC") attempt to preclude its two prior Executive Directors (who were in charge when the Project was being designed, bid, and/or constructed) from being deposed. Both of these depositions have been scheduled for April 21, 2014. The reasoning behind TransAmerica's subpoena to depose these two individuals (Mike Shoemaker and Rich Murray) is that the heart of this case involves the OSFC's reckless disregard for R.C. §153.01, which required the OSFC to provide "**full and accurate plans**" and "**details to scale and full-sized, so drawn and represented as to be easily understood.**" As a result, TransAmerica relied upon the OSFC's representation and incurred substantial additional costs to complete the Project due to the OSFC's flawed design and administration, much of which took place when these gentlemen ran the OSFC. TransAmerica seeks to depose the prior Executive Directors to determine what they were instructing, or being told by, the Project's representatives, including its Architect and Construction Manager, and what action was taken to ensure that the OSFC was satisfying its statutory and contractual duties. OSFC has already agreed to make its current

ON COMPUTER

Executive Director, Richard Hickman, available for a deposition to answer similar questions relevant to his tenure.

In support of TransAmerica's claim that the Project suffered from both a flawed design and administration, TransAmerica cites to the following:

1. OSFC's then Project Administrator stated the bid documents were "flawed," but were nevertheless put out to bid (see Rob Grinch e-mail dated October 6, 2010, attached as Exhibit A).
2. The Project's Construction Manager (Lend Lease) on multiple occasions acknowledged numerous errors with the drawings (see Lend Lease e-mails, attached as Exhibit B).
3. OSFC, through its Construction Manager and Architect, promised on multiple occasions that TransAmerica would receive an updated set of construction drawings, but no such set was ever provided (see SHP and LL e-mails attached as Exhibit C).
4. OSFC proceeded with construction knowing that the overall Project faced a budget shortfall of \$7,766,734 (see Budget v. Cost To Date and Compared to Remaining Funds, attached as Exhibit D).
5. The Project Architect never secured a full and complete building permit until July 18, 2012, approximately five (5) months after the Project was scheduled to be complete.

Unlike other typical OSFC projects, there was no school district serving as a "co-owner." As a result, OSFC acted as the lone decision maker on this high visibility Project on behalf of the public owner. This resulted in the Executive Directors being more involved in the day-to-day operations on this Project than what is typically seen on other OSFC projects.

This Project first started under then Executive Director Mike Shoemaker in 2007. In addition to the email referenced in OSFC's Motion to Quash, Mr. Shoemaker was involved with this Project as demonstrated by the following:

- Mr. Shoemaker executed the initial Memorandum of Understanding with the Ohio State School for the Blind and Ohio School For Deaf (see Memorandum of Understanding attached as Exhibit E).

- Mr. Shoemaker attended the interview and was involved with the selection of the Project's Construction Manager (see page 10 of the deposition transcript of Jim Swartzmiller, Project Executive for Lend Lease, attached as Exhibit F).
- Mr. Shoemaker executed the Architect's Agreement No. 3 for Professional Design Services on March 24, 2009.
- Mr. Shoemaker attended multiple meetings discussing the initial stages of the Project (see multiple meeting minutes, attached as Exhibit G).

With respect to Mr. Murray, he became Executive Director in 2009 and was also involved in the Project's administration as demonstrated by the following:

- Mr. Murray executed the Final Agreement for Construction Management Services on February 10, 2010.
- Mr. Murray executed a Project Labor Agreement that was later abandoned, under much public scrutiny, after the initial bids for the Project came in 40% over budget (see Project Labor Agreement, attached as Exhibit H).
- Mr. Murray was in charge when the decision was made to bid the dormitory portion separate from the remaining portions of the Project, without a full building permit, and to disregard the warning signs that the bid documents were flawed.
- Mr. Murray executed the Contract with TransAmerica (see Contract, attached as Exhibit I).
- As of November 2010, Mr. Murray was receiving updates from OSFC Project Administrator, Rob Grinch where it was expressed in a meeting that there "must be improved communication between the consulting firms." (see Rob Grinch November 29, 2010 email, attached as Exhibit J)

As shown above, both of these prior Executive Directors have personal knowledge of the Project and TransAmerica is entitled to discover what measures they or their subordinates took to ensure that the agency they controlled satisfied its contractual and statutory obligations, including but not limited to its obligation to provide "full and accurate" and "easily understood" plans required by R.C. §153.01 and to secure adequate funding for the construction Project.

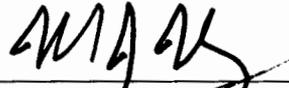
In its Motion to Quash, OSFC provided no legal authority for its position that the past Executive Directors should not be deposed. Conversely, there is ample authority supporting TransAmerica's position that these individuals should be deposed, as noted below:

- Ohio has a liberal discovery policy which, subject to privilege, enables opposing parties to obtain from each other all evidence that is material, relevant and competent, notwithstanding its admissibility at trial. See *Benjamin v. Sawicz*, 159 Ohio App.3d 265, 268, 823 N.E.2d 879, 881 (Ohio App. 10 Dist., 2004) and *Fletcher v. Nationwide Mut. Ins. Co.*, Darke App. No. 02CA1599, 2003-Ohio-3038, 2003 WL 21360646, at ¶ 14.
- A major philosophy of the Civil Rules is that the parties to a lawsuit shall be afforded liberal rights to discovery so that the true facts may become known to all the parties to the litigation prior to the time that the action comes on for final trial. *Stokes v. Lorain Journal Co.* 26 Ohio Misc. 219, 228, 266 N.E.2d 857, 863 (Ohio Com.Pl. 1970)
- Matters are exempt from discovery only if the matter is privileged or is totally irrelevant to the subject matter of the inquiry. The burden is on the objecting party to clearly show that the information sought is privileged or not relevant. *Insulation Unlimited, Inc. v. Two J's Properties, Ltd.* 95 Ohio Misc.2d 18, 22-23, 705 N.E.2d 754, 756 - 757 (Ohio Com.Pl., 1997).

OSFC has provided no support to satisfy its burden that the information sought through these depositions is either privileged or irrelevant.

Lastly, TransAmerica points out that OSFC has previously sought to exclude its Executive Director from deposition testimony regarding a typical OSFC project, where the Executive Director is admittedly further removed from the day-to-day developments than what occurred on this Project (see OSFC Motion to Quash in *Schmid Mechanical, Inc. v. OSFC*, Case No. 2011-01470 and Entry, attached as Exhibit K). Nevertheless in *Schmid Mechanical, Inc. v. OSFC*, this Court denied the OSFC's request and permitted the deposition. It should do nothing less here where both past Executive Directors had even greater involvement with this controversial Project and its problems.

Respectfully submitted,



Donald W. Gregory, Esq. (0021791)
Michael J. Madigan, Esq. (0079377)
Kegler Brown Hill & Ritter Co., L.P.A.
65 E. State Street, Suite 1800
Columbus, OH 43215-5400
(614) 462-5400; Facsimile: (614) 464-2634
dgregory@keglerbrown.com
mmadigan@keglerbrown.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via regular U.S. mail, postage prepaid, this 10th day of April, 2014 to:

William C. Becker, Esq.
Craig D. Barclay, Esq.
Jerry Kasai, Esq.
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, OH 43215
(614) 466-7447
Facsimile: (614) 466-9185
william.becker@ohioattorneygeneral.gov
craig.barclay@ohioattorneygeneral.gov
jerry.kasai@ohioattorneygeneral.gov



Michael J. Madigan

From: Grinch, Rob [mailto:Rob.Grinch@osfc.ohio.gov]
Sent: Wednesday, October 06, 2010 10:38 AM
To: Joshua Predovich
Cc: Andrew Maletz
Subject: D&B 10-06-10 OSD/OSSB Flawed Bid Sets

Re: **The Ohio School for the Deaf**
Ohio State School for the Blind
Dormitories (only) Re-Bid
SHP Leading Design / Berardi +Partners Coordination
DIC Plan Review - Correction Letter Status

Josh –

I spent a considerable amount of my time looking through (simple) drawing errors that should have been corrected back in June or July.

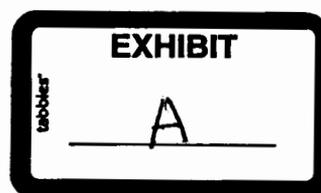
I am perplexed the documents were issued in such a state when a lead architect, consulting architect, and Construction Management firm all reviewed the documents in advance of being disseminated to the public. I made a phone call to Rolando, yesterday, to hear directly from him what he thought happened when the documents were originally issued (his firm stamped the drawings). He didn't understand my question and actually seemed surprised, regarding something you should have reviewed with him weeks ago, which told me communication between your two offices is poor.

On a related topic, I have still not been provided with correspondence from SHP regarding DIC plan review comments and responses. Clay tells me you recently responded to DIC and there will be modifications required to the dormitory drawings, adding cost to the project, in response to DIC's comments.

Please recall, I made a decision, at risk to OSFC, to bid the Project without having the DIC Plan Review and Correction Letter process completed in July. The Project team even delayed the bid opening, in part, hoping DIC issues would be resolved, prior to bid opening. At this time, the process is still not complete.

I look forward to reviewing the project status on Thursday with you and Clay.

Robert P. Grinch
Senior Project Administrator
Ohio School Facilities Commission
(614) 995-4551



----- Forwarded message -----

From: **Keith, Clayton** <Clayton.Keith@lendlease.com>

Date: Mon, Mar 28, 2011 at 10:06 AM

Subject: FW: Outstanding issues for OSDB

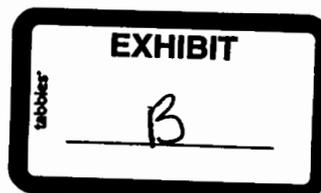
To: Josh Predovich <jpredovich@shp.com>, Andrew Maletz <amaletz@shp.com>

Cc: "Swartzmiller, Jim" <Jim.Swartzmiller@lendlease.com>, "Kirlangitis, Karin" <Karin.Kirlangitis@lendlease.com>, "Smith, Jr., Jim" <Jim.SmithJr@lendlease.com>

Josh

We still have not received any responses from you regarding all of these outstanding issues that have been sent to you numerous times, with the latest being on March 23rd from Karin and summarized on February 28th below.

85



SHP 025290

In addition we need to have a PR issued immediately for the revised corridor footing. I have seen a number of emails going back and forth trying to figure out the elevation of the footer that is to be poured today and per Jim Smith's email you agree with the direction of pouring it to 97'4". I will not allow the mason to start work until we receive a PR from you that clarifies exactly what is to be done with this situation as we have nothing in the drawings that provides this direction.

We have also noticed in the "Construction set" that the building orientation is not correct in the Architectural drawings, that you have directed the contractors to use numerous times, in relation to the civil and structural drawings. SHP has had 4 months to get the promised set of "Construction Drawings" into a form that is close to correct and coordinated and has failed to do so. On top of that we spent DAYS going through the drawings to do YOUR quality control and have marked up the drawings which have been sitting in our trailer for at least three weeks. You had requested that we do this work for you so that you could come out and review our red lines and then take our marked up set back to Rolando to attempt to get them corrected. This has not happened to date and this issue continues to cause problems on site. We are now referencing pieces from structural, pieces from Architectural and also now orientations from civil? SHP needs to take control of this situation and give us and the contractors the information needed to proceed with faith in your drawings.

We also have a couple of new issues that have arose from the permits and the permit drawings. There are revisions on the plumbing drawings that are not included in the bid set with no back up or paperwork associated with them that we need to resolve. We also have an issue with DIC and the Electrical Permit. We have the approval, but DIC is stating that there are additional corrections to be made prior to Jutte being able to pick up the permit. Please get this clarified or corrected.

We are on the brink of turning this project over to a new PA and will have to give him an update on the status of the project and it will not look good if we have to present all of this information we have been asking for from SHP for months with no response. We have not copied the Owner on all of this information in hopes that SHP would get caught up, but will be forced to get them involved if we do not have information in our hand by the end of the week.

I am also concerned with the status of the campus wide bid drawings to be re-formatted so that we can get the necessary items out to bid and coordinated with the dorm contractors on site. Per the partnering session we are to have those drawings by April 7th, along with the full action plan for the Academics by April 8th.

Joshua L. Predovich

From: Keith, Clayton <Clayton.Keith@lendlease.com>
Sent: Friday, May 06, 2011 4:39 PM
To: 'Josh Predovich'
Cc: Kirlangitis, Karin
Subject: FW: OSD&B, Construction Drawings

Josh

See message below, we are going to get hit with costs for every wall that is wrong on OSSB 5 and it will come back to confusion on the drawings.

You stated in last weeks' meeting that drawings were going to be done Wednesday the 4th and be at Key for printing on Thursday the 5th. What is the status??

Clay

From: Josh Wilhelm [mailto:jwilhelm@tabuilding.com]
Sent: Friday, May 06, 2011 4:36 PM
To: Keith, Clayton; Kirlangitis, Karin
Cc: Smith, Jr., Jim
Subject: OSD&B, Construction Drawings

Clay,

As we discussed, we are working on wall panels and lay-outs and still running into dimensional issues in the Architectural drawings. We have not seen the Construction set of drawings to date. We are concerned that we will continue to have these problems as we begin erecting the buildings next week. At this point we plan to lay out off of the "Known" walls, Bearing walls shown on the approved truss and construction foundation drawings we have corrected in RFIs and with our surveyor.

The best solution is to have the corrected construction set issued.

Please advise.

Joshua Wilhelm
Project Manager
TransAmerica Building Company, Inc.
2000 W. Henderson Road #500
Columbus, Ohio 43220
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Fax: (614) 457-2078
jwilhelm@TABuilding.com
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From: Keith, Clayton
To: 'jpredovich@shp.com'; Smith, Jr., Jim
Sent: 5/25/2011 9:33:24 AM
Subject: Re: OSDB framing

Josh

It is more than just the framing issue. It is hard to have any confidence in the specs, drawing notes, or drawings at this point after so many issues. Now, we add in changes to RFI's that had been answered and you are putting us in a very frustrating and difficult position to defend you and the Owner.

What is right?

Clayton Keith

Sr. Project Manager

Bovis Lend Lease

From: Josh Predovich [mailto:jpredovich@shp.com]
Sent: Wednesday, May 25, 2011 09:22 AM
To: Smith, Jr., Jim
Cc: Keith, Clayton
Subject: Re: OSDB framing

Jim-

I can't stick around tomorrow (I need to be back downtown by 10:30).

I appreciate your frustration. Specifically, this issue with the framing was a series of e-mails between SHP, SMBH, TA and Bovis back in January/February. We also discussed the final outcome in progress meeting back around this same time.

In hind sight, we should have gone back, re-opened the RFI and added the new response (as we have done with current issues). We could have also handled in a pre-install (did we have a pre-install for framing? this issue should have been reviewed).

If you would like to meet to discuss, I can come out early tomorrow (8am, before the super's meeting) or Friday AM.

Thanks,

Josh

Joshua L. Predovich, Assoc. AIA, LEED AP

Associate Project Manager

SHP Leading Design

250 Civic Center Dr., Suite 200

Columbus, OH 43215

TEL: 614-223-2124

FAX: 614-223-2130

CELL: 513-543-1951

www.shp.com

Joshua L. Predovich

From: Keith, Clayton <Clayton.Keith@lendlease.com>
Sent: Thursday, July 07, 2011 1:22 PM
To: 'jpredovich@shpinc.com'
Subject: Fw: OSDB Dorm CA - PR16 kitchen island and pantry dims

Josh

See message below. I am only sending this to you.

The email correspondence and passing back and forth of information between you and TA has to stop. There is no focus in getting the drawings correct in what we need looking forward, or correctly showing what the "intent" of the design is. It appears the only focus on the construction set is the as-built of all the issues and deficiencies that have been pointed out since DD. It makes it even more frustrating when Jim Smith and Myself are afraid to address deficiencies due to the situation just being reviewed by either structural, MEP or yourself and find out it is OK not to build per the plans and specs. This is not how we should be managing this construction and it is going to bite us in the you know what.

I have concerns on the soffit framing that you put on my desk yesterday. It appears we have added a lot of unnecessary weight with the 2x10's, there are no truss hangers or structural framing supports and we did not do the gussett design. I know design is in your court, but to have the contractor questioning my super with a design he has not seen is crazy. I also reviewed your kitchen mark ups and do not think your dimensions are correct.

We also have the roofing issue that is going to bite us because of your request for pricing as soon as TA yaps. I am not happy with the fact that they are now scheduling everything as EPDM dependent. They did not get complete color samples in by the deadline, therefore color selections were delayed and then waited until the week the material is needed to find out it is discontinued. They still have not completed the submittal with the manufacturer written approval that the design meets the warranty requirements. How with all this said should the Owner pay for this issue? I feel we need to get this train back on the track and it needs to start with clear and accurate drawings. We are not reviewing drawings anymore to give you correction list after correction list. You need to do a thorough review of your consultants drawings and if they pass your approval issue them. My fear is if they are like previous versions it will cause more confusion than is currently on site.

I would call you on this, but I am not available until 3:00.

Clayton Keith
Sr. Project Manager
Bovis Lend Lease

From: Kirlangitis, Karin
Sent: Thursday, July 07, 2011 08:56 AM
To: Keith, Clayton
Cc: Smith, Jr., Jim
Subject: RE: OSDB Dorm CA - PR16 kitchen island and pantry dims

For my surprise, Josh W gave a copy of this PR to Jim this morning; why TA had the information before we got it? Apparently Josh P gave TA the framing info AND the PR16 sketches yesterday. This needs to stop, SHP cannot be over passing us to go directly to the contractors without we knowing what information will be issued first.

He mentioned he was going to drop the framing info @ TA's trailer yesterday, but that was all.

Karin M Kirlangitis | Assistant Project Manager | Project Management & Construction | Lend Lease
Ohio State School for the Blind and Ohio School for the Deaf
502 Morse Road, Columbus OH 43214
T 614 732 5275 | F 614 732 5295 | M 614 230 9910
karin.kirlangitis@lendlease.com | www.lendlease.com

From: Keith, Clayton [mailto:Clayton.Keith@bovislendlease.com]
Sent: Friday, November 19, 2010 4:38 PM
To: Rolando Matias
Cc: Kirlangitis, Karin; Joshua Predovich
Subject: D&B Dorm Drawings

Rolando

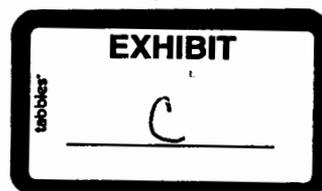
You had mentioned to TransAmerica that the dorm drawings were going to be updated with all of the addendums. Please let me know when this is expected as we are issuing the notice of intent Monday the 22nd and will be issuing the Notice To Proceed on December 10th and the contractors will be requesting their additional sets of drawings to start the submittal process.

I also wanted to know if we are going to be issuing the bid sets or if we are going to go back and update the permit sets and distribute those to the contractors.

Please let me know

Clay

886



SHP 003478



February 28, 2011

Mr. Clay Keith
Project Manager
Bovis Lend Lease, Inc.
Ohio State School for the Blind and Ohio School for the Deaf
502 Morse Road
Columbus, Ohio 43214

Re: OSDB Letter from TransAmerica

Dear Clay,

We are in receipt of Transamerica's letter dated February 23rd, 2011 in regards to schedule impacts due to the delay in re-issuance of the Construction Set of drawings. As you are aware, there is no contractual obligation in the specifications for the issuance of a revised set of drawings containing addendum items and post bid request for information. All of the items that are part of the revised issuance of the Construction set have already been issued to the contractors as either part of the bidding set of as response to RFI's. SHP feels that the issuance of this set will help to eliminate confusion; to that end, we are willing to complete this work at our cost.

I do appreciate the team's need to have this set issued as quickly as possible. With that in mind, the construction sets will be available for order from Key Blueprint on March 1st after 12pm; please inform all dorm contractors that this set will be keep on file at Key. Please let me know if you have any questions in regards to the information above.

Sincerely,

SHP LEADING DESIGN

Joshua L. Predovich, Assoc. AIA, LEED AP

Cc: Andrew Maletz, SHP
file

www.shp.com

CINCINNATI

4525 Montgomery Road Suite 400
Cincinnati, Ohio 45212
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513.781.5121 fax

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DENVER

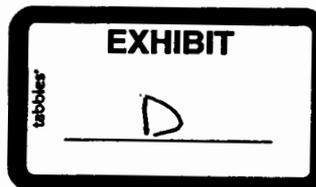
1675 Broadway Suite 1300
Denver, Colorado 80202
303.209.7886 main
303.209.7855 fax

BUDGET VS. COST TO DATE & COMPARED TO REMAINING FUNDS

Total Project Budget Funds	\$43,980,000
Construction Fund Allocation	\$37,383,000
Soft Cost Fund Allocation	\$ 6,597,000
Total Budget	\$43,980,000
<u>Actual Costs and Encumbrances to Date</u>	
Demo and Abatement	\$ 337,000
Early Site	\$ 4,336,736
Residential Dorm Buildings	\$ 7,704,327
Contingency for Dorms @5%	\$ 385,216
Soft costs expended or encumbered	\$ 6,251,158
Total Funds Spent or Encumbered	\$19,014,437
<u>Remaining Funds to Complete Project</u>	
Total budget	\$43,980,000
Funds spent or encumbered to date	\$19,014,437
Total Remaining	\$24,965,563
<u>Remaining Estimated Costs to Encumber</u>	
OSSB Current Estimate	\$ 9,968,105
OSD Current Estimate	\$ 10,204,039
Campus Wide Bid Package Estimate	\$ 5,428,144
Soft Cost to be replenished (estimate)	\$ 2,914,000
Remaining Building Contingency	\$ 1,350,834
Market Condition cuts included in current estimate	\$ 932,528
Loose Furnishings	\$ 934,647
Bridge Allocation	\$ 1,000,000
Total Remaining costs	\$32,732,297
<u>Potential Project Deficit</u>	
Remaining Funds for Project	\$24,965,563
Potential Estimated Costs	\$32,732,297
Potential Cost Overage for Project	(\$ 7,766,734)

Bovis Lend Lease, Inc.
Ohio State School for the Blind and
Ohio School for the Deaf Project Site
502 Morse Road
Columbus, Ohio 43214

P: 614 732 5275
F: 614 732 5295
www.bovislendlease.com



THE OHIO SCHOOL FACILITIES COMMISSION, THE OHIO STATE SCHOOL
FOR THE BLIND, AND THE OHIO SCHOOL FOR THE DEAF

This Memorandum of Understanding (hereafter MOU) is entered into by and between the Ohio School Facilities Commission (OSFC), the Ohio State School for the Blind (OSSB), and the Ohio School for the Deaf (OSD) for the purpose of setting out the preliminary agreements between the listed signatories, which is the first such document needed for the building of new school facilities.

WHEREAS, OSFC is charged with the administration of the construction of new facilities for OSD and OSSB (collectively referred to as "Schools"); and

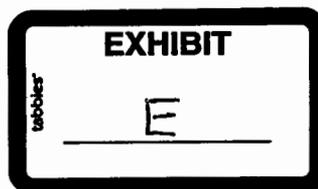
WHEREAS, OSFC has met with the Schools' administration on construction plans, which are proposed to meet the present and future needs of the students attending the Schools; and

WHEREAS, the Schools acknowledge and understand that separate sites for the two schools built on the existing site of their respective schools, as opposed to one consolidated site for both Schools, will create budgetary constraints on the scope of each site's new school facilities; and

WHEREAS, the Schools agree to provide quality education to their students through consolidating non academic resources, facilities and services to achieve efficiencies and budget savings; and

WHEREAS, the Schools understand the need to create fiscal efficiencies while providing an educational environment that will meet the academic, social and cultural needs of their students; and

NOW THEREFORE, the Parties agree to the following:



OSFC-Grinch 003733

1. New educational facilities, serving the educational needs of the students who attend the Ohio State School for the Blind and the Ohio School for the Deaf, will be designed and built on the existing sites of these two schools.

2. The planning and construction costs for the new facilities, based on total square footage is anticipated to be not less than 170,000 square feet and will not exceed the budgeted amount of \$42,900,000.

3. The Ohio School for the Deaf and the Ohio State School for the Blind upon completion of the construction of both facilities will implement an operations plan that will result in an annual savings of not less than \$939,000 relative to the operational costs of both schools on July 1, 2007.

4. The Ohio School Facilities Commission, in consultation with the Ohio Department of Education, the Ohio School for the Deaf and the Ohio State School for the Blind will oversee the construction process based on a total budget not to exceed \$42,900,000 dollars. (Four million dollars of that budgeted amount having already been appropriated, \$36 million will be sought in a future capital appropriation, and \$2.9 million to come from supplemental sources of both Schools).

5. Both Schools agree that the budget of \$ 42,900,000 will meet the constructional needs for the education of both the deaf and blind student communities and they will not seek additional state capital funds.

6. That a second Memorandum of Understanding will be executed by the Parties within 90 days of execution of this MOU for the purpose of setting forth the design and construction schedule and the master facilities plan for the new school facilities. The Parties understand that appropriation of funding and construction is contingent on agreement of all issues to be addressed in the second MOU.

Agreed to this 31 day of October 2007

Michael C. Shoemaker

Ohio School Facilities Commission

By: Michael C. Shoemaker, Executive Director

Edward E. Corbett Jr.

The Ohio School for the Deaf

By: Edward E. Corbett Jr., Superintendent

Louis A. Mazzoli

The Ohio State School for the Blind

By: Louis A. Mazzoli, Superintendent

IN THE OHIO COURT OF CLAIMS

- - - - -

TransAmerica Building :
 Company, Inc., :
 Plaintiff, :
 vs. Case No. 2013-00349 :
 Ohio School Facilities :
 Commission, nka OFCC, :
 Defendant. :

- - - - -

DEPOSITION OF JAMES A. SWARTZMILLER, JR.

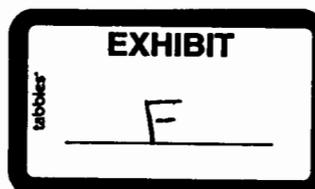
- - - - -

Taken at Lend Lease
 111 West Rich Street, Ste. 280
 Columbus, Ohio 43215
 March 28, 2014, 8:55 a.m.

- - - - -

Spectrum Reporting LLC
 333 Stewart Avenue, Columbus, Ohio 43206
 614-444-1000 or 800-635-9071
 www.spectrumreporting.com

- - - - -



Page 10

1 involved in the interview. I think basically that
2 was about it.

3 Q. Who from the OSFC was involved in the
4 interview process?

5 A. Now you're taxing my memory. I
6 remember Craig Weise was there. Crystal Canon was
7 there. Ron Bridge was there. Steve Rocca was
8 there. Mike Shoemaker had just come on as
9 executive director and he was sitting in his first
10 interview, which was blind and deaf. And there
11 were other staff. I can't really remember who.

12 Q. But Mike Shoemaker was involved in the
13 interview between Lend Lease and the OSFC?

14 A. He was in the interview, yes.

15 Q. Now, what I want to understand is you
16 were interviewing with just people with the OSFC.
17 Was there anybody from the schools that was part
18 of the interview?

19 A. Both schools were represented.

20 Q. And who were the primary
21 representatives of the schools?

22 A. Ed with the school for the deaf.

23 Q. Ed Corbett?

24 A. Yes. And his interpreter, of course.

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1 Mr. Mazoli from the school from the blind. And I
2 think they may have had some -- one or two of
3 their principals there; can't be sure.

4 Q. But Mr. Corbett was involved for the
5 deaf?

6 A. School for the deaf, yeah.

7 Q. Okay. So you interview sometime
8 in -- sometime in 2007. Do you recall when the
9 decision was made that Lend Lease was going to be
10 the construction manager for the project?

11 A. It wasn't too far after the interview;
12 a few weeks.

13 Q. But the goal was -- there was a budget
14 process taking place in 2007, and the goal was to
15 get the budget set so that it could be put into
16 the State budget to get the funds for the project?

17 A. In the fall, that's correct.

18 Q. And who was involved with the budgeting
19 the project for Lend Lease?

20 A. On the budgeting side?

21 Q. Correct.

22 A. Estimating it would have been myself,
23 Clay, Julie Taggart, some of our estimators in
24 Chicago.

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1 Q. And at that point in time had SHP been
2 brought on board?

3 A. They had.

4 Q. And there was an individual, a
5 consultant at SHP used by the name of John
6 Dickinson.

7 A. Deaf architect, correct.

8 Q. So he was a consultant under SHP?

9 A. He was.

10 Q. Now, you indicated Mike Shoemaker was
11 involved in the initial interview. Was he
12 involved after that with the project?

13 A. He attended -- I think he was at the
14 kickoff meeting, and then he attended various core
15 team monthly meetings after that.

16 Q. So we could go back and look at the
17 core team meeting minutes and determine whether
18 Mr. Shoemaker was involved?

19 A. During the design process, yes. There
20 should be a sign-in sheet.

21 Q. How often does the OSFC executive
22 director attend the core meetings?

23 MR. BECKER: Objection --

24 Mr. PAYNTER: Objection.

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1 MR. BECKER: -- lack of foundation.

2 Mr. PAYNTER: Go ahead and answer, Jim.

3 A. Well, you didn't tell me that.

4 Past history, not very often. But he
5 was new to the process and he was trying to get up
6 to speed, so he was out there.

7 Q. So it's not typical that the OSFC
8 executive director attends core meetings?

9 A. Not --

10 Mr. PAYNTER: Objection.

11 MR. BECKER: Same objection.

12 A. Not on a regular basis.

13 Q. I want to switch gears and talk about
14 the TransAmerica claim. You're familiar with the
15 TransAmerica claim, I presume.

16 A. I am.

17 Q. Do you have any criticisms of the
18 claim?

19 Mr. PAYNTER: Objection.

20 MR. BECKER: Objection; vague.

21 A. Could you be more specific?

22 Q. Sure. You've read it. I mean, do you
23 agree with it?

24 A. No.



Ohio School for the Blind and Deaf Project # 55055000 Bovis Lend Lease, Inc.
Tel: Fax:

Meeting Name: OSDB Core Team Meeting Number: 1
Date: 05/02/2007 Next Meeting Date: 05/21/2007
Time Started: 08:00 AM Next Meeting Time: 08:30 AM
Time Ended: 04:00 PM Prepared By: Jessica Saunders (Bovis Lend Lease)
Location of Meeting: Quest Center Location of Next Meeting: Ohio State School for the Blind
Purpose: Partnering Session / Core Team

General Notes:

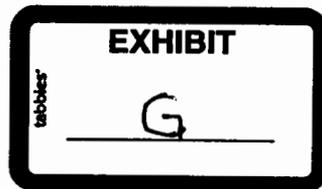
Attendees Non-Attendees

- Berardi Partners - George Berardi
- Bovis Lend Lease - Clay Keith
- Bovis Lend Lease - Jim Swartzmiller
- Bovis Lend Lease - Julie Taggart
- Office of Budget & Management - Anthony Perry
- Ohio Department of Education - Steven Puckett
- Ohio School Facilities Commission - Bill Prenosil
- Ohio School Facilities Commission - Craig Weise
- Ohio School Facilities Commission - Crystal Canan
- Ohio School Facilities Commission - Eric Bode
- Ohio School Facilities Commission - Jill Hoobler
- Ohio School Facilities Commission - Melanie Drerup
- Winter & Copmay - John Dickinson
- Steed Hammond Paul - Josh Predovich
- Steed Hammond Paul - Andrew Maletz
- Ohio State School for the Blind - Louis Mazzoli
- Ohio State School for the Blind - Gerard Marcom
- Ohio State School for the Blind - Eric Algoe
- Ohio State School for the Blind - Dennis Dillow
- Ohio State School for the Blind - Dawn Henslee
- Ohio State School for the Blind - Cynthia Johnson
- Ohio School for the Deaf - Tamara Burnett Penny
- Ohio School for the Deaf - Pam Brodie
- Ohio School for the Deaf - Ed Corbett
- Ohio School for the Deaf - Cheryl Prusinski
- Ohio School for the Deaf - Carl Brown
- Ohio School Facilities Commission - Michael Shoemaker
- Ohio School Facilities Commission - Rob Grinch

01. Meeting Schedules

Item Description Responsible Status Due Date

New Business





Meeting Minutes

Detailed, Grouped by Topic for each Meeting and by 'Old Business' and 'New Business'

Ohio School for the Blind and Deaf

Project # 55055500

Bovis Lend Lease, Inc.

Tel: Fax:

OSBD Executive Core Team Meeting 4

Date	Start	End	Next Meeting	Next Time	Prepared By	Company
1/10/2008	01:00 PM	03:00 PM		01:00 PM	Angela Kirk	Bovis Lend Lease

Purpose	Location	Next Location	General Notes
Executive Core	OSD Conference Center	OSD Conference Center	

Attended By	Non-Attendees
Ohio School Facilities Commission - Rob Grinch	Ohio State School for the Blind - Dennis Dillow
Ohio School for the Deaf - Eric Algoe	Berardi Partners - George Berardi
Ohio State School for the Blind - Dennis Dillow	Bovis Lend Lease - Julie Taggart
Steed Hammond Paul - Andrew Maletz	Berardi Partners - Rolando Matias
Steed Hammond Paul - Josh Predovich	Ohio School for the Deaf - Tamara Burnett Penny
Winter & Company - John Dickinson	
Ohio School Facilities Commission - Michael Shoemaker	
Ohio Department of Education - Steven Puckett	
Office of Budget & Management - Anthony Perry	
Envision-Works, Inc. - Gary Sierschula	
Ohio State School for the Blind - Cynthia Johnson	
Ohio State School for the Blind - Louis Mazzoli	

Item	Meeting	Item Description	Resp	Status	Due Date	Comp'l'd	Cls'd
Bishop Watterson							
Old Business							
003-012		On hold until Low Incidence Center is defined. Dir Shoemaker had met with Charlie Moses of BW to give him an update and told him they would have to be ready to move fast, if they get the approval to move forward.	All	Open	4/1/2008 (Original: 4/1/2008)		No
		1/10 On hold					

Item	Meeting	Item Description	Resp	Status	Due Date	Comp'l'd	Cls'd
Bridge							
Old Business							
003-001		Review of meeting with Stephanie Suter of FSWCD		Closed			Yes
003-002		Vehicular vs Pedestrian bridges- pedestrian is far more expensive due to grades					No
003-003		Preliminary meeting from FSWCD proposed January 3rd or 4th, need to confirm date. Will follow up with Clintonville Chamber in January	Josh Predovich (Steed)	In Progress	3/1/2008 (Original: 3/1/2008)		No

PROJECT LABOR AGREEMENT

BETWEEN

THE OHIO SCHOOL FACILITIES COMMISSION

AND

**THE COLUMBUS/CENTRAL OHIO
BUILDING & CONSTRUCTION TRADES COUNCIL**

AND

ALL SIGNATORY CONTRACTORS

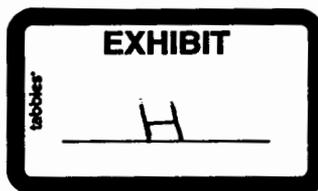
FOR THE

**OHIO STATE SCHOOL FOR THE BLIND AND
OHIO SCHOOL FOR THE DEAF
OHIO SCHOOL FACILITIES COMMISSION CONSTRUCTION PROJECT**

This Project Labor Agreement ("Agreement") is entered into this 10th day of May, 2010, by and between the Ohio School Facilities Commission (hereafter referred to as "OSFC"); the Columbus/Central Ohio Building & Construction Trades Council (hereinafter referred to as "Council"); and, the local unions listed at the end of this Agreement, each of which has, through its duly authorized officer, executed this Agreement (hereinafter referred to as the "Council," "Union," "Unions," or "Local Unions") (the OSFC, the Council, the Unions and Local Unions, and all Signatory Contractors, as defined in this Agreement, are referred to collectively as the "Parties"), with respect to the construction of various school facilities for the Ohio State School for the Blind and the Ohio School for the Deaf (hereafter "Blind/Deaf School") in the City of Columbus, Franklin County, Ohio. These school improvements consist of two academic buildings and up to sixteen Academic Dormitories as included in the Contract Documents, as may be amended from time to time, which were approved by the OSFC, and may include other improvements outside the scope of the Contract Documents, but which are integral to the improvements, providing for in the Contract Documents including but not limited to any Change Orders approved by OSFC (all of which improvements are referred to in this agreement as the "Project").

The term "Contractor" shall include all construction contractors and sub-contractors of whatever tier engaged in onsite construction work within the scope of this Agreement, except for those contractors and sub-contractors specifically excluded from this Agreement. When specific reference to the Construction Manager alone is intended, the term "CM" is used. When specific reference to the Architect alone is intended, the term "Architect" or "A/E" is used. The terms "material supplier," "vendor," and "manufacturer" refer to entities engaged in offsite product manufacture or sub-assembly related activities; these entities are not required to be signatory to this Agreement.

This Agreement is made available, and fully applies, to any successful bidder awarded a contract for work on the Project by the OSFC per the applicable sections of the Ohio Revised Code and the Standard Conditions of Contract for Construction applicable to the Project (current version issued by the OSFC, referred to as the "Construction Contract", provided that the work



is within the scope of the signatories to this Agreement and is not otherwise excluded by the terms of this Agreement. Subject to the exclusions stated in this Agreement, each Contractor awarded a contract for work on the Project shall become a signatory to the Agreement as a condition of contract award and as provided in this Agreement and the bidding documents, without regard to whether the successful bidder performs work at other sites on either a union or non-union basis and without regard to whether employees of such bidder are or are not members of any union. Each Contractor that signs this Agreement may be referred to as a "Signatory Contractor."

This Agreement will be applicable to the Unions (all references to the Union or Unions include the Local Unions) and all Signatory Contractors performing construction work on the Project. The Unions and all Signatory Contractors agree to abide by the terms and conditions contained in this Agreement. Nothing in this Agreement shall limit the selection or utilization of contractors or sub-contractors to perform construction work on the Project, provided, however, that all Contractors and sub-contractors must become signatories to and shall be bound by the terms and conditions of this Agreement, unless their scope of work is not covered by this Agreement. This Agreement is a stand-alone Agreement that represents the complete understanding of the parties with respect to the practices and requirements stated herein as these relate to the Project.

ARTICLE I PURPOSE

The Parties to this Agreement acknowledge that the construction of the Project is important to the development of the educational opportunities for the students of the Ohio State School for the Blind and the Ohio School for the Deaf. The Parties recognize the need for the timely completion of the Project without interruption or delay, so that state-of-the-art educational facilities will be available to the students as soon as possible. This Agreement is intended to enhance a cooperative effort among the Parties through the establishment of a framework for cooperative and stable relations between labor and management.

The Signatory Contractors and the Unions (including Local Unions) agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts who possess skills and qualifications that are vital to its completion. They will work together cooperatively to furnish skilled, efficient craftworkers for the construction of the Project, who, if possible, reside in the local area.

Further, the Parties desire to mutually establish and stabilize wages, hours, and working conditions for the craftworkers on the Project and to encourage close cooperation between the OSFC and each Signatory Contractor, the Council, the Unions, and Local Unions to the end that a satisfactory, continuous, and harmonious relationship will exist between the Parties to this Agreement.

The Parties recognize the advantages of this project-specific Agreement. In part, those benefits include standard work rules and prohibitions against strikes, lockouts, slowdowns, and other work stoppages during the course of construction. The Parties recognize the need to minimize the impact of construction industry challenges, such as the short-term nature of employment, which makes post-hire collective bargaining difficult, and to address the Contractor's need for predictable costs and a steady supply of skilled labor. This Agreement, in conjunction with any modified version of this Agreement that may be executed by a particular

trade, is also designed to reduce and eliminate jobsite tensions and conflicts between craftworkers.

This Agreement shall not foreclose any person or entity from submitting a bid on this Project. This Agreement does not distinguish between entities employing union labor and those employing non-union labor. It applies equally to all prospective bidders, with stated stipulations. Further, this Agreement does not require any Contractor to become a "union" employer. It simply requires any person or entity, as a condition for being engaged to perform work on the Project, to agree to be bound by the same rules and restrictions as all others similarly engaged. In addition, this Agreement provides that rules entered into hereunder apply only while a Contractor or a sub-contractor is performing on-site work on the Project. The Parties recognize that the OSFC participates in this Agreement as a market participant and that entry into this Agreement by the OSFC is not in its regulatory capacity.

While this Agreement requires Contractors to use the registration facilities of local unions, the selection of applicants for work on the Project is required to be done on a non-discriminatory basis, without regard to union or trade group membership. All construction labor unions are required by federal law to operate non-discriminatory hiring halls. Qualified non-union employees may ask to be placed upon the hiring hall referral list. Thus, under this Agreement, no individual or contractor is precluded from working on the Project based upon their affiliation or non-affiliation with a labor union.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of cooperation, the Parties agree to implement effective and binding methods for the settlement of all disagreements, disputes, or formal grievances that may arise. Further, the Signatory Contractors and all sub-contractors involved agree not to engage in any lockout, and the Unions and Local Unions agree not to engage in any strike, slow down, interruption, other disruption of, or interference with the work covered by this Agreement.

ARTICLE II SCOPE OF AGREEMENT

Section 1. This Agreement shall apply and is limited to the recognized and accepted historical definition of construction work, including new construction and renovations and additions to existing buildings, under the direction of and performed by the Signatory Contractors and their sub-contractors, of whatever tier, which have been awarded a contract for work on the Project that is within the scope of this Agreement (See Section 6 of this Article II for exceptions to this Agreement). Such work shall only include on-site work.

Generally the scope of the Project includes construction of the improvements identified in the Contract Documents prepared by the OSFC, as such Contract Documents may be modified during the course of the Project, together with any Change Orders approved by the OSFC.

Signatories to this Agreement shall execute the Signature Page attached to this Agreement.

Section 2. It is agreed that the OSFC shall require all Contractors, except those specifically excluded by this Agreement, and their sub-contractors, of whatever tier, that are awarded a contract for work covered by this Agreement to accept and be bound by the terms and conditions of this Agreement by executing the Letter of Assent in the form attached to this

Agreement as Attachment A prior to commencing work on the Project. The Contractor is responsible for ensuring that its sub-contractors become signatories to this Agreement and abide by its terms and shall provide signed copies of the Letter of Assent to the OSFC, through the CM, from each of its sub-contractors. It is further agreed that the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of the International Union of Elevator Constructors, with the exception of Articles IX, X, and XI, of this Agreement; in addition, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception of Articles IX, X, and XI, of this Agreement. It is understood that this is a self-contained, stand-alone Agreement and that by virtue of having become bound to this Agreement, each Signatory Contractor will not be obligated to sign any other local, area, or national agreement. Nothing in this Agreement shall be construed to detract from any Contractor's obligations under the Construction Contract.

Section 3. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work, or function that may occur at the Project site or be associated with the development of the Project. This Agreement is meant to supplement, and not to contravene or supersede, any provision of Ohio law or the Construction Contract.

Section 4. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates, or subsidiaries.

Section 5. Except as restricted by Ohio law, the OSFC has the absolute right to select any qualified bidder for the award of contracts on the Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready, and able to become a party to and comply with this Agreement, should it be designated the successful bidder.

Section 6. This Agreement does not apply to the following:

- A. Work performed by non-manual or professional employees, including, but not limited to, the Architect, CM, maintenance plan advisors, commissioning authorities, abatement consultants, geotechnical consultants, superintendents, supervisors, engineers, field engineers, surveyors, quality assurance and quality inspectors (including material testing services), technicians, office workers, messengers, persons making deliveries to and from the site of any improvement included in the Project, warehouse employees, guards, medical personnel, emergency vehicle operators, and employees similarly classified;
- B. All OSFC and the Schools operations, work on facilities outside of the Project, and activities;
- C. Work performed by technicians at the discretion of the Contractor and work performed under subcontracts that the OSFC designates as being for technically unique services or skills, including but not limited to utility providers, kitchen equipment installers, and HVAC testing and balancing. The OSFC may install specialized equipment, or inspect or test equipment before, during or after installation, using a vendor of the OSFC's choice, personnel of the OSFC, or

manufacturer's personnel as may be deemed necessary. Appropriate crafts will perform work under each such vendor's supervision;

- D. The delivery to the Project of any material by any means or removal from the Project of any material by any means;
- E. Landscape maintenance or work related to moveable office or building furnishings;
- F. Contractors and sub-contractors performing work completed under IUC or federal pricing systems and/or unit pricing;
- G. Work to provide and install all fixtures, furnishings, and equipment not permanently installed;
- H. Abatement or demolition contractors performing work outside the scope of this Agreement.
- I. All Contracts entered into prior to the execution of this Agreement.

Section 7. The provisions of this Agreement shall not apply to or restrict the OSFC and the Schools or their employees from performing work not covered by this Agreement on the Project site. As areas and systems of the Project are inspected and construction tested by the OSFC and accepted by the OSFC, the Agreement will not have further force or effect on such items or areas, except when a Contractor is directed by the OSFC or CM to engage in repairs, modifications, checkout, and warranty functions required by the Construction Contract during the term of this Agreement.

Section 8. It is understood that the OSFC, at its sole option, may terminate, delay, and/or suspend any or all portions of the Project at any time.

Section 9. It is understood that the liability of any Contractor and the liability of the separate Unions or Local Unions under this Agreement shall be several and not joint. The Unions and Local Unions agree that this Agreement does not have the effect of creating any joint employer status between or among the OSFC, CM, Union, or any Signatory Contractor or its sub-contractors of any tier or any other employer.

ARTICLE III UNION RECOGNITION

Section 1. The Contractors and sub-contractors recognize the Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. All employees covered by this Agreement now in the employ of the Contractor or a sub-contractor, of whatever tier, shall remain members in good standing in the union during the term of this Agreement

Section 3. A Contractor or sub-contractor shall not discharge any employee for non-membership in the Union: (a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied

or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership.

Section 4. All employees hired by the Contractor or any sub-contractor, of whatever tier, as a condition of employment, become and remain members in good standing of the union on the 8th day of employment.

ARTICLE IV MANAGEMENT'S RIGHTS

Section 1. The Contractors retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off, or discharge for just cause. No rules, customs, or practices shall be permitted or observed that limit or restrict production, or limit or restrict the working efforts of employees. The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, nor any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service. Nothing in this section shall be construed to alter the Contractor's obligations to fulfill all requirements of the Construction Contract.

ARTICLE V REFERRAL OF EMPLOYEES

Section 1. The Contractors agree to recognize and be bound by the legal referral facilities maintained by the Unions, to the extent these facilities comply with Ohio law, and shall notify the appropriate Union either in writing or by telephone when workers are required. The Contractors shall be the sole judge of all applicants' qualifications; except, nothing in this Article shall interfere with the OSFC's right to reject employees for cause pursuant to the terms of the Construction Contract.

Section 2. Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements. There shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in the union or based upon race, creed, color, sex, age, or national origin of such employee or applicant.

Section 3. In the event the referral facilities maintained by the unions are unable to fill the requisition of the Contractors for suitable employees within a 48-hour period after such requisition is made (Saturdays, Sundays, and holidays excluded), applicants for such requisition may be employed from any source.

Section 4. The selection and number of Foremen and/or General Foremen shall be the responsibility of the Contractor, it being understood that in the selection of such employees, the Contractor will give first consideration to the qualified workers available in the local area. Foremen and/or General Foremen shall take orders from supervisors designated by the Contractor. Foremen and/or General Foremen will not absent themselves from the area where their crews are working unless their presence is required elsewhere, and shall be held

responsible for all work performed by employees under their supervision. The Contractor may require Foremen to be working employees.

Section 5. In cases of employment positions requiring special skills or qualifications, the Contractor will notify the Union of the qualification tests or skills required, and the Union may refer any qualified applicant. The Contractor shall be the sole judge of all applicants' qualifications, except to the extent that the OSFC has the right to reject employees for cause pursuant to the terms of the Construction Contract.

Section 6. Requests for key, or core, employees will comply with the referral procedure of the Local Unions, but subject to the provisions of Sections 3 and 5 of this Article V.

Section 7. The Union or Local Union shall not refer employees employed at the Project site by a Contractor to other employment, nor shall the Union or Local Union engage in other activities that encourage work force turnover or absenteeism.

Section 8. Employees who voluntarily quit may be eligible for reemployment at the Project, and the referral facility may refer such former employees to the Project for rehire, but not sooner than thirty (30) days after such termination. During a reduction in force, Contractors shall have the right to retain employees of their choice without regard to any other criteria, except for Union Stewards and personnel operating special equipment who have historically been guaranteed forty (40) hours in accordance with the applicable collective bargaining agreement, as long as they have the work skills to perform the duties required. Employees who are terminated for cause shall not be eligible for rehire on the Project. However, this provision is subject to the rights of the OSFC with regard to each Contractor's employees under the terms of the Construction Contract.

Section 9. In the event that a Local Union does not have a job referral system as set forth in this Article, the Contractor shall give the Union equal opportunity to refer applicants, but is not bound to accept those referrals over those from other sources. The Contractor shall notify the Union of employees hired from any source other than referral by the Union.

ARTICLE VI APPRENTICES/TRAINEEES/HELPERS/SUBJOURNEYMEN

Section 1. Recognizing the need to maintain continuing support of Joint Apprenticeship Programs designed to develop an adequate number of competent workers in the Construction Industry, the Contractor will consistent with the terms of the applicable national, area, or local collective bargaining agreement employ apprentices, if available, of the individual craft workforce in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured except where in conflict with Federal or State Law or Regulation. The Contractor may also employ trainees and helpers, where the Union has such classification. There will be no restriction on apprentices', trainees', and helpers' scopes of work as long as they are accompanied by journeymen of their craft and receiving instructions from such journeyman.

ARTICLE VII WAGES AND BENEFITS

Section 1. All employees covered by this Agreement shall be properly classified and paid the hourly wage rate in effect for such classification as contained in their Local Collective Bargaining Agreement with scheduled wage increases effective as specified in the appropriate local or area agreements which have been or may be negotiated by the recognized bargaining agents during the life of this Agreement, as provided for in 4115.05 ORC. Current Prevailing Wage Rates for crafts applicable to Franklin County are attached as Attachment C. The Union shall have the option, if it so elects, of applying any part or all of any scheduled wage increases to fringe benefit contributions. (See attached Wages/Benefits)

Section 2. The Contractor shall make the required contributions to fringe benefit funds as set forth in the Employee's Local Union Agreement at the rates in effect at the start of the Project together with any additional amount deferred from wages in accordance with Section 1 of this Article. Contractor agrees to sign a Letter of Participation and be bound by the terms and conditions of the Trust Agreement adopted by the Fringe Benefit Funds to which contributions are made.

Section 3. The Contractor shall deduct from each employee's wages all uniform dues and working assessments set forth in the Employee's Local Collective Bargaining Agreement

Section 4. Where the Operating Engineers Local Union Building Agreement provides for a guaranteed workweek on certain jobs or equipment, such guarantee shall be applicable under the terms of the Project Agreement. Nothing in this Section shall alter the rights or obligations of the OSFC under the Construction Contract, nor shall it result in any modification of the bid price or contract price.

ARTICLE VIII WORK RULES

Section 1. The OSFC, through the CM, may establish reasonable uniform site working rules/procedures and security, health and safety rules/procedures in compliance with federal, state, and local regulations to supplement the sections in this Article VIII. These rules will be reviewed at the pre-job conference conducted by the CM and will be posted at the Project site by the Contractor. The OSFC, through the CM, may change these rules during the term of this Agreement with prior notice to the Unions. Such notice shall be given two (2) weeks prior to implementation of the change, when practical. All Unions, Contractors, and employees agree to abide by these rules and agree that violation of job site rules may result in disciplinary action up to and including suspension or discharge.

Section 2. The selection of Superintendents and General Superintendents, including the number thereof, shall be entirely the responsibility of the Contractor. However, this provision is subject to the rights of the OSFC with regard to Contractors' employees under the terms of the Construction Contract.

Section 3. Employees shall be at their place of work (change shanty) at the starting time and shall remain at their place of work, performing their assigned duties under supervision of the Contractor until quitting time. It is agreed, and it is the intent of the Parties, that there be a full day's work for a fair day's wage.

Section 4. Any employee reporting for work and for whom no work is provided shall receive two (2) hours pay at the regular straight time hourly rate unless such employee is notified no later than the end of his previous shift not to report. Any employee who starts to work and works beyond the two (2) hours will be paid for actual time worked. Whenever minimum reporting pay is provided for employees, they may be required to remain at the project site available for work for such time as they receive pay, unless released sooner by the employer's principal supervisor or his designated representative. This section shall have no impact on the terms of the Construction Contract with the OSFC and any expenses associated with this section shall be borne by the Contractor.

Section 5. Slowdowns, standby crews, and make-work practices shall not be tolerated. There will be no standby crews or personnel. Startup, checkout, and operation of process equipment and systems are the responsibility of the Contractor and/or OSFC. Manpower requirements for these operations will be determined by the Contractor and/or OSFC. Written startup and equipment acceptance procedures will be established for the operation. Once the system, partial systems, areas, or pieces of equipment are turned over to the OSFC, the calibration, testing, checking, startup, and commissioning of the equipment or system shall be excluded from the terms of this Agreement.

Section 6. The Contractor with approval from the OSFC shall have the prerogative to designate tool rooms and trailer locations for employers on the Project and will provide proper facilities for lunch and storage of personal tools. The Contractor may establish any reasonable system to control tool losses, subject to the approval of the OSFC, through the CM.

Section 7. There will not be any organized coffee breaks during working hours; however, the employees will be afforded a coffee break at their workstation (not change shanty). It is understood that the coffee break will not create a general work stoppage and will not exceed ten (10) minutes.

Section 8. The Contractor may install specialized equipment, or inspect or test equipment before, during, or after installation, using people of the Contractor's choice, personnel of the OSFC, or manufacturer's personnel as may be deemed necessary. Appropriate crafts will perform work under the specialized equipment vendor's supervision.

Section 9. The Contractor will have the right to determine crew size including partial crews during inclement weather; however, nothing in this section shall be construed to alter the Contractor's obligations under the Contract for construction with the OSFC.

Section 10. All Contractors shall contact the Council prior to starting work and arrange for a pre-job conference.

Section 11. The OSFC shall establish such reasonable project work rules as the OSFC deems appropriate. These rules will be reviewed at the pre-job conference and posted at the Project have in site by the Contractor and may be amended thereafter as necessary.

Section 12. The OSFC has established a smoke and tobacco free policy for the Project site. Because the Project will be constructed on school property and may be in proximity to existing school buildings, there will be no tobacco use at any site included in the Project.

Section 13. Parking for employees shall be at a location agreed upon by the Contractors and the OSFC, through the CM.

Section 14. All Parties shall comply at all times with the safety requirements of the OSFC and those prepared for the Project and required by the Construction Contract.

Section 15. The Contractor shall require all workers on the Project to attend an orientation session regarding the Blind/Deaf Schools and the special needs of the students that attend the schools prior to their working on the Project site.

Section 16. The Contractor shall obtain a criminal background BCI and FBI check on all workers on the Project prior to them working on the Project site as provided in 3319.392 ORC and in this section. No one who has plead guilty to, plead no contest to, or been found guilty of at a trial either to a court or a jury and convicted of the crimes identified in Attachment B (or any crime of similar import of any state or other governmental jurisdiction) shall be permitted to enter the Project site. The Contractor shall maintain copies of the criminal background record checks at the jobsite and the same will be available to the CM and/or the OSFC at any time. Should an urgent staffing situation arise requiring a worker's presence on the Project site prior to the completion of either the BCI or FBI background checks, the Contractor and the CM shall in each individual case establish an appropriate procedure mutually acceptable to both the Contractor and the CM to permit the worker to work on the Project site until the background checks are completed.

ARTICLE IX WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason—including but not limited to committing such acts in support of other Unions or Local Unions regardless of whether or not they are signatories to this Agreement—by the Union, its applicable Local Union or by any employee, and there shall be no lockout by a Signatory Contractor. Failure of any Union, Local Union, or employee to cross any picket line established at the Project site is a violation of this Article. The parties agree that violations of this Article will have a dramatic negative effect on the Project and those resultant damages would be uncertain as to amount and difficult to prove. Therefore, the parties intend and agree that any signatory to this Agreement, other than the OSFC, who breaches this Article IX, shall pay to the OSFC as liquidated damages the sum of \$5,000 per day beginning on the day the violation occurs and continuing so long as the violation continues. After careful consideration, the Parties agree that this amount of liquidated damages represents a reasonable estimate of the actual damages that the OSFC would incur if the Project is impacted by a violation of this Article.

Section 2. The Union and its applicable Local Union shall not sanction, aid or abet, encourage, or continue any work stoppage, strike, picketing or other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities that violate this Article IX. Any employee who participates in or encourages any activities that interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project.

Section 3. The International Union General President or Presidents will immediately instruct, order, and use the best efforts of his or her office to cause the Local Union or Unions to cease

any violations of this Article IX. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his or her office to cause the employees the Local Union represents to cease any violations of the Article IX. Regardless of the efforts of the Union or Local Union, if a pattern of disruptive acts as described in Section 1 of this Article IX continues and is not corrected within a reasonable time following notice from the OSFC, which may be issued through the Construction Manager, then the OSFC shall retain its rights and remedies under this Agreement but shall have no further obligations under this Agreement, and the Union, Local Union, and Contractor release, indemnify, and hold harmless the OSFC against any claims resulting from the termination of the OSFC obligations under this Agreement. The failure of the Contractor to exercise its right in any instances shall be deemed a waiver of its right in any other instance. Nothing herein shall affect the OSFC's rights and remedies under the Construction Contract or otherwise.

ARTICLE X DISPUTES AND GRIEVANCES

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article X; however, the OSFC shall not be a party to nor bound by such proceedings.

Section 3. Any question or dispute arising out of and during the term of this Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures. The Unions and Contractors agree that this process shall not delay or disrupt the Work on the Project in any form.

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, the employee's Local Union, may, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Contractor, the CM, and the OSFC) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union and the Contractors have a dispute and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be

reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The International Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provision of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the American Arbitration Association shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on the parties to the arbitration. The fee and expenses of such arbitration shall be borne equally by the Contractor and the involved Local Union.

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to, or detract from any of the provisions of this Agreement.

Step 4. The OSFC shall be notified of all action at Steps 2 and 3 and shall, upon its request, be permitted to participate in all proceedings at these steps.

ARTICLE XI JURISDICTION DISPUTES

Section 1. Subject to the terms of the Construction Contract, the assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for Settlement of Jurisdiction Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. All jurisdictional disputes between or among Unions and Local Unions, and their employees, which are parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Union parties to this Agreement. The OSFC shall have no liability with respect to any such claims, settlements, or adjustments.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature; and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge and other damages provided for in this Agreement.

Section 4. Each Contractor will conduct a pre-job conference with the Council prior to commencing work. The OSFC will be advised in advance of all such conferences and may participate, either through its representatives or the CM, if it wishes to do so.

ARTICLE XII UNION REPRESENTATION

Section 1. Authorized representatives of the Unions and their Local Unions shall have access to the Project, provided they do not interfere with the work of the employees, and, further provided, that such representatives fully comply with the visitor security rules established for the Project.

Section 2. Each Union that is a party to this Agreement, or its applicable Local Union, shall have the right to designate a working journeyman as a Steward. Such designated Steward shall be a qualified worker performing the work of that craft and shall not exercise any supervisory functions. Each Steward shall be concerned with the employees of his or her own employer and not with the employees of any other employer.

Section 3. The Steward shall not receive any special treatment from the Contractor and shall gain the Contractor's permission before leaving his assignment. Such permission is at the sole discretion of the Contractor. The Steward's duties shall not include hiring, termination, or any other involvement in, or interference with, decisions reserved to the Contractor.

ARTICLE XIII HOURS OF WORK, ETC.

Section 1. The CM, in coordination with the OSFC, shall designate the workweek and schedule for all employees, including starting and quitting times for work performed on site. It is understood that the OSFC may, acting through the CM, in its sole discretion, terminate, delay and/or suspend any or all portions of the Project at any time. Nothing in this Article XIII shall relieve the Contractor of its obligations to timely complete the Work and otherwise comply with the requirements of the Construction Contract. The hours of work will be reviewed at the pre-job conference conducted by the CM. All Unions, Contractors, and employees agree to abide by the hours of work established by the CM. The hours of work and workweek shall be consistent with the provisions of this Article XIII.

Section 2. Subject to revision by the CM in coordination with the OSFC, the workweek shall start at 7:00 a.m. Monday and conclude the following Monday at 7:00 a.m. Eight (8) hours per day shall constitute a standard workday between 7:00 a.m. and 5:00 p.m. with one-half hour designated for lunch. Employees shall be at their place of work for a full eight (8) hours each day except as set forth in Section 3 of this Article XIII. Forty (40) hours per week shall constitute a regular week's work. Lunch period shall be scheduled four (4) hours after starting time. The change shanty is considered the place of work for the beginning of the day.

Section 3. Overtime: All overtime work performed Monday through Friday will be paid at time and one-half the regular straight-time hourly rate up to four (4) hours of overtime per day. All work performed on Saturday, except for the third shift on Friday, will be paid at time and one-half the regular straight-time hourly rate. Work performed on Sundays, except for a third shift on Saturday, holidays, and any time worked over twelve (12) hours in a twenty-four (24) hour period, will be paid at double the regular straight-time hourly rate. When an employee is required to work more than ten (10) hours, the employer shall schedule a second one-half hour

lunch period at the beginning of the eleventh (11th) hour. When the employee is required to work through the second lunch break, one-half hour at the applicable overtime rate shall be added to the actual rates and double the straight-time hourly rate shall be the maximum compensation of any hour worked. Nothing in this section shall alter the OSFC's obligations or rights under the Construction Contract.

Section 4. Shifts: When so elected by the Contractor—or directed in accordance with the Construction Contract—multiple shifts may be worked. The first shift shall work eight (8) hours at the regular straight time rate. The second shift shall work seven and one-half (7 1/2) hours and receive the regular straight-time hourly rate for eight hours plus \$.25 per hour paid. The third shift shall work seven (7) hours and receive the regular straight-time hourly rate for eight hours plus \$.50 per hour paid. A thirty (30) minute unpaid lunch period shall be mutually agreed upon by the Contractor and the Union Representative and shall not be considered as time worked. Such shifts shall be established for a minimum of five (5) days. Nothing in this section shall alter any rights or obligations of the OSFC under the Construction Contract.

Section 5. Four (4) Ten (10) Hour Workweek: The option of scheduling a four (4) day, ten (10) hour workweek is permissible upon mutual agreement between the OSFC, CM, the Contractor, and Council at any pre-job conference. In the event such schedule is agreed upon by all parties, it shall be worked in accordance with the following provisions, but subject to change by the CM in coordination with the OSFC:

- A. Monday through Thursday shall constitute a normal workweek.
- B. Starting and quitting time will be determined at the Pre-Job Conference.
- C. All hours worked in excess of ten (10) hours on any workday shall be paid at the overtime rate of time and a half.
- D. All hours worked in excess of forty (40) hours in any workweek shall be paid at the overtime rate of time and a half.
- E. In the event of inclement weather or Holiday, Friday shall be a make-up day. In the event the job has worked thirty-two (32) hours or less Monday through Thursday, a full eight (8) hour shift must be worked; if the job has worked thirty-one (31) hours or less, a full nine (9) hour shift must be worked; if the job has worked thirty (30) hours or less, a full ten (10) hour shift must be worked.
- F. An employee who is referred for employment whose work is scheduled for less than forty (40) hours of work (from the date of hire to date of termination), shall receive overtime pay for all hours worked in excess of eight (8) hours per day.
- G. Any provision in this Section that is found to be in violation of any Federal, State, or local law shall be null and void and shall not affect the balance of this Agreement. Nothing in this section shall alter the rights or obligations of the OSFC under the Construction Contract, nor shall it result in any modification of the bid price.

Section 6. Holidays: For the purpose of uniformity, the following holidays shall be observed and, if worked, shall be paid at the rate of double time:

New Year's Day
Memorial Day
Fourth of July
Labor Day

Thanksgiving Day
Day after Thanksgiving
Christmas Day

Under no circumstances shall any work be performed on Labor Day excepting cases of emergency involving life or property. In the event a holiday falls on Saturday, the preceding day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. Monday holidays shall be honored in keeping with applicable Federal Law. Nothing in this section shall alter the rights and obligations of the OSFC under the Construction Contract.

ARTICLE XIV SUBCONTRACTING

Section 1. The Contractor agrees that neither it nor any of its sub-contractors will subcontract any on-site work to be done on the Project except to a person, firm, or corporation who is or agrees to become party to this Agreement. Any Contractor or sub-contractor working on the Project site shall, as a condition to working on said Project site, become signatory to and perform all work under the terms of this Agreement, except to the extent it is exempt from this Agreement.

Section 2. All contractors and sub-contractors, of whatever tier, will arrange and conduct a pre-job conference with the Union prior to starting work on the Project.

ARTICLE XV SAFETY AND HEALTH

Section 1. Employees must use diligent care to perform their work in a safe manner and to protect themselves and the property of their employer and the OSFC. Failure to do so may result in immediate dismissal.

Section 2. In order to protect the safety and health of employees, Contractor and its employees agree to comply with the applicable provisions of state and federal laws and regulations relating to job safety, health and safe work practices, as well as those specific Project safety rules that may be published by the OSFC.

Section 3. The employees covered by the terms of this Agreement shall, at all times while in the employ of the Signatory Contractor, be bound by the safety rules and regulations as established pursuant to the Federal Occupational Safety and Health Act, the governing local labor agreement, or applicable safety laws.

Section 4. All Contractors and their employees covered under this Agreement shall participate in a drug and alcohol testing program. The program must meet or exceed the programs required under the Construction Contract and the Ohio Revised Code and/or consistent with the terms of the applicable national, area or local collective bargaining agreement. The OSFC through the CM shall have the right to require additional random site workers drug testing and specific workers drug testing in circumstances deemed appropriate by the CM.

Section 5. It shall be the sole responsibility of each Contractor to assure safe working conditions for its employees and compliance by its employees with any safety rules contained in this Agreement or the Contract Documents or established by the Contractor. Nothing in this Agreement will make the Union or any of its Local Unions liable to any employees or to other persons in the event that an injury or accident occurs.

ARTICLE XVI GENERAL SAVINGS CLAUSE

Section 1. If any Article or provision of this Agreement shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the Federal or any State government, the OSFC and the Union shall suspend the operation of such Article or provision during the period of its invalidity and shall substitute by mutual consent, in its place, an Article or provision which will meet the objections to its validity and which will be in accord with the intent or purpose of the Article or provision in question. Any final determination that any provision of this Agreement violates any law or is otherwise not binding and enforceable, shall have no effect on the validity of the remaining provisions of this Agreement

ARTICLE XVII HELMETS TO HARDHATS

Section 1. The Contractor and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractor and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities, and other needs as identified by parties.

Section 2. The Unions and Contractor agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XVIII TERM OF AGREEMENT

This Agreement shall be effective as of the 10th day of May, 2010, and shall remain in full force and effect during the Contractor's performance on the Project described in Article II, Section 1.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be amended or supplemented only by the mutual consent of the parties hereto, reduced to writing and duly signed by each.

This Agreement shall remain in full force and effect and be binding, upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Ohio School Facilities Commission

By: _____
Richard C. Murray, Executive Director

Columbus/Central Ohio Building & Construction Trades Council

By: _____
Pasquale Manzi, Executive Secretary-Treasurer

CRAFT UNIONS

Asbestos Workers Local 50

By: _____
Name/Title: DORSEY HAGER
BUSINESS MANAGER

Boilermakers Local 105

By: _____
Name/Title: _____

Bricklayers Local 55

By: _____
Name/Title: _____

Ohio & Vicinity Regional Council of
Carpenters, United Brotherhood of
Carpenters and Joiners of America

By: _____
Name/Title: _____

Cement Masons & Plasters
OP& CMIA Ohio Local 132

By: _____
Name/Title: _____

Electrical Workers Local 683

By: _____
Name/Title: _____

Elevator Constructors Local 37

By: _____
Name/Title: _____

This Agreement shall remain in full force and effect and be binding, upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Ohio School Facilities Commission

By: *M*
Richard C. Murray, Executive Director

Columbus/Central Ohio Building & Construction Trades Council

By: *Pasquale Manz*
Pasquale Manz, Executive Secretary-Treasurer

CRAFT UNIONS

Asbestos Workers Local 50

By: *Dorsey Hagan Jr.*
Name/Title: *Dorsey Hagan Jr.*

Boilermakers Local 105

By: *Van Stephens*
Name/Title: *VAN STEPHENS*
BUSINESS MANAGER

Bricklayers Local 55

By: *Kenneth C Kudela*
Name/Title: *KENNETH KUDELA*
DIRECTOR

Ohio & Vicinity Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America

By: *Dois Refeitt*
Name/Title: *DOIS REFEDIT*
EX. REGIONAL DIRECTOR

Cement Masons & Plasters
OP & CMIA Ohio Local 132

By: *Thomas R Blevins*
Name/Title: *THOMAS BLEVIN'S*
BUSINESS MANAGER

Electrical Workers Local 683

By: *Mario Cardelli*
Name/Title: *MARIO CARDELLI*
BUSINESS MANAGER

Elevator Constructors Local 37

By: *John Neil Rouse*
Name/Title: *JOHN NEIL ROUSE*
BUSINESS MANAGER

Glaziers Local 372

By: Joseph Crytser
Name/Title: JOSEPH CRYTSEK
BUSINESS REPRESENTATIVE

Iron Workers Local 172

By: James V. Rosworth
Name/Title: JAMES ROSWORTH
BUSINESS MANAGER / FST

Laborers Local 423

By: Bob McCookill
Name/Title: BOB MCCOOKILL
BUSINESS MANAGER

Operating Engineers Local 18

By: _____
Name/Title: _____

Painters Local 1275

By: Joseph Crytser
Name/Title: JOSEPH CRYTSEK
BUSINESS REPRESENTATIVE

Plumbers & Pipefitters Local 189

By: Michael P. Kelley
Name/Title: MICHAEL KELLEY
BUSINESS MANAGER

Roofers Local 86

By: Marvin Cochran Jr.
Name/Title: MARVIN COCHRAN JR.
BUSINESS MANAGER

Sheet Metal Workers Local 24

By: Michael S. Moore
Name/Title: MICHAEL MOORE
BUSINESS MANAGER / FST

Sprinkler Fitters Local 669

By: Timothy S. Skinner
Name/Title: TIMOTHY S. SKINNER
BUSINESS AGENT

State of Ohio
Ohio School Facilities Commission

CONTRACT FORM

2010 DEC -9 PM 3:21

THE CONTRACT, evidenced by this Contract Form, is made and entered into by and between:

*TransAmerica Building Company, Inc.
2000 West Henderson Road #500
Columbus, OH 43220*

(the "Contractor") and the State of Ohio School Facilities Commission ("Commission") on the date executed by the State.

In consideration of the mutual promises herein contained, the Commission and Contractor agree as set forth below:

ARTICLE 1

1.1 The Contractor shall perform the entire Work described in the Contract Documents and reasonably inferable as necessary to produce the results intended by the Contract Documents, for:

*Contract 023R – Residential General Trades
Ohio State School for the Blind and Ohio School for the Deaf
Columbus, Ohio*

ARTICLE 2

2.1 The Commission shall pay the Contractor for the performance of the Contract, subject to additions and deductions as provided in the Contract Documents, the amount of *Three Million Nine Hundred Seventy-Five Thousand and 00/100 Dollars* (the "Contract Sum"), based upon the Bid Form, dated October 28, 2010 submitted by the Contractor and comprised of the following:

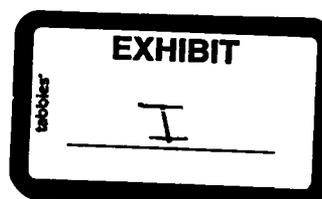
Total Bid: \$3,975,000.00

2.2 The Commission shall pay the Contractor upon receiving Applications for Payment submitted by the Contractor and approved by the Commission as provided in the Contract Documents.

ARTICLE 3

3.1 The Contractor shall diligently prosecute and complete all Work such that Final Acceptance occurs by January 18, 2012, unless an extension of time is granted by the Commission in accordance with the Contract Documents. The period established in this paragraph is referred to as the Contract Time.

3.2 The Contractor shall perform and complete all Work under the Contract within the established Contract Time, and each applicable portion of the Work shall be completed upon its respective Milestone date, unless the Contractor timely requests, and the Commission grants an extension



of time in accordance with the Contract Documents.

- 3.3 The Contractor's failure to complete all Work within the period of time specified, or failure to have the applicable portion of the Work completed upon any Milestone date, shall entitle the Commission to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the following table for each and every day thereafter until Contract Completion or the date of completion of the applicable portion of the Work, unless the Contractor timely requests, and the Commission grants an extension of time in accordance with the Contract Documents.

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1 to \$50,000	\$150
More than \$50,000 to \$150,000	\$250
More than \$150,000 to \$500,000	\$500
More than \$500,000 to \$2,000,000	\$1,000
More than \$2,000,000 to \$5,000,000	\$2,000
More than \$5,000,000 to \$10,000,000	\$2,500
More than \$10,000,000	\$3,000

- 3.4 The amount of Liquidated Damages is agreed upon by and between the Contractor and the Commission because of the impracticality and extreme difficulty of ascertaining the actual amount of damage the State would sustain.
- 3.5 The Commission's right to recover Liquidated Damages does not preclude any right of recovery for actual damages.

ARTICLE 4

- 4.1 The Contract Documents embody the entire understanding of the parties and form the basis of the Contract between the Commission and the Contractor. The Contract Documents are incorporated by reference into this Contract Form as if fully rewritten herein.
- 4.2 The Contract and any modifications, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio.
- 4.3 If any term or provision of the Contract, or the application thereof to any Person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of the Contract shall be valid and enforced to the fullest extent permitted by law.
- 4.4 The Contract shall be binding on the Contractor and the Commission, their successors and assigns, in respect to all covenants and obligations contained in the Contract Documents, but the Contractor may not assign the Contract without the prior written consent of the Commission.

ARTICLE 5

- 5.1 The Contract shall become binding and effective upon execution by the Commission.

ARTICLE 6

- 6.1 This Contract Form has been executed in several counterparts, each of which shall constitute a complete original Contract Form which may be introduced in evidence or used for any other purpose without production of any other counterparts.

ARTICLE 7

- 7.1 The Contractor represents and warrants that it is familiar with all applicable ethics law requirements, including without limitation, ORC Sections 102.04 and 3517.13, and certifies that it is in compliance with, and will continue to adhere to, such requirements.
- 7.2 In accordance with Executive Order 2007-01S, the Contractor, by signature on this document, certifies that it: (1) has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the State of Ohio.

ARTICLE 8

- 8.1 The Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Contract is void, and the Contractor shall immediately repay to the Owner any funds paid under this Contract.

ARTICLE 9

- 9.1 The Contractor represents and warrants that it has not provided any material assistance, as that term is defined in ORC Section 2909.33(C), to an organization that is identified by, and included on, the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization ("DMA")." The Contractor further represents and warrants that it has registered with the Ohio Business Gateway to file for DMA pre-certification and has provided, or shall provide, its DMA to the Commission prior to execution of this Contract Form. If these representations and warranties are found to be false, the Contract is void and the Contractor shall immediately repay to the Owner any funds paid under this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

CONTRACTOR

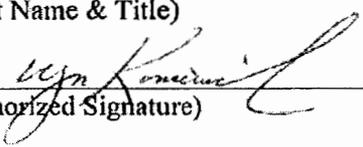
TransAmerica Building Company, Inc.

(Company Name)

William J.N. Koniewich, President

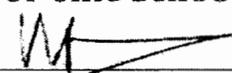
(Print Name & Title)

By:


(Authorized Signature)

Date: December 1, 2010

STATE OF OHIO SCHOOL FACILITIES COMMISSION

 12-20-10

Richard C. Murray
Executive Director

Date: _____

(Print Name)

12-20-10 6:00 AM

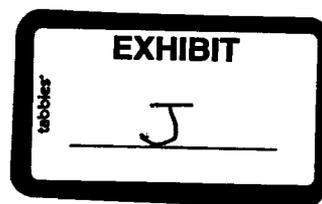
From: Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=ROB.GRINCH>
Sent: Monday, November 29, 2010 12:10 PM
To: Johnson, Paul <Paul.Johnson@ode.state.oh.us>
Cc: Scott Schaller <schaller@osd.oh.gov>
Subject: D&B 11-29-10 Update

Paul -

Director Murray met with school superintendents Corbett and Johnson, this morning, and discussed strategies for re-bidding the balance of the OSFC project (two new academic school buildings). Meeting conversation points included no longer applying PLA requirements and underscoring to Architectural and Construction Management firms that, going forward, there must be improved communication between the consulting firms so oversights that occurred while bidding the Dormitory Buildings HVAC and Plumbing bid packages do not repeat - the project team has no available options to obtain additional project funds (like typical OSFC K-12 school district projects) to cover bid day overages.

Rob G.

Robert P. Grinch
Senior Project Administrator
Ohio School Facilities Commission
(614) 995-4551



OSFC-Grinch 003798

ORIGINAL

IN THE COURT OF CLAIMS OF OHIO

SCHMID MECHANICAL, INC. :

Plaintiff, :

-vs- :

OHIO SCHOOL FACILITIES
COMMISSION, :

Defendant/
Counterclaim Plaintiff :

-vs- :

LOOPMASTER INTERNATIONAL, INC. :
et al., :

Third-Party Defendants. :

Case No. 2011-01470

Judge DALE A. CRAWFORD

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COURT OF CLAIMS
OF OHIO

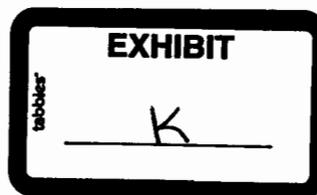
**DEFENDANT OSFC'S MOTION TO QUASH
PLAINTIFF SCHMID'S SUBPOENA OF
OFCC'S EXECUTIVE DIRECTOR AND
MOTION FOR PROTECTIVE ORDER**

Now comes the Defendant which moves to quash this subpoena on the grounds that:

- It was improperly served;
- A party cannot be compelled to attend;
- What the deponent knows about this case is privileged;
- This deposition is harassment.

The reasons for this Motion are more fully set out in the accompanying Memorandum in Support.

ON COMPUTER



Respectfully submitted,

MICHAEL DeWINE
Ohio Attorney General



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This is a claim by a low-bid, lump sum contractor for its work on one of the Ohio School Facilities Commission's (OSFC) school improvement projects. The OSFC has counterclaimed for damages against this contractor and a number of third parties have been added which are not relevant to this Motion.

Plaintiff served the attached subpoena (Exhibit A) by mail on the Executive Director of the Ohio Facilities Construction Commission (OFCC) of which the OSFC is a part.

What the Executive Director of OFCC knows about the Sandy Valley project is that which he has been told by counsel. (See Exhibit B) He essentially is the closest the State comes to having a party to the case.

The OSFC did have a project representative, Bill Courson, and that individual has been deposed on two (2) separate occasions by the Plaintiff.

II. **REASONS WHY PLAINTIFFS' SUBPOENA SHOULD BE QUASHED**

A. The subpoena was not properly served.

Although the Executive Director of the OFCC is not subject to being compelled to appear at a deposition by way of a subpoena (see subsequent section), the subpoena in this case was defective in that it had not been properly served. Ohio Civ.R. 45(B) allows for service of a subpoena in the following manner:

Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, by leaving it at the person's usual place of residence, or by placing a sealed envelope containing the subpoena in the United States mail as certified or express mail return receipt requested with instructions to the delivering postal authority to show to whom delivered, date of delivery and address where delivered, and by tendering to the person upon demand the fees for one day's attendance and the mileage allowed by law. The person responsible for serving the subpoena shall file a return of the subpoena with the clerk.

As best can be determined (because Plaintiff has not filed a return of service as required by rule) this subpoena was simply delivered via FedEx to the Executive Director of the OFCC at his business address. Ohio Civ.R. 45 does not permit service in this manner and as such this is the first reason the Plaintiff's subpoena should be quashed.

B. A party cannot be compelled to attend a deposition by way of subpoena.

Ohio Civil Rule 30(A) states in pertinent part:

The attendance of a party deponent may be compelled by the use of notice of examination as provided by division (B) of this rule. The deposition of a person confined in prison may be

taken only by leave of court on such terms as the court prescribes.

Ohio Civil Rule 45 states in pertinent part:

A subpoena may not be used to obtain the attendance of a party or the production of documents by a party in discovery. Rather, a party's attendance at a deposition may be obtained only by notice under Civ.R. 30, and documents or electronically stored information may be obtained from a party in discovery only pursuant to Civ.R. 34.

Thus, the Executive Director of the OFCC and OSFC, is in essence the party representative for the Defendant. As such, his attendance at a deposition cannot be compelled by way of a subpoena.

C. The subpoenaed deponent has no relevant, non-privileged information.

Ohio Civil Rule 26 is clear with regards to the scope of discovery. A party is entitled to discover that which is relevant and not privileged. Civ.R. 26(B)(1)

As stated in the statement of facts, the Executive Director of the OFCC has no first-hand knowledge of this case. What he knows about this case is based on privileged discussions that he has had with counsel. Accordingly, Plaintiffs' request to depose him is outside the scope of the discovery that they are entitled.

D. Efforts to Resolve.

Defendant, OFSC attempted to work out this dispute by asking the Plaintiff why he needed to depose the Executive Director of OFCC and offering to provide an alternative deponent who could provide relevant, non-privileged information to the Plaintiffs.

From the attached communication between counsel (Exhibit C), the Court can see that Plaintiff's counsel was unwilling to articulate a relevant, non-privileged discovery request. On

August 8, 2008, OSFC again contacted Plaintiff's counsel by telephone to discuss a resolution, including offering a different deponent. The result was the same – Plaintiff's counsel was unwilling to articulate the relevant, non-privileged reason for the request, leaving one to conclude that the purpose of this deposition is harassment. (Exhibit D) Therefore, OSFC is entitled to a protective order pursuant to Ohio Civil Rule 26(C) barring Plaintiff's deposition of the Executive Director of the OFCC.

III. CONCLUSION

Plaintiff's subpoena for the deposition of the Executive Director of the Ohio Facilities Construction Commission should be quashed for the following reasons:

- The subpoena was not properly issued and served;
- A party cannot be compelled to attend a deposition through the use of subpoena;
- This deposition would exceed the scope of discovery permissible under the Civil Rules – it seeks neither relevant nor non-privileged information;

Respectfully submitted,

MICHAEL DeWINE
Ohio Attorney General



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant OSFC's Motion to Quash Plaintiff Schmid's Subpoena of OFCC's Executive Director and Motion for Protective Order was sent by regular U.S. mail, postage prepaid, this 12 day of August, 2013 to:

e-mail
wcy

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SCHMID MECHANICAL, INC.

Plaintiff/Counter Defendant

v.

OHIO SCHOOL FACILITIES
COMMISSION

Defendant/Counter
Plaintiff/Third-Party Plaintiff

v.

LOOPMASTER INTERNATIONAL,
INC., et al.

Third-Party Defendants

Case No. 2011-01470

Judge Dale A. Crawford

ENTRY

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OF OHIO
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On August 12, 2013, Defendant/Counter Plaintiff/Third-Party Plaintiff, Ohio School Facilities Commission (OSFC), filed a combined motion to quash a subpoena issued to its executive director by Plaintiff/Counter Defendant, Schmid Mechanical, Inc., and motion for a protective order to prevent the director from being deposed.

Upon review, the motion is DENIED and the director shall make himself available for a deposition at a time convenient to all parties. In the event that the deposition is later determined to be frivolous, OSFC may move for sanctions.

DALE A. CRAWFORD
Judge

JOURNALIZED

Case No. 2011-01470

- 2 -

ENTRY

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