

EXHIBIT X

CERTIFICATION OF RECORD

I, William Koniewich, President of TransAmerica Building Company, Inc. ("TransAmerica"), certify that the attached document, Final Agreement for Construction Management Services, is a true and accurate copy of that Agreement as it appears in the project files for the Ohio School for the Deaf and Ohio State School for the Blind construction Project.



William Koniewich

BLIND / DEAF
CM CONTRACT

FINAL AGREEMENT
FOR
CONSTRUCTION MANAGEMENT SERVICES

OHIO SCHOOL
FACILITIES COMMISSION

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This Interim Agreement for Construction Management Services (this "Agreement"), is made as of November 18, 2009, by and between the State of Ohio through the *Ohio School Facilities Commission* (the "Commission"), whose contact person and address is set forth below, and *Bovis Lend Lease, Inc.* (the "Construction Manager"), whose contact person and address is set forth below.

The Commission, under the terms and conditions set forth herein, does employ the Construction Manager to provide management services with respect to the School and Residential Facilities for the Ohio State School for the Blind and Ohio School for the Deaf Project (the "Project").

The Construction Manager acknowledges that professional design services will be provided by *Steed Hammond Paul Inc.* (the "Architect"), whose contact person and address is set forth below:

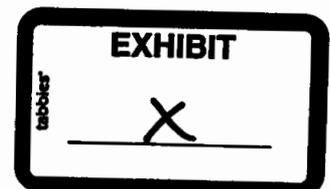
Project Name: School and Residential Facilities for the Ohio State School for the Blind and Ohio School for the Deaf

The Ohio School Facilities Commission:

Contact Person: Rob Grinch
Address: 10 W. Broad Street, 14th Floor
Columbus, Ohio 43215
Phone Number(s): (614) 466-6290
Fax Number(s): (614) 995-9908

Construction Manager:
Contact Person: Bovis Lend Lease, Inc.
Address: 111 West Rich Street, Suite 280
Columbus, Ohio 43215
Phone Number(s): 614-621-4148
Fax Number(s): 614-621-4148

Architect:
Contact Person: Andrew Maletz
Address: 1014 Vine Street, Suite 2100
Cincinnati, Ohio 45202
Phone Number(s): 513-381-2112
Fax Number(s): 513-381-1521



WHEREAS, the Ohio General Assembly has appropriated funds in Am. Sub. H.B. No 699 for the planning and design phase of the Project; and

WHEREAS, the Commission is administering the Project and desires to consult with designated representatives of the Ohio State School for the Blind and the Ohio School for the Deaf in accordance with a Memorandum of Understanding between them; and

WHEREAS, the Construction Manager desires, and is capable, to provide construction management services for the Project, including without limitation, services required to plan, schedule, coordinate, manage and administer the Project; and

WHEREAS, unless adjusted herein, all Direct Personnel Expenses, Basic Fees and Reimbursable Expenses and any Additional Fees payable to the Construction Manager under this Agreement will not exceed *One Million Nine Hundred Thirty Three Thousand and Thirteen Dollars (\$1,933,013)*. The amount of \$1,933,013 shown for this Agreement is the total amount for work associated with the Final Agreement only and is exclusive of Interim Agreement #1 and Interim Agreement #2.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Commission and the Construction Manager agree as follows:

ARTICLE I
RESPONSIBILITIES OF CONSTRUCTION MANAGER

1.0 The Construction Manager shall obtain a copy of the Ohio School Design Manual ("Design Manual"). The Construction Manager shall endeavor to ensure that the plans and materials proposed for use in the project comply with the standards established by the Design Manual. The Construction Manager agrees that any variance from the Design Manual will be submitted to the Commission for approval. The Basis of design and construction includes the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) - for Schools Silver Certification with a preferred investment in attaining points in the Energy and Atmosphere category.

1.1 **Construction Manager's Services.**

1.1.1 **Scope of Services; Applicable Law.** The Construction Manager shall provide construction management services for the Project in accordance with the terms of this Agreement. The Construction Manager shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable State rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations, and the Project's Program of Requirements (comprised of, without limitation, the Master Plan, Bracketing Forms, Project Budget and Cost Estimates) as incorporated by reference herein.

- 1.1.2 **Construction Budget.** The total amount available for the construction of the Project is estimated for purposes of this Agreement to be *Thirty Seven Million Three Hundred Eighty Three Thousand Dollars (\$37,383,000)* (the "Construction Budget"). The optional demolition budget is not included in the amount of the Construction Budget. Refer to Section 5.5 Optional Demolition/Abatement Expenses and Fees for the optional demolition budget. The Commission shall provide written notice to the Construction Manager and the Architect of any change in the Construction Budget. It is recognized that the Construction Manager, the Commission, and the Architect do not have control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the Construction Manager.
- 1.1.3 **Timeliness: Standard of Care.** The Construction Manager shall perform services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the Commission.
- 1.1.4 **Project Schedule.** Within thirty (30) days of receipt of the Architect's Design Schedule, the Construction Manager shall, in consultation with the Architect, merge the Design Schedule into a Project Schedule. Upon approval of the Project Schedule by the Architect and the Construction Manager, the Construction Manager shall submit the Project Schedule to the Commission for approval. It shall be the Construction Manager's responsibility to monitor, update, coordinate and seek adherence to the Project Schedule. The Project Schedule, when approved by the Commission, shall not be exceeded without notice and adjustment of the Project Schedule approved by the Commission.
- 1.1.5 **Personnel.** The identities of the principal persons, and the extent of their participation in performing the Construction Manager's services as set forth in an attachment to this Agreement, shall not be altered without the consent of the Commission.
- 1.1.6 **Non-Discrimination.** The Construction Manager represents that the Construction Manager is in compliance with all applicable equal employment opportunity requirements under law, as required by Section 153.59 of the Ohio Revised Code and/or any other applicable state or federal laws.
- 1.1.7 **Consultants.** The Construction Manager may provide services through one or more consultants employed by the Construction Manager (the "Consultants"); provided, the Construction Manager shall remain responsible to the Commission for all duties and obligations of the Construction Manager under this Agreement. Unless waived or otherwise modified in writing by the Commission upon written request of the Construction Manager, no Consultant shall be retained upon terms inconsistent with this Agreement. The identity of any Consultant and the extent of such Consultant's participation in performing the Construction Manager's services shall not be altered without the consent of the Commission.

- 1.1.8 **Anti-Abuse of Drugs and Alcohol.** The Construction Manager shall make a good faith effort to ensure that no employee of the Construction Manager will purchase, transfer, use or possess or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Projects. Except for the term "employee," terms in this Subparagraph are used as defined in Rule 123:1-76 of the Ohio Administrative Code.
- 1.1.9 **Ethics.** The Construction Manager represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.
- 1.1.10 **Ohio Services.** Unless otherwise authorized by the Commission, the Construction Manager's services shall be performed within the State of Ohio.
- 1.1.11 **Limitation of Authority.** The Construction Manager shall not have any authority to bind the Commission for the payment of any costs or expenses without the express written approval of the Commission. The Construction Manager shall have authority to act on behalf of the Commission only to the extent provided herein. In the event of an emergency affecting the safety of persons, the Project or adjacent property, the Construction Manager, without special instruction or authorization, shall act reasonably to prevent or minimize any threatened damage, injury or loss. The Construction Manager's authority to act on behalf of the Commission shall be modified only by an amendment in accordance with Subparagraph 9.5.2.
- 1.1.12 **Approval or Disapproval of Construction Manager's Services.** The Commission shall have the right to reasonably disapprove, by written notice stating the reasons for the disapproval, any portion of the Construction Manager's services for the Project. In the event that any of the Construction Manager's services are disapproved by the Commission, the Construction Manager shall proceed, when directed by the Commission, with corrections to the services to attempt to satisfy the objections. The Construction Manager acknowledges that any review or approval by the Commission of any services performed by the Construction Manager pursuant to this Agreement shall not relieve the Construction Manager of the Construction Manager's responsibility to properly and timely perform such services.
- 1.1.13 **Conflict of Interest.** Unless waived or otherwise modified in writing by the Commission upon written request of the Construction Manager, the Construction Manager and any consultant employed by the Construction Manager shall abstain from participating, either directly or indirectly, in any construction contract let in association with the Commission.
- 1.1.14 **Project Status Report.** Unless waived or otherwise modified in writing by the Commission, the Construction Manager shall, upon commencement of services through Project closeout, submit a project status report on a monthly basis to the Commission.

- 1.1.15 Project Website. The Construction Manager shall, upon commencement of services through Project closeout, maintain and summarize project information and reports as specified by the Commission on the Commission/Construction Manager website.
- 1.1.16 Unresolved Finding for Recovery. The Construction Manager represents that the Construction Manager is not subject to a finding for recovery under Section 9.24, ORC, or that Construction Manager has taken the appropriate remedial steps required under Section 9.24, ORC, or otherwise qualifies under this section.
- 1.1.17 Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization. For all contracts in excess of \$100,000, the Construction Manager is required to certify that the Construction Manager does not provide material assistance to any organization that is on the United States Department of State Terrorist Exclusion List. The Declaration Regarding Material Assistance/Nonassistant to a Terrorist Organization form to be executed by the Construction Manager is attached to the signature page and labeled Exhibit 1.
- 1.1.18 Ohio's Encouraging Diversity, Growth and Equity (EDGE) Program. Unless waived or otherwise modified in writing by the Commission upon written request of the Construction Manager, the Construction Manager shall comply with the EDGE business enterprise participation goal as indicated on the EDGE Participation Declaration. The Construction Manager shall report the actual amounts paid to EDGE business enterprises on the Construction Managers Invoice. Construction Manager is encouraged to utilize services provided by certified Minority Business Enterprise and EDGE vendors.
- 1.1.19 Drug Free Workplace. The Construction Manager is required to be enrolled and in good standing in an Ohio Bureau of Worker's Compensation (OBWC) Drug-Free Workplace Program (DFWP) or an equivalent OBWC-approved DFWP throughout the entire Project. Any consultant employed by the Construction Manager providing labor at the project site shall be enrolled and in good standing in the DFWP. The Construction Manager and any consultant employed by the Construction Manager that provide labor on the project site shall comply with the random testing requirements set forth in Section 153.03(B)(2)(b-c), Ohio Revised Code including the placement of its employees in a pool with a random drug testing rate of at least 5 percent. The Construction Manager certifies compliance with these requirements by signing this Agreement.

ARTICLE II
SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

2.1 General

- 2.1.1 The Construction Manager shall provide the Basic Services set forth in Paragraphs 2.2 through 2.7, inclusive, including services customary and typical. The Construction Manager shall provide services according to an Implementation Plan approved by the Commission. It is recognized that the Project's Program of Requirements may consist

of multiple Pre-Design, Schematic Design, Design Development, Construction Document, Bidding/Negotiation and Construction Phases.

2.1.2 Construction Manager shall provide services to accommodate the Project's Commissioning Authority and Maintenance Plan Advisor.

2.2 Predesign Phase (Program Validation).

2.2.1 Program of Requirements. The Construction Manager shall visit the Project site(s) with the Architect and review and comment upon the Architect's evaluation of the Project's Program of Requirements, schedule and budget requirements, including the Construction Budget, each in terms of the other.

2.2.2 Approved Program of Requirements and Revisions. The Construction Manager shall receive from the Architect a signed Program of Requirements; the Construction Manager shall deliver with comments the signed Program of Requirements to the Commission for approval. If any changes or adjustments to the Approved Program of Requirements are desired at any time after the Program of Requirements has been delivered to the Commission, the Architect shall prepare a written amendment to the Program of Requirements describing the changes or adjustments, and shall deliver the amendment to the Commission and the Construction Manager for review, comment and consent. The Approved Program of Requirements, as amended, shall determine the Scope of the Project.

2.2.3 Soil Testing. The Construction Manager shall assist the Commission in obtaining proposals to test surface and subsoil conditions at the site, obtaining additional borings, and carrying out any other test as deemed necessary.

2.3 Schematic Design Phase (Preliminary Drawings).

2.3.1 Review and Consultation. The Construction Manager shall assist the Architect's investigation of existing conditions.

2.3.2 Recommendations and Costs. The Construction Manager shall provide recommendations on constructability, logistics, availability of materials and labor, and time requirements for construction and factors related to the Commission Design Manual and the cost of the Project including costs of alternative designs or materials, preliminary budgets and possible economies.

2.3.3 Preliminary Life Cycle Analysis. The Construction Manager shall review any alternative design concepts for a Preliminary Life Cycle Analysis prepared or to be prepared by the Architect and provide recommendations thereon about the matters listed in Subparagraph 2.3.2 and forward a copy to the Commission.

2.3.4 Schematic Design Documents. The Construction Manager shall receive eight (8) copies of the Schematic Design Documents from the Architect. The Construction Manager will attend a meeting with the Architect and the Commission where those parties may make comments or suggestions to the Architect. After receiving

comments and suggestions, the Architect shall submit an amended set of Schematic Design Documents to the Construction Manager and obtain its approval in writing, then forward the approved amended set of Schematic Design Documents to the Commission for final review and approval.

2.3.5 Preliminary Cost Estimate. The Construction Manager shall, with the assistance of the Architect, prepare and submit a Statement of Probable Construction Cost based on current area volume and other unit costs, for approval of the Commission. The Construction Manager and the Architect shall review any difference between the Construction Budget and the Statement of Probable Construction Cost, identify reasons for any difference and recommend means to eliminate the difference. The Construction Manager shall prepare a report describing the agreed upon means and submit the report to the Commission.

2.4 Design Development Phase (Basic Drawings).

2.4.1 Life Cycle Analysis. The Construction Manager shall review any Life Cycle Cost Analysis, provide recommendations thereon about the matters listed in Subparagraph 2.3.2 and forward a copy to the Commission. This section does not apply if the Architect utilizes a system set forth in the Design Manual. The applicable Life Cycle Analysis calculations have already been prepared for systems contained in the Design Manual.

2.4.2 Design Development Documents. The Construction Manager shall receive eight (8) copies of the Design Development Documents from the Architect. The Construction Manager will attend a meeting with the Architect and the Commission where those parties may make comments or suggestions to the Architect. After receiving comments and suggestions, the Architect shall submit an amended set of Design Development Documents to the Commission for approval.

2.4.3 Cost Estimate and Project Schedule. Upon completion of the Design Development Phase for each phase of the Project or appropriate portion thereof, the Construction Manager, with the assistance of the Architect, shall prepare and submit a Detailed Estimate of Construction Cost and a Project Schedule indicating milestone completion dates for approval by the Commission. In establishing the Detailed Estimate of Construction Cost, the Construction Manager shall include reasonable contingencies for design, bidding and price escalation and determine in conjunction with the Architect the materials, equipment, component systems and types of construction to be included in the Contract Documents. The Construction Manager and the Architect shall review any difference between the Construction Budget or the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference and recommend means to eliminate the difference. The Construction Manager, the Architect, and the Commission shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the Construction Manager shall prepare a report describing the agreed upon means. The Construction Manager and the Architect shall review any differences between the initial Project Schedule and the updated Project Schedule, identify reasons for the differences and recommend whether the differences should be eliminated and, means to eliminate the differences. If the parties agree to eliminate any such differences, the Construction Manager shall prepare a report describing the agreed upon means. The Construction Manager and the Architect shall make any necessary amendments to the Approved Program of Requirements in accordance with Subparagraph 2.2.2.

2.5 Construction Documents Phase (Construction Drawings and Specifications).

2.5.1 Final Construction Documents, Drawings and Specifications. The Construction Manager shall prepare the Scope of Work for inclusion by the Architect in the Drawings and Specifications, taking into consideration factors including, but not limited to, time of performance, availability of labor, overlapping trade jurisdictions, provision of training for start-up and maintenance, provision of operation and maintenance manuals and provisions for temporary facilities, and to eliminate areas of conflict and overlapping in the Work to be performed by the various Contractors. The Construction Manager shall receive all Drawings and Technical Specifications from the Architect, review them and transmit them to the Commission for approval with recommendations thereon about the matters listed in Subparagraph 2.3.2 and possible Alternates.

2.5.2 Cost Estimate and Project Schedule. The Construction Manager shall inform the Architect and the Commission of the need for any changes in Project requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed and of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of Commission of any such changes or adjustments, the Construction Manager, with the assistance of the Architect, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such changes or adjustments and provide a copy to the Commission.

2.5.3 Bidding Documents. With the aid of the Architect and Commissioning Authority, the Construction Manager shall prepare documents necessary for bidding of Contracts by

reviewing those documents and making recommendations about the division of Work and matters to be included in the Special Conditions. The Architect shall review and provide comments to the Construction Manager on bid packages. Additionally, the Construction Manager shall work with the Architect to divide the Work into an appropriate number of bid packages so as to effect the greatest possible benefit, taking into full account the Construction Manager's responsibilities herein to schedule, coordinate and monitor the multiple Contractors.

2.5.4 **Government Approvals.** The Construction Manager shall cooperate with the Architect in submitting to the Division of Code Compliance of the Ohio Department of Commerce (the "Division"), such sets of the Drawings and Specifications as the Division may require for approval, together with any necessary completed applications. The Construction Manager shall assist the Architect to secure any necessary National Pollution Discharge Elimination System Storm Water General Permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the commencement of the Construction Phase, to prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project and to prepare and process the required notice of termination prior to Contract Completion. In addition, the Construction Manager shall cooperate with the Architect with filing of documents required for the approval of any other governmental authorities having jurisdiction over the Project.

2.5.5 **Additional Filings.** Upon approval of the Division of the Drawings and Specifications, the Construction Manager shall receive from the Architect one (1) set of corrected copies of the Drawings and Specifications bearing approval stamps of the Division.

2.5.6 **Special Items.** The Construction Manager shall schedule any necessary meetings with the Architect and the Commission and provide recommendations and information to the Architect and the Commission for discussion at such meetings regarding the assignment of responsibilities for refuse removal and for safety precautions and programs; temporary Project facilities and utilities, weather protection, fire protection and scaffolding; and equipment, materials and services for common use of Contractors, if any. The Construction Manager shall also review the Contract Documents to verify that the requirements for and assignment of responsibilities are included in the Contract Documents.

2.5.7 **Labor Recommendations.** The Construction Manager shall provide to the Architect an analysis of the types and quantities of labor required for the Project, review the availability of appropriate categories of labor required for all Contracts and shall make recommendations for actions designed to minimize adverse effects of labor shortages.

2.6 **Bidding or Negotiation Phase (Bidding Assistance and Recommendation).**

2.6.1 **Obtaining Bids.** The Construction Manager shall assist with the development of and make recommendations for bidding criteria, bidding schedules and bidding information and shall develop Bidders' interest in the Project.

- 2.6.2 **Prebid Conferences.** The Construction Manager, with the assistance of the Architect, shall conduct prebid conferences with prospective Bidders to familiarize Bidders with the Contract Documents, any special requirements of the Contract Documents and equal employment opportunity and set aside requirements. The Construction Manager shall obtain responses from the Architect to all questions at prebid conferences and review Addenda prepared by the Architect to incorporate those responses. The Construction Manager shall prepare a record of the questions and answers discussed at the prebid conferences, which shall be used by the Architect to prepare Addenda.
- 2.6.3 **Bid Packages and Addenda.** The Construction Manager shall assemble the Contract Documents into appropriate packages and shall distribute the packages to prospective Bidders and other appropriate persons, including without limitation any applicable local or regional plan room organizations. The Construction Manager shall review any Addenda and provide a copy to each person of record holding Drawings and Specifications.
- 2.6.4 **Bid Review.** The Construction Manager, with the assistance of the Architect and the Commission, shall coordinate the bid opening and the review of all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation of the Construction Manager and the Architect to the Commission about the award of, or rejection of, any bid or bids for each Contract for the Project in accordance with applicable law. In making the recommendation, the Construction Manager and the Architect shall evaluate all applicable Alternates referenced in the Contract Documents.
- 2.6.5 **Bid Substitutions.** Substitutions contained in the bid of any Bidder shall not be considered by the Construction Manager in recommending the award of any Contract.
- 2.6.6 **Pre-award Conferences.** The Construction Manager, with the assistance of the Architect, shall conduct pre-award conferences with apparently successful Bidders and shall gather documentation for contract execution from such Bidders. Upon the failure of a Bidder to provide such documentation in a timely manner, the Construction Manager shall assist the Commission in considering whether an extension of time for submitting such documentation is appropriate.
- 2.6.7 **Subcontractor and Material Supplier Review.** The Construction Manager, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the Standard Conditions.
- 2.6.8 **Over Budget Options.** If the Construction Budget is exceeded by the total of the lowest responsive and responsible bids and any legally negotiated prices for the Project, the Commission shall, at its option (1) approve in writing an increase in the Construction Budget; (2) authorize 2.6.8 rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Construction Budget; (3) abandon the Project, in whole or in part, and terminate this Agreement in accordance with Subparagraph 8.1.2 or Subparagraph 8.1.4, as applicable; or (4) cooperate in the revision of the Scope of the Project as defined in Subparagraph

2.2.2 to reduce the actual cost of construction to the Construction Budget. If the Commission adopts option (1) and such increase in the Construction Budget is more than ten percent (10%), the Construction Manager may request, in writing, an adjustment to the Basic Fee in accordance with Subparagraph 5.6.5. If the Commission adopts options (2), (3) or (4), the Construction Manager, with the assistance of the Architect, shall modify the Approved Program of Requirements, the Project Schedule and the Contract Documents and cooperate in any necessary bidding or negotiation without additional charge.

2.6.9 Further Revisions to Cost Estimate and Project Schedule. If necessary, the Construction Manager shall inform deliver the signed, revised Detailed Estimate of Construction Cost or Project Schedule to the Commission and inform the Architect and the Commission of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the Commission of any such adjustments, the Construction Manager, with the assistance of the Architect, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments and deliver the signed, revised Detailed Estimate of Construction Cost or Project Schedule to the Commission.

2.6.10 Contract Execution/Notices. The Construction Manager, with the assistance of the Architect, shall prepare and issue Notices of Award and Notices to Proceed, the Construction Contracts, Notices to Surety and the Notice of Commencement.

2.7 Construction Phase (Administration of Construction).

2.7.1 Duration; Extent; Access. The Construction Phase will commence with the award of a Contract for the Project to a Contractor and will terminate upon Final Acceptance of the Project by the Commission. The Construction Manager shall at all times have access to the Project whenever any Work is in preparation or in progress.

2.7.2 Duties Generally. The Construction Manager shall provide administration of the Project, scheduling of Work and coordination of the Contractors and any other persons on the site of the Project. Unless otherwise waived in writing by the Commission, the Construction Manager shall maintain a competent staff at the Project in preparation of progress on the Project and shall establish and implement on-site organization and authority so that the Work on the Project may be accomplished timely and efficiently. The Construction Manager shall refer all questions for interpretation of the Contract Documents to the Architect. The Construction Manager's duties shall not, and shall not be deemed to, require the Construction Manager to undertake any of the Contractor's Responsibilities as set forth in Subparagraph 2.7.18.

2.7.3 Investigation of Conditions for Renovation or Remodeling. For renovation and remodeling, the Construction Manager, with the assistance of the Architect, shall, as portions of the Project become accessible and as reasonably necessary, investigate existing conditions and assist in determining the accuracy of information provided by the Commission about existing conditions.

- 2.7.4 **Inspections.** The Construction Manager shall inspect the Work of each Contractor for Defective Work. If, through inspection or otherwise, the Construction Manager shall become aware of any Defective Work on the Project, the Construction Manager shall report all Defective Work to the Commission and the Architect, together with recommendations for the correction thereof, and shall notify any applicable Contractor to correct such Defective Work.
- 2.7.5 **Progress and Records.** The Construction Manager shall record the progress of the Project and provide written reports to the Commission on a monthly basis unless otherwise agreed in writing. Such reports shall include, without limitation, information about variations between actual and budgeted or estimated costs and information on each Contractor's Work, as well as completion status on the entire Project, showing percentages of completion. The Construction Manager shall require each Contractor to submit a safety program. The Construction Manager shall review those safety programs for the purpose of coordinating them with each other. The Construction Manager's responsibilities to coordinate the safety programs shall not require the Construction Manager to control the acts of Contractors, Subcontractors or any other persons not employees of the Construction Manager. The Construction Manager shall keep a log containing a daily record of weather, number of workers on site for each Contractor, identification of equipment, work accomplished, problems encountered and other similar relevant data. The Construction Manager shall provide for the maintenance at the Project site, on a current basis of records of all Contracts, Drawings, Specifications, Shop Drawings, Product Data, Samples, purchase orders, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. The Construction Manager shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations to the extent certified by a qualified surveyor or professional engineer and any test results, make all such records available to the Architect, the Contractors, and the Commission at all times and at the completion of the Project deliver all such records to the Commission.
- 2.7.6 **Construction Schedule.** The Construction Manager shall, with the cooperation of the Architect and the Contractors, prepare the Construction Schedule in accordance with the Standard Conditions. The Construction Manager shall provide copies of the Construction Schedule and schedule of submittals to the Architect and the Commission and incorporate the Construction Schedule and schedule of submittals into the Project Schedule so that the Project Schedule includes a Critical Path for the Project and provides for each scope of Work, including without limitation, phasing of construction, times for commencement and completion required of each Contractor and ordering and delivery of materials requiring long lead-time. The Construction Manager shall require each Contractor to provide records for any materials that require long lead-time and to certify to the Construction Manager that such materials have been ordered for timely delivery to the Project. The Construction Manager shall, if requested by the Commission, provide a priority of occupancy in accordance with the Standard Conditions. The Construction Manager shall review the sufficiency of the Contractors' workforce and the number and types of equipment assigned and provided by each Contractor to the Project and shall make recommendations to the Commission about the adequacy of such workforce and equipment. The Construction Manager shall periodically inform the Architect and the Commission of the need to update the Project Schedule as required to show current conditions, including without

limitation, to conform to the Construction Schedule, as updated from time to time. If such conditions indicate that milestone completion dates shown on the Project Schedule may not be met, the Construction Manager shall recommend corrective action to the Architect and the Commission and carry out the directions of the Commission so that the milestone completion dates may be met, unless the Commission agrees in writing to revise the milestone completion dates. Whenever the Project Schedule is revised or updated as provided in this Subparagraph, the Construction Manager, with the assistance of the Architect, shall prepare a revised Project Schedule, and deliver the revised Project Schedule to the Commission.

- 2.7.7 **Meetings.** The Construction Manager shall schedule, conduct and participate in preconstruction, progress, quality control, commissioning and special meetings with the Architect, the Commission appropriate Consultants, the Contractors and any other parties involved in the Project to discuss such matters as procedures, progress, problems and scheduling. The Construction Manager shall prepare and distribute minutes of all such meetings to the Architect, the Commission, the Contractors and any other parties involved. The Construction Manager shall initiate and coordinate partnering meetings with the Architect, the Commission, appropriate Consultants, the Contractors and other parties involved in the Project.
- 2.7.8 **Tests: Inspections.** The Construction Manager shall advise and consult with the Architect and the Commission during the Construction Phase as to the need for any special testing, inspections or approval of Work on the Project.
- 2.7.9 **Submittal Review.** The Construction Manager shall receive, review for completeness and responsiveness the Contractors' submittals such as Shop Drawings, Product Data and Samples and shall deliver them to the Architect for review and approval as provided in the Standard Conditions.
- 2.7.10 **Bulletins: Change Orders.** The Construction Manager shall recommend necessary or desirable changes in the Project to the Commission and the Architect, review any Bulletins prepared by the Architect prior to their issuance, review Contractor proposals and submit recommendations thereon to the Commission and the Architect, assist in negotiating Change Orders in accordance with the Standard Conditions for authorization and execution by the Commission and the Architect. The Construction Manager shall keep a log of all requests for information, Field Work Orders, Bulletins, Contractor Proposals and Change Orders.
- 2.7.11 **Project Costs.** The Construction Manager shall maintain Project cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis and afford the Commission access to these records at all times. The Construction Manager shall approve all invoices to be paid from the Project Construction Fund and maintain a log to track and record each approved expenditure. The Construction Manager shall review and reconcile the Construction Manager's log with records maintained by the Commission on a quarterly basis and submit a report to the Commission.
- 2.7.12 **Contractor Payments.** Based upon the Construction Manager's review of the applicable Work and evaluations of the applicable Contractor's Applications for Payment, the Construction Manager shall review and recommend for approval,

modification or rejection the amounts shown on such Applications as being due to the applicable Contractor in accordance with the Contract Documents. Each Application for Payment shall be signed by the Architect, the Construction Manager and the Commission, as applicable.

- 2.7.13 **Partial Occupancy and Maintenance Plan.** The Construction Manager shall assist the Commission in determining dates of Partial Occupancy of the Work or portions thereof designated by the Commission and shall assist in obtaining any necessary temporary occupancy certificate or other certificate from any applicable government authority. The Construction Manager shall review any lists prepared by the Architect of incomplete or unsatisfactory Work and prepare schedules for the completion or correction of such Work. The Construction Manager will initiate the process for developing a preventative maintenance and capital planning program for the completed facilities. The Construction Manager will collect and organize the facility equipment information in accordance with procedures and instructions provided in Appendix B to this Agreement.
- 2.7.14 **Contract Closeout.** Upon receipt of a Contractor's Punch List, the Construction Manager shall provide written notice to the Commission and the Architect that the Work is ready for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, conduct the Final Inspection with the concurrence of the Architect, review an Architect's Punch List, if applicable, and prepare and process a Certificate of Contract Completion in accordance with the Standard Conditions. Upon Contract Completion, the Construction Manager shall receive, review for conformity with the requirements of the Contract Documents and transmit to the Commission any affidavits and turn over any keys, manuals and the originals of any guarantees, warranties, releases, bonds and waivers. The Construction Manager shall assist the Commission with the check out of utilities and of operations systems and equipment for readiness and shall assist the Commission in the initial start-up and testing of such equipment and systems including coordinating the training of the staff on the operation and maintenance of new systems.
- 2.7.15 **Contractor Claims.** The Construction Manager shall endeavor to timely and proactively identify, address and resolve matters involving persons, entities or events which may give rise to a request for equitable adjustment of the Contract. The Construction Manager shall properly document and review claims from Contractors for additional compensation or time extension in accordance with the provisions set forth in the Standard Conditions. In the event the field level review does not resolve the issues brought forth by the Contractor, the Construction Manager shall make arrangements for, and attend dispute resolution or partnering intervention meetings related to each claim.
- 2.7.16 **Record Drawings.** The Construction Manager shall review the As-Built Drawings provided by the Contractors and verify that the As-Built Drawings, to the best of the Construction Manager's knowledge based upon the Construction Manager's observations during the progress of the Project, detail the actual construction of the Project. The Construction Manager shall transmit the verified As-Built Drawings to the Architect for the preparation of Record Drawings.

2.7.17 Eleven-Month Inspection and Project Close Out. The Construction Manager shall schedule and conduct a walk-through of the Project with the Commission one month prior to the expiration of the one year Guarantee provided by the Contractor. The Construction Manager shall consult with the Architect and the Commission to address any issue identified in the walk-through according to the procedures specified in the Standard Conditions. The Construction Manager will assist the Commission to provide a final accounting of the Project Construction Fund, including a total cost and total revenue for all funds related to the Project.

2.7.18 Contractor Responsibilities. The Construction Manager shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Work on the Project. The Construction Manager shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the Project. The Construction Manager shall not be responsible for the presence, handling, exposure or disposal of hazardous materials or mold at the Project site.

ARTICLE III ADDITIONAL SERVICES

3.1 General.

3.1.1 Basic Services. The following services are not included in Basic Services and shall be provided only if approved by the Commission in writing. The following services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Construction Manager shall not be compensated for any of the following services made necessary by the act or omission of the Construction Manager or any Consultant. Unless waived by the Commission in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

3.1.2 Specialized Services. Providing any service not included in this Agreement or not ordinarily furnished in accordance with customary practice.

3.1.3 Partnering Facilitator. Serving as a partnering facilitator.

3.1.4 Grant Applications. Preparing applications and supporting documents for governmental grants, loans or advances.

3.1.5 Replacement Work. Providing consultation concerning replacement of any Work on the Project damaged by fire, casualty or other cause not due to negligence of the Construction Manager or any Consultant and furnishing services as may be required in connection with the replacement of such Work.

3.1.6 Special Studies. Providing Planning Site Evaluations, Environmental Studies or Comparative Studies of alternative sites and preparing special surveys, studies and

submissions required for approval of governmental authorities or others having jurisdiction over the Project.

- 3.1.7 **Surveys.** Providing Survey services including land surveys and right of way studies.
- 3.1.8 **Contractor Default.** Providing services made necessary by the default of a Contractor.
- 3.1.9 **Site Availability.** Providing services necessary for the State of Ohio to obtain ownership or leasehold interest in the Project site, in order to permit the Contractor to perform the Work.

**ARTICLE IV
RESPONSIBILITIES OF THE COMMISSION**

- 4.1 **Required Actions.** The Commission shall review, approve or take such actions as are required by this Agreement, the Contract Documents and applicable law in a reasonable and timely manner.
- 4.2 **Instructions to Contractors.** All instructions of the Commission or the Architect to Contractors shall be through, or in consultation with, the Construction Manager, with notice to the Architect.
- 4.3 **Commission's Requirements.** The Commission shall provide full information regarding its requirements for the Project including without limitation the Program of Requirements, any agreements related to the Project, design and construction standards and work rules which shall set forth the Project's use, design, time and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment and systems and site requirements.
- 4.4 **Stated Representative.** If any party shall change its stated representative as set forth on Page 1 of this Agreement, they shall notify all other parties of that change immediately in writing.
- 4.5 **Commission's Representative.** The Commission shall designate a Representative; i.e. an individual authorized to act on the Commission's behalf with respect to the Project to the extent provided in the Contract Documents. If the Commission changes the Commission's Representative, the Commission shall notify the Construction Manager immediately in writing.
- 4.6 **Site Description.** If reasonably requested by the Construction Manager as necessary for the Project, the Commission shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and complete data pertaining to existing building, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including size, inverts and depths. The Construction Manager shall be entitled to rely upon the accuracy and completeness of information provided by the Commission under this Paragraph.

- 4.7 **Notice to Construction Manager.** If the Commission observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt notice thereof shall be given to the Construction Manager.
- 4.8 **Legal Representation.** The Commission shall not be responsible to provide, or pay for, any legal representation of the Construction Manager.

ARTICLE V COMPENSATION

- 5.1 **Total Compensation.** The total compensation of the Construction Manager shall consist of the overall Direct Personnel Expense, Reimbursable Expenses, the Basic Fee, and any Optional Demolition/Abatement Fees and shall not exceed the total amount of *One Million Nine Hundred Thirty Three Thousand and Thirteen Dollars (\$1,933,013)*. The amount of \$1,933,013 shown for this Agreement is the total amount for work associated with the Final Agreement only and is exclusive of Interim Agreement #1 and Interim Agreement #2.
- 5.2 **Direct Personnel Expense.**
- 5.2.1 **Definition.** Direct Personnel Expense shall mean the hourly portion of the direct cost of salaries and wages of all personnel of the Construction Manager, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pension and profit sharing pursuant to plans qualified under federal law and similar benefits related to their time devoted to the Project. Direct Personnel Expense shall not include any bonus or similar plan or agreement related to the Construction Manager's performance on, or profit from, the Project.
- 5.2.2 **Amount of Direct Personnel Expense.** The Construction Manager will invoice the actual Direct Personnel Expense of the approved personnel on the Project. The Construction Manager may group employees within the same category of labor to determine a blended rate per job position for the purpose of invoicing. The Direct Personnel Expenses, excluding Optional Demolition/Abatement shall not exceed the amount of *One Million Seventy Eight Thousand Three Hundred Sixty Dollars (\$1,078,360)*, as defined in Subparagraph 5.2.1 unless approved by amendment in accordance with Subparagraph 9.5.2.
- 5.2.3 **Reconciliation of Actual Direct Personnel Expense with Invoiced Direct Personnel Expense.** The Construction Manager shall, at the end of the performance of the services under this Agreement, and prior to final payment being due, provide the Commission with an accounting that reconciles all invoiced hourly rates with the actual Direct Personnel Expense as defined for all hours billed on the project.

- 5.3 **Basic Fee.** In addition to the Direct Personnel Expense, the Construction Manager will receive a Basic Fee for home office overhead and profit in the amount of *Six Hundred Seventeen Thousand Three Hundred Five Dollars (\$617,305)*. The Basic Fee portion of compensation is a condition of the proposal submittal process. The Basic Fee shall be 2% of the construction budget as determined at the time of entering into this Agreement, with no representation that additional Basic Fee will be approved if the construction budget changes.
- 5.4 **Reimbursable Expenses.**
- 5.4.1 **Definition.** Reimbursable Expenses means actual expenditures incurred by the Construction Manager or its Consultants in the interest of the Project approved by the Commission according to the Commission's Policy on Overhead and Reimbursable Expenses, attached to this Agreement and labeled Appendix A, for: (1) the Project field office and equipping and furnishing thereof, including without limitation utilities; (2) postage, telephone, photographs, copying expenses and expenses incurred in the event of an emergency; (3) transportation and living when traveling in connection with the Project, if approved in advance by the Commission; and (4) expenses that are negotiated prior to entering into an Agreement and specifically listed in the approved Implementation Plan, including Commissioning, Maintenance Planning, Neutral Facilitation and printing.
- 5.4.2 **Limits on Transportation and Living Expenses.** The cost for transportation and living expenses in connection with the Project shall be in accordance with OBM Administrative Travel Rule, OAC 126-1-02, as amended from time to time. The Commission will provide a copy of travel reimbursement rates to a Construction Manager upon request.
- 5.4.3 **Limits on Tangible Property.** The determination of whether to purchase or rent tangible property as Reimbursable Expenses must be approved in advance by the Commission. The Construction Manager shall maintain a current inventory of all such property and any such property that has been purchased and has a useful life after Project Closeout for disposition in accordance with procedures and instruction issued by the Commission. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Subparagraph 9.5.2.
- 5.4.4 **Limit.** The Construction Manager shall use all reasonable means to minimize Reimbursable Expenses. In all events, Reimbursable Expenses, excluding Optional Demolition/Abatement shall not exceed *Two Hundred Thirty Seven Thousand Three Hundred Forty Eight Dollars (\$237,348)* without the written approval of the Commission and an amendment in accordance with Subparagraph 9.5.2. Reimbursable Expenses for the following items shall not exceed the respective amounts unless approved by the Commission.
- 5.5 **Optional Demolition/Abatement Expenses and Fees.** The Commission shall pay the Construction Manager the respective expenses and fees for optional demolition/abatement services. The optional demolition/abatement budget for the project is *Zero (\$0)*. The optional demolition budget is not included in the amount of the Construction Budget. The Direct Personnel Expenses shall not exceed the amount of *Zero (\$0)*. Reimbursable Expenses shall not exceed the amount of *Zero (\$0)*. A Basic Fee will be due to the

Construction Manager in the amount of Zero (\$0), 2% of the contract price of the optional demolition/abatement.

For other Additional Services provided by the Construction Manager and any Consultants in accordance with Article III, the Commission shall pay the Construction Manager Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the Commission and the Construction Manager. Except for the Additional Services and Additional Fees listed above, Additional Services and any Additional Fees may be approved only by an amendment in accordance with Subparagraph 9.5.2.

5.6 Method and Terms of Payment.

5.6.1 **Direct Personnel Expenses.** Payment of the Direct Personnel Expenses will be made on a monthly basis upon receipt of a properly completed and certified Construction Manager's Pay Request. The Construction Manager will retain documentation to support its request for payment, and this documentation will be available for audit upon the request of the Commission.

5.6.2 **Basic Fee.** Payment of the Basic Fee shall be made monthly in proportion to services performed in each Phase in accordance with the following percentages of the Basic Fee:

Preconstruction	35%
Construction Phase	60%
Project Closeout	5%

Any balance of the final 5% of the Basic Fee shall be paid upon Project Closeout as follows; one-half after review of all Punch-Lists by the Construction Manager and one-half after completion of all Punch-List items to the reasonable satisfaction of the Commission and delivery of Project Record Submittals to the Architect. The Commission may waive the withholding of any final balance or part thereof, if Construction Manager has performed to the reasonable satisfaction of the Commission. The Basic Fee, including without limitation the final 5% thereof, shall be subject to all setoffs in favor of the State for claims against the Construction Manager. Payments for Basic Services shall be based upon a properly completed Construction Manager's Pay Request and shall be made within the applicable time limits provided by Section 126.30 of the Ohio Revised Code.

5.6.3 **Direct Personnel Expense, Reimbursable Expenses, Additional Fees.** Payments for Direct Personnel Expense as set forth in Paragraph 5.1 and for Reimbursable Expenses as set forth in Paragraph 5.2 and any Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.4, shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed Construction Manager's Pay Request. Without exceeding the total compensation approved in Section 5.1 of this Agreement, the allocation of costs in the Construction Manager's approved Implementation Plan may be adjusted upon request of the Construction Manager and approval by the Commission.

- 5.6.4 **Payments by Construction Manager.** Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Construction Manager shall pay all portions thereof due to Consultants and to persons who provided items the expenses of which are Reimbursable Expenses.
- 5.6.5 **Compensation for Extension of Project Time.** If the Construction Manager notifies the Commission not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 2.6.9, that such time for completion is reasonably expected to be exceeded by more than thirty (30) days through no fault of the Construction Manager, the compensation, if any, for Basic Services to be rendered and Reimbursable Expenses to be incurred during such extended period shall be negotiated to the mutual reasonable satisfaction of the Commission and the Construction Manager. If, as a result of such negotiation, the Commission agrees that the Construction Manager shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Construction Manager renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Commission.
- 5.6.6 **Compensation for Change of Scope of Project or Construction Budget.** The Scope of the Project is defined by the Approved Program of Requirements as provided in Subparagraph 2.2.2. The Construction Budget is defined in Subparagraph 1.1.2. If the Commission materially changes the Scope of the Project after the Schematic Design Phase or the Construction Budget at any time after the execution of this Agreement through no fault of the Construction Manager, any necessary adjustment in the compensation of the Construction Manager shall be negotiated to the mutual reasonable satisfaction of the Commission and the Construction Manager. If, as the result of such negotiation, the Commission agrees that the Construction Manager shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Construction Manager renders any services made necessary by such change in the Scope of the Project or the Construction Budget, unless otherwise agreed in writing by the Commission.

ARTICLE VI
INSURANCE, INDEMNIFICATION AND FINANCIAL ASSURANCE

6.1 Insurance

- 6.1.1 **Casualty Insurance.** Except when a modification is requested in writing by the Construction Manager and approved in writing by the Commission, the Construction Manager shall carry and maintain at the Construction Manager's cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement:
- a. Workers' Compensation and employer's liability insurance to the full extent as required by applicable law;

- b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
 - i. General Aggregate Limit:
\$2,000,000 each occurrence;
 - ii. Each Occurrence Limit:
\$1,000,000 each occurrence; and
- c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.

6.1.2 **Certificates.** The Construction Manager shall provide the Commission with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days' prior written notice to the Commission.

6.2 **Indemnification.**

6.2.1 **Indemnification by Construction Manager Generally.** To the fullest extent permitted by law, the Construction Manager shall and does agree to indemnify and hold harmless the Commission and their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by or result from performance of the Construction Manager's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, but (c) only to the extent they are caused by any negligent acts of the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager is legally liable. This Subparagraph is intended to be, and shall be construed as consistent with, and not in conflict with, Section 2305.31 of the Ohio Revised Code.

6.2.2 **Intellectual Property Indemnification.** To the fullest extent permitted by law, the Construction Manager shall and does agree to indemnify and hold harmless the Commission and their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager is legally liable. The Construction Manager shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the Commission or the Architect.

6.3 **Financial Assurance.** Except when a modification is requested in writing by the Construction Manager and approved in writing by the Commission, the Construction

Manager, as required by Section 9.333 of the Revised Code, shall provide a letter of credit pursuant to Chapter 1305 of the Ohio Revised Code, a surety bond pursuant to Sections 153.54 to 153.57 of the Ohio Revised Code, a certified check or cashier's check in an amount equal to the value of this Agreement or other reasonable financial assurances of a nature and amount satisfactory to the Commission before performing any services hereunder.

**ARTICLE VII
DISPUTE RESOLUTION PROVISIONS**

- 7.1 **Mediation.** Instead of, or in addition to, the procedures set forth below, the Commission and the Construction Manager may, by written agreement, submit any claims, requests, disputes or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.
- 7.2 **Notice and Filing of Requests.** Any request by the Construction Manager for additional fees or expenses shall be made in writing to the Commission and filed prior to payment of the final 5% of the Basic Fee. Failure of the Construction Manager to timely make such a request shall constitute a waiver by the Construction Manager of any request for such fees and expenses.
- 7.3 **Request Information.** In every written request filed pursuant to Paragraph 7.2, the Construction Manager shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.
- 7.4 **Meeting with Project Administrator.** If the Construction Manager files a written request with the Commission pursuant to Paragraph 7.2, the Commission shall, within thirty (30) days of receipt of the request, schedule a meeting in an effort to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting scheduled by the Commission shall be attended by persons expressly and fully authorized to resolve the request on behalf of the Construction Manager.
- 7.5 **Performance.** The Construction Manager shall proceed with the Construction Manager's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Construction Manager and the Commission in writing. The Commission shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute in accordance with this Paragraph.

**ARTICLE VIII
TERMINATION AND REMEDIES**

- 8.1 **Termination of Agreement.**
- 8.1.1 **Means of Termination.** This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail to perform in accordance with the

terms of this Agreement; provided, however, the Construction Manager shall not terminate this Agreement for non-payment if the Commission initiates the payment process by preparing, executing and submitting a voucher for all reasonably undisputed amounts due to the Construction Manager within ten (10) days of receipt of the Construction Manager's written notice to terminate. This Agreement may be terminated by the Commission without cause upon fifteen (15) days written notice to the Construction Manager. This Agreement may be terminated at any time upon the mutual consent of the Commission and the Construction Manager.

- 8.1.2 Construction Manager's Remedies Upon Termination by Commission Without Cause or Termination by Construction Manager.** In the event of a termination which is not due to the failure of the Construction Manager to perform in accordance with the terms of this Agreement, the Construction Manager shall be compensated for all Basic Services of a completed Phase performed prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Direct Personnel Expense and Reimbursable Expenses incurred prior to the termination date, and all reasonable demobilization costs. In such event, for services rendered prior to the termination date in an uncompleted Phase and for Additional Services, the Construction Manager shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable, and as reasonably determined by the Commission, together with Direct Personnel Expense and Reimbursable Expenses incurred prior to the termination date.
- 8.1.3 Construction Manager's Remedies Upon Termination by Commission for Cause.** In the event of a termination which is due to the failure of the Construction Manager to perform in accordance with the terms of this Agreement, the Construction Manager shall be compensated only for Basic Services performed and paid for prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Additional Services completely performed prior to the termination date. In such event, the Construction Manager shall be reimbursed only for that portion of the Basic Fee and Reimbursable Expenses incurred prior to the date of the notice of termination, unless the Commission consents in writing to the payment of Direct Personnel Expense and Reimbursable Expenses incurred after that date.
- 8.1.4 Construction Manager's Remedies Upon Termination by Mutual Consent.** In the event of a termination upon the mutual consent of the Commission and the Construction Manager, any compensation for Basic Services or for Additional Services or payment of Direct Personnel Expense and Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to such termination.
- 8.1.5 Post-Termination Matters.** If the Commission and the Construction Manager agree that any services are to be performed for the Project by the Construction Manager after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Direct Personnel Expense and Reimbursable Expenses related to such services shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to the commencement of such services. Such amendment and any relevant provisions of this Agreement shall survive termination of this Agreement.

8.2 Remedies

8.2.1 Cumulative Remedies. No remedy conferred upon the Commission by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the Commission shall be cumulative and shall be in addition to any other remedy given to the Commission hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Construction Manager by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Construction Manager shall be cumulative and shall be in addition to any other remedy given to the Construction Manager hereunder or now or hereafter existing.

8.2.2 Remedies Not Waived. No delay, omission or forbearance to exercise any right, power or remedy accruing to the Commission or the Construction Manager hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time to time and as often as deemed expedient.

ARTICLE IX MISCELLANEOUS PROVISIONS

9.1 Commission Use of Documents.

9.1.1 Property of State. Drawings, Specifications and other documents prepared by, or with the cooperation of, the Construction Manager or any Consultant pursuant to this Agreement are the property of the Commission whether or not the Project for which they are prepared is commenced or completed. The Construction Manager or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference.

9.1.2 Construction Manager's Intellectual Property. All inventions, patents, design patents and computer programs acquired or developed by the Construction Manager in connection with or relation to the Project shall remain the property of the Construction Manager and shall be protected by the Commission from use by others except by agreement in writing with appropriate and agreed upon compensation to the Construction Manager.

9.2 Public Relations. Prior to completion of the Project, any public relations or publicity about the Project shall be solely within the control and with the consent of the Commission.

9.3 Records. The records of all the Construction Manager's Direct Personnel Expenses, Reimbursable Expenses and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Commission at all times and shall be maintained for seven (7) years after Final Acceptance of the Project by the Commission. All other records kept by the Construction Manager related to the Project shall be available to the Commission at all times and shall be maintained for sixteen (16) years after Final Acceptance of the Project by the Commission. The Commission may request the Construction Manager to retrieve requested project records at no additional cost during the time they are to be maintained by the Construction Manager.

9.4 Successors and Assigns. The Commission and the Construction Manager, each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement. The Construction Manager shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the Commission.

9.5 Extent of Agreement.

9.5.1 Entire Agreement. This Agreement and the Contract Documents represent the entire and integrated agreement between the Commission and the Construction Manager and supersede all prior negotiations, representations or agreements, either written or oral.

9.5.2 Amendments. This Agreement may be amended only by an amendment prepared by the Commission and signed by both the Construction Manager and the Commission..

9.5.3 Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.5.4 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

9.5.5 Precedence. If there are any inconsistencies between the provisions of the Contract Documents, or this Agreement, the provisions of the Contract Documents shall prevail. In addition, the Construction Manager should refer to the provision of the Ohio School Design Manual for guidance wherever appropriate, including without limitation all exhibits thereto, for applicable procedures, policies and forms.

9.5.6 Conditions to Validity. None of the rights, duties and obligations contained in this Agreement shall be binding on any party until all legal requirements have been complied with, including without limitation that the Director of Budget and Management of the State first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, as required by Section 126.07, Ohio Revised Code, all necessary funds are available from the applicable state agencies or instrumentalities and, when required, the expenditure of such funds is approved by the Controlling Board of the State of Ohio or other applicable approving body.

9.6 Governing Law.

9.6.1 Law of Ohio. This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction and the State of Ohio shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.

9.6.2 Capitalized Terms. Capitalized terms in this Agreement shall have the same meaning as those in the Standard Conditions, unless otherwise defined herein or unless another meaning is indicated by the context.

- 9.7 **Assignment of Antitrust Claims.** Each party to this Agreement recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the Commission. Therefore, the following assignment is made:

Intending to be legally bound, the Construction Manager, acting herein by and through the person signing this Agreement on its behalf as a duly authorized agent, hereby assigns, sells, conveys and transfers to the Commission any and all right, title and interest in and to any and all claims and causes of action which the Construction Manager may now have or hereafter acquire under the antitrust laws of the United States of America or the State, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the Commission pursuant to this Agreement, and EXCEPT as to any claims or causes of action which result from antitrust violations commencing after the price is established under this Agreement and which are not passed on to the Commission by any means. In addition, the Construction Manager warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and State antitrust claims and causes of action to the Commission, subject to the proviso and exception stated above. The provisions of this Subparagraph shall become effective at the time the Commission executes its concurrence to this Agreement without further acknowledgment by any of the parties.

9.8 **Notices.**

- 9.8.1 **Addresses.** All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be given if delivered to the Contact Person, listed on Page 1 of the Agreement. The term 'in writing' shall include electronic communication through the information management systems established by the Commission.
- 9.8.2 (Reserved).
- 9.8.3 **Facsimiles.** For convenience of communication only, notices, certificates, requests or other communications hereunder of fewer than ten (10) pages, except requests for payment, may be sent by facsimile transmission. Notices, certificates, requests or other communications sent by facsimile transmission shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.8.1. Requests for payment may be sent to the Commission by facsimile transmission only upon specific direction from the Commission.
- 9.8.4 **Emergencies.** In the event of an emergency involving the Project, including, without limitation, a fatality, serious injury, fire, collapse, flood, utility or power loss to occupied facilities, explosion, or environmental damage, the Construction Manager shall immediately notify the Commission by telephone.
- 9.8.5 **Change of Address.** The Commission or the Construction Manager may, by notice given hereunder, designate any further or different addresses telephone numbers or

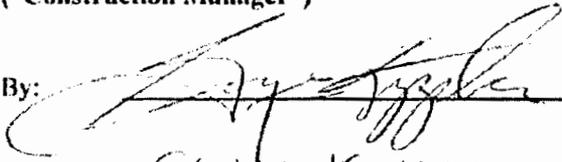
facsimile numbers to which subsequent notices, certificates, requests or communications shall be sent.

- 9.9 **Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Final Agreement as of the date and year written above.

**Boys Lend Lease
("Construction Manager")**

By: _____


GEORGE KEPPNER
(Print Name)

Title: _____

SVP

Tax ID #: _____

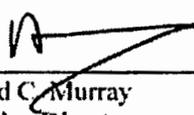
56-0315630

Date: _____

12/10/09

OHIO SCHOOL FACILITIES COMMISSION

By: _____

 2/10/2010
Richard C. Murray
Executive Director

Date: _____



EXHIBIT 1 -- Ohio Department of Public Safety
 Division of Homeland Security
<http://www.homelandsecurity.ohio.gov>

GOVERNMENT BUSINESS AND FUNDING CONTRACTS
 In accordance with section 2909.33 of the Ohio Revised Code

DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List (see the Ohio Homeland Security Division website for a reference copy of the Terrorist Exclusion List).

Any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

LAST NAME		FIRST NAME		MIDDLE INITIAL
HOME ADDRESS				
CITY	STATE	ZIP	COUNTY	
HOME PHONE		WORK PHONE		

COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION

BUSINESS/ORGANIZATION NAME Bovis Lend Lease, Inc.				
BUSINESS ADDRESS 111 W. Rich Street Suite 280				
CITY Columbus	STATE OH	ZIP 43215	COUNTY Franklin	
PHONE NUMBER 614-621-4148				

DECLARATION

In accordance with division (A)(2)(b) of section 2909.32 of the Ohio Revised Code

For each question, indicate either "yes," or "no" in the space provided. Responses must be truthful to the best of your knowledge.

- Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No
- Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No

HLS 0038 2/06

Exhibit 1

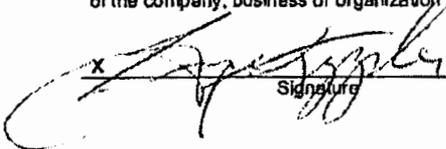
GOVERNMENT BUSINESS AND FUNDING CONTRACTS - CONTINUED

3. Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List, or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

In the event of a denial of a government contract or government funding due to a positive indication that material assistance has been provided to a terrorist organization, or an organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List, a review of the denial may be requested. The request must be sent to the Ohio Department of Public Safety's Division of Homeland Security. The request forms and instructions for filing can be found on the Ohio Homeland Security Division website.

CERTIFICATION

I hereby certify that the answers I have made to all of the questions on this declaration are true to the best of my knowledge. I understand that if this declaration is not completed in its entirety, it will not be processed and I will be automatically disqualified. I understand that I am responsible for the correctness of this declaration. I understand that failure to disclose the provision of material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List, or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree. I understand that any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided by myself or my organization. If I am signing this on behalf of a company, business or organization, I hereby acknowledge that I have the authority to make this certification on behalf of the company, business or organization referenced on page 1 of this declaration.

X  _____
Signature

12/10/09 _____
Date

**POLICY ON
OVERHEAD AND REIMBURSABLES**

INTRODUCTION

This memo establishes the Commission's policy on compensating Construction Managers for overhead, reimbursable expenses, and mileage expenses. It is the intent of the Commission to compensate all Construction Manager's in a manner consistent with their corporate accounting methodologies, in accordance with Generally Accepted Accounting Procedures. This policy is not intended to contradict any requirements that are currently in the Construction Manager Agreement; rather it clarifies the Commission's requirements for submission of cost information as a precursor to reimbursement by the state.

OVERHEAD

Each Construction Manager will submit a statement that describes its actual procedures for incurring overhead costs. In general, overhead contains costs that cannot be segregated to a specific project. The following list of typical overhead costs is provided for example only:

Home office telephone
Home office telephone charges
Home office facsimile
Telegrams
Postage
Photos
Photocopying
Home office clerical and accounting support
Home office labor (management, supervision)
Legal services
Travel and parking expenses

This procedure should be consistent with corporate accounting policy and procedures, and should not be inconsistent with or contradict the methodology currently being used by the Construction Manager. Included within the description of overhead accounting procedures should be a list of cost items that are considered overhead costs. Additionally, each Construction Manager will detail its overhead rates for each of the past three years to the Commission.

IMPLEMENTATION PLAN

At the outset of executing its contract, the Construction Manager will provide a fee proposal and proposed Implementation Plan for hourly direct personnel expenses and reimbursable costs. The plan must be submitted in the suggested format as provided by example from the Commission. This format is utilized to delineate direct personnel expenses, reimbursable expenses and the basic fee for construction, demolition and any locally funded initiatives. This plan will also describe the items the Construction Manager plans to purchase, when they will be purchased, and the estimated cost for all items. No reimbursable expenditures will be authorized until the Implementation Plan has been approved by the Commission. The Construction Manager may include certain expenses in its Implementation Plan, in accordance with the following list of expenses that have been identified as appropriate by the Commission:

Project Field Office (including "satellite headquarters")

When a core office is approved as part of an Implementation Plan for a Commission project, the Construction Manager is permitted to include a project trailer, including move-in and set-up, in bid packages. None of the associated costs of a project field office may be included in bid packages. Whenever a core office is not established for central administrative purposes, the Construction Manager is to provide one (1) project field office for each district. The Construction Manager is permitted to include a trailer for separate project sites within a district, including move-in and set-up, in bid packages. None of the associated costs of a separate project site field office may be included in bid packages.

- Office trailer rental*
- Office trailer move-in/set-up*
- Office trailer maintenance/repair*
- Office trailer utilities*
- Office furniture*
- Fax and answering machine*
- Copier & supplies*
- Office supplies*
- Postage*
- Express mail*
- Telephone and long distance*
- First aid materials*
- Bottled water*
- Communication Equipment (as defined by the Construction Manager's communication strategy included in the Implementation Plan)*
- Miscellaneous blueprint expenses*
- Computer Equipment*

Description	Quantity
Server capable of hosting web site and database applications	1 per CM
Desktop and Notebook PC's	As determined by OSFC
Scanner capable of scanning 11 x 17 documents and photos	1 per CM
Color printer capable of printing to 11 x 17 documents	As determined by OSFC
Laser printers	1 per job site
Digital camera	1 per school district
Scheduling software	1 per CM
Project documentation	1 per school district
Software upgrades	As required by OSFC

The Construction Manager shall maintain a current inventory of all equipment, materials and supplies. Any such equipment, materials and supplies which has been purchased and has a useful life after Project Closeout shall be recycled or disposed of in accordance with procedures and instruction issued by the Commission. The Construction Manager will maintain an inventory with serial numbers of all equipment, materials and supplies, and will update it periodically.

All reimbursable items purchased by the Construction Manager and compensated by the Commission will be used solely for the management and administration of the projects being overseen by the Construction Manager; this includes any satellite or project offices. The Commission reserves the right to verify that the reimbursable items are being used exclusively on Commission projects.

If, during the course of the project, the Construction Manager becomes aware of an expense that has not been identified on the above list, or, if the Construction Manager has determined that the costs of a specific item may exceed \$5,000, the Construction Manager should notify the Project Administrator in writing, of all pertinent information relating to the proposed cost. The Project Administrator will make a determination of the appropriateness of the expense prior to the Construction Manager incurring the cost. In the event that written notification is not possible due to time constraints, the Construction Manager will contact the Project Administrator and discuss the proposed expenditure. Any information that relates to the expenditure will be included as support documentation to the invoice for cost for the specific expenditure.

AUDIT RIGHTS

The Commission shall have the right to examine all books, records, documents and other data related to the projects that it is overseeing.

The above referenced materials shall be made available at the office of the Construction Manager as applicable, at all reasonable times for inspection, audit and reproduction until the expiration of six (6) years after the date of acceptance of the project(s) by the Commission. Any documents copied by the Commission shall be protected as trade secrets and not subject to public disclosure under Section 149.43, ORC.

The right of inspection, audit and reproduction shall extend to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.

If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the Commission for a period of three (3) years from the date of any applicable final settlement.

Records that relate to disputes, litigation, or settlement of claims arising out of the performance of the Work shall be made available until such dispute, litigation or claims have been finally decided or settled.

Appendix B

**FACILITY DATA AND INFORMATION COLLECTION GUIDELINES
FOR SCHOOL DISTRICTS / CONSTRUCTION MANAGERS**

The Facility Information Collection by the team shall follow the written methodology and organizational procedures. The methodology and organizational guidelines are outlined below:

The following is the required information to be collected, organized and *made available* to the Maintenance Plan Advisor by the team. This information is as per the scope and services of the Architect / CM team deliverables. Thus, this outline is for organizational purposes only relevant to the District & OSFC close-out documents. All information shall be collected and made available in compliance with these guidelines in a format as deemed appropriate by the District's Team.

Note: One option is to have all information placed in legal size manila folders and identified by tabs on file pockets and by labels on the manila folders.

Required Data collection items:

1. A copy of the facilities drawings and specifications, preferably as-built documents if available.
2. A copy of the District's OSFC Master Plan sheet
3. Access to the Districts Original 'OSFC Assessment Report' (Renovated buildings only)
4. A copy of the construction documents (CD) cost estimate sheet(s) prepared by the construction manager for the facility.
5. A separate contact sheet with facilities locations, contact personnel including phone numbers and e-mail of superintendents, principals and maintenance personnel, etc.
6. A separate contact sheet listing all prime contractors and sub contractors names, addresses, phone, fax and e-mail.
7. A copy of all equipment submittals and submittal log.
8. A copy of *all* manufacturers equipment operation and maintenance manuals including kitchen, stage and any/all other state funded equipment.
9. A copy of all warranties including kitchen, stage and any/all other state funded equipment. (Construction Managers shall provide school districts with all equipment warranties and facilitate their completion and mailing). The Construction Manager shall log and retain a copy of the completed equipment warranties. The completed equipment warranties shall be placed in the individual equipment or system file.
10. Documentation of any system or equipment training activities given to the school facilities maintenance staff and administrators by vendors or technicians prior to or after the building was turned over to the school district. The Construction Manager shall log the type and date of any training activities and provide the MPA with any ancillary materials from the training sessions. Example: training tapes or written materials. The training log and materials shall be kept in a separate "Training" file.

The organization of the materials shall be compiled according to the 11 building categories and 52 Building Systems. All information associated with the system components and sub-components shall be placed in the individual system file.

The 11 categories are:

1. Life/ Fire Safety
2. ADA/ Elevators/ Lifts
3. HVAC Systems
4. Building Envelope
5. Plumbing
6. Electrical
7. Misc. Equipment
8. Interiors
9. Site
10. Structure/ Support
11. Kitchen Equipment

Each of the 52 individual building system information collection files shall be organized in the following manner.

Example:

Category: Life/Fire Safety LFFS-01

Building System: **Fire Protection System-General:** inclusive of all system components (fire hydrant, post indicator valve, backflow preventer, fire pump, jockey pump, flow device, sprinkler heads, control panel, enunciator panel, pull stations, duct detectors, smoke detectors, heat detectors, water storage tank (tower), water storage tank (ground level).

The information for each component of a building system shall be organized in the following order:

1. Any system or component certification documentation.
2. Building system component cut sheets and/or submittal information.
3. Building system component operations and maintenance manuals.
4. Building system component completed warranty. This would be a copy. The construction manager shall facilitate the completion of the warranty forms by the school district and log and file a copy.
5. Documentation of building system training and information.

Appendix C

Task	X = Primary Responsibility			S = Support			
	Owner	Architect/AIE	Commissioning Agent	Contractor	CM	MP	OSFC
Assign LEED Accredited Professional		X	S		X		
Attend an Eco-Charette	X	X	X		X		X
Designate a LEED point person	X	X			X		
Register the project with USGBC		X					
Apply the ANSI/MITS 1.0 WSIP	S	X	S		S		S
Conduct an Integrated Design Charrette	S	X	S		S		S
Perform parametric analysis		X			S		
Summarize target credits	S	X			S		
Identify the design team members	S	X			S		
Confirm at each design phase. (LEED points)	S	X			S		S
Obtain the review and comments - Commissioning Agent		X	S		S		
Prepare the documentation - submit to USGBC	S	X			S		
Respond to the USGBC design review comments	S	X			S		
Research and submit Credit Interpretation Rulings		X					
Identify Project as LEED in Div. 1		X			S		
Specify the contractors' responsibilities regarding LEED		X			X		
Attend a construction Kick-off meeting		S	S	X	X		
Attend construction phase process meetings to review		X	S	X	X		
Manage and coordinate the LEED online management system	S	X			X		X
Review comments for LEED credits given		X					
Conduct Pre bid conference with LEED		S			X		
Develop a management plan (Construction Phase)		S			X		
Obtain proper documentation from the contractors				X	X		
Maintain the LEED calculator, (Construction Phase)		X			S		
Provide the Architect the LEED Construction Review Submittal					X		
Respond to the Architect					X		
Provide post occupancy monitoring & Documentation		S	X			S	

Appendix D

EDGE PARTICIPATION DECLARATION
Certified Statement of Intent to Contract and Perform

Submit one fully-completed form for each EDGE Business Enterprise

Project Name and Location: Ohio State School for the Blind and Ohio School for the Deaf

School District: _____

Name/County: Franklin County

A. Company Name: Glen Stephens, Inc.

B. Certified EDGE Business Enterprise Information (for project contract at ANY tier)

EDGE Business Name: Glen Stephens, Inc.

EDGE Business Address: 133 N Summit Street, Akron, OH 44304

EDGE Business Federal Tax I.D. 34-1732984 E-mail: gstephens@gstelphensinc.com

Contact Person: Glen Stephens Phone: (330-262-1386)

Description of materials, supplies, labor, etc. to be provided by certified EDGE Business Enterprise (may use industry codes)

Ohio State School for the Blind and Ohio School for the Deaf

Scheduling Creation and Maintenance

C. Certification of Intent

By signing below, company certifies that it intends to contract with the certified EDGE Business Enterprise for the portion of the Contract described above related to the Contract for this Project and for the estimated cost shown below. By signing below, the certified EDGE Business Enterprise certifies that it intends to contract with the company and intends to provide the portion of the Contract described above related to the Contract for this Project for the *estimated amount of*:

Two Hundred Six Thousand and /100 dollars (\$ 206,000.00).

EDGE Business Enterprise
Glen Stephens, Inc.

Authorized representative name, title (print or type)

Glen L Stephens
Signature of authorized representative President

Company
Bovis Lend Lease, Inc.

Authorized representative name, title (print or type)

George KERRICK, Sr
Signature of authorized representative

Appendix D

EDGE PARTICIPATION DECLARATION
Certified Statement of Intent to Contract and Perform

Submit one fully-completed form for each EDGE Business Enterprise

Project Name and Location: Ohio State School for the Blind and Ohio School for the Deaf

School District: _____

Name/County: Franklin County

A. Company Name: Van Auken Akins Architects LLC

B. Certified EDGE Business Enterprise information (for project contract at ANY tier)

EDGE Business Name: Van Auken Akins Architects LLC

EDGE Business Address: 29325 Chagrin Blvd., Suite 205, Cleveland, OH 44122

EDGE Business Federal Tax I.D. 34-1740530 E-mail: jakins@vaakins.com

Contact Person: Jill Akins Phone: (216) 292-9944

Description of materials, supplies, labor, etc. to be provided by certified EDGE Business Enterprise (may use industry codes)

Ohio State School for the Blind and Ohio School for the Deaf Design Manual Review

C. Certification of Intent

By signing below, company certifies that it intends to contract with the certified EDGE Business Enterprise for the portion of the Contract described above related to the Contract for this Project and for the estimated cost shown below. By signing below, the certified EDGE Business Enterprise certifies that it intends to contract with the company and intends to provide the portion of the Contract described above related to the Contract for this Project for the *estimated amount* of:

Seventy Three Thousand Dollars and 100 dollars (\$ 73,000.00).

EDGE Business Enterprise
Van Auken Akins Architects, LLC

Jacqueline V. Akins AIA, Principal

Authorized representative name, title (print or type)


Signature of authorized representative

Company
Bovis Lend Lease, Inc.

GEORGE KEMPER, Sr.

Authorized representative name, title (print or type)

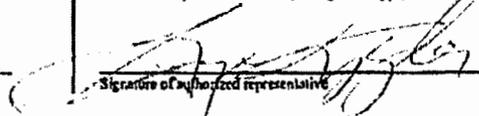

Signature of authorized representative

EXHIBIT Y

EXHIBIT

tabbies

Y



TransAmerica Building Company, Inc.

Expert Report

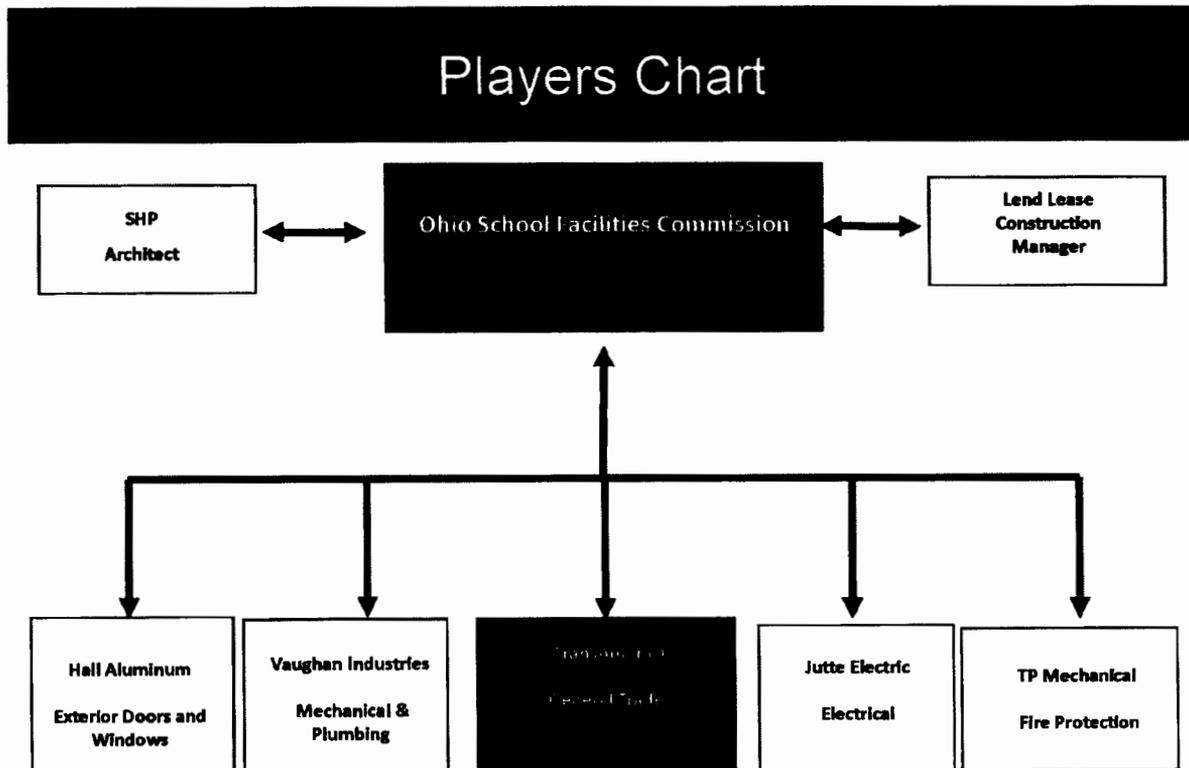
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- I. Introduction
- II. Background Information
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 - Inclusion Of OSSB/OSD Buildings #4 and #8
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 - g. Loss Of Productivity For Rough Carpentry
 - h. Additional Drywall Costs
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 - k. Summary Of Damages
- VII. Conclusion
- VIII. Attachments
 - a. Donald P. McCarthy Resume

I. Introduction

McCarthy Consulting, LLC ("McCarthy Consulting") has been retained by TransAmerica Building Company, Inc. ("TransAmerica") to review and analyze the issues related to project delays, damages assessed to TransAmerica by the Owner, and other damages incurred by TransAmerica associated with the construction of the dormitories ("Project") for the Ohio State School for the Blind and the Ohio State School for the Deaf ("OSSB/OSD") located in Columbus, Ohio in Franklin County.

The Owner of the Project was the Ohio School Facilities Commission ("OSFC"). The Construction Manager for the Project was Bovis Lend Lease, Inc. ("Lend Lease"). The Lead Architect on the Project was Steed Hammond Paul – SHP Leading Design ("SHP"). The General Trades Contractor was TransAmerica. There were a number of other prime contracts involved in this multi-prime contract team. Jutte Electric Ltd. ("Jutte") was the electrical prime contractor. TP Mechanical Inc. ("TP Mechanical") was the plumbing and fire protection prime contractor. Vaughan Industries ("Vaughan") was the HVAC prime contractor. Hall Aluminum Products, Inc. ("Hall") was the storefront prime contractor.



SHP served as the Lead Architect for this assignment and had a number of lower tier consultants assisting them in performing their contractual responsibilities. Berardi + Partners, Inc. ("Berardi")

and Winter & Company ("Winter") were two such consultants and were primarily responsible for finalizing the construction set of plans for the dormitories.

CAMPUS IMPROVEMENT PROJECT
SHP
 LEADING DESIGN
 IN ASSOCIATION WITH
Winter & Company

SITE LOCATION
 Bovis Lend Lease, Inc. / Construction Manager
 111 West Sixth St., Suite 200, Columbus, OH 43215
 Phone (614) 821-1414 Fax (614) 821-1414

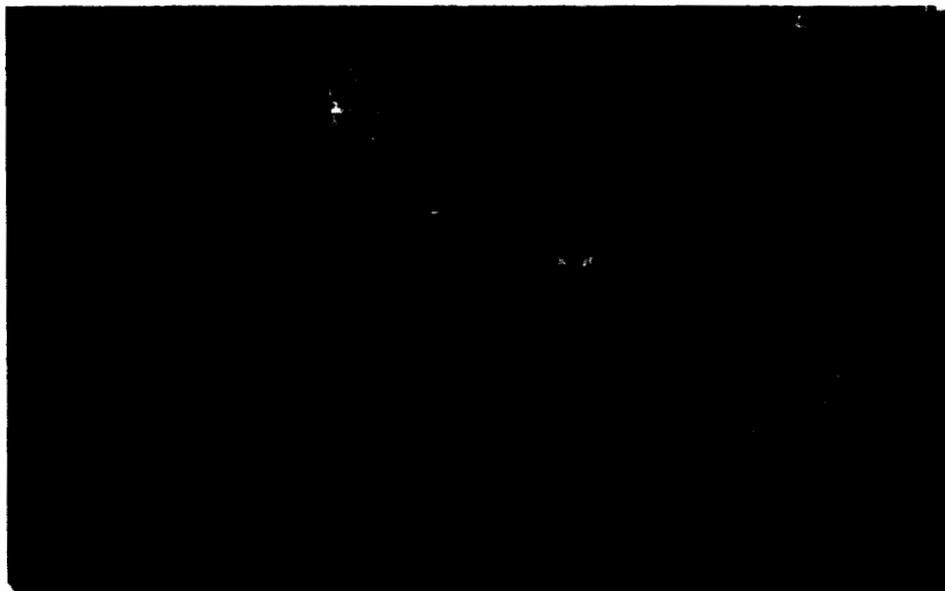
Kleingers & Associates, Inc. / Civil Engineering
 200 Westvillage Rd., Suite B, Westerville, OH 43082
 Phone (614) 892-5511 Fax (614) 892-4178

Joby Smith & Associates / Kitchen Design Consultants
 6111 Laboursville West Center Rd., West Chester, OH 43081
 Phone (513) 778-7870 Fax (513) 778-7870

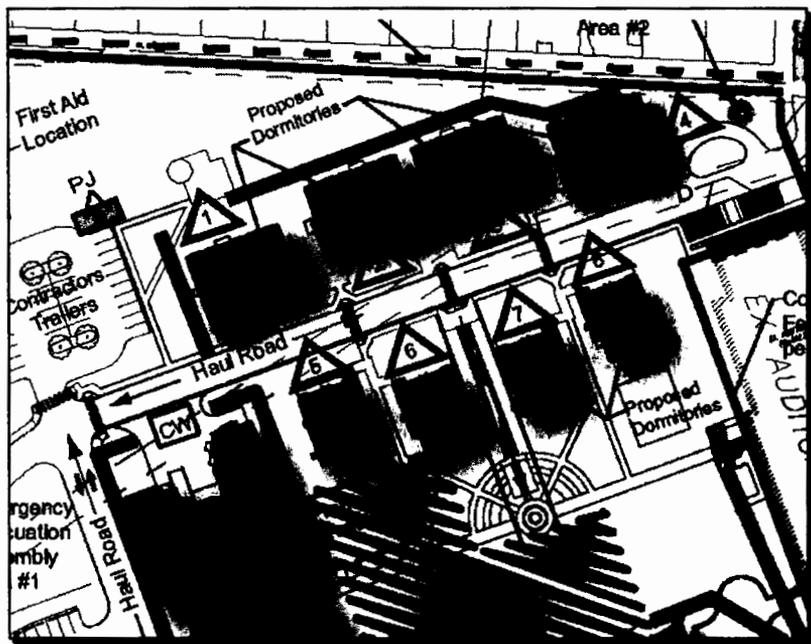
STATE SEALS

II. Background Information

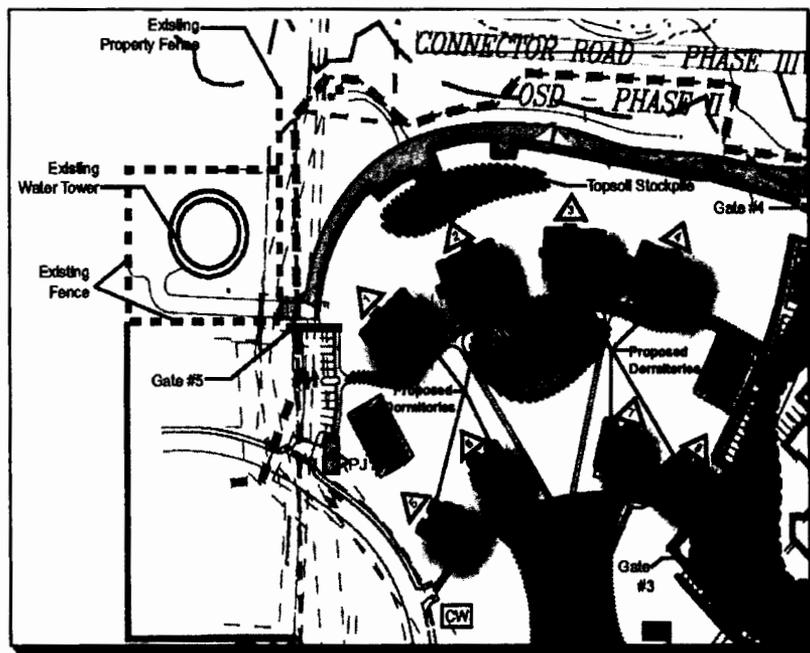
The OSSB/OSD Project consisted of distinct campus layouts of dormitory units. One set of eight (8) dormitory units for the blind students and one set of eight (8) dormitory units for the deaf students. Each set of eight (8) dormitory units consisted of residential units with a focus on high school age students (HS) and middle school/elementary school age students (MS/ES). The original construction plan for the dormitories showed four (4) high school units and four (4) middle school/elementary school units for a total of eight (8) dormitories on each campus. Each unit was number 1 through 8 and was referred to during the course of the Project by its location and assigned number – Blind 1, Deaf 5, etc. The residential units within each grouping (HS Blind/Deaf and MS/ES Blind/Deaf) were generally designed to be identical in size, layout, dimensions, and features.



Ohio State School for the Blind - Dormitories



Ohio State School for the Deaf - Dormitories



It also should be noted there was an academic portion of the overall Project as well, which is not identified above. While the construction of the dormitories was separate from the academic portion, both the dormitories and academic portions were funded and budgeted as a single Project.

The Project originally planned to receive bids for the dormitory work June 16, 2010. The bid period was extended due to significant bid period questions and bids were actually received on July 22, 2010. All bids received were significantly over the established budgets and therefore were rejected by the OSFC.

1st Bid Attempt

BID DATE:
JUNE 16, 2010 AT 1:00 P.M.

Contract Documents available at Key Plan Print
 • Additional copies per bid available at the "Bid Location"
 • All Bids Due by 1:00 P.M.

Major Budgets

Read: Bids Will Be Received For:

BID SET #3: OSFC/OSFB Academic Buildings (\$150.00 Deposit Per Set)	
BPIContract 0228 - OSFC General Trades	\$ 1,041,172.00
BPIContract 0229 - OSFC Windows/Glass/Glazing	\$ 400,582.00
BPIContract 0230 - OSFC Fire Protection	\$ 183,208.00
BPIContract 0231 - OSFC Plumbing	\$ 813,888.00
BPIContract 0232 - OSFC HVAC	\$ 1,370,400.00
BPIContract 0233 - OSFC Electric	\$ 1,853,832.00
BID SET #4: OSFC/OSFB Academic Buildings (\$150.00 Deposit Per Set)	
BPIContract 0234 - OSFC General Trades	\$ 1,680,736.00
BPIContract 0235 - OSFC Windows/Glass/Glazing	\$ 357,334.00
BPIContract 0236 - OSFC Fire Protection	\$ 130,464.00
BPIContract 0237 - OSFC Plumbing	\$ 616,442.00
BPIContract 0238 - OSFC HVAC	\$ 1,370,400.00
BPIContract 0239 - OSFC Electric	\$ 1,853,832.00
BID SET #5: OSFC/OSFB Academic Buildings (\$150.00 Deposit Per Set)	
BPIContract 0240 - OSFC General Trades	\$ 1,680,736.00
BPIContract 0241 - OSFC Windows/Glass/Glazing	\$ 704,868.00
BPIContract 0242 - OSFC Fire Protection	\$ 258,096.00
BPIContract 0243 - OSFC Plumbing	\$ 1,220,428.00
BPIContract 0244 - OSFC HVAC	\$ 2,704,000.00
BPIContract 0245 - OSFC Electric	\$ 2,104,000.00

Bid Set #4: OSFC/OSFB Academic Down Buildings (\$150.00 Deposit Per Set)

BPIContract 023R - Academic Down General Trades	\$ 3,049,304.00
BPIContract 024R - Academic Down Windows/Glass/Glazing	\$ 403,229.00
BPIContract 025R - Academic Down Fire Protection	\$ 95,070.00
BPIContract 026R - Academic Down Plumbing	\$ 658,036.00
BPIContract 027R - Academic Down HVAC	\$ 358,792.00
BPIContract 028R - Academic Down Electric	\$ 614,908.00
BPIContract 029R - Academic Down Combination Plbg./HVAC	\$ 1,016,828.00

The OSFC, SHP and Lend Lease made a number of revisions to the bid documents including removing the previously mandated union labor requirement. The attached article appeared in the Columbus Dispatch on October 2, 2010.

**NO MANDATED UNION LABOR New bids sought for deaf, blind schools The Columbus Dispatch
(Ohio) October 2, 2010 Saturday Correction Appended**

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

October 2, 2010 Saturday
Correction Appended

SECTION: NEWS; Pg. 3B

LENGTH: 249 words

HEADLINE: NO MANDATED UNION LABOR New bids sought for **deaf, blind schools**

BYLINE: Darrel Rowland, THE COLUMBUS DISPATCH

BODY:

The Ohio School Facilities Commission has decided against mandating union labor in the building of new schools for the **deaf and blind** in Columbus.

Reversing course on using a controversial **project-labor** agreement, the panel decided Thursday to seek new bids on the costlier-than-expected undertaking.

Commission Director Richard Murray was harshly criticized in an August report by Ohio Inspector General Thomas P. Charles. The probe said that Murray, a former union official hired about a year ago, should not have negotiated and signed a **project-labor** agreement to use union labor to build the **deaf and blind school** buildings, which was initially expected to cost \$34 million.

The labor agreement would have resulted in payments possibly topping \$145,000 to a union local of which Murray is a member and to the Laborers-Employers Cooperation and Education Trust, which Murray directed for 12 years. The report criticized Murray for creating the appearance of impropriety.

At the time, Gov. Ted Strickland's spokeswoman, Amanda Wurst, said there was no wrongdoing because Murray would not have benefited personally.

Critics said the commission's original requirement for union labor caused **construction** bids to exceed cost estimates by 41 percent.

A contract for a new dormitory will be bid Oct. 22 without the project-labor agreement. However, under state law the project is still subject to the state's prevailing-wage law.

The schools are along Morse Road on the North Side.

Another strategy employed by the Project Team was to have the OSSB and OSD dormitories #4 and #8 bid as alternates. This strategy would ensure that the next round of bidding would result in a Project that could be awarded by creating "sacrificial lamb" scope that would be jettisoned if the new bids did not meet the revised budget expectations.

The Project was re-advertised.

State of Ohio
Ohio School Facilities Commission

NOTICE TO BIDDERS

Scaled Bids will be received by the *Ohio School Facilities Commission (the Commission)*, at The Ohio State School for the Blind Administration Office, 5220 North High Street, Columbus, OH 43214, for the following Project:

*Residential Buildings at the
Ohio State School for the Blind
Ohio School for the Deaf
Columbus, OH 43215*

in accordance with the Contract Documents prepared by:

*SHIP Leading Design
250 Civic Center Drive, Suite 200
Columbus, OH 43215
614-223-2124
www.ship.com*

The Construction Manager for the Project is:

*Boys Lend Lease
502 Morse Road
Columbus, OH 43214
614-732-5275
614-732-5295
www.boyslendlease.com*

Scaled bids will be received for:

BP/Contract 023R - Residential Buildings General Trades	\$ 4,075,774.00
BP/Contract 024R - Residential Buildings Windows/Glass/Glazing	\$ 416,132.00
BP/Contract 025R - Residential Buildings Fire Protection	\$ 98,112.00
BP/Contract 026R - Residential Buildings Plumbing	\$ 679,093.00
BP/Contract 027R - Residential Buildings HVAC	\$ 370,273.00
BP/Contract 028R - Residential Buildings Electric	\$ 634,645.00
BP/Contract 029R - Residential Buildings Combination Plbg./HVAC	\$ 1,049,366.00
Total Project Cost Estimate	\$4,276,429.00

until ~~October 19, 2010 at 1:00 p.m.~~ when they will be opened and read.

A pre-bid meeting will be held on October 19, 2010 at 1:00 p.m. at the following location:

NB - 1 (Revision 2 - Addendum #10) OSFC OSD/OSSB Edition - January 2009

Bids were received and publically opened on October 28, 2010. Twelve (12) bids for the General Trades Bid Package 023R were received. The established General Trades Bid Package 023R budget for the "base bid" work by Lend Lease was reduced from the Notice To Bidders amount of \$4,075,774 (see above Notice) to \$4,054,594 in Addendum #11 issued during the second bid period.

The average bid amount for the twelve (12) General Trades bids received was \$4,651,292. The low three (3) bids received for the base bid work were:

Summit Construction Co.	\$3,734,000
TransAmerica	\$3,975,000
Thomas & Marker	\$4,212,500
Average of Low Three Bids	\$3,973,383

Bid Package	LL Estimate	Apparent Low Bidder	Bid Amount	Variance
BP 023R - Residential Building - General Trades	\$ 4,054,594.00	TransAmerica	\$ 3,975,000.00	\$ (79,594.00)
BP 024R - Residential Buildings - Windows/Glass/Glazing	\$ 519,787.00	Hall Aluminum	\$ 438,000.00	\$ (81,787.00)
BP 025R - Residential Buildings - Fire Protection	\$ 157,682.00	T P Mechanical	\$ 139,500.00	\$ (18,182.00)
BP 026R - Residential Buildings - Plumbing	\$ 682,271.00	T P Mechanical	\$ 922,498.00	\$ 240,227.00
BP 027R - Residential Buildings - HVAC	\$ 400,090.00	Vaughan Industries	\$ 715,000.00	\$ 314,910.00
BP 028R - Residential Buildings - Electric	\$ 898,199.00	Jutte Electric	\$ 786,892.00	\$ (111,307.00)
Total	\$ 6,712,623.00		\$ 6,976,890.00	\$ 264,267.00
*No bid alternates could be accepted				Overbudget

From: Keith, Clayton
To: Andrew Maletz
CC: Swartzmiller, Jim; Kirlangitis, Karin
Sent: 11/18/2010 1:21:28 PM
Subject: RE: Outline of Memorandum

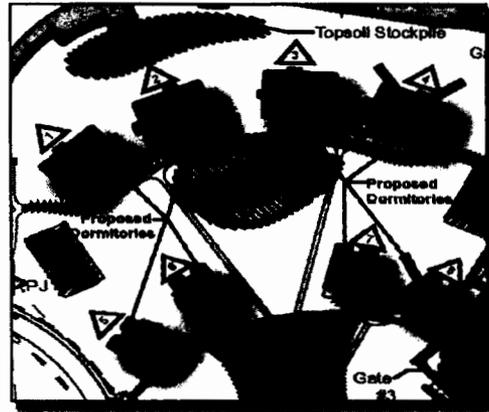
Andrew

For Discussion purposes I will use January 17th as basis for us to receive direction to move forward:
 January 17-21 (One Week) Discussion of value engineering opportunities to pursue.
 January 24 – March 18 (Six Weeks) Re-design of Academic building incorporating value engineering.
 March 21 –April 1 (Two Weeks) Estimating and proposal of possible alternates.
 April 4-8 (Two Weeks) Decide on Alternates and front ends to be prepped for bidding
 April 10 – May 4 (Three and a half weeks) Advertise for bids
 May 5 Bid Day
 May 6-9 (Two Days) 48 Hour withdraw period
 May 10-20 (Two Weeks) Apparent low interviews
 May 23-27 (One Week) Background checks on apparent lows.
 May 30-June 3 (One Week) OSFC Review of Recommendations
 June 6 Issue Notice of Intent
 June 20 Issue Notice to Proceed
 June 27 Contractor Mobilization
September 27, 2012 Completion Date

Financials

Andrew here is how I came up with the approximate numbers for the Academic buildings.
 \$22,166,402 – Total Estimate for Academics and Campus Wide packages as we bid out in July.
~~\$ (500,000)~~ Deduct for scope of work transferred into the Early Site package (Paving)
 \$21,666,402 – Money needed for Academics
~~\$ 1,083,320~~ - 5% increase for inflation (3.2%) Addenda scope (1.8%) Very conservative number, we were at 10.4%
 for the dorms but they are much smaller scale.
 \$22,749,722 – Revised total
 \$ 1,000,000 – Additional soft cost money needed for re-design and additional construction time on site with staff. (BLL
 contract ends in June 11 so it would add 15 months at 50,000 per month 750,000 approximate)
 \$23,749,722 - Total funds needed for Academics
~~\$21,460,910~~ – Less funds remaining after Dorm bids assuming we still have Bridge, Loose Furnishings and
 Contingency at 100% budget
 (\$ 2,288,812) Delta for Academics

As a result of the bids received, the alternates for dormitories #4 and #8 for both the OSSB and
 OSD campuses could not be accepted. However, these dormitories remained part of the project
 documentation, schedule updates, plans examination submissions and building permitting for the
 project even though they were never to be constructed.



III. Project Schedule Overview

The Project Schedule included in the Project Manual dated October 10, 2010 includes Specification Section 013200. This Specification Section provides information on the requirements regarding how the Project Schedule will be managed, updated, reviewed and approved.

The General Conditions and Specification Section 013200 – Milestone Schedule both state that the Project Schedule shall utilize the Critical Path Method (CPM) scheduling method for development and updating all schedules for the Project. The software used by Lend Lease was Primavera P6. The Project Schedule included at the end of the Specification Section 013200 – Milestone Schedule was graphically sorted to show a section for Milestones, General Conditions, eight (8) dormitories for the Ohio State School for the Blind, eight (8) dormitories for the Ohio State School for the Deaf, and related site work/improvements.

The Bid Form and related Project Schedule define the time for Contract Completion is 372 consecutive days from the Notice To Proceed.

A review of the Project Schedule included in the Project Manual clearly shows a sequential, staggered, building-by-building flow of the work to be accomplished. This was further reinforced by Lend Lease at the Pre-Bid Meeting for the Project on October 19, 2010 where the following additional explanation of how the Project Schedule is set up was provided:

- “2. Scheduling – Explain Staggering
 - a. Construction start date of March 1, 2011 with one building starting each week and completing in succession in accordance with the start of sequence.”

It is therefore expected based on the presentation of the Project Schedule that there will be a logical flow of workers, materials, and equipment from one building to the next and that work activities will be repetitive in nature. A learning curve or improved productivity over the course of constructing twelve (12) similar buildings is expected since these dormitories are mirror images of

each other – high school to high school, and middle/elementary school to middle/elementary school. The Project Schedule included in the Project Manual clearly shows speed and efficiency is not only predicted but expected.

a. Lend Lease Schedule Issues

- ***Conflicts & Confusion Between General Conditions & Specification Section 013200***

As previously noted there are two detailed schedule requirement sections in the Project Manual dated October 10, 2010. The State of Ohio approved General Conditions define all of the requirements and responsibilities for developing, issuing, updating, reviewing and approving the Construction Schedule. Lend Lease included an additional Specification Section 013200 within the Project Manual that provides their expectations of the schedule development and updating process. The inclusion of this Specification Section also creates conflicts and contradictions with the State of Ohio approved General Conditions Section 4.3. It is customary that any modifications to the State of Ohio approved General Conditions be completed using Special Conditions. Special Conditions are used to supplement article paragraphs and subparagraphs of the General Conditions as provided by the State of Ohio. A review of the Special Conditions included in the Project Manual dated October 10, 2010 show no such modifications were made to General Conditions Section 4.3. The information provided in the Specification Section 013200 creates confusion on the process for issuing and updating the CPM schedule.

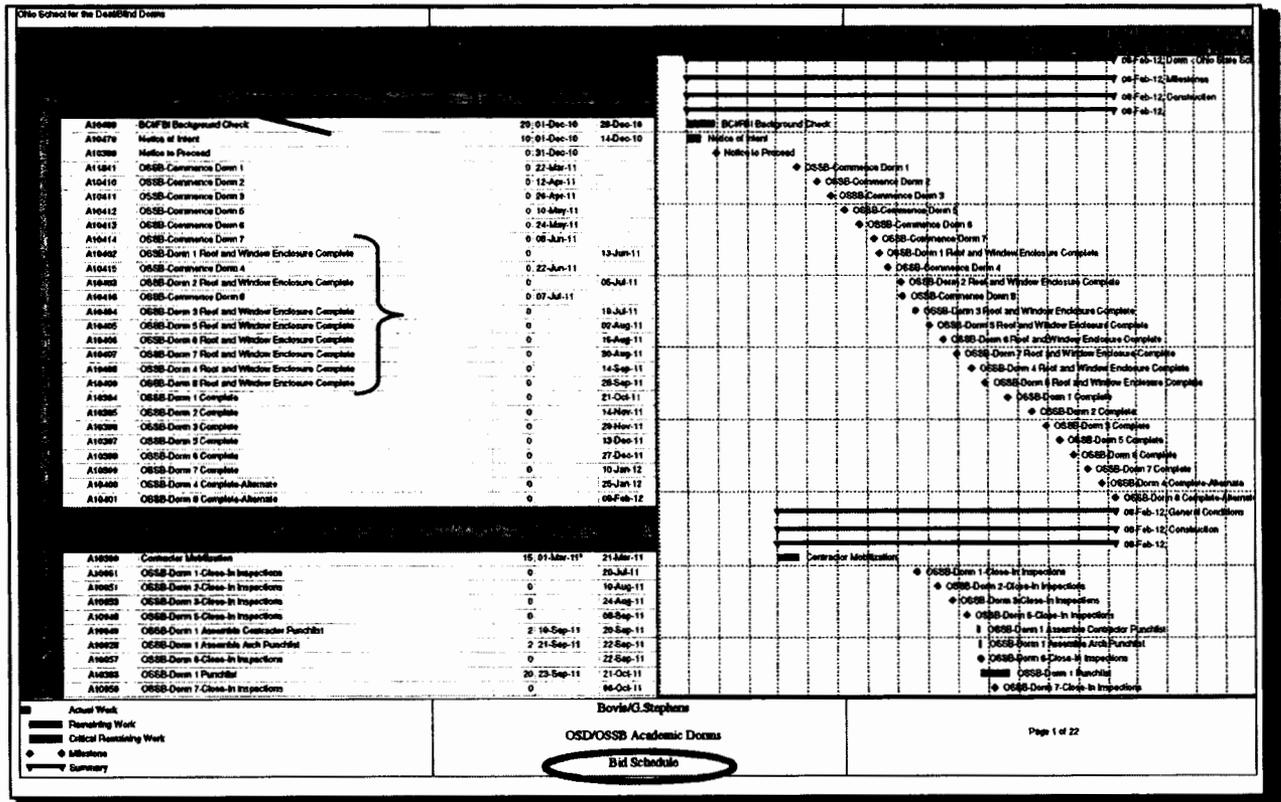
An example of this confusion and procedural conflict is noted in Specification Section 013200 – Milestone Schedule, Section 1.05.B which states, “Within Five (5) calendar days following the Contract Award, the Contractor shall submit to the CM...” The Contract Documents have no definition for “Contract Award”. The corresponding information within the General Conditions Section 4.3.1.1 states, “Within ten (10) days of the Notice To Proceed, the Construction Manager shall distribute a preliminary construction schedule to the Contractor....”

- ***Inclusion Of OSSB/OSD Buildings #4 and #8***

The Project Schedule included in the Project Manual shows OSSB and OSD Buildings #4 and #8 as part of the base contract scope for the Project. These alternates were never accepted. The inclusion of OSSB/OSD Buildings #4 and #8 completely distorts the critical path and masks the true longest path for the Project Schedule. When calculating the longest path for the schedule and the related float for various activities, the Lend Lease Project Schedule includes in the calculation work that will not be performed for these buildings. This pattern of scheduling work that is not in any contract and will not be completed continued throughout the entire Project. This practice violated good scheduling practices and failed to meet the requirements defined in the General Conditions and Specification Section 013200 – Milestone Schedule.

• **Conflicts With Milestones**

The Project Schedule is sorted by OSSB Milestone, General Conditions, building activities, OSD Milestone, General Conditions, building activities, and Site Work. Below is the cover page from the Project Schedule included in the Project Manual dated October 10, 2010.



A review of the above activities within the Milestone section of the Project Schedule shows a series of "Milestones". Note that each building has a "Roof and Window Enclosure Complete" milestone activity including OSSB/OSD buildings #4 and #8. There is no definition provided anywhere in the Contract Documents as to what constitutes the requirements for meeting or achieving this apparent Milestone. However, a review of Specification Section 013200 – Milestone Schedule, Section 1.12 Schedule Of Milestones shows that there is a specific listing of the contractual Milestones. This specific list forms the basis of any potential Liquidated Damage assessment points beyond Contract Completion, but includes nothing for the interim milestone of Roof and Window Enclosure Completion.

1.12 SCHEDULE OF MILESTONES

<u>A. ACTIVITY</u>	<u>DEADLINE</u>
1. OSD/OSSB Residential Buildings Notice to Proceed	December 31, 2010
2. Category "A" Submittals	15 days from NTP
3. Category "B" Submittals	30 days from NTP
4. Category "C" Submittals	45 days from NTP
5. OSSB Dorm 1 Completion	October 21, 2011
6. OSD Dorm 1 Completion	November 9, 2011
7. OSSB Dorm 2 Completion	November 14, 2011
8. OSD Dorm 2 Completion	November 21, 2011
9. OSSB Dorm 3 Completion	November 29, 2011
10. OSD Dorm 3 Completion	December 6, 2011
11. OSSB Dorm 5 Completion	December 13, 2011
12. OSD Dorm 5 Completion	December 20, 2011
13. OSSB Dorm 6 Completion	December 27, 2011
14. OSD Dorm 6 Completion	January 3, 2012
15. OSSB Dorm 7 Completion	January 10, 2012

As stated above there is no definition as to what constitutes achieving "Roof and Window Enclosure Complete". Also this milestone involves two separate Prime Contractors – BP 023R General Trades, and BP 024R Windows/Glass/Glazing, which further complicates the ability to use this as a milestone. A review of the logic that is included in the Project Schedule for achieving each of these milestones coupled with the information noted above clearly shows that Lend Lease did not initially intend the "Roof and Window Enclosure Complete" activities to be potential Liquidated Damages points.

As supporting information for this conclusion a review of Specification Section 015000 – Temporary Facilities And Controls references the following information related to "Building Enclosure":

G. Temporary Heating – Prior to Building Enclosure

1. ~~The facility shall not be considered enclosed until the permanent building shell is completely enclosed with exterior openings, windows, and doors closed by permanent or temporary closures.~~
2. The Contractor, until the additions are enclosed, shall provide heating for materials to afford protection of water-bearing material against injury by frost or freezing and to permit construction to continue and progress uninterrupted. The Contractor shall maintain such temporary heating until danger of frost or freezing has past.
3. Salamanders and electric heaters will not be permitted; however, portable direct-fired heaters, fired with LP gas, kerosene, #1 or #2 fuel oil will be allowed. When such heaters are employed, the Contractor shall observe safety precautions necessary;

TEMPORARY FACILITIES AND CONTROLS

01 50 00 - 5

H. Temporary Heating / Cooling – After Building Enclosure

1. ~~The facility shall be considered enclosed when the permanent building shell is completely enclosed with exterior openings, windows, and doors closed by permanent or temporary closures.~~
2. Temporary heating facilities shall have adequate capacity based upon the following:
 - a. When incorporating special materials into the construction, maintain space temperatures in strict accordance with the manufacturer's instructions.
 - b. Maintain in heated area not less than 50 degrees Fahrenheit space temperature.
 - c. Maintain constantly in heated areas when the space temperature is once raised above 65 degrees Fahrenheit to prevent thermal shock to the structure.
 - d. Preheat materials in accordance with manufacturer's instructions and accepted trade practice.

Additional information on this topic is presented and detailed in the section relating to Unwarranted Assessment of Liquidated Damages.

• **Project Schedule Logic Problems**

A review of the Bid Schedule that was included in the Project Manual shows that this schedule was illogically constructed and in fact, violated all responsible CPM scheduling practices as well as the contractual obligations between the OSFC and Lend Lease. The Bid Schedule contained a total of 1,111 activities. Of those activities there were only 1,883 relationships or logic ties. A minimum rule of thumb for CPM scheduling practices is that each activity in a network has at least one (1) predecessor and at least one (1) successor. The exception in a CPM network is the very first activity which would not have a predecessor and the very last activity in a network which would not have a successor.

A review of the Primavera P6 SCHEDLOG Report from the Bid Schedule shows that the Project Schedule contained in the Project Manual had 27 activities without predecessors and 246 activities

without successors. Along with these issues the Bid Schedule had activities with "Out of Sequence" progress and activities with progress beyond the data date. These are elementary level scheduling mistakes.

SchedLog

Scheduling/Leveling Report - 11-Jan-14 - PM.exe

Default Project.....55055501-Dorms - B2

Projects:
~~55055501-Dorms - B2~~.....Ohio school for
~~the West/Ohio Dorms - B2 - Activities before Contractors Changes~~

Scheduling/Leveling Settings:

 General

 SchedulingYes
 LevelingNO
 Ignore relationships to and from other projectsNO
 Make open-ended activities criticalNO
 Use Expected Finish DatesYes
 Schedule automatically when a change affects datesNO
 Level resources during schedulingNO
 Recalculate assignment costs after schedulingNO
 When scheduling progressed activities useActual Dates
 Calculate start-to-start lag fromEarly Start
 Define critical activities as Total Float less than or equal to .0
 Compute Total Float AsFinish Float
 Calculate float based on finish date ofEach project
 Calendar for scheduling Relationship LagPredecessor Activity

Calendar

Advanced

 Calculate multiple float paths.....NO

Statistics:

 # Projects.....1
 # ~~Activities~~.....1111
 # Not Started.....1064
 # In Progress.....2
 # Completed.....45
 # ~~Activities~~.....1000
 # Activities with Constraint.....6

Mobilization	Project:	55055501-Dorms - B2	Activity:	A10388	Contractor
Mobilization	Project:	55055501-Dorms - B2	Activity:	A10390	Contractor
Mobilization	Project:	55055501-Dorms - B2	Activity:	A1680	1st Advertisement
Mobilization	Project:	55055501-Dorms - B2	Activity:	A2370	Contractor
Architect/Engineer CD Design Period	Project:	55055501-Dorms - B2	Activity:	A5520	x
Architect/Engineer CD Design Period	Project:	55055501-Dorms - B2	Activity:	A9773	

Errors:

 Warnings:

~~Activities with Constraint~~.....77

Mobilization	Project:	55055501-Dorms - B2	Activity:	A2370	Contractor
	Project:	55055501-Dorms - B2	Activity:	A3530	X
	Project:	55055501-Dorms - B2	Activity:	A3540	X
	Project:	55055501-Dorms - B2	Activity:	A3550	X
	Project:	55055501-Dorms - B2	Activity:	A3560	X
	Project:	55055501-Dorms - B2	Activity:	A3570	X
	Project:	55055501-Dorms - B2	Activity:	A3580	X
	Project:	55055501-Dorms - B2	Activity:	A3590	X
	Project:	55055501-Dorms - B2	Activity:	A3600	X
	Project:	55055501-Dorms - B2	Activity:	A3610	X
	Project:	55055501-Dorms - B2	Activity:	A3620	X
	Project:	55055501-Dorms - B2	Activity:	A3630	X
	Project:	55055501-Dorms - B2	Activity:	A3640	X
	Project:	55055501-Dorms - B2	Activity:	A3650	X

Page 1

		SchedLog			
Project:	55055501-Dorms - B2	Activity:	A3660	X	
Project:	55055501-Dorms - B2	Activity:	A3670	X	
Project:	55055501-Dorms - B2	Activity:	A3680	X	
Project:	55055501-Dorms - B2	Activity:	A3690	X	
Project:	55055501-Dorms - B2	Activity:	A3700	X	
Project:	55055501-Dorms - B2	Activity:	A3710	X	
Project:	55055501-Dorms - B2	Activity:	A3720	X	
Project:	55055501-Dorms - B2	Activity:	A3730	X	
Project:	55055501-Dorms - B2	Activity:	A5021	X	
Project:	55055501-Dorms - B2	Activity:	A5031	X	
Project:	55055501-Dorms - B2	Activity:	A5041	X	
Project:	55055501-Dorms - B2	Activity:	A5520	X	
Project:	55055501-Dorms - B2	Activity:	A9773		
Architect/Engineer CD Design Period					
Activities without success					
1	Project:	55055501-Dorms - B2	Activity:	A10389 Notice to Proceed	
Complete	Project:	55055501-Dorms - B2	Activity:	A10392 Rough Grade-Dorm	
Complete	Project:	55055501-Dorms - B2	Activity:	A10394 OSSB-Dorm 1	
Complete	Project:	55055501-Dorms - B2	Activity:	A10395 OSSB-Dorm 2	
Complete	Project:	55055501-Dorms - B2	Activity:	A10396 OSSB-Dorm 3	
Complete	Project:	55055501-Dorms - B2	Activity:	A10397 OSSB-Dorm 5	
Complete	Project:	55055501-Dorms - B2	Activity:	A10398 OSSB-Dorm 6	
Complete	Project:	55055501-Dorms - B2	Activity:	A10399 OSSB-Dorm 7	
Complete-Alternate	Project:	55055501-Dorms - B2	Activity:	A10400 OSSB-Dorm 4	
Complete-Alternate	Project:	55055501-Dorms - B2	Activity:	A10401 OSSB-Dorm 8	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10402 OSSB-Dorm 1 Roof	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10403 OSSB-Dorm 2 Roof	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10404 OSSB-Dorm 3 Roof	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10405 OSSB-Dorm 5 Roof	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10406 OSSB-Dorm 6 Roof	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10407 OSSB-Dorm 7 Roof	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10408 OSSB-Dorm 4 Roof	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10409 OSSB-Dorm 8 Roof	
Background Check	Project:	55055501-Dorms - B2	Activity:	A10417 BIC/FBI	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10427 OSD-Dorm 1 Roof	
Complete	Project:	55055501-Dorms - B2	Activity:	A10429 OSD-Dorm 1	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10430 OSD-Dorm 2 Roof	
Complete	Project:	55055501-Dorms - B2	Activity:	A10432 OSD-Dorm 2	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10433 OSD-Dorm 3 Roof	
Complete	Project:	55055501-Dorms - B2	Activity:	A10436 OSD-Dorm 3	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10437 OSD-Dorm 5 Roof	
Complete	Project:	55055501-Dorms - B2	Activity:	A10438 OSD-Dorm 5	
Complete	Project:	55055501-Dorms - B2	Activity:	A10441 OSD-Dorm 6	
and window Enclosure Complete	Project:	55055501-Dorms - B2	Activity:	A10442 OSD-Dorm 7 Roof	

These issues speak to a schedule that is illogically constructed, manually constrained, incomplete, impossible to use as a management planning tool and not produced following the very schedule specifications defined in the Project Manual for which the Construction Manager has the contractual obligation to prepare and update as noted below. This pattern of ignoring the scheduling requirements for the Construction Manager defined in the Contract Documents continued throughout the entire Project. This fact is also commented throughout the February 16, 2012 Calvey Consulting, LLC Schedule Analysis report completed on behalf of Jutte Electric, Ltd. who is also involved in a major dispute with the OSFC on this Project.

General Conditions:

4.2 RESPONSIBILITY AND AUTHORITY OF THE CONSTRUCTION MANAGER

4.2.1 The Construction Manager shall consult with the Architect, the Commission and any governmental authority having jurisdiction over the Project, to obtain full knowledge of all rules, regulations or requirements affecting the Project. The Construction Manager shall establish the Project's regular working hours, subject to approval by the Architect and the Commission.

4.2.2 The Construction Manager shall schedule the Project and coordinate the Work with the work of all Separate Contractors and with the activities and responsibilities of the

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GENERAL CONDITIONS

OSD/OSSB Edition - January 2009

Architect and the Commission to complete the Project in accordance with the Contract Documents.

4.2.2.1 If the Contractor fails to prosecute the Work in accordance with the Construction Schedule, the provisions of GC paragraph 5.3 may be invoked.

4.2.2.2 The Construction Manager's coordination activities shall not relieve the Contractor from the Contractor's duty to supervise, direct and perform the Work in accordance with the Contract Documents nor shall it relieve the Contractor of its coordination obligation pursuant to GC paragraph 4.1.

4.2.3 The Construction Manager shall develop and keep current the Construction Schedule for the Project in accordance with GC paragraph 4.2 and shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Construction Schedule.

Specification Section 013200:

1.04 CPM Computer Scheduling

- A. The CPM Schedule network plan including any appropriate milestone dates and the computer produced reports shall be part of the Owner/Contractor agreement as stipulated herein.
- B. All Prime Contractors shall provide all information required by the Construction Manager for development of a network plan and schedule for this in accordance with the requirements of this section of the General Conditions.
- C. The purpose of the plan and schedule will be to assure adequate planning and execution of the work of the various Prime Contractors, and to assist the Construction Manager in monitoring the progress of the work and evaluating proposed changes to the contract and schedule.

1.05 Construction Management and Coordination

1.06 Construction Management and Coordination