FILED
COURT OF CLAIMS
OF OHIO

2015 FEB 11 AM 11: 11

IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING COMPANY, INC., Plaintiff, v. **OHIO SCHOOL FACILITIES COMMISSION** Defendant/Third Party Plaintiff, v. **STEED HAMMOND PAUL, INC. dba SHP LEADING DESIGN, et al.** Third-Party Defendant/Fourth Party Plaintiff, v. **BERARDI PARTNERS, INC.** 369 East Livingston Ave Columbus, OH 43215 Fourth Party Defendant.	CASE NO.: 2013-00349 JUDGE: McGrath REFEREE: Wampler **ANSWER OF DEFENDANT, STEED HAMMOND PAUL, INC. TO THIRD-PARTY COMPLAINT AND FOURTH PARTY COMPLAINT**

ORIGINAL

Third-Party Defendant, Steed Hammond Paul, Inc. dba SHP Leading Design ("SHP"), hereby answers Third-Party Plaintiff's Complaint as follows:

FIRST DEFENSE

1. SHP admits that Plaintiff's Complaint is styled as an action for indemnification but SHP denies OSFC's entitlement to indemnification and denies all other allegations set forth in paragraph 1 of the Third-Party Complaint.
2. SHP admits the allegations set forth in paragraph 2 of the Third-Party Complaint.

ON COMPUTER

3. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 3 of the Third-Party Complaint and therefore denies each and every such allegation.
4. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 4 of the Third-Party Complaint and therefore denies each and every such allegation.
5. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 5 of the Third-Party Complaint and therefore denies each and every such allegation.
6. SHP admits the allegations set forth in paragraph 6 of the Third-Party Complaint.
7. SHP admits performance of its scope of work as set forth in the parties' Contract, but denies each and every other allegation set forth in paragraph 7 of the Third-Party Complaint.
8. SHP admits the allegations set forth in paragraph 8 of the Third-Party Complaint.
9. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 9 of the Third-Party Complaint and therefore denies each and every such allegation.
10. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 10 of the Third-Party Complaint and therefore denies each and every such allegation.
11. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 11 of the Third-Party Complaint and therefore denies each and every such allegation.

12. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 12 of the Third-Party Complaint and therefore denies each and every such allegation.
13. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 13 of the Third-Party Complaint and therefore denies each and every such allegation.
14. SHP admits that certain other documents were incorporated into the parties' Contract, but it denies each and every other allegations set forth in paragraph 14 of the Third-Party Complaint.
15. SHP denies the allegations set forth in paragraph 15 of the Third-Party Complaint.
16. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 16 of the Third-Party Complaint and therefore denies each and every such allegation.
17. SHP admits the allegations set forth in paragraph 17 of the Third-Party Complaint.
18. SHP admits the existence of a Complaint by TransAmerica, but it denies any paraphrased or selective quotation from such complaint and further denies each and every other allegation in paragraph 18 of the Third-Party Complaint.
19. SHP denies the allegations set forth in paragraph 19 of the Third-Party Complaint.
20. SHP admits and denies the allegations incorporated into paragraph 20 of the Third-Party Complaint to the same extent such allegations are admitted or denied above.
21. SHP denies the allegations set forth in paragraph 21 of the Third-Party Complaint.

22. SHP admits and denies the allegations incorporated into paragraph 22 of the Third-Party Complaint to the same extent such allegations are admitted or denied above.

23. SHP is without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 23 of the Third-Party Complaint and therefore denies each and every such allegation.

SECOND DEFENSE

24. The Third-Party Complaint fails to state a claim against SHP upon which any relief may be granted.

THIRD DEFENSE

25. The passage of time in bringing this action and the prejudice to SHP caused by such delay bars Third-Party Plaintiff's claim against SHP, based upon the doctrine of laches.

FOURTH DEFENSE

26. Any damages suffered by Third-Party Plaintiff were caused by Third-Party Plaintiff's own errors or omissions or those of other persons for whom SHP is not responsible.

FIFTH DEFENSE

27. Third-Party Plaintiff's right to relief is barred by the doctrine of unclean hands.

SIXTH DEFENSE

28. To the extent Third-Party Plaintiff's Complaint against SHP is based upon a theory of negligence, SHP alleges that Third-Party Plaintiff was itself comparatively negligent or comparatively at fault to such a degree that Third-

Party Plaintiff's claims are barred or reduced by the relative proportion of Third-Party Plaintiff's own negligence or fault.

SEVENTH DEFENSE

29. SHP incorporates and asserts all defenses raised by Defendant Ohio School Facilities Commission in its answer to Plaintiff's Complaint.

EIGTH DEFENSE

30. Upon information and belief, Third-Party Plaintiff has failed to reasonably mitigate its damages in this case.

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FOURTH PARTY COMPLAINT

Third-Party Defendant SHP hereby asserts its Fourth-Party Complaint as follows:

1. SHP incorporates all allegations in the Third-Party Complaint admitted by SHP to be true, as set forth above.
2. On or about ___, SHP subcontracted a portion of its architectural and other work on the above-referenced project to Fourth-Party Defendant Berardi Partners, Inc. ("Berardi"). A true and accurate copy of the documents constituting Berardi's subcontract are attached hereto as Exhibit A and fully incorporated herein.
3. In addition to undertaking contractual duties, Berardi undertook other common law and statutory duties in the performance of its work in the Project.
4. Thereafter, Berardi undertook to perform its work under the above-described contract and SHP fully performed its obligation under its contract with Berardi.
5. Any liability proven by the Third Party Plaintiff against SHP (which SHP denies) would be directly and proximately caused by breaches of Berardi of its contract

and/or other duties owed to SHP regarding the subcontracted work, entitling SHP to contribution or indemnity against Berardi in the amount of such liability.

WHEREFORE, SHP demands judgment:

1. Dismissing the Third-Party Complaint against SHP;
2. On its Fourth-Party Complaint in the amount of any liability incurred by SHP to Third-Party Plaintiff Ohio School Facilities Commission, which amount is currently unproven and unliquidated.

SHP further prays for interest in the above sums, the costs of the within action and any other and further relief to which it may be entitled.

Respectfully submitted,

DUNLEVEY, MAHAN & FURRY

By _____

David M. Rickert (0010483)
110 North Main Street; Suite 1000
Dayton, Ohio 45402
Phone: 937-223-6003
Fax: 937-223-8550
Email: dmr@dmfdayton.com
ATTORNEY FOR THIRD-PARTY DEFENDANT, STEED HAMMOND PAUL, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following by ordinary U.S. mail, this 10th day of February, 2015.

William C. Becker
Craig D. Barclay
Jerry K. Kasai

Assistant Attorneys General
Court of Claims Defense
150 E. Gay St., 18th Floor
Columbus, OH 43215-3130
Telephone: 614-466-7447
Fax: 614-644-9185
Email: william.becker@ohioattorneygeneral.gov
craig.barclay@ohioattorneygeneral.gov
jerry.kasai@ohioattorneygeneral.gov
Attorneys for Defendant/Third-Party Plaintiff, OSFC

Donald Wayne Gregory
Peter Berg
Michael Madigan
Kegler Brown Hill & Ritter
65 E. State St., 18th Floor
Columbus, OH 43215
Email: dgregory@keglerbrown.com
mmadigan@keglerbrown.com
Attorneys for Plaintiff TransAmerica Building Co., Inc.

Craig B. Paynter
65 E. State St., Ste. 1000
Columbus, OH 43215-4213
Telephone: 614-221-2838
Fax: 614-221-2007
Email: cpaynter@taftlaw.com
Attorney for Third-Party Defendant, Lend Lease

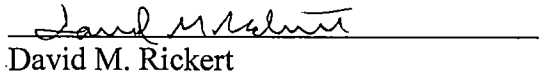
David M. Rickert

EXHIBIT
A

SHP
LEADING DESIGN

June 17, 2011

Rolando Matias
Project Manager
Berardi + Partners, Inc.
369 East Livingston Avenue
Columbus, OH 43215

Re: Ohio School for the Deaf / Ohio State School for the Blind
Additional Services Fee Agreement

Dear Rolando,
Below is outline of the fee agreement we reviewed during our phone conversations from the week of May 23rd as well as our accounting of the fee paid and owed to B+P for the above referenced project.

Ohio State School for the Blind – SHP Project Number 2007022.00
Original Contract Agreement

Contract Value:	$103,343.00
Invoiced:	$103,343.00 (as of April 28th, 2011)
Paid to Date:	$103,343.00
Remaining:	$0.00

Ohio School for the Deaf – SHP Project Number 2007022.02
Original Contract Agreement

Contract Value:	$103,343.00
Invoiced:	$103,343.00 (as of April 28th, 2011)
Paid to Date:	$103,343.00
Remaining:	$0.00

OSDB Additional Services Agreement

Redesign services:	$10,350.00 Dorm Re-bid (Able to billed immediately)

www.shp.com
CINCINNATI
4555 Montgomery Road Suite 400
Cincinnati, Ohio 45212
513.351.2112 main
513.351.5121 fax
HAMILTON
130 High Street
Hamilton, Ohio 45011
513.863.8441 main
513.868.5550 fax
COLUMBUS
250 Civic Center Drive Suite 200
Columbus, Ohio 43215
614.223.2124 main
614.223.2120 fax
DENVER
1675 Broadway Suite 1500
Denver, Colorado 80202
303.209.7866 main
303.209.7835 fax
Steed Hammond Paul Inc.

SHP
LEADING DESIGN

We appreciate all of the work your firm has provided during this challenging project and look forward to working with the team to finish strong. I would like to set a time to review your billing to date; I want to make sure we are in agreement on the invoicing numbers to date and the work required to complete the contract.
Please send back a signed copy acknowledging your acceptance of the additional services fee agreement outlined above and feel free to give me a call set up a meeting to review invoicing.

Sincerely,

SHP LEADING DESIGN

Joshua L Predovich

Joshua L. Predovich, Assoc. AIA, LEED AP

Cc: Andrew Maletz, SHP
file

Accepted: Date:

SHP
LEADING DESIGN

February 28th, 2011

Mr. Rolando Matias
Project Manager
Berardi + Partners, Inc.
369 Livingston Ave.
Columbus, OH 43215

Re: Ohio School for the Deaf / Ohio State School for the Blind
Dorm Construction Administration Contract

Dear Rolando,
Based on our conversation of February 18th, SHP is requesting an amendment to your contract for Architectural Services for the Construction Administration phase of the above referenced project. This request is based on SHP taking on a proportionally greater amount of time and responsibility thru this phase. The amendment is outlined as follows:

Duration of Dorm Construction: March 1st, 2011– January 19th, 2012 (47 weeks)
SHP Contractual Responsibility: 8 hours per week (1/3rd of 24 hour contract requirement)

Total CA fee for Dorms:	$150,029.65
Consultants fee for CA	
Kleingers & Associates:	$7,200.00
Cyp Studios (formally Envision Works):	$2,500.00
Shelley, Metz, Baumann & Hawk:	$8,500.00
Dynamix Engineering:	$48,101.61
Remaining fee less consultants:	$83,728.04
B+PI CA fee:	$31,725.00
SHP Fee:	$52,003.04

Expectation of hours: Based on the fee arrangement outlined above, the following is SHP's expectation of hours through the CA phase of the dorms:

B+PI Project Manager / Construction Administrator :	211.5 hours (avg. of 4.5 hours/week)
BP+I Draftsperson / Interior Designer:	70.5 hours (avg. of 1.5 hours/week)

www.shp.com | CINCINNATI 4605 Montgomery Road Suite 400 Cincinnati, Ohio 45212 513.331.2112 main 513.331.5121 fax | HAMILTON 236 High Street Hamilton, Ohio 45011 513.863.5441 main 513.863.5598 fax | COLUMBUS 250 Civic Center Drive Suite 200 Columbus, Ohio 43215 614.229.2124 main 614.229.2130 fax | DENVER 1675 Broadway Suite 1600 Denver, Colorado 80202 302.209.7856 main 302.209.7835 fax

Steed Hammond Paul Inc.

SHP
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As we discussed in our meeting, we will as a team revisit these numbers on a quarterly basis. Any variation in the expectation of hours will be reviewed and a determination if an adjustment is necessary will be made at that time. Please let me know if you have any questions on the information outlined above. We would expect that the terms of the arrangement as outlined would be effective immediately.

Sincerely,

SHP LEADING DESIGN

Joshua L. Predovich, Assoc. AIA, LEED AP
Associate Project Manager

Cc: Andrew Maletz, SHP

www.shp.com

CINCINNATI
4805 Montgomery Road Suite 400
Cincinnati, Ohio 45212
513.861.2112 main
513.861.1121 fax

HAMILTON
256 High Street
Hamilton, Ohio 45011
513.863.5441 main
513.863.5088 fax

COLUMBUS
250 Civic Center Drive Suite 200
Columbus, Ohio 43215
614.228.2124 main
614.228.2120 fax

DENVER
1675 Broadway Suite 1900
Denver, Colorado 80202
303.298.7666 main
303.298.7665 fax

Steed Hammond Paul Inc.

Steed | Hammond | Paul

100 Years of Architecture Inspired by the Community

MEMORANDUM

TO: George Berardi
FROM: Josh Predovich
RE: OSB/OSD SD Housing Design Services Fees
DATE: June 5th, 2007

Below is our attempt at laying out design service fees for the housing component of the Ohio State School for the Blind and Ohio School for the Deaf project. Please review and be prepared to discuss after our design team update meeting on Thursday.

Housing Design Fee Structure

1. Total Design Fee for SD Phase

			Updated Strategy 5/16/08
Proposed Building Area	207,000sf (based original contract agreement)		170,000sf
Proposed Construction Cost:	$33,120,000 ($160.00/sf from OSFC agreement)		$35,883,600.00
Proposed Fee percentage	6.5% $211.08		6.5%
Proposed total fee	$2,152,800.00		$2,332,434.00
Percentage for SD fee	25%		25%
Proposed fee for SD	$538,200.00		$582,108.50

2. Housing Component Fee Structure

Housing Component Proposed Area	64,235sf (based on latest draft of POR)		62,305sf
Housing Construction Cost	$10,277,600.00		$13,151,339.40
Total SD Design Fee for Housing	$167,011.00		$213,709.25
No Consultants Fee Assigned	$70,144.62	-42% for consultants fees	$89,757.89
		Remaining arch. fee	$123,951.36

3. SD Housing design services fee for Berardi & Partners

	$96,866.38	
Berardi & Partners	$125,258.25 (75% of housing fee) $41,753.00 (SHP)	$92,963.52

4. Assumptions
   A. Current draft of POR square footage is significantly higher than 207,000sf. Design service fees may be adjusted with completion of SD documents, SD estimate. Fee structure listed above is based on housing square footages of 64,235sf as contained in the current draft of the POR (of 324,932sf).

250 Civic Center Drive, Suite 200
Columbus, Ohio 43215
614-223-2124 | fax 614-223-2130

www.shp.com

B. Berardi & Partners will perform MEP and limited technology design in house and coordinate systems with Dynamix.

C. Structural design for housing will be performed by Shelly, Metz, Baumann and Hawk, Inc.

Please feel free to give me a call if you have any questions.

Sincerely,
STEED HAMMOND PAUL INC.

Joshua L. Predovich, Associate AIA, LEED AP
Project Manger

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Please feel free to give me a call if you have any questions.

Sincerely,
STEED HAMMOND PAUL INC.

Joshua L. Predovich, Associate AIA, LEED AP
Project Manger

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