ORIGINAL

IN THE OHIO COURT OF CLAIMS

GRAND VALLEY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION 111 Grand Valley Ave. West Suite A Orwell Ohio 44076,	:	Case No. 2014-00469-PR
	:	Judge Patrick M. McGrath
and	:	
OHIO SCHOOL FACILITIES COMMISSION, 30 West Spring Street, 4th Floor Columbus, Ohio 43215,	:	AMENDED COMPLAINT WITH JURY DEMAND ENDORSED HEREON
and	:	
STATE OF OHIO, Through the Ohio School Facilities Commission, 30 West Spring Street, 4th Floor Columbus, Ohio 43215,	:	
Plaintiffs,	:	
v.	:	
BUEHRER GROUP ARCHITECTURE & ENGINEERING, INC. c/o Fan Zhang, Statutory Agent 7445 Airport Highway Holland, Ohio 43528,	:	
and	:	
JACK GIBSON CONSTRUCTION CO. c/o John C. Gibson, Sr., Statutory Agent 2460 Parkman Road, NW Warren, Ohio 44485,	:	
and	:	
MCMILLAN CONSTRUCTION LIMITED aka MCMILLAN CONSTRUCTION COMPANY c/o David O. McMillan 26457 State Route 58 Wellington, Ohio 44090	:	

FILED
COURT OF CLAIMS
OF OHIO
2014 JUL -2 PM 3:09

ON COMPUTER

and :

HARTFORD FIRE INSURANCE COMPANY :
10507 Timberwood Circle, Suite 208
Louisville, Kentucky 40223 :
c/o Agent: Schiff, Kreidler-Shell, Inc.
1 West Fourth Street, Suite 1300 :
Cincinnati, Ohio 45202
:
and
:
MERCHANTS BONDING COMPANY
2100 Fleur Drive :
Des Moines, Iowa 50321
c/o Agent: Dawson Insurance, Inc. :
1340 Depot Street
Cleveland, Ohio 44116, :

and :

JOHN DOE CORPORATIONS ONE (1) :
THROUGH TEN (10)
(Names and Addresses Unknown) :

and :

JOHN DOE BUSINESS ENTITIES :
ONE (1) THROUGH TEN (10)
(Names and Addresses Unknown) :

and :

JOHN DOE INDIVIDUALS :
ONE (1) THROUGH FIFTY (50)
(Names and Addresses Unknown) :

Defendants. :

INTRODUCTION, JURISDICTION & VENUE

1. This is an action for money damages and declaratory relief.

2. Plaintiff, Ohio School Facilities Commission ("OSFC"), is an agency of the state of Ohio, organized and existing pursuant to R.C. Chapter 3318, with specific authority to administer and enforce R.C. Chapter 3318 for and on behalf of the state of Ohio, and has the right to sue in its own name.

3. OSFC was formed by the Ohio General Assembly to facilitate the construction and reconstruction of educational buildings throughout the State of Ohio, and its headquarters are located at 30 West Spring Street, 4th Floor, Columbus, Franklin County, Ohio 43215.

4. As part of the OSFC program, school districts are identified to partner with OSFC in the financing and construction of school facilities throughout the State of Ohio.

5. Plaintiff, Grand Valley Local School District Board of Education ("Grand Valley") is a duly constituted Ohio political subdivision, which secured a favorable vote of electors of the Grand Valley Local School District to fund the local share of the school building project with OSFC, which is the subject of this litigation. (OSFC and Grand Valley are collectively referred to as the "Owners").

6. The events that give rise to this action occurred in connection with the design and construction for Grand Valley of the new PK-12 School Building located at 111 Grand Valley Ave. West, Orwell Ohio 44076 (the "Project") which occurred between 2001 and 2005.

7. The Project included among other things the design, engineering, construction, manufacturing, assembly, delivery, and installation of structural steel, roof, flashing, wall, windows, doors, insulation, and masonry systems, site development of storm sewer systems as well as site development, excavation, and preparation of the building identified in the preceding paragraph.

8. Defendant, Buehrer Group Architecture & Engineering, Inc. ("Buehrer"), is, upon information and belief, an Ohio Professional Corporation licensed to do business in Ohio and was

previously engaged in providing architectural and design services. Its agent for service of process is Fan Zhang, 7445 Airport Highway, Holland, Ohio 43528.

9. Buehrer was the Architect and Engineer of record for the Project, performing, designing, and supervising the architectural, engineering, and construction aspects of the Project before, during, and after construction. The acts performed by agents and employees of this Defendant concerning the Project were in connection with their duties with said Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment and/or agency.

10. On or about April 22, 2002, Grand Valley entered into a contract with Buehrer to serve as the Architect and Engineer of record for the Project (the "Buehrer Contract"). Plaintiff OSFC is specifically identified in the Buehrer Contract as an intended third-party beneficiary so as to permit OSFC to obtain full performance of Buehrer's obligations, and thus Grand Valley and OSFC are real parties in interest to the Buehrer Contract. A true and accurate copy of the Buehrer Contract is attached hereto as *Exhibit A* and incorporated by reference as if fully rewritten herein.

11. At all times relevant herein, and upon information and belief, Defendant Jack Gibson Construction Limited, aka Jack Gibson Construction Company ("Gibson") was an Ohio corporation licensed to do and conducting business in the state of Ohio, with its principal place of business located at 2460 Parkman Road, NW, Warren, Ohio 44485, and was a General Trades contractor for the Project. The acts performed by agents and employees of Defendant Gibson concerning the Project were in connection with their duties with said Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment.

12. On or about October 14, 2003, the State of Ohio, through the President and Treasurer of Grand Valley, entered into a contract with Gibson to serve as the General Trades contractor for the

Project (the "Gibson General Trades Contract"), and thus the State of Ohio, through the OSFC and Grand Valley, is the real party in interest to the Gibson General Trades Contract. A true and accurate copy of the Gibson General Trades Contract is attached hereto as *Exhibits B*, and is incorporated by reference as if fully rewritten herein.

13. At all times relevant herein, and upon information and belief, Defendant McMillan Construction Limited (hereinafter "McMillan") was an Ohio corporation licensed to do and conducting business in the state of Ohio, with its principal place of business located at 26457 St Route 58, Wellington, Ohio 44090, and was the early site contractor for the Project. McMillan filed its dissolution on or about October 15, 2007 with the Ohio Secretary of State by David O. McMillan, its authorized representative and its Agent for Service of Process. David O. McMillan's address is 26457 State Route 58, Wellington, Ohio 44090. The acts performed by agents and employees of this Defendant concerning the Project were in connection with their duties with said Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment.

14. On or around May 28, 2003, the State of Ohio, through the President and Treasurer of Grand Valley, entered into a contract with McMillan to serve as the early site contractor for the Project (the "McMillan Contract"). The State of Ohio, through the OSFC and Grand Valley is the real party in interest to the McMillan Contract. A true and accurate copy of the McMillan Contract is attached hereto as *Exhibits C*, and is incorporated by reference as if fully rewritten herein.

15. Defendant Hartford Fire Insurance Company (hereinafter "Hartford Fire") is a corporation licensed to issue insurance, including surety bonds, with its principal place of business being 10507 Timberwood Circle, Suite 208, Louisville, Kentucky. Its duly authorized agent is Schiff, Kreidler-Shell, Inc., 1 West Fourth Street, Suite 1300, Cincinnati, Ohio 45202. Hartford Fire issued the

surety bond for Defendant Gibson on its contract as set forth above, a copy of which is incorporated by reference and attached as *Exhibit B*; the surety bond for Defendant Jack Gibson Construction Company on its contract, a copy of which is incorporated by reference and attached as *Exhibit D*.

16. Defendant Merchants Bonding Company (hereinafter "Merchants") is a corporation licensed to issue insurance, including surety bonds, with its principal place of business being 2100 Fleur Drive, Des Moines, Iowa 50321. Its duly authorized agent is Dawson Insurance, Inc., 1340 Depot Street, Cleveland, Ohio 44116. Merchants issued the surety bond for Defendant McMillan on its contract as set forth above, a copy of which is incorporated by reference and attached as *Exhibit C*; the surety bond for Defendant McMillan on its contract, a copy of which is incorporated by reference and attached as *Exhibit E*.

17. At all times relevant herein, Defendants John Doe Corporations One (1) through Ten (10), and/or John Doe Business Entities One (1) through Ten (10), and/or John Doe Individuals One (1) through Fifty (50), whose identities are currently unknown to the Plaintiffs because they could not discover their names, executed pay applications and/or are legally responsible for the damages alleged hereinafter and/or are the individuals who are officers, directors, principals, and/or employees of Defendants, and conducted and/or are responsible for the activities as set forth in this Complaint.

18. Each of the aforementioned contracts, *Exhibits A-C*, incorporates by reference additional documents, including without limitation the Ohio School Design Manual, General Conditions and Specifications, Plans and Specifications, Special Conditions, manufacturers' specifications and installation guidelines, applicable building codes, later written and executed amendments, and the like (collectively, the "Contract Documents"). These additional documents are part of the

aforementioned contracts, but are not attached as they are voluminous and each Defendant should have them in its possession; regardless, the additional documents will be produced upon request.

19. Among other things, Defendants failed to perform and otherwise breached certain terms under their respective contracts, breached expressed and implied warranties, failed to correct defective materials and installations, breached their respective standards of care, failed to perform in a workmanlike manner, and/or otherwise failed to comply with the requirements of the Contract Documents, and their failures have directly and proximately caused the Owners to incur additional costs and damages, including without limitation repairing and replacing defective work and products, placing the buildings in the condition contemplated by the parties, and diminution in the fair market value of the buildings for the remaining conditions which are not susceptible to repair without economic waste. The Plaintiffs are currently in the process of repairing and replacing the defective and non-complying work, and the amount of damages are not therefore final, but are in excess of $6,000,000.00.

20. Defendant Hartford Fire under the terms and conditions of its surety bond is jointly and severely responsible for the damage proximately caused by Defendant Gibson, and Defendant Merchants under the terms and conditions of its surety bond is jointly and severely responsible for the damage proximately caused by Defendant McMillan, as herein set forth.

21. This Court has subject matter and personal jurisdiction of this action because, at all times relevant herein, the parties were doing business and/or domiciled in the State of Ohio.

22. Pursuant to Civ.R. 3(B), venue is proper in Ashtabula County, Ohio because the actions and omissions that give rise to Plaintiffs' claims occurred in Ashtabula County and the real property at issue is located in said county.

FIRST CLAIM FOR RELIEF:
BREACH OF CONTRACTS BY GIBSON

23. Plaintiffs incorporate paragraphs 1-22 above as if fully rewritten herein.

24. Plaintiffs performed all of their obligations under the Gibson General Trades Contract and all conditions precedent to bringing this action.

25. Defendant Gibson is liable to Plaintiffs for breach of the Gibson General Trades Contract by, among other things, failing to construct the Project in compliance with the Contract Documents, including without limitation the plans and specifications; failing to perform under and otherwise comply with the terms and conditions in the Gibson General Trades Contract; failing to correct defective materials and installations; failing to correctly perform repairs and remediation; and otherwise failing to perform in a workmanlike manner.

26. As a direct and proximate result of Gibson's breaches of its contracts, Plaintiffs have incurred and will incur additional costs and damages to repair and replace defective and non-complying work and materials in an amount in excess of $25,000.00, plus pre-judgment interest other compensatory and consequential damages, to be proven at trial.

SECOND CLAIM FOR RELIEF:
BREACH OF CONTRACT BY MCMILLAN

27. Plaintiffs incorporate paragraphs 1-26 above as if fully rewritten herein.

28. Plaintiffs performed all of their obligations under the McMillan Contract and all conditions precedent to bringing this action.

29. Defendant McMillan is liable to Plaintiffs for breach of the McMillan Contract by, among other things, failing to construct the Project in compliance with the Contract Documents, including without limitation the plans and specifications; failing to perform under and otherwise comply with the terms and conditions in the McMillan Contract; failing to correct defective materials and

installations; failing to correctly perform repairs and remediation; and otherwise failing to perform in a workmanlike manner.

30. As a direct and proximate result of McMillan's breaches of its contract, Plaintiffs have incurred and will incur additional costs and damages to repair and replace defective and non-complying work and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

THIRD CLAIM FOR RELIEF: BREACH OF EXPRESS & IMPLIED WARRANTIES BY GIBSON

31. Plaintiffs incorporate paragraphs 1-30 above as if fully rewritten herein.

32. At all times relevant herein, Defendant Gibson was engaged in the design, formulation, production, creation, construction, assembly, sale, distribution, supplying, preparation, labeling, installation, repair, and/or maintenance of the general trades scope of work and materials related to the Project.

33. Defendant Gibson expressly and impliedly warranted that its work and materials were free from defect in material or workmanship and were otherwise of good and merchantable quality and fitness for their intended uses.

34. Plaintiffs and/or their agents timely notified Defendant Gibson of defects in the materials and workmanship and that the same were otherwise not fit for their intended use, but Defendant Gibson has refused to honor its express and implied warranties.

35. Defendant Gibson breached the express and implied warranties by failing, among other things, to provide workmanship and materials of good and merchantable quality and fitness for their intended uses.

36. As a direct and proximate result of Defendant Gibson's breach of express and implied warranties, Plaintiffs have incurred additional costs and damages to repair and replace defective and

non-complying work and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

FOURTH CLAIM FOR RELIEF: BREACH OF EXPRESS & IMPLIED WARRANTIES BY MCMILLAN

37. Plaintiffs incorporate paragraphs 1-36 above as if fully rewritten herein.

38. At all times relevant herein, Defendant McMillan was engaged in the design, formulation, production, creation, construction, assembly, sale, distribution, supplying, preparation, labeling, installation, repair, and/or maintenance of the parking lots and materials related to the Project.

39. Defendant McMillan expressly and impliedly warranted that its work and materials were free from defect in material or workmanship and were otherwise of good and merchantable quality and fitness for their intended uses.

40. Plaintiffs and/or their agents timely notified Defendant McMillan of defects in the materials and workmanship and that the same were otherwise not of good and merchantable quality and fitness for their intended uses, but Defendant McMillan has refused to honor its express and implied warranties.

41. Defendant McMillan breached its express and implied warranties by failing, among other things, to provide workmanship and materials of good and merchantable quality and fitness for their intended uses.

42. As a direct and proximate result of Defendant McMillan's breach of express and implied warranties, Plaintiffs have incurred additional costs and damages to repair and replace defective and non-complying work and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

FIFTH CLAIM FOR RELIEF:
SURETY BOND CLAIMS AGAINST HARTFORD FIRE

43. Plaintiffs incorporate the allegations set forth in Paragraphs 1-42 above as if fully rewritten herein.

44. Pursuant to R.C. 153.54, Defendant Hartford Fire submitted bond (*Exhibits D*), which obligated Defendant Hartford Fire to indemnify Plaintiffs OSFC and Grand Valley up to the limits of the contract between Plaintiffs and Gibson for all damages incurred by Plaintiffs as a result of failure on the part of Gibson to perform its General Trades Contract according to the provisions therein and in accordance with the plans, details, specifications and bills of materials as set forth in the Contract Documents concerning the Project.

45. Pursuant to Ohio law and the bond issued by it, Defendant Hartford Fire is required to indemnify Plaintiffs, and is therefore jointly and severally liable for damages incurred by Plaintiffs as a proximate result of the breaches by Gibson as herein set forth.

46. Defendant Hartford Fire, as a result of the liability of Defendants Gibson to Plaintiffs for damages as set forth in this Complaint, is liable to the Plaintiffs for all damages incurred by Plaintiffs up to the full amounts of the bond.

SIXTH CLAIM FOR RELIEF:
SURETY BOND CLAIMS AGAINST MERCHANTS

47. Plaintiffs incorporate the allegations set forth in Paragraphs 1-46 above as if fully rewritten herein.

48. Pursuant to R.C. 153.54, Defendant Merchants submitted bond (*Exhibits E*), which obligated Defendant Merechants to indemnify Plaintiffs OSFC and Grand Valley up to the limits of the contract between Plaintiffs and McMillan for all damages incurred by Plaintiffs as a result of failure on the part of McMillan to perform its McMillan Contract according to the provisions therein and in

accordance with the plans, details, specifications and bills of materials as set forth in the Contract Documents concerning the Project.

49. Pursuant to Ohio law and the bond issued by it, Defendant Merchants is required to indemnify Plaintiffs, and is therefore jointly and severally liable for damages incurred by Plaintiffs as a proximate result of the breaches by McMillan as herein set forth.

50. Defendant Merchants, as a result of the liability of Defendant McMillan to Plaintiffs for damages as set forth in this Complaint, is liable to the Plaintiffs for all damages incurred by Plaintiffs up to the full amounts of the bond.

SEVENTH CLAIM FOR RELIEF: BREACH OF CONTRACT BY BUEHRER

51. Plaintiffs incorporate paragraphs 1-50 above as if fully rewritten herein.

52. Plaintiffs performed all of their obligations under the Buehrer Contract and all conditions precedent to bringing this action.

53. Defendant Buehrer is liable to Plaintiffs for breach of the Buehrer Contract by, among other things, failing to properly design the Project; failing to perform its obligation in compliance with the Contract Documents; failing to perform under and otherwise comply with the terms and conditions in the Buehrer Contract; failing to observe, detect, correct, and protect the Owners from defective designs, materials, and installations; and failing to meet the standard of care as the Architect and Engineer of Record on the Project.

54. As a direct and proximate result of Buehrer's breach of contract, Plaintiffs have incurred and will incur additional costs and damages to repair and replace defective and non-complying designs, workmanship and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

EIGHTH CLAIM FOR RELIEF: NEGLIGENCE OF BUEHRER

55. Plaintiffs incorporate paragraphs 1-54 above as if fully rewritten herein.

56. Defendant Buehrer was negligent in its performance concerning the Project, and otherwise failed to properly perform its duties as Architect and Engineer of Record within the professional standard of care.

57. Plaintiffs neither possessed reasonable notice, nor had they discovered, the design deficiency of Buehrer with respect to the Project's roads and parking lots, until receiving a consultant's report in June of 2011, setting forth deficiencies in the roads and parking lots design.

58. Plaintiffs neither possessed reasonable notice, nor had they discovered, the design deficiencies of Buehrer with respect to the Project's exterior envelope, until receiving a consultant's report in October of 2011, setting forth a number of deficiencies in the exterior envelope design.

59. As a direct and proximate result of the negligence of Defendant Buehrer, Plaintiffs have incurred and will incur additional costs and damages to repair and replace defective and non-complying designs, work and materials in an amount in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

NINTH CLAIM FOR RELIEF: LIABILITY OF JOHN DOE CORPORATIONS ONE (1) THROUGH TEN (10)

60. Plaintiffs incorporate paragraphs 1-59 above as if fully rewritten herein.

61. At all times relevant herein, Defendants John Doe Corporations One (1) through Ten (10), and/or John Doe Business Entities One (1) through Ten (10), and/or John Doe Individuals One (1) through Fifty (50), whose identities are currently unknown to Plaintiffs because they could not

discover their names, may have breached contracts and/or express and implied warranties, may have been negligent, may have made negligent misrepresentations, and/or may be legally responsible for the damages incurred by Plaintiffs, and/or are the individuals who are officers, directors, principals, and/or employees of Defendants who may be individually and personally responsible for the activities as set forth in this Complaint, and thus may be liable to Plaintiffs for the damages incurred by Plaintiffs.

62. As a direct and proximate result of the actions of these as yet unidentified Defendants, Plaintiffs have incurred and will incur additional costs and damages in excess of $25,000.00, plus pre-judgment interest, and other compensatory and consequential damages, to be proven at trial.

TENTH CLAIM FOR RELIEF: DECLARATORY RELIEF

63. Plaintiffs incorporate paragraphs 1-62 above as if fully rewritten herein.

64. This is a claim for declaratory judgment pursuant to Ohio Revised Code Chapter 2721 to determine the rights and duties of the parties to the Buehrer Contract, Gibson General Trades Contract, McMillan Contract, and the Surety Bonds issued by Hartford Fire and Merchants, attached hereto as *Exhibits A-E*, respectively.

65. There are genuine, material disputes as to the terms and conditions and rights, duties, and responsibilities under each of the aforementioned contracts for which Plaintiffs are entitled to declaratory judgment as to each.

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment in their favor and against Defendants as follows:

1. Upon Plaintiffs' First Claim for Relief against Defendant Gibson for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

2. Upon Plaintiffs' Second Claim for Relief against Defendant McMillan for all damages incurred in an amount in excess of $25,000.00, plus interests, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

3. Upon Plaintiffs' Third Claim for Relief against Defendant Gibson for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

4. Upon Plaintiffs' Fourth Claim for Relief against Defendant McMillan for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

5. Upon Plaintiffs' Fifth Claim for Relief against Defendant Hartford Fire jointly and severely for all damages and costs awarded against Defendant Gibson upon Plaintiffs' First and Third Claims for Relief.

6. Upon Plaintiffs' Sixth Claim for Relief against Defendant Merchants jointly and severely for all damages and costs awarded against Defendant McMillan upon Plaintiffs' Second and Fourth Claims for Relief.

7. Upon Plaintiffs' Seventh Claim for Relief against Defendant Buehrer for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

8. Upon Plaintiffs' Eighth Claim for Relief against Defendant Buehrer for all damages incurred in an amount in excess of $25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

9. Upon Plaintiffs' Ninth Claim for Relief against each John Doe Defendant individually and jointly and severally for all damages incurred in an amount in excess of

$25,000.00, plus interest, costs, fees, and any other recovery which Plaintiffs are legally entitled to recover from Defendant.

10. Upon Plaintiffs' Tenth Claim for Relief for declaratory judgment declaring the rights and responsibilities of Plaintiffs and Defendants under the Buehrer Contract, the Gibson General Trades Contract, the McMillan Contract, and the Surety Bonds issued by Hartford Fire and Merchants.

11. Upon all Claims for Relief for all costs and fees incurred and such other relief as is necessary to provide Plaintiffs complete relief.

Respectfully submitted,

MICHAEL DeWINE
Attorney General of Ohio

Jerry K Kasai

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Rileylaw@roadrunner.com
Attorney for Plaintiff Grand Valley Local School District Board of Education

JURY DEMAND

Now comes Plaintiffs, by and through their attorneys, and demand a jury of eight (8) persons to hear the within cause.

DAVID A. BEALS (0038495)
Assistant Attorney General

CERTIFICATE OF SERVICE

A copy of the foregoing Amended Complaint was sent via regular U.S. Mail and email, to the following counsel this 2dth day of July 2014 to:

Joseph A. Gerling (0022054) Scott A. Fenton (0068097) Lane Alton & Horst LLC Two Miranova Place, Ste 500 Columbus, OH 43215 jgerling@lanealton.com sfenton@lanealton.com Counsel for Gibson	Brian C. Lee, Esq. Jason D. Winter Riannon A. Ziegler Reminger Co., LPA 101 W. Prospect Ave, Ste 1400 Cleveland, OH 44115 blee@reminger.com jwinter@reminger.com rziegler@reminger.com Counsel for Buehrer
Stephen P. Withee (0069176) Ashley L. Oliker (0085628) Frost Brown Todd LLC 10 West Broad Street, Ste 2300 Columbus, OH 43215 swithee@fbtlaw.com aoliker@fbtlaw.com Counsel for Merchants	Patrick F. Roche Davis & Young 1200 Fifth Third Center 600 Superior Avenue East Cleveland, OH 44114 Phone (216) 348-1700 proche@davisyoung.com Counsel for Boak
Brian L. Buzby (0023124) Porter Wright Morris & Arthur LLP 41 S. High Street Columbus, OH 43215 bbuzby@porterwright.com Counsel for Hartford	Brian McMillan McMillan Construction 26457 State Route 58 Wellington, OH 44090
J William Pustelak 9070 Peach St. Waterford PA 16441	Hirschman Construction Services c/o Joseph Hirschman 26457 State Route 58 Wellington, OH 44090
Velotta Asphalt Paving Company, Inc. P.O. Box 1930 4964 Campbell Dr. Willoughby, OH 44096	

DAVID A. BEALS (0038495)

AGREEMENT
FOR
PROFESSIONAL DESIGN SERVICES
(CONSTRUCTION MANAGER INVOLVED)

sent 4/22/02

This Agreement for Professional Design Services (this "Agreement"), is made as of April 1, 2002, by and between the Grand Valley Local School District Board of Education ("School District Board"), whose contact person and address is set out below, and *Buehrer Group Architecture & Engineering, Inc.,* ("Architect") whose contact person and address is set forth below.

The School District Board, under the conditions named herein, does employ the Architect to provide professional services with respect to the Project (the "Project"). The School District Board and the Architect each acknowledge that the Ohio School Facilities Commission (the "Commission") is an intended third party beneficiary of this Agreement, so as to permit the Commission to obtain full performance of the Architect's obligations under this Agreement.

The School District Board and the Architect further acknowledge that Construction Management services will be provided by RP Carbone Company (the "Construction Manager") pursuant to a contract with the Commission whose contact persons are set forth below:

Project Name:	**Grand Valley Local School District**
Project Number:	
School District Board:	
Contact Person:	John Sheets, Superintendent
Address:	7527 Route 45, North Orwell, OH 44067
Phone Number(s):	(440) 437-6570
Fax Number(s):	(440) 437-1025
Architect:	
Contact Person:	Huber H. Buehrer, FAIA, PE
Address:	314 Conant Street, Maumee, OH 43537
Phone Number(s):	(419) 893-9021
Fax Number(s):	(419) 893-9027
Ohio School Facilities Commission:	
Contact Person:	Jeff Tuckerman
Address:	88 E. Broad St., Suite 1400, Columbus, OH 43215
Phone Number(s):	(614) 466-6290
Fax Number(s):	(614) 466-7749
Construction Manager:	
Contact Person:	Robert Speight
Address:	5885 Landerbrook Drive, Cleveland, OH 44124
Phone Number(s):	(440) 449-6750
Fax Number(s):	

EXHIBIT
A

WHEREAS, the Ohio General Assembly has appropriated funds for the Project to the Commission as more fully itemized in the applicable Controlling Board Request and the applicable Office of Budget and Management Encumbrance; and

WHEREAS, the School District Board has received a favorable vote of the electors of the school district on the propositions required for the Project, as required by Section 3318.05(A) and (B) of the Ohio Revised Code; and

WHEREAS, the Architect desires, and is capable and licensed, to provide professional design services for the Project; and

WHEREAS, unless adjusted as provided herein, the Basic Fee and any Approved Additional Fees payable to the Architect under this Agreement shall not exceed ***One Million Eight Hundred Ninety-Six Thousand Three Hundred Ninety Dollars ($1,896,390.00).***

NOW, THEREFORE, in consideration of the mutual promises herein contained, the School District Board and the Architect agree as follows:

ARTICLE I
RESPONSIBILITIES OF ARCHITECT

1.0 The Architect shall obtain a copy of the Ohio School Design Manual ("Design Manual"). The Architect shall endeavor to ensure that the plans, specifications and materials proposed for use in the Project comply with the standards established by the Design Manual and Commission Policies. The Architect agrees that any Variance Request will be submitted to the Commission 30 days before the completion of the Design Development Phase.

1.1 Architect's Services

1.1.1 Scope of Services; Applicable Law. The Architect shall provide professional design services as defined in Section 153.65(c) of the Ohio Revised Code, including without limitation, services customarily furnished in accordance with generally accepted architectural and engineering practices, for the Project in accordance with the terms of this Agreement. The Architect shall provide such services in accordance with the applicable Sections of the Ohio Revised Code, any applicable state rules and regulations, any applicable federal and local statutes, ordinances, rules, building codes and regulations, and the School District Board's Program of Requirements (comprised of, without limitation, the Master Plan, Bracketing Forms and Summary of Renovations, Project Budget and Cost Estimates) as incorporated by reference herein. The Architect shall cooperate with the Construction Manager in performing its services hereunder.

1.1.2 Construction Budget. The total amount available for the construction of the Project is *Thirty-One Million Eighty-Eight Thousand Three Hundred Sixty and 42/100 Dollars ($31,088,360.42)* (the "Construction Budget"). The Commission and the School District Board shall give written notice to the Architect and Construction Manager of any change in the Construction Budget. It is recognized that the Commission, School District Board, Architect and Construction Manager do not have control over the costs of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect 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 Architect. However, the Architect acknowledges the Construction Budget and will perform its services hereunder with that Budget in mind.

1.1.3 Timeliness; Standard of Care. The Architect shall perform services hereunder in an efficient and timely manner in accordance with professional standards of skill, care and due and reasonable diligence in a timely manner expected of architects with experience in designing school buildings similar in design and function to the Project 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 as is consistent with professional skill, due care and in the best interests of the Commission and the School District Board.

1.1.4 Design Schedule. Within thirty (30) days after the execution of this Agreement, the Architect shall submit to the Construction Manager a Design Schedule for the performance of the Architect's services which shall include allowances for reasonable periods of time required for the review and approval of items by the Commission and the School District Board and, as applicable, for approvals of governmental authorities having jurisdiction over the Project. The Construction Manager shall review and coordinate the Design Schedule with the proposed Construction Schedule to produce 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 School District Board and the Commission for approval. The Project Schedule, when approved by the School District Board and the Commission, shall not be exceeded without notice and adjustment of the Project Schedule approved by the School District Board and the Commission.

1.1.5 Personnel. The identities of the principal persons, and the extent of their participation in performing the Architect's services as set forth in this Agreement, shall not be altered without the written consent of the School District Board. A list of those principal persons is attached as Appendix B.

1.1.6 Non-Discrimination. The Architect represents that the Architect is in compliance with all applicable equal employment opportunity requirements under law as required by Section 153.59 of the Ohio Revised Code and any other applicable state or federal laws.

1.1.7 Consultants. The Architect may provide services through one or more consultants employed by the Architect (the "Consultants"); provided the Architect shall remain responsible to the School District Board for all duties and obligations of the Architect under this Agreement. Should the Architect desire to employ a Consultant or Consultants to assist the Architect in performing services for the Project, the Architect shall, in writing, state the scope of services to be performed by the Consultant or Consultants and identify the Consultant or Consultants and their business addresses and shall seek the School District Board's approval, which shall not be unreasonably withheld. The identity of any Consultant, and the extent of such Consultant's participation in, performing the Architect's services shall not be altered without the consent of the School District Board.

1.1.8 Anti-Abuse of Drugs and Alcohol. The Architect shall make a good faith effort to ensure that no employee of the Architect or any Consultant or Consultant's employees, 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 Project or use tobacco or bring firearms, ordinance or other dangerous materials onto the property of the School District Board. 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 Architect 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 not and has not engaged in any activity which would cause it or another person to not be in compliance with such requirements.

1.1.10 Ohio Services. Unless otherwise authorized by the Commission, the Architect's services shall be performed within the State of Ohio.

1.1.11 Limitation of Authority. The Architect shall not have any authority to bind the Commission or the School District Board for the payment of any costs or expenses without the express written approval of the Commission or the School District Board, as applicable. The Architect shall have authority to act on behalf of the Commission and the School District Board only to the extent provided herein. The Architect's authority to act on behalf of the Commission and the School District Board shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

1.1.12 Approval or Disapproval of Architect's Work. The Commission and the School District Board shall have the right to reasonably disapprove any portion of the Architect's work on the Project, including, without limitation, any design work or documents or Drawings prepared by the Architect. In the event that any portion of the Architect's work is disapproved by the Commission or the School District Board, the Architect shall proceed, when directed by the Commission or School District Board, with corrections to the work, documents or Drawings prepared or performed for that Phase to attempt to satisfy the objections. The Architect acknowledges that any review or approval by the Commission and the School District Board of any work, documents or Drawings prepared or performed by the Architect pursuant to this Agreement shall not relieve the Architect of the Architect's responsibility to properly and timely perform such work and prepare such documents and Drawings.

1.1.13 Safety. The Architect acknowledges that the safety of the School District's students, employees and guests is of the utmost importance. The Architect will take no action which would jeopardize the safety of the School District's students, employees, or guests and, without the School District Board's written approval, shall take no action which would interfere with the School District Board's activities. The School District Board reserves the right to require the Architect and its employees and any Consultants and the Consultant's employees to wear identification (subject to applicable safety standards), to stay in designated work areas at all times while on the School District Board's property and to record on a log the Architect's or Consultant's presence immediately upon entering the School District Board's property. The School District Board shall have the right to effect through the Architect the immediate removal of the Architect's employee or any Consultant or Consultant's employees from the Project Site for failure to wear identification, for being outside a designated work area, for fraternizing with or engaging in any improper behavior directed toward or in the vicinity of students, employees or guests of the School District Board or for other good cause shown.

ARTICLE II
SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 General

2.1.1 Basic Services to be provided by the Architect shall consist of the six (6) phases set forth in Paragraphs 2.1 through 2.7 inclusive, and include without limitation normal architectural, civil, structural, mechanical, electrical, and landscape design and engineering services for the Project, and any necessary signage and graphics, acoustics, computers, communications, fixtures, furnishings, interior design and equipment. It is recognized that the School District Board's Program of Requirements may consist of multiple Pre-Design, Schematic Design, Design Development, Construction Document, Bidding/Negotiation, and Construction Phases and Project Closeout. Attached to this Agreement and incorporated herein is Appendix A setting forth the element of the minimum phase submission requirements for each of the design phases for the Project.

2.2 Pre-design Phase (Program Development/Confirmation)

2.2.1 Program of Requirements. The Architect, in conjunction with the Construction Manager, shall visit the Project Site(s) to familiarize themselves with the conditions and limitations thereof, prior to the Architect providing an evaluation of the School District Board's educational requirements, schedule and budget requirements, including the Construction Budget, each in terms of the other, to the School District Board, the Commission, and the Construction Manager.

2.2.2 Program of Requirements and Revisions. The Architect shall, through a process of interviews, compile, date, and sign the Program of Requirements, and deliver the same to the School District Board for written approval and deliver a copy of the signed Program of Requirements to the Commission and Construction Manager. If any changes or adjustments to the 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, obtain the School District Board's written approval thereof and deliver the amendment to the Commission and the Construction Manager for review, comment and consent. The Program of Requirements, as amended, shall determine the Scope of the Project.

2.2.3 Site Conditions. The Architect shall assist the School District Board and the Construction Manager in obtaining proposals to test surface and subsoil conditions at the site, obtaining additional borings, and carrying out any other test or evaluation related to the site as may be recommended by the Architect or the Construction Manager and authorized by the School District Board.

2.3 Schematic Design Phase (Preliminary Drawings)

2.3.1 Consultation. The Architect shall identify and analyze requirements of governmental authorities having jurisdiction to approve design of the Project and participate in consultations with such authorities. The Architect shall further investigate existing conditions and verify the information provided by the School District Board, as reasonably necessary and practical.

2.3.2 Recommendations and Costs. The Architect shall review site use and improvements and alternative approaches to selection of materials, building systems and equipment with the School District Board as related to the Ohio School Design Manual.

2.3.3 Preliminary Life Cycle Analysis. In accordance with Section 123.011 of the Ohio Revised Code and Rule 123:4 of the Ohio Administrative Code, the Architect shall prepare and submit three (3) copies of alternative design concepts for a Preliminary Life Cycle Analysis to the School District Board unless a different number is required by the School District Board. The Architect will provide a copy to the Construction Manager. This subparagraph 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.

2.3.4 Schematic Design Documents. Based upon the Program of Requirements, and the Project Schedule and Construction Budget requirements, the Architect shall prepare Schematic Design Documents consisting of architectural drawings and other documents illustrating the scale of the Project and the relationship of components of the Project to one another and of the Project to surrounding properties. Upon completion of the Schematic Design Phase, the Architect shall provide four (4) copies of the Schematic Design Documents to the Construction Manager, the School District Board and the Commission. A meeting shall then be held between the Architect, the Construction Manager, the School District Board and the Commission where the Construction Manager, the School District Board and the Commission may make comments or suggestions to the Architect. After receiving these comments and suggestions, the Architect shall submit an amended set of Schematic Design Documents to the School District Board 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 Estimates. Based upon the Program of Requirements and the Schematic Design Documents, the Architect shall assist the Construction Manager to prepare and submit a Statement of Probable Construction Cost based on current area volume and other unit costs, for approval of the School District Board. The Architect and the Construction Manager 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 to the School District Board and the Commission.

2.4 Design Development Phase (Basic Drawings)

2.4.1 Life Cycle Analysis. In accordance with Section 123.011 of the Ohio Revised Code and Rule 123:4 of the Ohio Administrative Code, the Architect shall prepare and submit three (3) copies of a Life Cycle Cost Analysis to the School District Board and submit copies to the Construction Manager. This Subparagraph 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. Based on the approved Schematic Design Documents, the Program of Requirements, the approved Statement of Probable Construction Cost and the approved Project Schedule, the Architect shall prepare Design Development Documents consisting of drawings, outline specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other essential elements as may be appropriate. Upon completion of the Design Development Phase, the Architect shall provide four (4) copies of the Design Development Document to the Construction Manager, the School District Board and the Commission. A meeting will then be held between the Architect, the Construction Manager, the School District Board and the Commission, at which the Construction Manager, the School District Board, and the Commission may make comments or suggestions to the Architect. After receiving these comments and suggestions, the Architect shall submit an amended set of Design Development Documents to the School District Board and obtain its approval in writing, then forward the approved amended set of Design Development Documents to the Commission for final revision and approval.

2.4.3 Cost Estimate and Project Schedule. Based upon the Program of Requirements and the Design Development Documents, the Architect shall assist the Construction Manager to prepare and submit a Detailed Estimate of Construction Cost and a Project Schedule indicating milestone completion dates for approval by the School District Board. 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 School District Board and the Architect the materials, equipment, component systems and types of construction to be included in the Contract Documents. The Architect and the Construction Manager 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, if necessary. The Architect, the Construction Manager and the School District Board 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 Architect and the Construction Manager 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, the means to eliminate the differences. If the Architect, the Construction Manager and the

School District Board agree to eliminate any such differences, the Construction Manager shall prepare a report describing the agreed upon means. The Architect, the Construction Manager and the School District Board shall make any necessary amendments to the Program of Requirements in accordance with Subparagraph 2.2.2.

2.5 Construction Documents Phase (Contract Documents)

2.5.1 Drawings and Specifications. Based on the approved Design Development Documents, approved Detailed Estimate of Construction Cost, approved Project Schedule and any further revisions to the Program of Requirements, the Architect shall prepare, for approval by the School District Board and the Commission, Drawings and Specifications setting forth in detail the requirements for the construction of the Project. With the consent of the School District Board, the Architect may include approved Alternates in the Contract Documents. The Drawings and Specifications shall encourage competition, shall provide for construction by multiple prime contractors as required by the Ohio Revised Code and, shall be complete and unambiguous and in accordance with all applicable codes, ordinances, statutes, laws, regulations, except to the extent stated otherwise in writing by the Architect for necessary variances and waivers at the time of submission thereof by the Architect to the School District Board and the Commission for approval. In preparing the Drawings and Specifications, the Architect shall consider the scope of the Work, general market conditions, including without limitation, any analysis of labor provided by the Construction Manager. The Architect shall not amend the Standard Conditions except by Special Conditions approved by the School District Board and the Commission in writing. From time to time, the Architect shall make any necessary revisions to the Drawings and Specifications. Upon completion of the Contract Documents, the Architect shall provide seven (7) copies of the Drawings and Specifications to the Construction Manager who shall submit three (3) copies each to the School District Board and the Commission for review and approval. The Architect shall revise the Drawings and Specifications to incorporate comments from the Construction Manager, School District Board and the Commission and shall submit a copy of the revised Drawings and Specifications to the Construction Manager, the School District Board and the Commission.

2.5.2 Revisions to Cost Estimate and Project Schedule. The Architect shall advise in writing the School District Board and the Construction Manager of the need for any changes in the Project requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed and any adjustments required in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the School District Board and the Commission of any such changes or adjustments, the Architect shall assist the Construction Manager in preparing a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such changes or adjustments. The Construction Manager shall submit a copy of the revised Detailed Estimate of Construction Cost or the revised Project Schedule, as applicable, obtain the School District Board's signature thereon and deliver the approved revisions to the Commission.

2.5.3 Bidding Documents. The Architect shall assist the Construction Manager in the preparation of all of the documents necessary for bidding of Contracts. The Architect shall review and provide comments to the School District Board and the Construction Manager on all of the bidding documents. The Architect shall consult with, and provide recommendations to, the Construction Manager, with regard to the appropriate number and division of bid packages.

2.5.4 Government Approvals. In cooperation with the Construction Manager, the Architect shall submit to the Division of Code Compliance of the Department of Commerce of the State of Ohio, such sets of the Drawings and Specifications as the Division may require for approval, together with any necessary completed applications and all required fees. The Architect, with the assistance of the Construction Manager, shall 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, shall prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project and shall prepare and process the required notice of termination prior to Contract Completion. In cooperation with the Construction Manager, the Architect shall assist the School District Board and the Commission in filing documents with, and obtaining the necessary approvals of, all governmental authorities having jurisdiction over the Project, including without limitation, the provision and explanation of technical and design data and participation in consultations with appropriate officials.

2.5.5 Additional Filings. Upon approval of the governmental authorities pursuant to Section 2.5.4, the Architect shall obtain four (4) sets of corrected copies of the Drawings and Specifications bearing approval stamps of those authorities. The Architect shall retain one set and distribute the other corrected copies as follows:

(a) One set to the School District Board,
(b) One set to the Construction Manager,
(c) One set to the Commission.

2.5.6 Labor Recommendations. The Architect shall review and comment upon any analysis prepared by the Construction Manager of the types and quantities of labor required for the Project, the availability of appropriate categories of labor required for all Contracts and recommendations for actions designed to minimize adverse effects of labor shortages.

2.6 Bidding or Negotiation Phase (Bidding Assistance and Recommendation)

2.6.1 Addenda. The Architect shall render interpretations and clarifications of the Contract Documents in Addenda and submit the proposed interpretations and clarifications to the Construction Manager for review and distribution.

2.6.2 Pre-bid Conferences. The Architect and their consultants shall attend and participate in the pre-bid conferences to be conducted by the Construction Manager for review of the Project scope with prospective bidders.

2.6.3 Bid Review. The Architect shall assist the Construction Manager, review all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation of the Architect and the Construction Manager to the School District Board and 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, all applicable Alternates referenced in the Contract Documents shall be evaluated.

2.6.4 Bid Substitutions. Substitutions contained in the bid of any Bidder shall not be considered by the Architect in recommending the award of any Contract.

2.6.5 Pre-award Conferences. The Architect shall attend pre-award conferences between the Construction Manager and the apparently successful Bidders. The Construction Manager shall notify the Architect in a timely manner as to the schedule for the conferences.

2.6.6 Subcontractor and Material Supplier Review. The Architect, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall assist the Construction Manager in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the Standard Conditions.

2.6.7 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 and the School District Board shall, at their option (1) approve in writing an increase in the Construction Budget; (2) authorize re-bidding or re-negotiation 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 and the School District Board elect option (1) and such increase in the Construction Budget is more than ten percent (10%), the Architect may request, in writing, an adjustment to the Basic Fee in accordance with Subparagraph 5.5.5 of this Agreement. If the Commission and the School District Board elect options (2), (3) or (4), the Architect shall modify the Program of Requirements, the Project Schedule and the Contract Documents and cooperate in any necessary bidding or negotiation without additional compensation.

2.6.8 Further Revisions to Cost Estimate and Project Schedule. The Architect and the Construction Manager shall advise the Commission and the School District Board of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the Commission and the School District Board of any such adjustments, the Architect shall assist the Construction Manager in preparing a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments. The Construction Manager shall obtain the School District Board's signature thereon and deliver the signed, revised Detailed Estimate of Construction Cost or Project Schedule to the Commission.

2.6.9 Contract Execution Notices. The Architect shall assist the Construction Manager and School District Board as needed in the preparation and issuance of Notices of Award and Notices to Proceed, preparation and execution of the Construction Contracts, preparation and issuance of 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 any portion of the Project to a Contractor and will terminate upon the Final Acceptance of the Project by the Commission and the School District Board, provided that the Architect shall thereafter perform, as a part of Basic Services, such services as shall be reasonably necessary in connection with the correction by a Contractor or any subcontractor of any defects in the Project appearing during the applicable warranty period(s) and such services as may be necessary to correct any defects resulting from the Architect's failure to comply with the terms of this Agreement. The Architect shall provide its services during the Construction Phase in accordance with this Agreement. The Architect and the Construction Manager shall at all reasonable times have access to the Project.

2.7.2 Interpretations and General Responsibilities. The Architect shall render interpretations of the Contract Documents necessary for the proper execution or progress of the Work on the Project. All interpretations shall be in writing, shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be delivered to the Construction Manager for distribution to the School District Board and each applicable Contractor.

2.7.3 Investigation of Condition of Facilities. For renovation and remodeling, the Architect, with the assistance of the Construction Manager, 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 School District Board about existing conditions.

2.7.4 Site Visits and Inspections. The Architect and appropriate Consultants shall visit the Project at appropriate intervals and, at such intervals as the Architect and the School District Board agree, to review the Work of each Contractor for Defective Work, to become familiar with the progress and quality of the Work on the Project and to determine if the Work is proceeding in conformity with the Contract Documents. Such visits shall specifically include, without limitation, the observation of large excavations, observation of footings during placement of concrete and observation of masonry work, structural steel erection, roofing work and interior finishes. In all events, the Architect or its representative and appropriate Consultants shall be on the site of the Project for such purposes not less than 32 hours per week whenever any Work is in preparation or progress, unless otherwise expressly provided in writing by the School District Board. The School District reserves the right to require the Architect or his representative to be at the Project Site 32 hours per week as part of the Architect's Basic Fee. If the Architect shall become aware, either through such visits or otherwise of any Defective Work on the Project, the Architect shall provide a written report of all Defective Work to the School District Board and the Construction Manager, together with recommendations for the correction thereof.

2.7.5 Reserved Section

2.7.6 Construction Schedule. The Architect shall review and approve for conformance with the Contract Documents the Construction Schedule prepared by the Construction Manager. If such conditions indicate that milestone completion dates shown on the Project Schedule may not be met, the Architect shall recommend corrective action to the Construction Manager. When the Project Schedule is revised or updated, the Construction Manager shall prepare a revised Project Schedule and obtain the Architect's signature thereon and deliver the revised Project Schedule to the School District Board.

2.7.7 Meetings. The Architect shall participate in pre-construction, progress, quality control and special meetings with the Construction Manager, the School District Board, potential bidders and bidders, appropriate Consultants, the Contractors and any other parties involved in the Project to discuss such matters as procedures, progress, problems, scheduling and coordination. The Architect shall participate in partnering meetings with the Construction Manager, the School District Board, appropriate Consultants, the Contractors and other parties involved in the Project.

2.7.8 Tests; Inspections. The Architect shall advise and consult with the Construction Manager and the School District Board 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 Architect shall receive from the Construction Manager, for the Architect's review, approval or other appropriate action, Contractor submittals such as Shop Drawings, Product Data and Samples, for conformity with the Contract Documents. The Architect shall also review drawings, calculations and designs required of Contractors and provided with such submittals (except calculations and designs of manufacturers of original equipment and systems to be installed in the Project and except calculations and designs which the Contract Documents expressly make the sole responsibility of one or more Contractors, Subcontractors, Material Suppliers or other persons).

2.7.10 Bulletins; Change Orders. The Architect shall prepare Bulletins and other necessary documentation for changes in the Work and submit each Bulletin to the Construction Manager for review and processing. In consultation with the Construction Manager, and Architect shall prepare all Change Orders and all Drawings, Specifications and other required documents or supporting data. 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 Architect shall monitor Project costs on all Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis. The Architect shall afford access to these records at all times to the Commission, the School District Board and the Construction Manager.

2.7.12 Contractor Payments. Based upon the Architect's review of the Work and evaluations of the Contractor's Applications for Payment, the Architect shall review and approve, modify or reject the amounts shown on such Applications as being due to the Contractor in accordance with the Contract Documents. Each Application for Payment shall be signed by the Architect and the Construction Manager, then delivered to the School District Board. The Architect's certification of an Application for Payment shall constitute a representation to the School District Board, based on the Architect's observations at the site and on the recommendations of the Construction Manager that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformacne with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation by the Architect that to the best of the Architect's skill, knowledge and belief the Contractor is entitled to payment in the amount certified.

2.7.13 Partial Occupancy. The Architect shall assist the Construction Manager and the School District Board in determining dates of Partial Occupancy of the Work or portions thereof designated by the School District Board and shall assist in obtaining any necessary certificate from any applicable government authority. Prior to partial occupancy the Architect shall prepare lists of incomplete or unsatisfactory Work and submit them to the School District Board and the Construction Manager.

2.7.14 Contract Closeout. Upon receipt of a Contractor's Punch List, the Construction Manager shall provide written notice to the Commission, the School District Board and the Architect that the Work is ready for Final Inspection. The Architect shall assist the Construction Manager in conducting the Final Inspection. If applicable, the Architect shall prepare an Architect's Punch List and transmit it to the Construction Manager and the Contractor. The Architect shall transmit a copy of any guarantees, warranties, releases, bonds and waivers in its possession to the Commission. The original documents are public records to be provided to the School District Board.

2.7.15 Contractor Claims. The Architect shall review claims from Contractors for additional compensation and equitable adjustment of compensation, and shall deliver a written recommendation to the Construction Manager and the School District Board about each claim and attend any dispute resolution meetings related to each claim.

2.7.16 Record Drawings. Based on marked-up prints, drawings or data provided by the Contractors and the As Built Drawings transmitted by the Construction Manager, the Architect shall furnish to the School District Board one (1) set of Record Drawings in the form of reproducible Drawings correctly marked to show the Project as completed in the form of mylar tracings, one (1) set of all other Contract Documents showing the Project as completed in the form of paper documents and one (1) set of all Contract Documents showing the Project as completed on a computer medium approved by the School District Board. The Record Drawings, to the best of the Architect's knowledge based upon the As-Built Drawings delivered to the Architect by the Contractors and the Architect's observations during the progress of the Project, shall detail the actual construction of the Project and contain such annotations by the Architect as may be necessary for

someone unfamiliar with the Project to understand the changes that were made to the original Drawings.

2.7.17 Contractor Responsibilities. The Architect 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 Architect 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 Architect does have a duty to inform the School District Board and the Construction Manager if work is not being completed according to the Construction Documents.

2.7.18 11-Month Inspection. The Architect shall participate in the eleven-month walk-through of the Project with the School District Board one month prior to the expiration of the one year guarantee provided by the Contractor. The Architect shall consult with the Construction Manager and the School District Board to address any issue identified in the walk-through according to the procedures specified in the Standard Conditions.

ARTICLE III
ADDITIONAL SERVICES

3.1 General

3.1.1 The following services are not included in Basic Services and must be approved in writing by the School District Board with the concurrence of the Commission. The following services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Architect shall not be compensated for any of the following services made necessary by the act or omission of the Architect or any Consultant.

3.1.2 Additional On-Site Services. Providing administration or observation of construction beyond those services to be provided as Basic Services pursuant to Subparagraph 2.7.4.

3.1.3 Scheduling Consultant. Serving as a construction scheduling consultant.

3.1.4 Perspectives, Models, Renderings. Preparing professional perspectives, models or renderings that are not otherwise useful or necessary to the Architect in the provision of Basic Services hereunder at the written request of the Commission or the School District Board.

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

3.1.6 Special Studies. Providing planning, site evaluations, environmental studies, or comparative studies of prospective 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 surveying services including land surveys and rights-of-way studies.

3.1.8 Constructability and Cost Analyses. Preparing analyses of the construction feasibility of the Project or of owning and operating costs or preparing detailed quantity surveys or inventories of material, equipment and labor beyond those services to be provided as Basic Services.

3.1.9 Off-Site Services. Providing planning or design services for off-site utilities which are not adjacent to the Project, building connections or roadways.

3.1.10 Certain Revisions. Making revisions in Drawings, Specifications or other Contract Documents when such revisions are inconsistent with written approvals or instructions previously given or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

3.1.11 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 Architect or any Consultant and furnishing services as may be required in connection with the replacement of such Work.

3.1.12 Contractor Default. Providing services made necessary by the default of a Contractor.

3.1.13 Additional Documents. Preparing more than the sets of Contract Documents required as Basic Services pursuant to Subparagraphs 2.5.1, 2.6.3 and 2.6.8.

3.1.14 Asbestos. Providing services related to identifying, surveying, remediating, removing or disposing of asbestos.

ARTICLE IV
RESPONSIBILITIES OF THE SCHOOL DISTRICT BOARD AND THE COMMISSION

4.1 Required Actions. The Commission and the School District Board shall review, approve or take such actions as are required of them 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 School District Board to Contractors shall be through, or in consultation with, the Construction Manager, with notice to the Architect.

4.3 School District Board's Requirements. The School District Board and the Commission shall provide full information regarding its requirements for the Project including, without limitation, the Program of Requirements, any agreement related to the Project, design and construction standards and work rules which shall set forth the School District Board's and the Commission'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 Site Description. If reasonably requested by the Architect as necessary for the Project, the School District Board 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 inverts and depths. The Architect and the Construction Manager

shall be entitled to rely upon the accuracy and completeness of information provided by the School District Board under this Paragraph.

4.6 Notice to Architect. If the School District Board or 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 Architect and the Construction Manager.

4.7 Legal Representation. The School District Board and the Commission shall not be responsible to provide, or pay for, any legal representation of the Architect.

ARTICLE V
COMPENSATION

5.1 Total Compensation. The total compensation of the Architect and all Consultants shall consist of the Basic Fee, any Approved Additional Services and Reimbursable Expenses and shall not exceed the total amount of ***One Million Nine Hundred Fifty-Nine Thousand Five Hundred Ten Dollars ($1,959,510.00)***.

5.2 Basic Fee.

5.2.1 Amount of Basic Fee. For all of its services hereunder, the School District Board agrees to pay the Architect a Basic Fee of One Million Eight Hundred Ninety Six Thousand Three Hundred Ninety Dollars ($1,896,390). This Basic Fee represents 6.10 percent of the Construction Budget set forth in Subparagraph 1.2. A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with Subparagraph 9.5.2.

5.2.2 Extent of Basic Fee. The Architect's Basic Fee includes all compensation for Basic Services, including without limitation, for salaries or other compensation of the Architect's employees at the principal office, branch offices and the field office, general operating expenses of the Architect's principal office, branch offices and the field office, any part of the Architect's capital expenses, including interest on the Architect's capital employed for the Project, overhead or expenses of any kind, any costs incurred due to the negligence of the Architect, the Architect's general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

5.3 Additional Fees

5.3.1 Fees For Additional Services. The School District Board shall pay the Architect the following Additional Fees for the following Additional Services:

Additional Service	Additional Fee
Optional Demolition (w/o asbestos abatement)	$ 63,120

In all events, total Additional fees shall not exceed the amount of ***Sixty-Three Thousand One Hundred Twenty Dollars ($63,120)*** without an amendment to this Agreement in accordance with Subparagraph 9.5.2 and a request filed in accordance with Subparagraphs 7.2 and 7.3.

For other Additional Services provided by the Architect and any Consultants in accordance with Article III, the School District Board shall pay the Architect Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the School District Board and the Architect, but in all events, such Additional Fees shall not exceed 2.5 times the Direct Personnel Expense incurred by the Architect and any applicable Consultant in providing those Additional Services. 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. The Architect, with the prior written consent of the School District Board, may provide Additional Services through one or more Consultants in accordance with Subparagraph 1.1.7.

5.3.2 Direct Personnel Expense. Direct Personnel Expense shall mean the portion of direct salaries and wages of all personnel of the Architect or any Consultants, 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 Architect's performance on, or profit from, the Project.

5.4 Method and Terms of Payment

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

Pre-design Phase	5%
Schematic Design Phase	20%
Design Development Phase	20%
Construction Documents Phase	25%
Bidding or Negotiation Phase	5%
Construction Phase	20%
Project Closeout	5%

Any balance of the final 5% of the Basic Fee shall be paid upon Project Closeout as follows: one-half after preparation of all Punch-Lists and one-half after completion of all Punch-List items to the reasonable satisfaction of the School District Board and receipt of Project Record Drawings by the School District Board as provided in this Agreement. The School District Board may waive the withholding of any final balance or part thereof, if the Architect has performed to the reasonable satisfaction of the School District Board. Payment of the last twenty percent (20%) of the appropriate portion of the Basic Fee for the Predesign Phase, the Schematic Design Phase, the Design Development Phase, the Construction Documents Phase, and the Bidding or Negotiation Phase shall be made only after all documents and Drawings required for the respective Phase have been submitted to the Commission or the School District Board, as applicable, in form and substance reasonably satisfactory to the Commission and the School District Board. The Basic Fee, including without limitation the final 5% thereof, shall be subject to all setoffs in favor of the School District Board for claims against the Architect. Payments for Basic Services shall be based upon a properly completed Architect's Pay Request or Invoice and shall be made within the applicable time limits. The Architect's pay request shall be submitted to the Construction Manager for approval prior to payment.

5.4.2 Additional Fees. Payments of Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.3 shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed Architect's Pay Request or Invoice.

5.4.3 Payments by Architect. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Architect shall pay all portions thereof due to Consultants.

5.4.4 Compensation for Extension of Project Time. If the Architect notifies the School District Board 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 ten percent (10%) through no fault of the Architect, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the School District Board and the Architect. If, as a result of such negotiation, the School District Board agrees that the Architect shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Architect renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Commission and the School District Board.

5.4.5 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 and the School District Board materially change 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 Architect, any necessary adjustment in the compensation of the Architect shall be negotiated to the mutual reasonable satisfaction of the School District Board and the Architect. If, as the result of such negotiation, the School District Board agrees that the Architect shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Architect 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 and the School District Board.

ARTICLE VI
INSURANCE AND INDEMNIFICATION

6.1 Insurance

6.1.1 Casualty Insurance. Except when a modification is requested in writing by the Architect and approved in writing by the School District Board, the Architect shall carry and maintain at the Architect'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 fullest extent 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 Professional Liability Insurance. When the Commission does not elect to procure Project Professional Liability Insurance, and subject to the Commission's waiver or modification of Professional Liability Insurance upon written request of the Architect, the Architect shall maintain insurance to protect against claims arising from the performance of the Architect's services caused by any negligent acts, errors or omissions for which the Architect is legally liable ("Professional Liability Insurance"). Except when a waiver is approved by the Commission upon written request of the Architect, such Professional Liability Insurance shall be in an amount not less than $1,000,000 per claim and in the annual aggregate. The Architect shall endeavor to keep such insurance in effect for so long as the Architect may be held liable for its performance of services for the Project. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the Architect commenced to perform services relating to the Project. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.

6.1.3 Certificates. The Architect shall provide the School District Board with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. Each policy of insurance required to be purchased and maintained by the Architect, shall name the School District Board and the Commission as an additional insured. 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 School District Board.

6.2 Indemnification

6.2.1 Indemnification by Architect Generally. To the fullest extent permitted by law, the Architect shall and does agree to indemnify and hold harmless the Commission, the School District Board and their members, officers, employees and representatives and agents 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 Architect's services 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, errors or omissions of the Architect, anyone directly or indirectly employed by the Architect or anyone for whose acts the Architect 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 Architect shall and does agree to indemnify and hold harmless the Commission, the School District Board 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 Architect, anyone directly or indirectly employed by the Architect or anyone for whose acts the Architect is legally liable. The Architect 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 School District Board.

ARTICLE VII
DISPUTE RESOLUTION PROVISIONS

7.1 Mediation. Instead of, or in addition to, the procedures set forth below, the School District Board and the Architect 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 Architect for Additional Fees shall be made in writing to the School District Board and filed prior to payment of the final 5% of the Basic Fee. Failure of the Architect to timely make such a request shall constitute a waiver by the Architect of any request for such fees and expenses.

7.3 Request Information. In every written request filed pursuant to Paragraph 7.2, the Architect 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 Decision of the School District Board. If the Architect files a written request with the School District Board pursuant to Paragraph 7.2, the School District Board shall review the request and render a final decision in writing as between the School District Board and the Architect. Any payment resulting from such decision must be approved by the Commission pursuant to an Amendment to this Agreement in accordance with subparagraph 9.5.2.

7.5 Performance. The Architect shall proceed with the Architect's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Architect and the School District Board in writing. The School District Board 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. The decision of the School District Board shall be conclusive and final.

7.6 Delegation. No provision of this Article shall prevent the School District Board from delegating the duties or authorities of the School District Board to any other person selected at the discretion of the School District Board.

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 Architect shall not terminate this Agreement for non-payment if the School District Board initiates the payment process for all reasonably undisputed amounts due to the Architect within ten (10) days of receipt of the Architect's written notice to terminate. This Agreement may be terminated by the School District Board without cause upon fifteen (15) days

written notice to the Architect. This Agreement may be terminated at any time upon the mutual consent of the School District Board and the Architect.

8.1.2 Architect's Remedies Upon Termination by the School District Board Without Cause or Termination by Architect. In the event of a termination which is not due to the failure of the Architect to perform in accordance with the terms of this Agreement, the Architect 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. In such event, for services rendered prior to the termination date in an uncompleted Phase and for Additional Services, the Architect shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable.

8.1.3 Architect's Remedies Upon Termination by the School District Board for Cause. In the event of a termination which is due to the failure of the Architect to perform in accordance with the terms of this Agreement, the Architect 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 5.5.1, together with Additional Services completely performed prior to the termination date.

8.1.4 Architect's Remedies Upon Termination by Mutual Consent. In the event of a termination upon the mutual consent of the School District Board and the Architect, any compensation for Basic Services or for Additional Services 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 School District Board and the Architect agree that any services are to be performed for the Project by the Architect after any termination date, the amount of any compensation and the method and terms of payment of such compensation 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 obligations to be performed by the Architect under this Agreement will survive termination of this Agreement.

8.2 Remedies

8.2.1 Cumulative Remedies. No remedy conferred upon the School District Board 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 School District Board shall be cumulative and shall be in addition to any other remedy given to the School District Board hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Architect 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 Architect shall be cumulative and shall be in addition to any other remedy given to the Architect 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 School District Board or the Architect 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 as often as deemed expedient.

ARTICLE IX
MISCELLANEOUS PROVISIONS

9.1 Ownership and Use of Documents

9.1.1 Property of the School District Board. Drawings, Specifications and other documents prepared by, or with the cooperation of, the Architect or any Consultant pursuant to this Agreement are the property of the School District Board whether or not the Project for which they are prepared is commenced or completed. The Architect or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference. Such Drawings, Specifications or other documents may be used by the School District Board or others employed by the School District Board for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without compensation to the Architect or Consultant. Unless the Project is a prototype, such Drawings, Specifications or other documents shall not be given or sold by the School District Board to be used by others, on other Projects except by agreement in writing and with agreed upon appropriate compensation to the Architect or Consultant, as applicable. The Architect shall not be held liable if a third party receives the Architect's Drawings, Specifications or other Documents and either modifies, changes or uses the documents in a way not originally anticipated when the documents were created. If an event occurs for which the Architect or Consultant may be liable, the School District Board shall notify the Architect or Consultant of such event as soon as practical after such event and shall provide access to the Project to the Architect or Consultant and their representatives. This Subparagraph shall survive termination of this Agreement.

9.1.2 Architect's Intellectual Property. Except as specified in Article 9.1.1 above, all inventions, patents, design patents and computer programs acquired or developed by the Architect in connection with or relation to the Project shall remain the property of the Architect and shall be protected by the School District Board from use by others except by agreement in writing with appropriate and agreed upon compensation to the Architect.

9.2 Public Relations. Prior to completion of the Project, any public relations or publicity about the Project shall be within the control and with the consent of the School District Board and the Commission. However, the Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect shall seek the express approval of the School District Board and the Commission prior to making any application, or submitting for any design award, or acknowledgement of any kind for the Architect's services for the Project.

9.3 Records. The records of all of the Architect's Direct Personnel Costs, 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 School District Board and 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 Architect related to the Project shall be available to the Commission and the School District Board at all times and shall be maintained for six (6) years after Final Acceptance of the Project by the Commission.

9.4 Successors and Assigns. The School District Board and the Architect, 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 School District Board and the Architect each acknowledge that the Commission is an intended third-party beneficiary of this Agreement and a duty of trust and care is owed to the