

- 7.6.5 The following criteria establish the exclusive and maximum amount that the Commission shall pay for any Change Order, including without limitation all amounts for interference with, delay, hindrance, disruption, or impact of the Work (“Pricing Criteria”). These Pricing Criteria also govern the value of deduct Change Orders and the Contractor’s entitlement to additional compensation or damages through the Claims and dispute resolution processes on account of changes in the Work. A Change Order may, however, provide that the Commission may pay less than the amount established by these Pricing Criteria if an equitable amount is negotiated between the Construction Manager and the Contractor. In order to expedite the review and approval process, Proposals shall be prepared in the categories and order listed below:
- 7.6.5.1 LABOR - All field labor shall be priced at the current base rate being paid by the Contractor for such labor on the Project, or if such labor has not been previously employed on the Project, the base rate currently being paid by the Contractor on projects in the same locality, excluding fringe benefits. The payroll is to be based on straight time only and is to include number of hours and rate of pay for each classification of worker. If overtime is approved, list only the straight time portion in this item; overhead and profit will not be permitted on the cost of any premium time costs or shift work premiums. Any Contractor performing time and materials or cost-plus basis Work, shall submit certified payroll records for all employees performing that Work.
- 7.6.5.2 FRINGES - All established payroll taxes, assessments, and fringe benefits on the labor in GC paragraph 7.6.5.1. This may include, but is not limited to, FICA, Federal and State Unemployment, Health and Welfare, Pension Funds, Workers' Compensation and Apprentice Fund. Each of the fringes shall be a separate line item. The Contractor shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification.
- 7.6.5.3 EQUIPMENT RENTALS - All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost. No rental charges shall be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays shall not be allowed. The Contractor shall submit copies of actual paid invoices to substantiate rental costs.
- 7.6.5.4 OWNED EQUIPMENT - All charges for certain Contractor-owned heavy or specialized equipment at up to 100 percent of the cost listed by the current edition of the Associated Equipment Distributors *Green Book* rental rates and specifications for construction equipment. No recovery shall be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance, and weather delays shall not be allowed.
- 7.6.5.5 TRUCKING - A reasonable delivery charge or per-mile trucking charge for delivery of required materials or equipment. Charges for use of a pick-up truck shall not be allowed.

7.6.5.6 **OVERHEAD** - Overhead on items in GC subparagraphs 7.6.5.1, 7.6.5.2, 7.6.5.3, 7.6.5.4, and 7.6.5.5: up to 10 percent, which includes costs required to schedule the Work and coordinate with Separate Contractors.

- .1 Overhead includes, but is not limited to, telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor (management, supervision, engineering*), all other home office expense, legal services, travel, and parking expenses.
- .2 *An exception from paragraph GC paragraph 7.6.5.6.1 is allowed for shop or engineering labor for steel fabricators, sheet metal fabricators and sprinkler system fabricators. Recovery for such matters shall be allowed under items in GC subparagraphs 7.6.5.1 and 7.6.5.2 of these Pricing Criteria.
- .3 The overhead mark-up described under this GC paragraph 7.6.5.6 includes the sum of the costs of the Contractor, its Subcontractors, and Sub-subcontractors.
- .4 If the Contract Sum is adjusted on account of an adjustment of Contract Time only (i.e., the adjustment of Contract Sum does not include any of the items described under GC subparagraphs 7.6.5.1 through 7.6.5.5 or GC paragraph 7.6.5.7), the adjustment shall be based upon actual "general conditions" costs incurred or a reasonable estimate of the "general conditions" costs actually avoided. In no event shall the Contract Sum adjustment per day of Contract Time adjustment exceed an amount equal to the sum of the "general conditions" line items in the Contractor's first approved Contract Cost Breakdown divided by the total number of days of original Contract Time.

7.6.5.7 **MATERIALS**

- .1 All materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or Unit Prices of all items, as appropriate. Reimbursement of material costs shall only be allowed in the amount of the Contractor's actual cost, including any and all discounts, rebates or related credits.
- .2 Up to 33 percent of the cost of reusable materials for each use (e.g., concrete form lumber, shoring, or temporary enclosures).

7.6.5.8 **PROFIT** - Profit on items in GC subparagraphs 7.6.5.1, 7.6.5.2, 7.6.5.3, 7.6.5.4, 7.6.5.5, 7.6.5.6, and 7.6.5.6.3: Up to 5 percent.

7.6.5.9 **SUBCONTRACTOR** - The reasonable cost of labor and materials provided by a Subcontractor whose pricing is included and which complies with these Pricing Criteria.

7.6.5.10 CONTRACTOR MARK-UP ON SUBCONTRACTOR - Mark-up on item in GC paragraph 7.6.5.9: Up to 10 percent.

7.6.5.11 MISCELLANEOUS - The following items are allowable at the cost of the Work, with **no overhead or profit**.

- .1 The cost of extending the Bond and the cost of extending liability, property damage, or specialty coverage insurance.
- .2 The premium portion only for approved overtime (labor and fringes). The straight time portion is included in GC subparagraphs 7.6.5.1 and 7.6.5.2.
- .3 Fees for permits, licenses, inspections, tests, etc.
- .4 When requested by the Contractor and approved in writing by the Commission due to special circumstances, reimbursement shall be paid for overnight lodging, travel and food in an amount not to exceed the State travel guidelines established by the Office of Budget and Management.

7.6.5.12 State sales tax shall be allowed on items as defined by GC subparagraph 1.7.

7.6.6 Costs which shall not be reimbursed for Change Order Work include the following:

7.6.6.1 Voluntary Employee Deductions – examples are United Way and U.S. Savings Bonds, etc.

7.6.6.2 Employee Profit Sharing

7.7 TIME EXTENSION

7.7.1 Every adjustment of the Contract Time associated with any change in the Work shall be determined as provided in this GC paragraph 7.7, which establishes the Contractor's maximum entitlement for any change in the Work, including without limitation all adjustments for interference, delay, hindrance, or disruption of the Work. This GC paragraph 7.7 also governs time adjustments for deduct Change Orders and the Contractor's entitlement to additional time through the Claims and dispute resolution processes on account of changes in the Work.

7.7.2 The Contractor shall substantiate all changes in the Contract Time with:

7.7.2.1 A written description of the nature of the interference, disruption, hindrance or delay;

7.7.2.2 Identification of Persons and events responsible for the interference, disruption, hindrance or delay;

7.7.2.3 Date, or anticipated date, of commencement of the interference, disruption, hindrance or delay;

- 7.7.2.4 Activities on the Construction Schedule which may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities;
 - 7.7.2.5 Anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period;
 - 7.7.2.6 Specific number of days of extension requested and specific number of days for remobilization requested;
 - 7.7.2.7 Recommended action to avoid or minimize any future interference, disruption, hindrance or delay;
 - 7.7.2.8 A detailed written proposal as described under GC paragraph 7.6 for an increase in the Contract Sum which would fully compensate the Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.
- 7.7.3 A Change Order may authorize extension of the Contract Time for specific elements, while maintaining Milestone dates for unaffected elements. Such a Change Order may also authorize appropriate adjustment of Liquidated Damages.

7.8 EXAMINATION AND AUDIT OF CONTRACTOR'S RECORDS

- 7.8.1 The Commission may examine all books, records, documents and other data of the Contractor and of the Contractor's Subcontractors and Material Suppliers related to the bidding, pricing or performance of the Work for the purpose of evaluating any Proposal or Claim.
- 7.8.2 The above referenced materials shall be made available at the office of the Contractor, Subcontractor, or Material Supplier, as applicable, at all reasonable times for inspection, audit and reproduction until the expiration of seven (7) years after the date of Final Acceptance of the Project.
- 7.8.3 To the extent that the Contractor, Subcontractor or Material Supplier, as applicable, informs the Commission in writing that any documents provided to the Commission are trade secrets, the Commission shall treat such documents, to the extent permitted by law, as trade secrets of the Contractor, Subcontractor or Material Supplier, as applicable.
 - 7.8.3.1 If a dispute arises with any other Person about whether that Person should be given access to the documents, the Contractor, Subcontractor, or Material Supplier as applicable, shall indemnify the Commission against all costs, expenses, and damages, including, but not limited to, attorney fees, incurred or paid by reason of that dispute.
- 7.8.4 The right of inspection, audit and reproduction extends to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.

- 7.8.5 If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the Commission for a period of seven (7) years from the date of any applicable final settlement or payment, as applicable.
- 7.8.6 Records that relate to disputes, litigation, or settlement of claims arising out of the performance of the Work shall be made available until the dispute, litigation or claims have been finally decided or settled.

ARTICLE 8 - DISPUTE RESOLUTION

8.1 INITIATION OF A CLAIM

- 8.1.1 Except as provided under GC subparagraph 2.14, the Contractor shall initiate every Claim by giving written notice of the Claim to the Architect, through the Construction Manager, within ten (10) days after the occurrence of the event giving rise to the Claim.
 - 8.1.1.1 The ten (10) day time limit on a Claim arising from a determination of the Commission concerning a Field Work Order begins to run on the date on which the Commission issue its determination under GC subparagraph 7.2.2.6 or GC subparagraph 7.2.2.9 (as applicable).
 - 8.1.1.2 The ten (10) day time limit on a Claim arising from the response of the Architect to a Request for Information begins to run on the date on which the Architect issues the Architect's response to the Request for Information.
 - 8.1.1.3 The ten (10) day time limit on a Claim arising from the Architect and Construction Manager's determination concerning a Differing Site Condition begins to run on the date on which the Architect and Construction Manager issue their determination under GC subparagraph 7.5.
- 8.1.2 The Contractor's written notice of a Claim shall provide the following information to permit timely and appropriate evaluation of the Claim, determination of responsibility, and opportunity for mitigation:
 - 8.1.2.1 Nature and anticipated amount of the impact, including all costs for any interference, disruption, hindrance, or delay, which shall be calculated in accordance with GC paragraph 7.6 and be a fair and reasonably accurate assessment of the damages suffered or anticipated by the Contractor;
 - 8.1.2.2 Identification of the circumstances responsible for causing the impact, including, but not limited to, the date or anticipated date, of the commencement of any interference, disruption, hindrance, or delay;
 - 8.1.2.3 Identification of activities on the Construction Schedule that will be affected by the impact or new activities that may be created and the relationship with existing activities;
 - 8.1.2.4 Anticipated impacts and anticipated duration of any delay, impact, interference, hindrance or disruption, and any remobilization period; and

- 8.1.2.5 Recommended action to avoid or minimize any delay, interference hindrance, impact, or disruption.
- 8.1.3 The Contractor shall promptly provide any additional information requested by the Construction Manager or the Architect.
- 8.1.4 The Contractor's failure to provide written notice of a Claim as and when required under this GC paragraph 8.1 shall constitute the Contractor's irrevocable waiver of the Claim.

8.2 CERTIFICATION OF THE CLAIM

- 8.2.1 The Contractor shall certify each Claim within thirty (30) days after providing written notice of the Claim under GC paragraph 8.1 or before Contract Completion, whichever is earlier, by providing the notarized certification specified in GC subparagraph 8.2.1.1, signed and dated by the Contractor:
 - 8.2.1.1 "The undersigned Contractor certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; that the supporting data fully complies with all of the requirements stated in subparagraph 8.3.3 of the General Conditions; that the amount requested is a fair, reasonable, and necessary adjustment for which the Contractor believes the State is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Contractor."
- 8.2.2 The Contractor's failure to comply with the requirements of this GC paragraph 8.2 shall constitute an irrevocable waiver of any related Claim.

8.3 SUBSTANTIATION OF CLAIMS

- 8.3.1 Within thirty (30) days after providing written notice of a Claim, the Contractor shall submit in writing five (5) copies of all information and statements required to substantiate a Claim as provided in this GC Article 8 and all other information which the Contractor believes substantiates the Claim. The Contractor shall file the four (4) copies by delivery of one (1) copy to the Architect, one (1) copy to the Construction Manager and one (1) copy to the Commission.
- 8.3.2 The date the Contractor is required to file its substantiated and certified Claim with the Commission shall begin the statute of limitations to file a lawsuit related to the Claim.
- 8.3.3 The Contractor shall substantiate all of its Claims by providing the following minimum information:
 - 8.3.3.1 A narrative of the circumstances, which gave rise to the Claim, including, without limitation, the start and finish date of the event or events and the actual, or anticipated, finish date;
 - 8.3.3.2 Detailed identification of the Work (e.g., activity codes from the Construction Schedule) affected by the event giving rise to the Claim;

- 8.3.3.3 Copies of relevant correspondence and other information regarding or supporting Contractor entitlement;
- 8.3.3.4 Copies of the Contractor's most recent job cost reports itemized by activity codes, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; and
- 8.3.3.5 The notarized certification described under GC subparagraph 8.2.1.1.
- 8.3.4 The Commission and Contractor may agree, in writing, to reasonably extend the thirty (30) day period for substantiation of a Claim required under GC subparagraph 8.3.1.
- 8.3/5 The Contractor's failure to comply with the requirements of this GC paragraph 8.3 shall constitute an irrevocable waiver of any related Claim.

8.4 SUBSTANTIATION OF CLAIMS FOR INCREASE OF THE CONTRACT SUM

- 8.4.1 The Contractor shall substantiate each Claim for an increase of the Contract Sum with:
 - 8.4.1.1 Written documentation as described under GC paragraph 7.6 of the actual additional direct and indirect costs to the Contractor due to the event giving rise to the Claim;
 - 8.4.1.2 A written statement from the Contractor that the increase requested is the entire increase in the Contract Sum associated with the Claim;
 - 8.4.1.3 The general substantiation documentation described under GC paragraph 8.3; and
 - 8.4.1.4 A detailed written Proposal as described under GC paragraph 7.6 for an increase in the Contract Sum which would fully compensate the Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay together with a statement consistent with GC subparagraph 8.4.1.2.
- 8.4/2 The Contractor's failure to comply with the requirements of this GC paragraph 8.4 shall constitute an irrevocable waiver of any related Claim.

8.5 SUBSTANTIATION OF CLAIMS FOR EXTENSION OF THE CONTRACT TIME

- 8.5.1 The Contractor shall substantiate each Claim for an extension of the Contract Time with:
 - 8.5.1.1 Written documentation as described under GC paragraph 7.7 of the actual delay to the critical path of the Construction Schedule due to the event giving rise to the Claim;
 - 8.5.1.2 A written statement from the Contractor that the extension requested is the entire extension of the Contract Time associated with the Claim; and

8.5.1.3 The general substantiation documentation described under GC paragraph 8.3.

8.5.2 In addition to the requirements of GC subparagraph 8.5.1, if adverse weather conditions are the basis for a Claim for additional time, the Contractor shall document the Claim with data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on a critical element of the scheduled construction. The support for and evaluation of all adverse weather Claims shall be based upon average weather conditions during the ten (10) years immediately preceding the dates at issue in the Claim as those weather conditions were recorded at the government-controlled weather-recording facility nearest to the Site.

8.5/3 The Contractor's failure to comply with the requirements of this GC paragraph 8.5 shall constitute an irrevocable waiver of any related Claim.

8.6 DELAY AND DELAY DAMAGE LIMITATIONS; DERIVATIVE CLAIMS

8.6.1 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Time:

8.6.1.1 On account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path;

8.6.1.2 To the extent that a delay occurs concurrently with a delay attributable to the Contractor; or

8.6.1.3 On account of the delay of any Work not on the critical path.

8.6.2 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path unless the delay is caused by (1) the Commission, and (2) the delay was not authorized or permitted under the Contract.

8.6.3 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages arising from a delay in the commencement or progress of any of the Work caused by the occurrence or non-occurrence of an event beyond the Commission's control such as acts of God or the public enemy, acts of the government, fires, floods, epidemics, labor disputes, unusual delivery delays, weather, acts or neglects of a Separate Contractor, or acts or neglects of the Contractor.

8.6.4 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor is solely responsible for prosecuting against a Separate Contractor any claim, suit, or appeal necessary to recover from the Separate Contractor damages caused by the Separate Contractor.

8.6.5 If the Contractor makes a Claim seeking other than an extension of the Contract Time from the Commission on account of the acts or neglects of a Separate Contractor, the Commission may pursue the Claim against the Separate Contractor in the joint interest

of the Commission and the Contractor. The Commission is not obligated to prosecute any such claim, suit, or appeal.

8.7 LIQUIDATED DAMAGES

- 8.7.1 If the Contractor fails to achieve one or more of the Completion Milestones set forth in the Contract Documents, the Contractor shall pay to or credit the Commission the associated liquidated damages per-diem sum(s) set forth in the Contract Documents for each day that the Contractor fails to achieve one or more of the Completion Milestones.
- 8.7.1.1 If the Contractor fails to achieve two or more Completion Milestones, the Commission shall be entitled to recover the sum of the associated per diem rates.
- 8.7.2 Nothing contained in this GC paragraph 8.7 shall preclude the Commission's recovery from the Contractor of actual damages.
- 8.7.3 In addition to other rights that the Commission may have relative to liquidated damages, the Commission may deduct the liquidated damages from the Contract Sum as the damages accrue. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall immediately pay the amount of the insufficiency to the Commission.

8.8 JOB SITE DISPUTE RESOLUTION PROCEDURE

- 8.8.1 To avoid or minimize the filing of Claims, the Contractor and the Construction Manager, with the assistance of the Architect, shall endeavor to timely and proactively identify, address and resolve matters involving Persons or events that may give rise to a Claim.
- 8.8.2 The Construction Manager, with the assistance of the Architect, shall within thirty (30) days of receipt of the Contractor's substantiated and certified Claim, schedule a meeting with the Contractor to implement the job site dispute resolution procedures the parties agreed to implement under the partnering arrangement.
- 8.8.3 If no agreement can be reached between the Contractor, the Construction Manager, the Architect the Commission, as a result of implementing the process the parties agreed to for job site dispute resolution, the Construction Manager and the Architect shall review the Claim and prepare a written analysis of its content, which shall include:
- 8.8.3.1 A narrative of the Construction Manager and the Architect's examination of the facts giving rise to the Claim;
- 8.8.3.2 Identification of relevant Contract Documents and language;
- 8.8.3.3 An analysis of whether the Contractor complied with the requirements of the Contract Documents pertaining to Claim initiation and substantiation including, without limitation, the issues of entitlement to, and calculation of, adjustments of the Contract Sum or Contract Time;

- 8.8.3.4 An analysis of claimed additional labor, materials, and equipment for the scope of the Work items described;
 - 8.8.3.5 An analysis of any time extension for any interference, disruption, hindrance, impact, or delay claimed (to include the calculation of any concurrent delays affecting entitlement);
 - 8.8.3.6 A concluding opinion and recommendation regarding Contractor entitlement to, and the appropriateness and reasonableness of all, or any part of, the Claims; and
 - 8.8.3.7 An appendix containing copies of contemporaneous documentation supporting the concluding opinion.
- 8.8.4 The Construction Manager shall submit the written analysis and recommendation to the Contractor, Architect, and Commission no more than fourteen (14) days after the meeting held pursuant to GC subparagraph 8.8.2.
- 8.8.5 If the parties agree with the Construction Manager's written analysis and recommendation, they shall enter into a Change Order; otherwise, they shall proceed with the dispute resolution process set forth in GC paragraphs 8.9 and 8.10.

8.9 APPEAL TO COMMISSION

- 8.9.1 The Contractor may appeal the written analysis and recommendation of the Construction Manager by providing written notice to the Commission within fourteen (14) days of the date of the Construction Manager's written analysis and recommendation.
- 8.9.2 The Commission shall, within thirty (30) days of receipt of the Contractor's notice of appeal, schedule and conduct a meeting in an effort to resolve the dispute or render a decision on the dispute, unless an agreement is made between the Contractor and the Commission to extend such time limit. The purpose of the meeting shall be to settle the issues in dispute. ORC Chapter 119 shall not be applicable to any such meeting.
- 8.9.3 The Commission shall determine the final disposition of the Contractor's appeal and provide a written decision to the Contractor within thirty (30) days of any meeting scheduled pursuant to GC subparagraph 8.3.1, unless an agreement is made between the Contractor and the Commission to extend such time limit.
- 8.9.4 If the Contractor agrees with the Commission's decision, the decision shall be incorporated into a Change Order.
- 8.9.5 In lieu of an appeal to the Commission, the parties may agree to utilize Alternative Dispute Resolution, as described in GC paragraph 8.10.

8.10 ALTERNATE DISPUTE RESOLUTION

- 8.10.1 The ("ADR") procedure shall be accepted by all of the Project's key stakeholders during the partnering process, described in GC paragraph 4.4.

- 8.10.2 The accepted ADR methods shall be described in the partnering agreement, but shall not include binding arbitration; alter any of the requirements for Claim initiation, certification, and substantiation; or alter the process described under this GC Article 8.
- 8.10.3 Only non-binding forms of ADR may be considered or utilized.
- 8.10.4 If the Commission agrees to ADR, it shall not, under any circumstances, be deemed to have waived any of the requirements contained in the Contract Documents, including without limitation, the requirements of this GC Article 8.

8.11 AUDIT OF THE CLAIM

- 8.11.1 All Claims shall be subject to audit at any time following the filing of the Claim, whether or not the Claim is part of a lawsuit.
- 8.11.2 The audit may be performed by employees of the Commission or by a consultant engaged by the Commission.
- 8.11.3 The audit may begin upon ten (10) days notice to the affected Contractor, Subcontractor, or Material Supplier.
- 8.11.4 The Contractor shall cooperate with the request.
- 8.11.5 Failure of the Contractor, Subcontractor, or Material Supplier to produce sufficient records to allow the Commission to audit and verify a Claim shall constitute an irrevocable waiver of the Claim or the portion of the Claim that could not be completely audited.
- 8.11.6 Upon request from the Commission, the Contractor shall make available to the Commission all Contractor, Subcontractor, and Material Supplier documents related to the Claim including, without limitation, the following documents:
 - .1 Daily time sheets and superintendent's daily reports;
 - .2 Union agreements, if any, and employer agreements;
 - .3 Insurance, welfare, fringes, and benefits records;
 - .4 Payroll register;
 - .5 Earnings records;
 - .6 Payroll tax returns;
 - .7 Material invoices, purchase orders, Subcontractor contracts, and all material and supply acquisition contracts;
 - .8 Material cost distribution worksheets;
 - .9 Equipment records (list of Contractor equipment, rates, etc.);
 - .10 Vendor rental agreements and Subcontractor invoices;
 - .11 Subcontractor payment certificates;

- .12 Canceled checks (payroll and vendors);
- .13 Job cost report;
- .14 Job payroll ledger;
- .15 General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
- .16 Cash disbursements journal;
- .17 Financial statements for all years reflecting operations on the Project;
- .18 Income tax returns for all years reflecting operations on the Project;
- .19 Depreciation records on all equipment utilized whether the records are maintained by the Contractor involved, its accountant, or others;
- .20 If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all other source documents;
- .21 All documents which reflect the Contractor's actual profit and overhead during the years the Project was being performed;
- .22 All documents related to the preparation of the Contractor's Bid, including the final calculations on which the Bid was based;
- .23 All documents which relate to the Claim together with all documents which support the amount of damages as to the Claim;
- .24 Worksheets used to prepare the Claim establishing the cost components for items of the Claim including, but not limited to, labor, fringes, benefits and insurance, materials, equipment, Subcontractors, and all documents which establish the time periods, individuals involved, the hours and rate of pay for the individuals; and
- .25 All other documents required by the Commission to reasonably review the Claim.

8.12 FALSE CERTIFICATION OF THE CLAIM

- 8.12.1 If the Contractor falsely certifies all, or any part, of a Claim, the portion of the Claim falsely certified shall be denied, and may be sufficient cause for the State to find the Contractor not to be a responsible bidder for future contracts.

8.13 PERFORMANCE AND PAYMENT

- 8.13.1 The Contractor shall proceed with the Work during any dispute resolution process, unless otherwise agreed by the Contractor and the Commission in writing.

- 8.13.2 The Commission shall continue to make payment of any undisputed amounts in accordance with the Contract Documents pending final resolution of a Claim, unless otherwise agreed by the Contractor and the Commission in writing.

8.14 INTEREST

- 8.14.1 The rate of any prejudgment interest on the Claim shall be at the applicable statutory rate.

ARTICLE 9 - CONTRACTOR PAYMENT

9.1 CONTRACT COST BREAKDOWN

- 9.1.1 Within thirty (30) days of receipt of the Notice to Proceed, the Contractor shall submit to the Architect, through the Construction Manager, a Contract Cost Breakdown with separate amounts shown for labor and materials for each branch of Work, following the preferred titles and sequences of Sections of Construction Specifications Institute ("CSI") format used by the Architect in developing the Specifications.

- 9.1.1.1 The Contractor shall clearly indicate on the Contract Cost Breakdown, the amount(s) allocated for each certified EDGE Business Enterprise used in the performance of the Work. The amount(s) shall indicate labor and materials, as appropriate.

- 9.1.2 The grand total shown on the Contract Cost Breakdown must equal the total Contract Sum. The Commission may use the approved Contract Cost Breakdown to determine the cost or credit to the Commission resulting from any change in the Work.

- 9.1.2.1 The first item shall be actual cost of Bond, insurance, permits and tests required for the Project.

- 9.1.2.2 The amounts for labor and material shall accurately reflect the cost for each item. Separate items shall not be shown for overhead or profit, but shall be included in the totals for labor and materials.

- 9.1.2.3 If the material allocation exceeds 55 percent of the Contract Sum, the Contractor shall provide, upon request, sufficient information to support the higher percentage.

- 9.1.2.4 Subcontract Work shall show amounts for labor and materials. Fringe benefits shall be shown as a part of labor costs.

- 9.1.2.5 When more than one (1) major structure is included in the Work, the Contract Cost Breakdown shall be subdivided accordingly if requested by the Architect, with cost details for each structure shown separately.

- 9.1.2.6 Unless otherwise specified in the Contract Documents, mechanical and electrical Contractors shall include separate line items for all major pieces of equipment and shall group smaller equipment items by type.

- 9.1.2.7 Line items shall be included for each Allowance, Punch List Work, regular clean-up and final cleaning, Project Record Document Submittals, delivery of attic stock, and specified demonstrations and training.
- 9.1.2.8 The line items shall be coordinated with line items in the Project Schedule, which may require division of items of Work by area of the Project by floor, phase, or other appropriate area.
- 9.1.3 The Contract Cost Breakdown shall be returned to the Contractor for re-submittal if it does not meet the requirements or contains insufficient items or details of the Work.
- 9.1.4 No payment shall be made without an approved Contract Cost Breakdown.

9.2 APPLICATION FOR PAYMENT

- 9.2.1 The Contractor shall submit an itemized Application for Payment for Work performed based upon the Contract Cost Breakdown to the Construction Manager each month or upon another interval approved by the Commission. When the rate of Work and amount involved is sufficient that it is considered appropriate by the Commission, the Contractor may submit Applications for Payment twice a month.
 - 9.2.1.1 The Contractor shall support each Application for Payment with documentation substantiating the Contractor's right to payment. The Contractor shall supply additional documentation as the Construction Manager or the Architect may request in connection with each Application for Payment.
 - 9.2.1.2 The Contractor shall list on the Application for Payment any Change Orders approved and performed prior to submission of the Application for Payment.
 - 9.2.1.3 The Contractor shall submit, with every Application for Payment, a certified payroll report of all individuals providing labor in the Application for Payment being submitted. The certified payroll report shall be in the format specified in the Contract Documents. No Application for Payment shall be approved or processed unless a certified payroll report is received for the labor in that Application for Payment. No social security numbers shall be provided in the certified payroll reports, however the Commission reserves the right to review this information upon request.
 - 9.2.1.4 The Commission may require proof of the renewal of required insurance as a condition precedent to payment.
 - 9.2.1.5 The Contractor shall clearly indicate on each Application for Payment, the amount(s) requested for each certified EDGE Business Enterprise used in the performance of the Contract. The amount(s) shall indicate labor and materials, as appropriate.
- 9.2.2 Subject to GC paragraph 9.6, payment of an approved Application for Payment shall be made within thirty (30) days from the date of approval by the Construction Manager, the Commission and the Architect.

9.2.2.2 Payments due and not paid to the Contractor, through no fault of the Contractor, within such thirty (30) day period shall, from the date payment is due, bear simple interest at the applicable statutory rate.

9.2.3 The amount of Liquidated Damages to which the Commission is apparently entitled under the Contract Documents may be deducted from any Application for Payment.

9.2.4 Payments, except for lump sum items, in Unit Price Contracts shall be made to the Contractor only for the authorized actual quantities of Work performed or materials furnished in accordance with the Contract Documents.

9.3 LABOR PAYMENTS

9.3.1 Partial payments to the Contractor for labor performed under either a Unit Price or lump sum Contract with the total Contract Sum less than \$15,000 shall be paid at the rate of 100 percent of the amount invoiced through the Application for Payment.

9.3.2 Partial payments to the Contractor for labor performed under either a Unit Price or lump sum Contract, except as provided in GC subparagraph 9.3.1, shall be made at the rate of 92 percent of the amount invoiced through the Application for Payment which shows the total Contract Completion at 50 percent or greater.

9.3.3 After the Contract is 50 percent complete, as evidenced by payments in the amount of at least 50 percent of the Contract Sum to the Contractor, no additional funds shall be retained from payments for labor.

9.4 MATERIAL PAYMENTS

9.4.1 The Commission shall pay the Contractor at the rate of 100 percent of the invoice cost, not to exceed the scheduled value, for materials incorporated into the Project.

9.4.1.1 The Commission shall pay the balance of the scheduled value for materials incorporated into completed line items which are (1) concealed, underground, or otherwise inaccessible and (2) not subject to inclusion on the Architect's Punch List.

9.4.1.2 Once the Contractor completes the Punch List, testing, or start-up demonstration and training related to a line item, the Commission shall pay the balance of the scheduled value for materials which are (1) subject to inclusion on the Architect's Punch List or (2) require testing or start-up demonstration and training.

9.4.2 The Commission shall pay the Contractor at the rate of 92 percent of the invoice cost, not to exceed the bid amount in a Unit Price or lump sum Contract, for materials delivered to the Site, or other off-site storage location approved by the Construction Manager, provided the Contractor provides the following information with the Application for Payment:

9.4.2.1 A list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost.

- 9.4.2.2 A certification of materials stored off-site, prepared by the Contractor and signed by the Construction Manager and the Architect to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. The Contractor shall directly reimburse the Construction Manager or Architect, as applicable, for all costs incurred to visit a storage site, other than the areas adjacent to the Project.
- 9.4.2.3 The Commission shall pay the balance of the invoice cost when the materials are incorporated into and becomes a part of the Project.
- 9.4.3 When payment is allowed on account of material delivered to the Site or other approved off-site storage location but not yet incorporated in the Project, the materials are the property of the Commission, but if such material is stolen, destroyed, or damaged by casualty before being used, the Contractor shall be required to replace it at the Contractor's expense.
 - 9.4.3.1 The Commission may, at its sole discretion, retain any material not ultimately incorporated into the Project or return it to the Contractor for credit of an amount proportionate to the value of the extra materials. If the loss is covered by a Project builders risk insurance policy, the Contractor is responsible for the payment of the deductible.

9.5 RETAINAGE

- 9.5.1 All funds retained for the faithful performance of the Work, in accordance with GC paragraph 9.3, shall be deposited in an escrow account with a bank or building and loan association in the State of Ohio in accordance with the terms and conditions provided in an escrow agreement executed by the Contractor, the Commission, and the applicable bank.
- 9.5.2 When the major portion of the Work is occupied or in use, and there is no other reason to retain funds, including without limitation, compliance with GC Article 11, upon request of the Contractor, the funds retained in connection with that Work shall be released from escrow and paid to the Contractor, withholding only that amount necessary to assure faithful completion, in the sole discretion of the Commission.
 - 9.5.2.1 Any reduction or release of retained funds, or portion thereof, shall not be a waiver of the Commission's right to retain funds in connection with other payments to the Contractor, or any other right or remedy the Commission has under the Contract Documents at law or in equity.
 - 9.5.2.2 Funds in the escrow account not previously paid shall be authorized for release to the Contractor within thirty (30) days of the Commission's approval of a final Application for Payment and execution of the Certificate of Contract Completion by the Architect, the Construction Manager and the Commission.
- 9.5.3 Upon consent by the Contractor's Surety, the Commission may reduce the amount of funds retained for the faithful performance of Work by fifty (50) percent of the amount of funds required to be retained, provided the Contractor's Surety remains responsible

for all damages that may be caused due to default by the Contractor, including without limitation, the following:

- 9.5.3.1 Completion of the Work;
- 9.5.3.2 All interference, disruption, hindrance and delay claims;
- 9.5.3.3 All Liquidated Damages; and
- 9.5.3.4 All additional expenses incurred by the Commission, or otherwise incurred by the State.

9.6 PAYMENTS WITHHELD

- 9.6.1 The Architect and the Construction Manager may recommend to the Commission that payments be withheld from, or Liquidated Damages be assessed against and withheld from, a Contractor's Application for Payment.
- 9.6.2 The Commission may decline to approve any Application for Payment or part thereof, or because of subsequent evidence or inspection, may nullify any previous Application for Payment, in whole or in part, to such extent necessary to protect the State Commission from loss because of:
 - 9.6.2.1 The Contractor's failure to comply with the Contract Documents, including, without limitation, Defective Work not remedied;
 - 9.6.2.2 Damage caused by the Contractor;
 - 9.6.2.3 Liquidated Damages;
 - 9.6.2.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; or
 - 9.6.2.5 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance of the Contract Sum would not be adequate to cover damages under the Contract Documents for the anticipated delay.
- 9.6.3 If the Contractor remedies the basis for withholding payment pursuant to paragraph GC subparagraph 9.6.2, payment shall be made for amounts withheld because of them.
- 9.6.4 Whenever the Commission receives a Claim Affidavit, the Commission shall detain the stated amount from the Contractor's subsequent Application for Payment, unless the Contractor provides a release and waiver of lien with the Application for Payment.
 - 9.6.4.1 The release and waiver of lien shall be executed by the Person supplying labor, materials or services on the Project, which has or may have a right of lien against the Contractor's proceeds.

- 9.6.4.2 If the Commission detains an amount as set forth above, such action shall not be construed as conferring any right on such Subcontractor or Material Supplier, nor as enlarging or altering the application or effect of the existing lien law.

9.7 FINAL APPLICATION FOR PAYMENT

- 9.7.1 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and to final payment, shall complete all requirements of the Contract Documents.
 - 9.7.1.1 The Contractor shall execute an affidavit to certify that the Contractor has paid all Subcontractors, Material Suppliers and laborers in full for all Work performed or materials furnished for the Project.
- 9.7.2 Payment of the final Application for Payment shall be made within thirty (30) days from the date of approval by the Construction Manager, the Commission and the Architect.
 - 9.7.2.1 The inability of a Contractor to complete Project closeout requirements within the time specified by the Architect and Construction Manager shall not be grounds for withholding final payment to a Separate Contractor.
 - 9.7.2.2 Payments due and not paid to the Contractor, through no fault of the Contractor, within such thirty (30) day period shall bear interest from the date payment is due under the Contract Documents at the applicable statutory rate.
- 9.7.3 The making of final payment by the Commission constitutes a waiver of all claims by the Commission except those relating to unsettled claims against the Contractor and those arising after Contract Completion including, without limitation, the following:
 - 9.7.3.1 Defective Work;
 - 9.7.3.2 Outstanding liens; or
 - 9.7.3.3 The Contractor's failure to comply with any warranties or guarantees required by the Contract Documents.
- 9.7.4 The acceptance of final payment by the Contractor, a Subcontractor, or a Material Supplier constitutes a waiver of all claims against the Commission and the State except those previously made in writing in accordance with GC Article 8 and identified by that payee as unsettled at the time of final payment.

ARTICLE 10 - CONTRACT COMPLETION

10.1 FINAL CLEANING

- 10.1.1 Before requesting the Architect's Punch List review, the Contractor shall restore the property to its original condition so that upon Contract Completion, the premises are

ready for occupancy by the Schools; clean the Site; and remove all waste materials and rubbish attributable to the Work, including without limitation:

- 10.1.1.1 Replace chipped, scratched, or broken glass or other damaged transparent materials;
 - 10.1.1.2 Remove excess glazing or caulking compound, and other substances that are noticeable vision-obscuring materials;
 - 10.1.1.3 Remove labels that are not permanent, remove marks, stains and soiled spots from finished surfaces;
 - 10.1.1.4 Remove marks, stains, paint droppings and other blemishes and leave in polished condition all equipment and material with exposed finished surfaces;
 - 10.1.1.5 Clean exposed exterior and interior hard-surfaced finishes;
 - 10.1.1.6 Sweep paved areas broom clean, rake grounds that are neither paved nor planted to an even-textured surface, and broom clean concrete floors;
 - 10.1.1.7 Clean washable air filters or replace all air filters at the Site;
 - 10.1.1.8 Remove all waste materials and rubbish from any roof surface and clean any roof drains;
 - 10.1.1.9 Remove any temporary controls required pursuant to the storm water pollution prevention plan and permit.
- 10.1.2 At the completion of the Project, the Electrical Contractor shall clean all light fixtures, which includes, without limitation, removing bugs, debris, stains, rust and dirt, and replacing any burned out or substantially diminished light bulbs.
- 10.1.3 If the Contractor performs any Work after final cleaning, the Contractor shall clean any affected area as provided above so that upon Contract Completion, the premises are ready for occupancy by the Commission.
- 10.1.4 Final cleaning shall be done to the reasonable satisfaction of the Architect, the Construction Manager, and the Commission.
- 10.1.4.1 If a dispute arises among the Contractor and Separate Contractors as to responsibility for final cleaning, the Construction Manager may authorize a Separate Contractor, or engage a qualified cleaning company, to perform final cleaning and deduct the cost from amounts due to those contractors responsible, as the Construction Manager recommends and the Commission determines to be appropriate. The decision of the Commission on the responsibility for such cost shall be final.
 - 10.1.4.2 If the Construction Manager cannot determine the responsible contractor, the costs shall be shared by the contractors actively working on the Project as determined at the sole discretion of the Commission. The decision of the Commission on the responsibility for such cost shall be final.

10.2 CONTRACTOR'S PUNCH LIST

- 10.2.1 When the Contractor considers the Work, or designated portion thereof, nearly complete, the Contractor shall inspect the Work and prepare a list of defective, incomplete, or unacceptable Work (the "Contractor's Punch List"). The Contractor shall list all items of Work not in compliance with the Contract Documents, including items the Contractor is requesting to be deferred.
- 10.2.2 The Contractor shall proceed to correct all items listed on the Contractor's Punch List and certify that the incomplete items listed on the Contractor's Punch List are to its knowledge an accurate and complete list by signing said Punch List.
- 10.2.3 The Contractor's failure to include an item on the Contractor's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.
- 10.2.4 The Contractor shall submit the signed Contractor's Punch list to the Construction Manager and the Architect, together with a request for of the Architect's Review of the Work.

10.3 ARCHITECT'S REVIEW

- 10.3.1 Within seven (7) days of receipt of the request for the Architect's Review of the Work, the Architect and the Construction Manager shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.
- 10.3.2 Within seven (7) days of their acceptance of the Contractor's request, the Architect and the Construction Manager shall conduct the Architect's Review to determine whether the Work, or the designated portion thereof, is in conformity with the Contract Documents. The Construction Manager shall notify the Contractor, the Architect and the Commission scheduled time of the Architect's Review.
 - 10.3.2.1 The Architect and the Construction Manager shall include comments from the Commission in the Architect's Review.
- 10.3.3 Within three (3) days of the Architect's Review, the Construction Manager shall provide to the Contractor a list of defective, incomplete, or unacceptable Work ("Architect's Punch List").

10.4 COMPLETION OF PUNCH LIST ITEMS

- 10.4.1 Within thirty (30) days after receipt of the notice required by GC subparagraph 10.2.3 and before the date of Final Contract Completion, the Contractor shall complete all items remaining on the Architect's Punch List. After completing all items on the Punch List, the Contractor shall provide a written request for Final Inspection of the Work to the Architect and the Construction Manager.
 - 10.4.1.1 If completion of the Work on the Architect's Punch List cannot be timely completed, the Contractor shall justify in writing to the reasonable satisfaction of the Architect and the Construction Manager, the reasons the items cannot be completed, and the Contractor shall propose, for approval by

the Architect and the Construction Manager, a time when the Contractor shall complete those items.

- 10.4.1.2 Within three (3) business days of receipt of the Contractor's notice that all Punch List items have been completed, the Architect and the Construction Manager shall complete a Final Inspection of the Work for compliance with the Contract Documents.
- 10.4.1.3 Failure of the Architect or the Construction Manager to include any items on the Architect's Punch List shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- 10.4.1.4 If multiple inspections of items on the Architect's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall pay any additional costs incurred by Separate Contractors, the Construction Manager, the Architect and the Commission resulting from any attendant delay. The Commission may deduct those additional costs from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Commission, as applicable.

10.5 PROJECT RECORD DOCUMENT SUBMITTALS

- 10.5.1 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion, release of retained funds, and final payment, shall provide all Project record documents to the Construction Manager for review for conformity with the requirements of the Contract Documents, then transmittal to the Architect for approval, which may include, without limitation:
 - 10.5.1.1 Certificate of Occupancy issued by the Department of Commerce, Division of Industrial Compliance, or such local building department as determined pursuant to OAC Section 4101:2-1-49;
 - 10.5.1.2 Inspection Certificates required and issued by the Department of Commerce, such as Pressure Piping, Elevator, Boiler, Electrical, Plumbing, or Piping Purification, etc.;
 - 10.5.1.3 Letter of Approval from the Fire Marshal for fire suppression system;
 - 10.5.1.4 Operating and Maintenance Manuals, organized into suitable sets of manageable size. Indexed data shall be bound in individual binders, with pocket folders for folded sheet information and appropriate identification shall be marked on the front and the spine of each binder;
 - 10.5.1.5 Neatly and accurately marked sets of As-Built Drawings and other Contract Documents reflecting the actual construction of the Project;
 - 10.5.1.6 Reproducible detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems and components;

- 10.5.1.7 Assignment to the Commission of all Warranties and Guarantees, including the most recent address and telephone number of any Subcontractors, Material Suppliers, or manufacturers;
- 10.5.1.8 An affidavit to certify that all Subcontractors, Material Suppliers and laborers have been paid in full for all Work performed or materials furnished for the Project;
- 10.5.1.9 Final certified payroll reports; and
- 10.5.1.10 Completed project evaluation forms.

10.6 AS-BUILT AND RECORD DRAWINGS

- 10.6.1 Upon Final Completion of the Work, the Contractor shall organize the As-Built Drawings into manageable sets, bind the sets with durable paper cover sheets, certify to the completeness, correctness, and accuracy of the As-Built Drawings by signature thereon, and deliver the As-Built Drawings to the Architect, through the Construction Manager. The Construction Manager shall review the As-Built Drawings and verify that, to the best of the Construction Manager's knowledge based upon the Construction Manager's observations during the progress of the Work, the As-Built Drawings detail the actual construction of the Project.
- 10.6.2 The Architect shall revise the original Contract Documents and related electronic files with the information contained on the As-Built Drawings provided by the Contractor. The Architect shall label the revised original Contract Documents and related electronic files as "Record Drawings" and reflect the date of the Architect's incorporation of the As-Built Drawings.
- 10.6.3 The Commission or Schools may thereafter use the Record Drawings for any purpose relating to the Project including, without limitation, additions to or completion of the Project.

10.7 DEMONSTRATION AND TRAINING, OPERATING APPURTENANCES

- 10.7.1 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion, release of retained funds, and final payment, shall perform demonstration and training of the School's maintenance personnel as specified in the Contract Documents.
- 10.7.2 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion, release of retained funds, and final payment, shall organize and submit operating appurtenances and loose items related to the operation and maintenance of the completed Project including, without limitation:
 - 10.7.1.1 Keys to door and window hardware, panels, and other devices not directly provided to the Schools from the manufacturer;
 - 10.7.1.2 Operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and

10.7.1.3 Extra materials (e.g., attic stock).

10.8 CERTIFICATE OF CONTRACT COMPLETION

10.8.1 Partial Completion:

10.8.1.1 With the approval of the Architect and the Construction Manager, when upon Final Inspection items of Work cannot be completed until a subsequent date, or if the Commission agrees that a particular item need not be completed until a subsequent date, the Commission may release payment to the Contractor less twice the cost of completing the remaining Work as determined in the sole discretion of the Commission.

10.8.1.2 The Construction Manager, with the assistance of the Architect, shall list such deferred items on a Partial Certificate of Contract Completion with the dates the items are to be completed, and recommend execution by the Commission, which execution shall be done in the Commission's sole discretion.

10.8.2 Final Completion:

10.8.2.1 When all items on the Architect's Punch List have been corrected to the satisfaction of the Architect, the Construction Manager and the Commission, all requirements of the Contract Documents have been completed, and the provisions of GC paragraphs 11.1 through 11.4 have been fulfilled, the Construction Manager, with the assistance of the Architect, shall prepare and recommend execution of a Certificate of Contract Completion by the Commission, which execution shall be done in the Commission's sole discretion.

10.8.2.2 The date the Commission executes the Certificate of Contract Completion is the date that the Work of the Contract is accepted ("Final Acceptance"), the warranty period commences, and retained funds may be released.

10.8.2.3 The Commission reserves the right of Final Acceptance of the Project.

10.9 CONTRACTOR PERFORMANCE

10.9.1 The Architect, the Construction Manager and the Commission shall, at the completion of the Project, or as determined by the Commission, evaluate the Contractor's performance. The Commission shall retain the evaluation(s).

10.9.1.1 The Contractor may request a copy of the completed evaluation(s). If the Contractor wishes to comment or take exception to any rating or remark, the Contractor shall send a response in writing to the Commission with copies to the Architect and the Construction Manager within thirty (30) days of receiving the evaluation(s).

10.9.1.2 The evaluation shall be used by the Commission in determining the responsibility of the Contractor for award of future contracts.

10.10 ARCHITECT PERFORMANCE

- 10.10.1 The Commission, the Construction Manager and the Contractor shall, at the completion of the Project or as determined by the Commission, participate in the evaluation of the Architect's performance. The Commission shall retain the evaluation(s).
- 10.10.1.1 The Architect may request a copy of the completed evaluation(s). If the Architect wishes to comment or take exception to any rating or remark, the Architect shall send a response in writing to the Commission, the Construction Manager, and the Contractor, within thirty (30) days of receiving the evaluation(s).
- 10.10.1.2 The evaluation shall be used by the Commission and the Commission in determining the qualifications of the Architect to provide services for future projects.
- 10.10.1.3 The Commission may request information from the Contractor for use in evaluating the Architect's performance. If information is requested, the Contractor shall comply in a timely and responsive manner.

10.11 CONSTRUCTION MANAGER PERFORMANCE

- 10.11.1 The Commission, the Architect and the Contractor shall, at the completion of the Project or as determined by the Commission, participate in the evaluation of the Construction Manager's performance. The Commission shall retain the evaluation(s).
- 10.11.1.1 The Construction Manager may request a copy of the completed evaluation(s). If the Construction Manager wishes to comment or take exception to any rating or remark, the Construction Manager shall send a response in writing to the Commission, with copies to the Architect and the Contractor, within thirty (30) days of receiving the evaluation(s).
- 10.11.1.2 The evaluation shall be used by the Commission in determining the qualifications of the Construction Manager to provide services for future projects.
- 10.11.1.3 The Commission may request information from the Contractor for use in evaluating the Construction Manager's performance. If information is requested, the Contractor shall comply in a timely and responsive manner.

ARTICLE 11 - INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

- 11.1.1 The Contractor shall purchase and maintain liability and other insurance as will protect the Contractor from claims described below, which may arise out of, or result from, the Contractor's performance or obligations under the Contract Documents, whether

due to action or inaction by the Contractor or any Person for whom the Contractor is responsible.

- 11.1.1.1 Claims under workers' compensation, occupational sickness or disease, disability benefit and other similar employee benefit acts;
 - 11.1.1.2 Claims for damages because of bodily injury, disease, illness, death or personal injury, and other claims usually covered by bodily injury liability insurance;
 - 11.1.1.3 Claims for damages because of injury to, or destruction of, property and other claims usually covered by property damage liability insurance.
- 11.1.2 The Contractor shall purchase and maintain a Commercial General Liability policy and Business Automobile Liability policy to provide insurance and limits as indicated below. An Umbrella or Excess Liability policy may be used to reach such limits.

Policy Limits – Commercial General Liability

\$2,000,000	General Aggregate (minimum – see below)
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Occurrence Limit (minimum – see below)
\$1,000,000	Personal and Advertising Injury Limit
\$ 100,000	Fire Legal Liability Limit
\$ 10,000	Medical Payments

Policy Limits – Business Automobile

\$ 500,000	Combined Single Limit
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- 11.1.2.1 Contracts in the amount of \$100,000 or less require coverage in the amount of not less than \$2 million general aggregate and \$1 million per occurrence.
- 11.1.2.2 Contracts in excess of \$100,000, but not more than \$5 million, require coverage in the amount of not less than \$3 million general aggregate and \$3 million per occurrence.
- 11.1.2.3 Contracts exceeding the amount of \$5 million require coverage in an amount to be determined by the Commission and identified in the Special Conditions, but in no case less than \$5 million general aggregate and \$5 million per occurrence.
- 11.1.2.4 Such policies shall be endorsed to provide that the General Aggregate Limit applies separately to each of the insured Contractor's projects.
- 11.1.2.5 For any demolition, blasting, excavating, tunneling, shoring or similar operations, the Contractor shall provide and maintain Property Damage

Liability insurance with a limit of liability equal to such limit as specified in the applicable sections of GC subparagraph 11.1.2

11.2 BUILDER'S RISK - NEW CONSTRUCTION

- 11.2.1 The Commission shall provide and maintain, during the progress of the Work and until the execution of the Certificate of Contract Completion by the Commission, a Builder's Risk insurance policy to cover all Work in the course of construction including false work, temporary buildings and structures, and materials used in the construction process, stored on or off-site, or while in transit. Such insurance shall be on a special cause of loss form, which provides coverage on an open perils basis insuring against the direct physical loss of, or damage to, covered property including, without limitation, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse, water damage and hot and cold testing. It shall also include debris removal, and/or demolition occasioned by enforcement of any Applicable Law, and shall cover reasonable compensation for the Commission's services and expenses required to limit further loss. Such policy may not include coverage for certain demolition and abatement.
- 11.2.1.1 The Commission may provide Builder's Risk coverage for multiple buildings included within a project, or on a building-by-building basis, at the sole discretion of the Commission. The amount of coverage on a building-by-building basis shall be not less than the total completed value of the individual building included in the Project, including the value of permanent fixtures and decorations.
- 11.2.1.2 Coverage must include a provision to pay the reasonable extra costs of expediting temporary and/or permanent repairs to, or permanent replacement of, damaged property. This shall include overtime wages and the extra cost of "express" or other means for rapidly transporting materials and supplies necessary to such repair or replacement.
- 11.2.1.3 Coverage must include "soft cost endorsement" to include, without limitation, the reasonable extra costs of the Architect and Construction Manager and reasonable contractor extension on acceleration costs.
- 11.2.1.4 Coverage shall include materials in transit or stored off-site and identified for the Project.
- 11.2.1.5 Coverage shall waive all rights between the Commission and Contractor for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under such policy. The Commission may recover the amount of the Builder's Risk policy deductible for any losses caused by the Contractor.
- 11.2.1.6 Coverage shall include appropriate sub-limits for installation coverage.
- 11.2.1.7 Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.
- 11.2.1.8 Coverage shall include temporary structures and scaffolding, along with collapse coverage.

- 11.2.1.9 Coverage shall be primary to all other applicable insurance.
- 11.2.2 The Builder's Risk policy shall be written in the amount equal to at least 100 percent of the Contract Sum, including landscaping, paving and other Work.
 - 11.2.2.1 The Builder's Risk policy shall specifically permit and allow for Partial Occupancy by the School prior to execution of the Certificate of Contract Completion and Final Acceptance of the Project by the Commission and coverage shall remain in effect until all punch list items are completed.
 - 11.2.2.2 The Contractor experiencing any loss claimed under the Builder's Risk policy shall be responsible for that loss up to the amount of the deductible. The Contractor may provide its own coverage for amounts up to the deductible.

11.3 BUILDER'S RISK - RENOVATIONS

- 11.3.1 If the Contractor is involved solely in the installation of materials and equipment and not in new building construction, the Commission shall purchase and maintain either a Builder's Risk, Builder's Risk-Renovations, or Installation Floater insurance policy. Such policy shall comply with the provisions of GC paragraph 11.2.

11.4 INSURANCE POLICY REQUIREMENTS

- 11.4.1 Each policy of insurance required to be purchased and maintained by the Contractor shall name the Schools and the Commission as additional insureds or loss payees, as applicable; provided, however, this designation shall not cause any claim between the Contractor and the Commission to be waived, except as set forth in GC subparagraph 11.5. Each policy and respective Certificate of Insurance shall expressly provide that no less than thirty (30) days prior written notice shall be given to the Commission in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy or evidenced by such Certificate of Insurance.
- 11.4.2 The Contractor shall furnish the Commission a certified copy of any insurance or additional insured or loss payee endorsement required to be purchased or maintained by the Contract Documents. In no event shall any failure to demand a certified copy of any required insurance or insured endorsement be construed as a waiver of the obligation of the Contractor to obtain required insurance.
- 11.4.3 The Contractor shall maintain all insurance in the required amounts, without interruption, from the date of the execution of the Contract until the date of execution of the Certificate of Contract Completion by the Commission. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract.
- 11.4.4 Insurance policies required to be purchased and maintained by the Contractor may include a reasonable loss deductible, which shall be the responsibility of the Contractor to pay in the event of loss.

- 11.4.5 The prompt repair or reconstruction of the Work resulting from an insured loss or damage shall be the Contractor's responsibility and shall be accomplished at no additional cost to the Commission.

11.5 WAIVERS OF SUBROGATION

- 11.5.1 The Commission and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this GC Article 11 or other insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Commission as fiduciary.

ARTICLE 12 – CONTRACT SUSPENSION AND TERMINATION

12.1 SUSPENSION OF THE WORK

- 12.1.1 The Commission, with the concurrence of the Commission, without cause and without prejudice to any other right or remedy it may have, may order the Contractor in writing to suspend, delay or interrupt the performance of Work in whole or in part for such period of time as the Commission may determine. The Commission shall provide notice to the Contractor's Surety of any suspension ordered pursuant to this GC Article 12.

- 12.1.1.1 If the Commission suspends the Work under this GC subparagraph 12.1.1 and the Contractor complies with GC Article 8, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption. The adjustment of the Contract Sum, however, shall not include profit.

- 12.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the Contract Sum or Contract Time to the extent that:

- .1 Performance was, or could have been, suspended, delayed, or interrupted by a cause for which the Contractor is responsible; or
- .2 An equitable adjustment is made or denied under another provision of the Contract.

- 12.1.1.3 If the Commission suspends the Work under this GC subparagraph 12.1.1 and the Contractor submits a proper Application for Payment, but subject to all other provisions of the Contract Documents, the Contractor shall be entitled to payment of compensation due under the Contract Documents for Work performed before the suspension based upon the Contract Cost Breakdown.

- 12.1.2 The Commission, without prejudice to any other right or remedy it may have, may order the Contractor in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period of time as the Commission may determine for any of the following reasons: (1) Defective Work; (2) the Contractor is causing undue risk of damage to any part of the Project or adjacent area; (3) the Contractor

fails to furnish or perform the Work in such a way that the complete Work will conform to the requirements of the Contract Documents; or (4) any other cause the Commission reasonably believes justifies a suspension.

12.1.2.1 The Commission's exercise of its right to suspend the Work under this GC subparagraph 12.1.2 shall not entitle the Contractor to any adjustment of the Contract Sum or Contract Time.

12.1.2.2 If the Commission is adjudged to have improperly suspended the Work under this GC subparagraph 12.1.2, the suspension shall be deemed to have been a suspension under GC subparagraph 12.1.1.

12.1.3 Upon receipt of notice of suspension, delay or interruption under this GC paragraph 12.1, the Contractor shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The Contractor, through the Construction Manager, shall furnish a report to the Commission, within five (5) days of receipt of the notice of suspension, describing the status of the Work, including without limitation, results accomplished, conclusions resulting therefrom, and such other information as the Commission may require.

12.1.4 In the event of suspension, delay or interruption under this GC paragraph 12.1, the Contractor may be entitled to payment of compensation due under the Contract Documents, upon submission of a proper invoice, for the Work performed prior to receipt of notice of suspension, delay or interruption, which shall be payable based upon the Contract Cost Breakdown.

12.1.5 The Commission's right to stop the Work shall not give rise to any duty to exercise the right for the benefit of the Contractor or any other party, and the Commission's exercise or failure to exercise the right shall not prejudice any of the Commission's other rights.

12.2 TERMINATION FOR CONVENIENCE

12.2.1 The Commission may, upon the recommendation of the Construction Manager and the Architect, at any time, terminate the Contract in whole or in part for the Commission's convenience and without cause, at any time upon twenty (20) days written notice to the Contractor.

12.2.2 Upon receipt of the notice of termination for convenience, the Contractor shall immediately proceed with performance of the following duties in accordance with instructions from the Commission:

12.2.2.1 Cease operation as specified in the notice;

12.2.2.2 Place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Project;

12.2.2.3 Terminate all subcontracts and orders to the extent they relate to the Work terminated;

- 12.2.2.4 Proceed with Work not terminated; and
- 12.2.2.5 Take actions that may be necessary, or that the Commission may direct, for the protection and preservation of the terminated Work.
- 12.2.3 Upon such termination, the Contractor shall be paid in accordance with the Contract Cost Breakdown for Work completed, including any retained funds, and the value of materials ordered and delivered, less any salvage credit the Contractor may receive for them.
 - 12.2.3.1 All materials, equipment, facilities and supplies at the Site, or stored off-site, for which the Contractor has received payment, shall become property of the Commission.
 - 12.2.3.2 The Contractor shall be entitled to a fair and reasonable profit for Work performed and reasonable expenses directly attributable to the termination of the Contract. In no event shall the Contractor be entitled to (1) overhead and profit on Work not performed, or (2) compensation in excess of the total Contract Sum.
 - 12.2.3.3 Any dispute as to the sum then payable to the Contractor shall be resolved in accordance with the provisions of GC Article 8.
- 12.2.4 If the Commission terminates the Work under this GC paragraph 12.2, the termination shall not affect the rights or remedies of the Commission against the Contractor then existing or that may thereafter accrue.
- 12.2.5 Notwithstanding GC subparagraph 12.2.3, if the Commission terminates the Work under this GC paragraph 12.2, but there exists an event of the Contractor's default, the Contractor shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in GC paragraph 12.3.

12.3 TERMINATION FOR CAUSE

- 12.3.1 The Commission may terminate all or a portion of the Contract if the Commission determines, upon the recommendation of the Construction Manager and the Architect, that the Contractor:
 - 12.3.1.1 Fails to prosecute the Work with the necessary force or in a timely manner;
 - 12.3.1.2 Refuses to remedy Defective Work;
 - 12.3.1.3 Fails to supply enough properly skilled workers or proper materials;
 - 12.3.1.4 Fails to properly make payment to Subcontractors or Material Suppliers;
 - 12.3.1.5 Disregards Applicable Law or rules, regulations, or orders of a public authority with jurisdiction over the Project; or
 - 12.3.1.6 Otherwise fails to comply with the requirements of the Contract Documents.

- 12.3.2 If the Commission exercise its termination rights under this GC paragraph 12.3, the Construction Manager shall issue a 5-Day Notice in accordance with GC paragraph 5.3, notifying the Contractor and the Contractor's Surety of the failure or refusal. If the Contractor fails or refuses to commence and continue to correct the defective work or recover the schedule deficiencies with diligence and promptness within 15 days after receiving the 5 day Notice, the Commission may without jeopardizing other remedies, take any action the Commission deems appropriate to correct the Defective Work or to recover the schedule deficiencies. The Contractor shall begin to cure such failure or refusal within five (5) days of receipt of the notice.
- 12.3.3 If the Contractor fails to cure such failure or refusal within fifteen (15) days of receipt of the 5-Day Notice, the Commission may declare the Contractor in default, terminate the Contract, and employ upon the Work the additional force, or supply the materials or such part of either as is appropriate, including removal of Defective Work.
- 12.3.4 If the Contractor is terminated, the Contractor's Surety may perform the Contract. If the Contractor's Surety does not commence performance of the Contract within ten (10) days of Contract termination, the Commission may complete the Work by such means as the Commission deems appropriate. The Commission may take possession of and use all materials, facilities and equipment at the Site or stored off-site for which the Contractor has been paid.
- 12.3.5 If the Contractor is terminated, the Contractor shall not be entitled to any further payment. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including without limitation the fees and charges of engineers, architects, attorneys, separate contractors, and other professionals and court costs, and other damages incurred by the Commission, the Contractor or the Contractor's Surety shall immediately pay the amount of the insufficiency to the Commission. This obligation for payment shall survive termination of the Contract.
- 12.3.6 If the Contractor's Surety performs the Work, the provisions of the Contract Documents shall govern the Surety's performance, with the Surety in the place of the Contractor in all provisions including, without limitation, provisions for payment for the Work and provisions about the right of the Commission to complete the Work.
- 12.3.7 If the Commission terminates the Work under this GC paragraph 12.3, the termination shall not affect any rights or remedies of the Commission against the Contractor then existing or which may thereafter accrue. The Commission's retention or payment of funds due the Contractor shall not release the Contractor or the Contractor's Surety from liability for performance of the Work in accordance with the requirements of the Contract Documents.
- 12.3.8 If the Commission is adjudged to have improperly terminated the Work under this GC paragraph 12.3, the termination will be deemed to have been a termination under GC paragraph 12.2.

12.4 CONTRACTOR INSOLVENCY

12.4.1 Contractor Bankruptcy:

12.4.1.1 If the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the Contractor, the Contractor as the debtor-in-possession, or the trustee of the Contractor's bankruptcy estate shall file a motion to assume or reject the Contract under Bankruptcy Code §365, 11 U.S.C. §365, within twenty (20) days after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within forty-five (45) days after the filing of the voluntary or involuntary petition. The failure to file and prosecute that motion within the time frames provided by this GC paragraph 12.4 shall constitute a material breach of the Contract as time is of the essence with respect to the Contractor's performance of all terms of this Contract. The Contractor agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Commission to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.

12.4.2 Receivership or Assignment for the Benefit of Creditors:

12.4.2.1 If the Contractor makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the Contractor's business or property, the Commission shall serve written notice on the Contractor and the Contractor's Surety stating that any failure of the Contractor to provide adequate assurance of continued performance shall be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court.

ARTICLE 13 - SHOP DRAWINGS AND SAMPLES

13.1 DESCRIPTION

13.1.1 Shop Drawings, Product Data, Samples and other submittals for the Architect's review and action shall be provided by the Contractor for any item required by the Contract Documents but not fully described in the Contract Documents, unless waived by the Architect, and shall include, without limitation:

13.1.1.1 Construction of the various parts, method of jointery, type of material, grade, quality and thickness of material, alloy of material, profiles of all sections, reinforcement, method of hanging doors or installing windows, anchorage, type and grade of finish.

13.1.1.2 Capacities, types of materials and performance charts that are pertinent to the materials and performance charts that are pertinent to the equipment item.

13.1.1.3 Wiring diagrams, control diagrams, schematic diagrams, working and erection dimensions, arrangement and specifications.

- 13.1.1.4 If the Project is designed and constructed under the LEED® (“Leadership in Energy and Environmental Design”) program developed by the U.S. Green Building Council or another rigorous rating system used to facilitate achievement of sustainability goals for the Project, the Contractor shall provide submittals certifying achievement of sustainable design rating system criteria for verification by a third party.
- 13.1.2 Submittals are not Contract Documents. In the event of conflicts between submittals and the Contract Documents, the Contract Documents take precedence and govern the Work.

13.2 FORM OF SUBMITTALS

- 13.2.1 The Contractor shall provide a submittal letter, review and stamp it “approved” and submit the submittals to the Architect and the Construction Manager, in accordance with a schedule established by the Architect, the Construction Manager and the Contractor.
 - 13.2.1.1 Unless otherwise specified in the Contract Documents, the Contractor shall submit one (1) sepia and three (3) prints of all Shop Drawings and four (4) copies of any other submittal.
 - 13.2.1.2 The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show the Architect the materials and equipment which the Contractor proposes to provide.
 - 13.2.1.3 Each Sample shall be identified clearly as to material, supplier, pertinent data such as catalog numbers, the intended use, and other uses as the Architect may require to enable the Architect to intelligently review the submittal.

13.3 VARIATION FROM CONTRACT DOCUMENTS

- 13.3.1 If the submittals show variations from the requirements of the Contract Documents, the Contractor shall make specifically and clearly identify variations in the Contractor's letter of submittal to the Architect.
 - 13.3.1.1 Variations which may affect the construction quality, cost or timeline shall be submitted by the Architect to the Commission for review, and if approved, shall be incorporated into the Work by Change Order.
 - 13.3.1.2 The Contractor shall not be relieved of any responsibility for deviations from the Contract Documents by the Architect's approval of submittals.

13.4 CONTRACTOR'S REVIEW

- 13.4.1 The Contractor shall review and stamp “approved” all submittals before forwarding them to the Architect and the Construction Manager. If it is apparent to the Architect or the Construction Manager that the Contractor has not reviewed the submittals, or

has conducted an incomplete review, the Architect or the Construction Manager shall reject the submittals.

- 13.4.1.1 The Contractor shall field verify conditions as necessary and make corrections of dimensions, locations of various items, encroachments of work of Separate Contractors, or variations from the requirements of the Contract Documents.
- 13.4.1.2 If required by the Contract Documents or Applicable Law, the Contractor shall have the Shop Drawings or other submittals prepared by Persons possessing expertise and experience in an appropriate trade or profession or by a licensed architect, engineer or other professional.
- 13.4.2 By approving and submitting submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related to the associated Work, or shall do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Contract Documents.

13.5 ARCHITECT AND CONSTRUCTION MANAGER REVIEW

- 13.5.1 The Construction Manager and the Architect shall review and approve or disapprove submittals for conformity with design intent within fifteen (15) days of receipt or in accordance with the approved submittal schedule or such other period of time as is mutually agreed by the Construction Manager, the Architect and the Contractor.
 - 13.5.1.1 The Contractor shall make any corrections required by the Architect and the Construction Manager and shall resubmit the required number of corrected copies of submittals until approved, which resubmission shall be acted upon by the Architect and the Construction Manager within fifteen (15) days of receipt or such other period of time as is mutually agreed by the Architect, the Construction Manager and the Contractor.
 - 13.5.1.2 When resubmitting corrected submittals, the Contractor shall direct the Architect's and Construction Manager's attention to any revisions made by noting such revisions on the resubmitted submittal.
 - 13.5.1.3 The Contractor shall pay all reasonable costs incurred by the Architect, Separate Contractors, the Commission, and the Construction Manager for attendant delay, interference, hindrance or disruption of the Project due to excessive re-submittals without fault of the Architect, Separate Contractors, the Commission, or the Construction Manager. Re-submittals in excess of two (2) without fault of the Architect, Separate Contractors, the Commission, or the Construction Manager may be determined excessive by the Commission.
 - 13.5.1.4 The Architect and the Construction Manager may hold Samples and other submittals used to coordinate finishes, colors, patterns, textures, or other characteristics until submittals for adjacent materials are available. The Architect and Construction Manager shall issue a written notice to the Contractor stating that the submittal is being held, within seven (7) days of receiving it.

13.5.1.5 If coordinating submittals are not received within the period required for action on previously received submittals that are held in accordance with GC subparagraph 13.5.1.4, review of the previously received submittals shall be delayed.

13.5.2 The Architect and Construction Manager's review of submittals is to determine if the items covered by the submittals will, after installation and incorporation into the Work, conform to the Contract Documents and be compatible with the design concept of the Project as a functioning whole.

13.5.2.1 The Architect and Construction Manager's review shall not extend to means, methods, manners, techniques, sequences, nor procedures of construction, or to safety precautions or incident programs.

13.5.2.2 The review and approval of a separate item shall not indicate approval of the assembly in which the item functions.

13.6 RISK OF NONPAYMENT

13.6.1 The Contractor shall not commence any portion of the Work requiring Shop Drawings, Product Data, Samples or other submittals until the submittal has been approved by the Architect. If the Contractor starts Work prior to the Architect's final approval of the submittal, the Contractor does so at its own risk that payment shall not be approved or made for the related Work.

13.7 EQUIPMENT STATEMENT

13.7.1 Shop Drawings on all equipment shall include the following written statement from the manufacturer of the equipment:

13.7.1.1 "This equipment submitted for approval shall perform as specified when installed by the Contractor in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories as flues, breechings, piping, controls, and equipment not furnished by this manufacturer, but required as an accessory or supplement to this equipment, providing that the accessory or supplementary items perform as specified and are installed as shown in the Contract Documents."

ARTICLE 14 - SUBCONTRACTORS AND MATERIAL SUPPLIERS

14.1 EVALUATION AND APPROVAL

14.1.1 Within ten (10) days after the Notice to Proceed, the Contractor shall list the Contractor's proposed Subcontractors and Material Suppliers on Forms 26 and 27, respectively, and submit such forms to the Architect, through the Construction Manager, for the review and approval by the Commission. The Contractor shall submit written confirmation that all Subcontractors are enrolled in and be in good

standing in the OBWC DFWP or a comparable program approved by the BWC that meets the requirements specified in Section 153.031 ORC..

- 14.1.1.1 The Commission reserve the right to reject any Subcontractor or Material Supplier. Failure of the Architect to notify the Contractor of rejection within ten (10) days of receipt of Forms 26 and 27 shall constitute notice that the Commission has no objection.
- 14.1.1.2 If the Commission rejects any Subcontractor or Material Supplier, the Contractor shall replace the Subcontractor or Material Supplier at no additional cost to the Commission.
- 14.1.2 The Contractor shall list the Contractor's EDGE business enterprises on Form 28, submit such forms to the Architect, through the Construction Manager, for the review and approval by the Commission.
 - 14.1.2.1 The Contractor shall not replace any EDGE business enterprise after submitting Form 28 without approval of the Commission.
 - 14.1.2.2 The Contractor shall submit to the Architect, through the Construction Manager, amended Form 28 and a written justification for the change of the Contractor's EDGE business enterprise.
 - 14.1.2.3 If the Contractor is unable to comply with the EDGE business participation goal percentage indicated by the Contractor on the EDGE BP Form submitted as a condition precedent to Contract execution, the Contractor shall make a good faith effort to engage additional EDGE business enterprises in connection with the Project, in accordance with the criteria listed on the EDGE BP Form.
 - 14.1.2.4 Good faith effort for purposes of EDGE compliance will be determined pursuant to the process and factors set forth in Ohio Administrative Code Section 123:2-16-09.

14.2 REPLACEMENT

- 14.2.1 The Contractor shall not replace any Subcontractor or Material Supplier after execution of the Contract without the prior written approval of the Commission.
- 14.2.2 The Contractor shall submit to the Architect, through the Construction Manager, amended Forms 26 or 27 and a written justification for the change of the Contractor's Subcontractors or Material Suppliers.
- 14.2.3 Upon submission of such amended forms, the Contractor, the Architect and the Commission shall follow the procedure outlined in GC subparagraphs 14.1.1 and 14.1.2.

14.3 CONTRACTOR'S RESPONSIBILITY

- 14.3.1 The Contractor shall be fully responsible for all acts and omissions of its Subcontractors and Material Suppliers and shall be responsible for scheduling and

coordinating the Work of its Subcontractors and Material Suppliers with the Construction Manager.

14.3.1.1 The Contractor is fully responsible for any interference, disruption, hindrance or delay attributable to its Subcontractors or Material Suppliers.

14.3.1.2 The Contractor shall require that each of its Subcontractors have a competent supervisor at the Site whenever the Subcontractor is performing Work.

14.3.1.3 The Contractor shall bind its Subcontractors and Material Suppliers to the terms of the Contract Documents, so far as applicable to the Work of such Subcontractors or Material Suppliers, and shall not agree to any provisions which seek to bind the Commission to terms inconsistent with, or at variance from, the terms of the Contract Documents.

14.4 WARRANTY AND GUARANTEE

14.4.1 The Contractor shall require each Subcontractor and Material Supplier to fully warrant and guarantee, for the benefit of the Commission, the effectiveness, fitness for the purpose intended, quality and merchantability of any Work performed or item provided or installed by such Subcontractor or Material Supplier.

14.5 ASSIGNMENT OF SUBCONTRACTS

14.5.1 The Contractor hereby assigns its agreement with each Subcontractor and Material Supplier to the Commission provided that the assignment is effective only after termination of the Contract by the Commission for cause and only for those agreements which the Commission accepts by notifying the Contractor and applicable Subcontractor or Material Supplier in writing.

14.5 PROMPT PAYMENT

14.5.1 If a Subcontractor or Material Supplier requests payment in time to allow the Contractor to include the request in its next Application for Payment, the Contractor shall pay within ten (10) days after receipt of payment from the Commission:

14.5.1.1 To a Subcontractor an amount equal to percent of completion allowed for the Subcontractor's Work,

14.5.1.2 To a Material Supplier an amount equal to all or a portion of the Material Supplier's request for materials furnished.

14.5.2 The Contractor may reduce the amount to be paid to a Subcontractor or Material Supplier pursuant to GC subparagraph 14.5.1 by the amount of any retained funds withheld from the Contractor and may withhold amounts necessary to resolve disputed liens or claims involving the Work of the Subcontractor or Material Supplier.

14.5.3 If the Contractor fails to comply with the provision of GC paragraph 14.5, the Contractor shall pay to the applicable Subcontractor or Material Supplier 18 percent

interest on any unpaid amount beginning on the 11th day after receipt of payment from the Commission.

14.6 CLAIM AFFIDAVIT

14.6.1 In order to establish lien rights, Subcontractors and Material Suppliers not in privity of contract with the Contractor must serve a notice of furnishing on the Contractor whose contract is the contract under which the Subcontractor or Material Supplier is performing.

14.6.1.1 The notice of furnishing must be served upon the Contractor within 21 days of performing the Work or furnishing the materials.

14.6.1.2 Subcontractors and Material Suppliers not in privity of contract with the Contractor must, at the time of filing a Claim Affidavit with the Commission's representative, provide a copy of the notice of furnishing and proof that it was received by the Contractor.

14.6.2 In order to establish lien rights, a claimant must file a Claim Affidavit with the Commission's representative, within 120 days from the date of the last Work or furnishing of materials.

14.6.2.1 In order to receive priority over similar claims, the claimant must file a copy of the claim with the appropriate county recorder's office within 30 days of serving the Commission's representative.

14.6.2.2 All claimants who serve the Commission's representative, and file with the appropriate county recorder within 30 days, have no priority among themselves and share in the funds pro rata.

14.6.2.3 Claimants who file with the Commission's representative, but not with the appropriate county recorder, are paid only if there are sufficient funds left after paying those claimants who file with the appropriate county recorder.

14.6.3 The Commission shall notify the Contractor of the receipt of the claim within five (5) days of receiving the Claim Affidavit. A copy of the Claim Affidavit and a statement advising the Contractor of the Contractor's right to dispute the claim will accompany the notice.

14.6.3.1 The Contractor shall have 20 days to dispute said claim.

14.6.3.2 If the Contractor does not notify the Commission in writing of an intention to dispute the claim within 20 days after receipt of the Claim Affidavit, the Contractor is deemed to have assented to its correctness.

14.6.4 The Commission shall detain the amount stated in the Claim Affidavit from subsequent Applications for Payment when such amounts are otherwise due to the Contractor and deposit said amount in an escrow account in accordance with a general escrow agreement between the Commission and a bank in the State of Ohio.

14.6.4.1 The escrow agent shall hold the deposit and any interest earned thereon until receipt of notice from the Commission specifying an amount to be released and the person to whom the amount is to be released.

14.6.4.2 The Commission reserves the right to pay a Claim Affidavit which is not timely disputed.

14.7 CLAIMS AGAINST THE BOND

- 14.7.1 Laborers, Subcontractors or Material Suppliers who have furnished or delivered labor or materials to the Project may, at any time after performing the labor or delivering the materials, but not later than 90 days after the Final Acceptance of the Work, or applicable portion thereof by the Commission, furnish the Surety a statement of the amount due.
- 14.7.2 After furnishing the statement, laborers, Subcontractors or Material Suppliers must wait 60 days to bring a suit for the amount due. If the Surety has not paid the claim at the expiration of 60 days, laborers, Subcontractors or Material Suppliers may bring suit for amounts not paid, but must bring the suit within one (1) year of the Final Acceptance of the Work, or applicable portion thereof, by the Commission.

ARTICLE 15 - AUDITS AND RECORDS

15.1 EXAMINATION

- 15.1.1 The Commission shall have the right to examine all books, records, documents and other data of the Contractor and of the Contractor's Subcontractors and Material Suppliers related to the bidding, pricing or performance of the Work, including without limitation, related to any Proposals and request for equitable adjustment of the Contract.
- 15.1.2 The right of inspection, audit and reproduction shall extend to all documents necessary to permit intelligent evaluation of the cost of pricing data submitted along with the computations and projections used therein.
- 15.1.3 The above referenced materials shall be made available at the office of the Contractor, Subcontractor or Material Supplier, as applicable, at all reasonable times for inspection, audit and reproduction until the expiration of seven (7) years after the date of acceptance of the Project by the Commission.
- 15.1.4 To the extent that the Contractor, Subcontractor or Material Supplier, as applicable, informs the Commission in writing that any documents copied by the Commission are trade secrets, the Commission shall treat such documents as trade secrets of the Contractor, Subcontractor or Materials Supplier, as applicable. In the event any dispute arises with any other person about whether such other persons should be given access to the documents, the Contractor, Subcontractor or Material Supplier, as applicable, agrees to indemnify the Commission against all costs, expenses, and damages, including without limitation attorney fees, incurred by reason of that dispute.

15.2 TERMINATION AND DISPUTES

- 15.2.1 If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the Commission for a period of seven (7) years from the date of any applicable final settlement.

15.2.2 Records which relate to any dispute, litigation, or claim arising out of the performance of the Work shall be made available until such dispute, litigation or claim have been finally decided or settled.

State of Ohio
Ohio School Facilities Commission

SPECIAL CONDITIONS

General: The following Special Conditions supplement article paragraphs and subparagraphs of the "Instructions to Bidders" and "General Conditions" as provided by the State of Ohio, Ohio School Facilities Commission, latest edition, respectively. Where a portion of the Instructions to Bidder and General Conditions are not supplemented, then those paragraphs shall remain in effect.

Instructions to Bidders:

3.5 BID EVALUATION PROCEDURE

3.5.3.4 Add the following: "and information concerning the Bidder as reported by Dun & Bradstreet and other similar reporting services (e.g., Financial Information Report, Credit Advisory, Payment Analysis, Business Information);"

3.5.3.7 Change reference of \$250,000 to \$100,000

3.7 NOTICE OF INTENT TO AWARD

3.7.4 After issuance of Notice of Intent to Award, the Contractor shall proceed with BCI/FBI Criminal Background Check per Article 2, subparagraph 2.6.4 of the General Conditions. Contractor is granted 30 calendar days to complete necessary background checks after issuance of Notice of Intent. After 30 days, any delays due to lack of background checks completed will be the Contractors responsibility.

6.6 CONSTRUCTION CONTRACT RETAINAGE ESCROW AGREEMENT

6.6.1 The successful Bidder shall execute and become a party to the Construction Contract Retainage Escrow Agreement between the Ohio School Facilities Commission and a bank for the purpose of depositing funds required to be retained by the Commission under Articles 9 and 15 of the General Conditions. The Construction Contract Retainage Escrow Agreement shall be substantially in the form contained in the Contract Documents in order to fulfill the requirements of Sections 153.13 and 153.63(A), ORC.

7.3 CONDITIONS PRECEDENT FOR EXECUTION OF CONTRACT FORM

7.3.8 Replace with the following: Enrollment in good standing in the Ohio Bureau of Workers' Compensation ("OBWC") Drug Free Safety Program ("DFSP") or an equivalent OBWC-approved DFSP in accordance with ORC Sections 153.03 through 153.031, inclusive, including placement of its employees in a pool with a random drug testing rate of at least 5%.

- 7.3.13 Contractor executed Contract Form;
- 7.3.14 Fully executed Construction Contract Retainage Escrow Agreement;

General Conditions Additions:

1.1 CONDITIONS OF CONTRACT

- 1.2.5 DRUG FREE WORKPLACE PROGRAM: Change all reference to Drug Free Workplace Program, or DFWP included in this section and all sub-sections to reference Drug Free Safety Program and DFSP.
- 1.2.6 SAFETY
 - 1) Each Contractor and subcontractors shall have a written safety program.
 - 2) Each employee on site shall have completed an OSHA 10-hour, 30-hour course is required for all Supervisors.

1.14 PAYROLL REPORTS

- 1.14.6 The Contractor shall submit to the CM the Prevailing Wage Notification to Employee form, included within the documents, for each employee that is performing work on site prior to or in conjunction with that employee being listed on any certified payroll form. The Contractor will be responsible to update the Notification to Employee at any time there is an update to the prevailing wage rates that would constitute a change in that employee's rate of pay and submit an updated form with the certified payroll reports.

2.3 CONSTRUCTION SUPERVISION

- 2.3.1 Add the following: The superintendent shall be in attendance at the Project site throughout the Work, including completion of the punch list items. The superintendent shall, during the performance of the Work, remain on the Project site not less than eight hours per day, five days per week."
 - 2.3.1.1 Add the following subparagraph: "The superintendent will be responsible for the supervision of Work only and will **NOT** participate in the performance of the Work whenever the Contractor has more than 3 workers on site."

2.5 MATERIALS AND EQUIPMENT

- 2.5.1.1 Add the following subparagraph: "The Contractor shall inspect all materials and equipment as delivered to the premises and shall reject any materials or equipment that will not conform to the Contract Documents when properly installed."

2.6 LABOR

- Add the following subparagraph:
 - 2.6.4 The Contractor shall obtain a criminal background BCI and FBI check on all workers on the Project prior to them working on the Project site as provided in 3319.392 ORC and in this section. No one who has plead guilty to, plead no contest to, or been found guilty of at a trial either to a court or a jury and convicted of the crimes identified in subparagraphs 2.6.4.1 through 2.6.4.4 (or any crime of similar import of any state or other governmental jurisdiction) shall be permitted to enter the Project Site. The Contractor shall maintain copies of the criminal background record checks at the jobsite and the same will be available to the CM and/or the OSFC at any time. Should an urgent

staffing situation arise requiring a worker's presence on the Project Site prior to the completion of either the BCI or FBI background checks, the CM shall in each individual case establish an appropriate procedure mutually acceptable to both the owner and the CM to permit the worker to work on the Project Site until the background checks are completed.

2.6.4.1 At any time:

"Non Rehabilitation offenses" which mean a violation of the following sections:

(a) Sexually-oriented offenses: sections 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (unlawful sexual conduct with a minor), 2907.05 (gross sexual imposition), 2907.06 (sexual imposition), 2907.07 (importuning), 2907.21 (compelling prostitution), 2907.22 (promoting prostitution), 2907.23 (procuring), 2907.25 (prostitution; after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually oriented matter involving a minor), or 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code.

(b) Child-related violent offenses: sections 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (criminal child enticement), 2919.23 (interference of custody) of the Revised Code that would have been a violation of section 2905.04 (child stealing) of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, divisions (B)(1), (2), (3), or (4) of section 2919.22 (endangering children) of the Revised Code.

(c) Violent offenses: sections 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter) of the Revised Code.

2.6.4.2 Within Twenty years of the date of the report:

"Other violence-related offenses," which mean a violation of the following sections that occurred within twenty years prior to the date of the current criminal records check: 2903.11 (felonious assault), 2903.12 (aggravated assault), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), or 2923.161 (improper discharge firearm at or into habitation; school-related offenses) of the Revised Code; 3716.11 (placing harmful objects in food/confection), 2919.12 (unlawful abortion) of the Revised Code.

2.6.4.3 Within Ten years of the date of the report:

(a) "Drug offenses," which mean a violation of the following sections that occurred within ten years prior to the date of the current criminal records check: sections 2925.02 (corrupting another with drugs), 2925.03 (trafficking in drugs), 2925.04 (illegal manufacture of drugs or cultivation of marijuana), 2925.05 (funding of drug or marijuana trafficking), 2925.06 (illegal administration or distribution of anabolic steroids) of the Revised Code.

(b) "Theft offense," which means a violation of section 2911.12 (burglary) of the Revised Code that occurred within ten years prior to the date of the current criminal records check.

2.6.4.4 Within Five years of the date of the report:

"Other offenses," which mean a violation of the following sections that occurred within five years prior to the date of the current criminal records check: 2903.13 (assault), 2903.16 (failing to provide for a functionally impaired person), 2903.21 (aggravated menacing), 2903.34 (patient use or

neglect), 2907.08 (voyeurism), 2907.09 (public indecency), division (A) of section 2919.22 (endangering children), 2919.24 (contributing to unruliness or delinquency of a child), 2919.25 (domestic violence), 2923.12 (carrying concealed weapons), 2923.13 (having weapons while under disability), 2925.11 (possession of a controlled substance that is not a minor drug possession offense) of the Revised Code.

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

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

2.6.7 The Contractor shall require all workers on the Project to attend an orientation session regarding the Blind/Deaf Schools and the special needs of the students that attend the schools prior to their working on the Project site. This orientation will be part of the Project Safety orientation required for all workers.

2.7 SAFETY PRECAUTIONS

2.7.3.4 Add the following: "The Construction Manager shall review the Contractors' safety programs for the purpose of coordinating them with each other. The field superintendent of the Contractor shall conduct regular inspections of the site for compliance with safety regulations, stating in writing each month as a part of the Application for Payment, that he has done so. The Architect, Ohio School Facilities Commission and the Construction Manager reserves the right to inspect and recommend Contractor compliance with safety regulations if, in their opinion, conditions on the site do not comply."

2.8 CONSTRUCTION FACILITIES, UTILITIES AND EQUIPMENT

2.8.1.3 "The Construction to define temporary facility responsibilities in site logistics planning and the Contractors scope of work."

2.9 BUILDING AND TRADES PERMITS & LICENSES

2.9.2.2 Add the following: "Failure of Contractor to obtain any permits, licenses or other approvals shall not extend the time for Contract Completion, and the Contractor shall not be entitled to any additional costs as a result thereof. In addition, any additional costs and/or expenses of any nature incurred by the Commission as a result of the Contractor's failure to conform to this requirement shall constitute a charge against the Contractor's Contract."

2.10 TESTS & INSPECTIONS

2.10.1 Revise as follows: "The Commission will employ and pay for an independent testing agency unless otherwise specified in the contract documents"

2.10.1.1 Revise as follows: "The Contractor shall give reasonable notice to the Construction Manager to schedule the testing agency as required to properly inspect the work."

4.6 COORDINATION MEETINGS

4.6.1.8 Add the following paragraph: "The Construction Manager may conduct additional project coordination meetings on an "as-needed" basis at times convenient for all parties involved. Any

Contractor may request that a coordination meeting be held to discuss an issue they are concerned about."

6.1 COMPUTING TIME

6.1.4 Replace with the following language: Legal Holidays are recognized as part of this project and scheduled as a non-working day. Any work performed by Contractors on the Legal Holidays recognized will not be subject to any cost above and beyond the standard labor rates not inclusive of any overtime or holiday rates.

7.8 EXAMINATION AND AUDIT OF CONTRACTOR'S RECORDS

7.8.1.1 Add the following: The Contractor shall obtain a criminal background BCI and FBI check on all workers on the project prior to them working on the project site as provided in 3319.392 ORC. The Contractor shall maintain copies of the criminal background record checks at the jobsite and the same will be available to the CM and/or the OSFC at any time. Review of Criminal Background checks will be done by CM prior to workers performing any work within the construction area, or on school grounds.

8.6 DELAY AND DELAY DAMAGES LIMITATIONS: DERIVATIVE CLAIMS

8.6.2 Add: "Contractor agrees that any claim for equitable adjustment will not accrue interest until the commission has rendered a final decision."

10.5 PROJECT RECORD DOCUMENT SUBMITTALS

10.5.1.11 Completed Certificate of Good Standing regarding Certified Payrolls from Prime Contractor and all Sub-Contractors performing work on site.

11.4 INSURANCE POLICY REQUIREMENTS

11.4.1 Before "Ohio School Facilities Commission", add "Construction Manager, Architect,"

13.2 FORM OF SUBMITTALS

13.2.1.1 Change "three (3)" to "five (5)" and "four (4)" to "seven (7)".

13.2.1.4 Add the following subparagraph: "All Shop Drawings must be completed and submitted per the milestone dates. Contractors will allow for resubmission and lead time for equipment procurement in order to allow for milestone dates to be met."



The Ohio School Facilities Commission
 10 West Broad Street
 14th Floor
 Columbus, OH 43215
 Phone: 614-466-6290 Fax: 614-466-7749

CHANGE ORDER

X ADD DEDUCT

Contractor's Contract No. **SFC - 682-11087-023R**

Change Order No. 682-11087-023R - 007
 Change Order Date: 06/09/11
 Contractor Name: TransAmerica Building Company, Inc
 Project Name: OSBD - Residential Dorms

Contract Days Changed 0.00
 Revised Completion Date

Check Reason for Change Order

- Design Clarification or Correction
- Field Condition
- Field Dispute Resolution
- School District Board Request
- Local Funded Initiative (List breakdown % below)

Location: Ohio State School for the Blind
 Ohio School for the Deaf

	100	
% Project Construction Fund		% Local Initiative Fund
Other		
Original Contract	\$	3,975,000.00
Previous Changes	\$	72,550.87
This Change	\$	6,802.78
Revised Contract	\$	4,054,353.65

Description / Justification (Add more pages if necessary)

CE #006 OSDB All Buildings-Adding continuous ridge vents in lieu of square roof vents (PR #003)

The compensation or time extension provided by this Change Order constitutes full and complete satisfaction for all direct and indirect costs, and interest related thereto, which has been or may be incurred in connection with this change to the work, including but not limited to, any delays, inefficiencies, disruption or suspension, extended overhead, acceleration, and the cumulative impact of this and other change orders issues as of this date.

CONTRACTOR'S ACCEPTANCE

TransAmerica Building Company, Inc
 2000 West Henderson Road
 Columbus, OH 43220

John L. ... 6/17/11

Contractor Signature & Date

ARCHITECT'S ACCEPTANCE

SHP Leading Design
 4805 Montgomery Road
 Suite 400

John L. ... 6/22/11

Architect Signature & Date

CHANGE ORDER RECOMMENDED

Lend Lease (US) Construction Inc.
 111 West Rich Street
 Suite 280

Charles ... 6-20-11

Construction Manager Signature & Date

CHANGE ORDER APPROVED

Charles ... 6-23-11

OSFC Signature & Date

State of Ohio
Ohio School Facilities Commission

INSTRUCTIONS TO BIDDERS

Article 1 Contract Information
Article 2 Bidding Procedures
Article 3 Bid Opening & Consideration of Bids
Article 4 Withdrawal of Bid
Article 5 Bid Estimate
Article 6 Bid Guaranty and Contract Bond
Article 7 Contract Award and Execution
Article 8..... Applicable Law and Forum

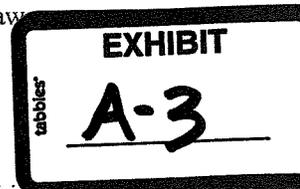
ARTICLE 1 - CONTRACT INFORMATION

1.1 PROJECT BID REQUIREMENTS

- 1.1.1 When the entire cost of the Project exceeds \$50,000, the Commission is required by Applicable Law to solicit separate bids for, at least, the following branches of Work: general trades, plumbing, electrical and HVAC (heating, ventilating and air conditioning).
- 1.1.2 The Commission may solicit bids which combine more than one of the branches of Work.
- 1.1.3 Ohio's Encouraging Diversity, Growth and Equity ("EDGE") program is applicable to this Project. A Bidder awarded a contract shall comply with, or make a good faith effort to comply with, the EDGE business enterprise participation goal of 5 percent of each Contract award amount, calculated as a portion of the Base Bid plus all accepted Alternates.
- 1.1.4 A Bidder's compliance with the requirement to meet the EDGE participation goals or make a good faith effort to locate and engage the services of EDGE business enterprises in connection with the Project shall be a matter of Bidder responsibility.
- 1.1.5 For more information about the EDGE program, contact the State of Ohio EDGE certification office at www.EDGE.ohio.gov or 30 East Broad Street, 18th Floor, Columbus, OH 43215, (614) 466-8380
- 1.1.6 The requirements of Revised Code Chapter 4115, Ohio's Prevailing Wage Law, shall be applicable to this Project.

1.2 PROJECT SCHEDULING AND COORDINATION

- 1.2.1 The time for completion of the Work, or applicable portion thereof, indicated in the bidding documents shall be the time for Contract Completion applicable to the Bidders.



- 1.2.2 The Construction Manager shall be responsible for scheduling the Project, coordinating the Contractors, and providing other services identified in the Contract Documents.
- 1.2.3 The award of separate Contracts for the Project requires sequential, coordinated and otherwise interrelated Contractor operations and may involve interference, disruption, hindrance or delay in the progress of any individual Contractor's Work. Each Contractor shall be an intended third party beneficiary of the Contract of each Separate Contractor performing work on the Project. Each Contractor shall cooperate with the Architect, the Construction Manager and Separate Contractors to minimize interference, disruption, hindrance or delay of the Project.
- 1.2.4 By submitting its Bid, the Bidder understands and agrees that the Contract Sum, based on its Bid and as amended by Change Orders, shall cover all amounts due from the Commission resulting from interference, disruption, hindrance or delay caused by or between Contractors or their agents and employees.
- 1.2.5 The Bidder agrees that the Bidder will make no request for additional compensation or mitigation of Liquidated Damages for any such interference, disruption, hindrance or delay, and will accept as full satisfaction an extension of the Contract Time which may be provided by the Commission in accordance with the Contract Documents.
- 1.2.6 When the Contract Documents refer to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday.

1.3 GIVING NOTICE

- 1.3.1 Notice under the Contract Documents shall be validly given if:
 - 1.3.1.1 Delivered personally to a member of the organization for whom notice is intended;
 - 1.3.1.2 Delivered or sent by registered or certified mail, to the last known business address of the organization; or
 - 1.3.1.3 Sent by facsimile, email, or Web-based project management software, provided the original signed document is delivered within three (3) business days after the date of the electronic transmission.
- 1.3.2 Notices provided to one Project Participant from another shall be simultaneously copied to the prospective Bidders, the Commission, the Architect, and the Construction Manager.

ARTICLE 2 - BIDDING PROCEDURES

2.1 EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE

- 2.1.1 Before submitting a Bid, the Bidder shall examine all Contract Documents, including without limitation the Drawings, Specifications, and Addenda for all divisions of Work for the Project, noting particularly all requirements which will affect the Bidder's Work in any

way. In addition, the Bidder must carefully examine all Contract Documents because laws and rules applicable to other state projects are not necessarily applicable to the Project.

- 2.1.2 The Bidder's failure to become acquainted with the extent and nature of Work required to complete any portion of the Work in conformity with the requirements of the Contract Documents, shall not be a basis for additional compensation.
- 2.1.3 Before submitting a Bid, the Bidder shall examine and evaluate the Site and related Project conditions where the Work will be performed, including without limitation the following:
 - 2.1.3.1 The condition, layout and nature of the Site and surrounding area;
 - 2.1.3.2 The availability and cost of labor;
 - 2.1.3.3 The availability and cost of materials, supplies and equipment;
 - 2.1.3.4 The cost of temporary utilities required in the Bid;
 - 2.1.3.5 The cost of any permit or license required by a local or regional authority having jurisdiction over the Project;
 - 2.1.3.6 The usual weather conditions of the Project location;
 - 2.1.3.7 Conditions bearing upon transportation, disposal, handling, and storage of materials, equipment, and waste; and
 - 2.1.3.8 Subsurface and concealed physical conditions and related information provided in the Contract Documents.

2.2 PRE-BID MEETING

- 2.2.1 The Bidder is strongly encouraged to attend any pre-bid meetings, where the Architect and the Construction Manager will answer questions regarding the Contract Documents.
- 2.2.2 The Construction Manager, with the assistance of the Architect, shall prepare minutes of the pre-bid meeting for the Project record, which will be provided to a Bidder upon request. If questions raised by the prospective Bidders require changes to, or clarifications of, the Contract Documents, the Architect shall issue the changes by written Addendum, along with a list of pre-bid meeting attendees.
- 2.2.3 Additional compensation shall not be based upon the Bidder's failure to attend the pre-bid meeting, which results in the Bidder's incomplete knowledge and familiarity of the Project requirements.
- 2.2.4 If not given in the Notice to Bidders, the Architect shall issue notice of the time and place of any pre-bid meeting to each registered Plan Holder.

2.3 REQUESTS FOR INTERPRETATION

- 2.3.1 If the Bidder finds any perceived ambiguity, conflict, error, omission or discrepancy within the Contract Documents, including without limitation the Drawings, Specifications, and Addenda, or between any of the Contract Documents and Applicable Law, the Bidder shall

submit a written Request for Interpretation (“RFI”) to the Architect, through the Construction Manager, for an interpretation or clarification.

2.3.1.1 The Bidder shall be responsible for prompt delivery of the RFI.

2.3.1.2 The Architect shall respond to RFIs received more than seven (7) days before the bid opening.

2.3.2 The Architect shall issue Addenda in response to RFIs that modify or clarify the Contract Documents. Any Addenda issued within 72 hours before any bid opening, excluding Saturdays, Sundays and legal holidays, shall extend the bid opening by one (1) week, with no further advertising required.

2.3.2.1 The Addenda may be delivered by facsimile, posted to a Web or FTP site, or otherwise furnished to each registered Plan Holder.

2.3.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Architect, or in any manner other than a written Addendum, shall not be binding and the Bidder shall not rely upon the interpretation or clarification.

2.3.4 The successful Bidder shall not be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting or erroneous Contract Documents, any discrepancy on or between Contract Documents, or assumed conditions regarding the nature, extent, or character of the Work, if the Bidder did not submit a related RFI prior to the bid opening.

2.4 BASIS OF DESIGN AND ACCEPTABLE COMPONENTS

2.4.1 The Contract Documents may list components produced by specific manufacturers to denote kind, quality, or performance requirements.

2.4.2 The component listed first is the Basis of Design Component.

2.4.3 Other listed components are Acceptable Components.

2.4.3.1 If the Bidder includes an Acceptable Component in its Bid, the Bidder is responsible for the costs of coordination and modification required, including changes to the design by the Architect.

2.5 SUBSTITUTIONS PRIOR TO THE BID OPENING

2.5.1 If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture or other item other than the Basis of Design or Acceptable Components named in the Specifications, the Bidder shall certify that the proposed item is equal in quality, and all aspects of performance and appearance, to the item specified.

2.5.1.1 If approval of a Substitution requires changes to the Contract Documents or affects the work of other trades, the Bidder is responsible for the additional costs.

2.5.2 The Bidder shall submit its request for Substitution to the Architect no later than ten (10) days prior to the bid opening, which shall include:

- 2.5.2.1 The name and complete description of the proposed Substitution, including Drawings, performance and test data, and other information necessary for a complete evaluation; and
- 2.5.2.2 A statement setting forth any changes which the proposed Substitution will require in the Contract Documents or the Project.
- 2.5.3 If the Architect approves the proposed Substitution, the Architect shall issue an Addendum to that effect.
- 2.5.4 If the Architect does not approve the proposed Substitution, the Architect shall inform the Bidder of the decision, which is final. The Architect may reject a proposed Substitution because the Bidder failed to provide sufficient information to enable the Architect to completely evaluate the proposed Substitution without causing a delay the scheduled bid opening.
- 2.5.5 Proposed Substitutions received by the Architect less than ten (10) days prior to the bid opening shall not be considered.

2.6 BID FORM

- 2.6.1 Each Bid shall be submitted on the Bid Form and sealed in an envelope clearly marked as containing a Bid, indicating the Project name, the construction trade of the Bid, and the date and time of the bid opening on the envelope.
 - 2.6.1.1 Any change, alteration or addition in the wording of the Bid Form shall cause the Bid to be rejected as non-responsive.
 - 2.6.1.2 Unless the Bidder withdraws the bid as provided in IB Article 4, the Bidder is required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder that might indicate a contrary intention.
 - 2.6.1.3 All pages of the Bid Form shall be submitted with the Bid. Failure to do so shall cause the Bid to be rejected as non-responsive.
- 2.6.2 The Bidder shall fill in all relevant blank spaces on the Bid Form in ink or type, and not in pencil.
 - 2.6.2.1 The Bidder shall show all bid amounts in both words and figures. In the case of a conflict between the words and figures, the amount shown in words shall govern, where such words are not ambiguous. When the Bidder's intention and the meaning of the words are clear, omissions or misspellings of words will not render the words ambiguous.
 - 2.6.2.2 The Bidder shall initial any alteration or erasure of items filled in on the Bid Form.
- 2.6.3 When an Alternate is listed on the Bid Form, the Bidder shall fill in the applicable blank with an increased or decreased bid amount. The Commission reserves the right to accept or reject any or all bids on Alternates, in whole or in part, and in any order. Voluntary

Alternates submitted by a Bidder are prohibited from becoming the basis of the Contract award.

- 2.6.3.1 If no change in the bid amount is required, indicate "No Change" or \$0 dollars.
 - 2.6.3.2 Failure to make an entry or an entry of "No Bid," "N/A," or similar entry for any Alternate by a Bidder shall cause the Bid to be rejected as non-responsive if that Alternate is selected.
 - 2.6.3.3 If an Alternate is not selected, an entry by a Bidder as listed in paragraph IB 2.6.3.2 on that Alternate will not, by itself, render a Bid non-responsive.
 - 2.6.3.4 In a combined bid, a blank entry or an entry of "No Bid," "N/A," or similar entry on an Alternate will cause the Bid to be rejected as non-responsive if that Alternate applies to the combined bid and that Alternate is selected.
- 2.6.4 Each Bid shall contain the name of every Person interested therein. If the Bidder is a corporation, partnership, sole proprietorship, or limited liability company, an officer, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided and sign the Bid Form. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided and sign the Bid Form on behalf of that member. All signatures must be original.
- 2.6.5 Subject to the provisions of this IB paragraph 2.6, the completed Bid Form of the Bidder with which the Commission executes a Contract Form shall be incorporated into the Contract Form as if fully rewritten therein.

2.7 REQUIRED SUBMITTALS WITH BID FORM

- 2.7.1 A Bid shall be rejected as non-responsive if the Bidder fails to submit the following submittals with the Bid Form in a sealed envelope:
 - 2.7.1.1 A Bid Guaranty as provided in IB subparagraphs 6.1.1.1 or 6.1.1.2 meeting the requirements of ORC Sections 153.54 to 153.571.
 - 2.7.1.2 Power of Attorney of the agent signing for a Surety which is licensed in Ohio, when a Bid Guaranty and Contract Bond is submitted.

2.8 UNIT PRICES

- 2.8.1 If Unit Prices are requested on the Bid Form, the amount of the scheduled quantities shall be included in the Base Bid amount. Unit prices shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the estimated quantities on the Bid Form and the actual quantities provided.
- 2.8.2 Unit Prices shall include all materials, equipment, labor, delivery, installation, overhead, profit and any other cost or expense, in connection with or incidental to, the performance of that portion of the Work. The Bidder shall submit Unit Prices for all items listed unless other instructions are stated on the Bid Form.

2.9 CHANGE IN THE BID AMOUNT

- 2.9.1 Any change to a previously submitted Bid shall be in writing and received by the Commission before the time scheduled for the bid opening.
- 2.9.2 Changes shall provide an amount to be added to or subtracted from the bid amount, so that the final bid amount can be determined only after the sealed envelope is opened.
- 2.9.3 If the Bidder's written instruction reveals the bid amount in any way prior to the bid opening, the Bid shall not be opened or considered for award of a Contract.

2.10 COMBINED BIDS

- 2.10.1 If only two (2) items are listed on the Bid Form, the Bidder may only submit one (1) Combined Bid with the combination of those two (2) items.
- 2.10.2 If more than two (2) items are listed on the Bid Form, the Bidder may, as described on the Bid Form, submit a combined Bid by circling the items on which the Bidder is bidding in the Combined Bid.
 - 2.10.2.1 The Bidder may only submit one (1) Combined Bid on a Bid Form.
 - 2.10.2.2 The Bidder may submit multiple Combined Bids by submitting separate Bids in accordance with the Contract Documents.
 - .1 Such separate Bids shall contain no more than one (1) Combined Bid per Bid Form pursuant to IB subparagraph 2.10.2.1.
 - .2 If the Bidder submits multiple Combined Bids with a single Bid, that Bid shall be rejected as non-responsive, in accordance with IB subparagraph 2.6.1.1.

ARTICLE 3 - BID OPENING AND CONSIDERATION OF BIDS

3.1 DELIVERY OF BIDS

- 3.1.1 The Bidder shall submit its Bid to the Commission at the designated location prior to the time scheduled for bid opening.
- 3.1.2 If the sealed bid envelope is enclosed in another envelope for the purpose of delivery, the exterior envelope shall also be clearly marked as containing a Bid with the Project name, construction trade of the Bid, and the date and time of the bid opening shown on the envelope.
- 3.1.3 No bid shall be opened or considered if it arrives after the time set for the bid opening.

3.2 BID OPENING

- 3.2.1 Sealed Bids will be received at the office designated in the Notice to Bidders until the time stated when all Bids will be opened, read, and the tabulation made public.

- 3.2.2 The public opening and reading of Bids is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted.
- 3.2.3 The contents of the bid envelope shall be a public record and open for inspection, upon request, at any time after the bid opening, except for any information that is not defined as a public record under Ohio law.

3.3 BID OPENING EXTENSION

- 3.3.1 If any Addendum is issued within 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall be extended one (1) week, with no further advertising required. If the Commission approves, the bid opening may be extended for more than one (1) week, and consideration for additional advertising may be recommended.

3.4 BID EVALUATION CRITERIA

- 3.4.1 The Commission reserves the right to accept or reject any or all Bids, in whole or in part, and reserves the right to award the Contract to any remaining Bidder the Commission determines to be the lowest responsive and responsible Bidder. The Commission reserves the right to accept or reject any or all Alternates, in whole or in part. Alternates may be accepted or rejected in any order.
- 3.4.2 The Commission shall reject the Bid of any Bidder that has engaged in collusive bidding.
- 3.4.3 The Commission reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure, a minor irregularity or technical deficiency in a Bid, provided the irregularity or deficiency does not affect the bid amount or otherwise give the Bidder a competitive advantage. Noncompliance with any requirement of the Contract Documents shall cause a Bid to be rejected as non-responsive.
- 3.4.4 The Commission may reject all Bids for one or more bid packages, prior to, during or after evaluation of Bidders pursuant to IB subparagraph 3.5.4, and may advertise for other Bids, using the original estimate or an amended estimate, for such time, in such form and in such newspapers as the Commission may determine in accordance with Applicable Law.

3.5 BID EVALUATION PROCEDURE

- 3.5.1 The Contract will be awarded to the lowest responsive and responsible Bidder as determined in the discretion of the Commission, or all Bids may be rejected in accordance with Applicable Law.
 - 3.5.1.1 In determining which Bid is the lowest, the Commission shall consider the Base Bid and the bids for any Alternate or Alternates which the Commission decides, in its sole discretion, to accept.
 - 3.5.1.2 The total of the bid amounts for the accepted Alternate(s) will be added to, or deducted from, the Base Bid, as applicable, to determine the lowest Bidder.

- 3.5.1.3 If two or more Bidders submit the same bid amount and are determined to be responsive and responsible, the Commission may select one Bidder by lot in the presence of all such Bidders in such manner as the Construction Manager shall determine and such selection shall be final.
- 3.5.2 In determining whether a Bidder is responsible, factors to be considered include, without limitation:
 - 3.5.2.1 Whether the Bidder's Bid responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents that would affect the amount of the Bid or otherwise give the Bidder a competitive advantage.
 - 3.5.2.2 Preferences required by law;
 - 3.5.2.3 The experience of the Bidder, including;
 - 3.5.2.3.1 The Bidder's prior safety record and history of OSHA violations;
 - 3.5.2.3.2 Whether the Bidder has substantive and re-occurring instances of non-compliance with prevailing wage or other laws;
 - 3.5.2.3.3 The Bidder's prior experience in school construction;
 - 3.5.2.3.4 Whether the Bidder has a history or pattern of non-payment of workers' compensation, unemployment taxes, or other assessments or taxes.
 - 3.5.2.4 The financial condition of the Bidder;
 - 3.5.2.5 The conduct and performance of the Bidder on previous contracts, including;
 - 3.5.2.5.1 The incidence of defective workmanship on prior contracts, including the Bidder's actions in addressing such defective workmanship;
 - 3.5.2.5.2 Evaluations of the Bidder given by owners or project team members on prior contracts;
 - 3.5.2.5.3 Whether the Bidder has missed milestones and otherwise caused prior projects to experience delay.
 - 3.5.2.6 The facilities of the Bidder, including;
 - 3.5.2.6.1 Whether the workforce of the Bidder has been properly trained and possesses the experience to perform the requested scope of work;
 - 3.5.2.6.2 Whether the Bidder actually possesses, or has access to, the equipment and adequate manpower to perform the requested scope of work.

- 3.5.2.7.1 The management skills of the Bidder, including;
- 3.5.2.7.2 Whether the Bidder has demonstrated the ability to properly manage a multi-prime contractor construction schedule comparable to this Project;
- 3.5.2.7.3 Whether the Bidder has demonstrated the ability to properly manage and coordinate its workforce and subcontractors on a comparable Project.
- 3.5.2.7.4 Whether the Bidder has demonstrated a willingness and ability to partner with other prime contractors and owners in achieving a successful project.
- 3.5.2.7.5 Whether the Bidder has demonstrated the ability to properly manage a construction project adjacent to occupied facilities.

- 3.5.2.8 The Bidder's ability to execute the Contract properly, including past performance of the Bidder and the Subcontractors that the bidder proposes to use on the Project;
- 3.5.2.9 The evaluation of a Bid below the median of other Bids pursuant to paragraph IB paragraph 5.2;
- 3.5.2.10 A Bidder that submits a Bid for Work as a mechanical Contractor, i.e., for electrical, plumbing, hydronics, refrigeration or heating, ventilating and air conditioning, may be required to submit evidence of licensure by the Ohio Construction Industry Examining Board. Additionally, the Bidder may be required to demonstrate that its subcontractors possess the appropriate licenses, and whether the Bidder or any of its subcontractors have had their respective licenses revoked in the past;
- 3.5.2.11 A Bidder's compliance with the EDGE participation goals or the requirement to make a good faith effort to locate and engage the services of EDGE business enterprises in connection with the Project; and
- 3.5.2.12 Whether a finding for recovery has been issued by the Auditor of State for the Bidder and that finding is unresolved.

A material breach of the responsible bidder criteria prior to, or during the contract performance, shall subject the contractor to all contractual remedies, including, but not limited to, termination for cause.

- 3.5.3 The Construction Manager shall obtain from the lowest Bidder and such other Bidders as the Construction Manager determines to be appropriate any information appropriate to the consideration of factors showing responsibility, including without limitation the following:
 - 3.5.3.1 Overall experience of the Bidder, including number of years in business under present and former business names;
 - 3.5.3.2 Complete listing of all ongoing and completed public and private construction projects of the Bidder in the last three years, including the nature and value of each contract and a name/address/phone number for each owner;
 - 3.5.3.3 Complete listing of any public or private construction projects for which the Bidder has been declared in default; also, any EPA, OSHA or other regulating entity issues or citations in the last ten (10) years;

- 3.5.3.4 Certified financial statement and bank references;
 - 3.5.3.5 Description of relevant facilities of the Bidder;
 - 3.5.3.6 Description of the management experience of the Bidder's project manager(s) and superintendent(s);
 - 3.5.3.7 Complete list of major Subcontractors with an estimated contract value of \$250,000 or more, which the Bidder proposes to employ on the Project;
 - 3.5.3.8 To support a Bond, a current and signed Certificate of Compliance required under ORC Section 9.311, issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in Ohio;
 - 3.5.3.9 Current Ohio Workers' Compensation Certificate;
 - 3.5.3.10 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Secretary of State showing the right of the Bidder to do business in the State; or, if the Bidder is a person or partnership, the Bidder has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under ORC Section 153.05 or under ORC Sections 4123.01 to 4123.94, inclusive.
- 3.5.4 Each such Bidder's information shall be considered separately and not comparatively. If the lowest Bidder is responsible, the Contract shall be awarded to such Bidder unless all Bids are rejected.
 - 3.5.5 If the lowest Bidder is not responsible, and all Bids are not rejected, the Commission shall follow the procedure set forth in IB subparagraph 3.5.3 with each next lowest Bidder until the Contract is awarded, all Bids are rejected, or all Bidders are determined to be not responsible.
 - 3.5.6 The Bidder shall provide all information requested under IB subparagraph 3.5.3 within three (3) days of a request from the Construction Manager, or a longer period, if the Commission consents in writing.

3.6 REJECTION OF BID BY THE COMMISSION

- 3.6.1 If the lowest Bidder is not responsive or responsible, the Commission shall reject the Bid and notify the Bidder in writing by certified mail of the finding and the reasons for the finding.
- 3.6.2 A Bidder notified in accordance with IB subparagraph 3.6.1 may object to its rejection by filing a written protest, which must be received by the Commission within five (5) days of the notification provided pursuant to IB subparagraph 3.6.1.
- 3.6.3 Upon receipt of a timely protest, representatives of the Commission shall meet with the protesting Bidder to hear its objections. ORC Chapter 119 shall not be applicable to such meeting.

3.6.3.1 No Contract award shall become final until after the representatives of the Commission have met with all Bidders who have timely filed protests and the award of the Contract is affirmed by the Commission.

3.6.3.2 If all protests are rejected, the Contract shall be awarded to the lowest responsive and responsible Bidder, or all Bids shall be rejected.

3.7 NOTICE OF INTENT TO AWARD

3.7.1 The Commission shall notify the apparent successful Bidder that the Bidder has been awarded the Contract for the work contingent upon satisfactory compliance with all conditions precedent for execution of the Contract Form, within the time specified.

3.7.2 The Commission reserves the right to rescind any Notice of Intent to Award if the Commission determines it issues the Notice of Intent to Award in error, or if the conditions precedent for execution of Contract set forth in Article 6 are not met.

3.7.3 After issuance of the Notice of Intent to Award, the Commission shall notify the Surety and agent of the Surety in compliance with ORC Section 9.32.

ARTICLE 4 - WITHDRAWAL OF BID

4.1 WITHDRAWAL PRIOR TO BID OPENING

4.1.1 A Bidder may withdraw a Bid after the Commission receives the Bid, provided the Bidder makes a request in writing and the Commission receives the request prior to the time of the bid opening, as determined by the Commission.

4.2 WITHDRAWAL AFTER BID OPENING

4.2.1 All Bids shall remain valid and open for acceptance for a period of, at least, 60 days after the bid opening; provided, however, that within two (2) business days after the bid opening, a Bidder may withdraw a Bid from consideration if the bid amount was substantially lower than the amounts of other Bids, provided the Bid was submitted in good faith, and the reason for the bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor or material made directly in the compilation of the bid amount.

4.2.1.1 Notice of a request to withdraw a Bid must be made in writing filed with the Commission within two (2) business days after the bid opening. The Commission reserves the right to request the Bidder to submit evidence substantiating the Bidder's request to withdraw the Bid.

4.2.1.2 No Bid may be withdrawn under IB subparagraph 4.2.1 that would result in awarding a Contract involving the same item on another Bid to the same Bidder.

4.2.2 If a Bidder withdraws its Bid under IB subparagraph 4.2.1, the Commission may award the Contract to the next lowest responsive and responsible Bidder, or reject all Bids and advertise for other Bids. If the Commission advertises for other Bids, the withdrawing

Bidder shall pay the costs, in connection with the rebidding, of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, if the Commission finds that these costs would not have been incurred but for such withdrawal.

- 4.2.3 A Bidder may withdraw the Bidder's Bid at any time after the period described in IB subparagraph 4.2.1 by written notice to the Commission, and if permitted by the Commission.

4.3 REFUSAL BY COMMISSION TO ACCEPT WITHDRAWAL

- 4.3.1 If the Commission contests the right of a Bidder to withdraw a Bid pursuant to IB subparagraph 4.2.1, a hearing shall be held by one or more representatives of the Commission within ten (10) days after the bid opening and the Commission shall issue an order allowing or denying the claim of such right within five (5) days after such hearing is concluded. The Commission shall give the withdrawing Bidder timely notice of the time and place of any such hearing.

4.3.1.1 The Commission shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing.

4.3.1.2 Pursuant to ORC Section 119.12, the Bidder may appeal the order of the Commission required by IB subparagraph 4.3.1.

4.4 REFUSAL BY BIDDER TO PERFORM

- 4.4.1 If the Commission denies the request for withdrawal and the Bidder elects to appeal or otherwise refuses to perform the Contract, the Commission may reject all Bids or award the Contract to the next lowest responsive and responsible Bidder.

4.5 EFFECT OF WITHDRAWAL

4.5.1 A Bidder who is permitted to withdraw a Bid under IB subparagraph 4.2.1, shall not supply material or labor to, or perform any subcontract or other work for, the Person to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted, without the Commission's prior written consent.

4.5.2 The Person to whom the Contract is awarded and the withdrawing Bidder shall be jointly liable to the Commission in an amount equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval, in addition to any penalty which may be imposed under ORC Section 2913.31.

ARTICLE 5 - BID ESTIMATE

5.1 BID TOTALS

5.1.1 No Contract shall be entered into if the Contract Sum, or if the Project involves multiple contracts where the total price of all contracts for the Project, is in excess of ten (10) percent above the entire estimate.

5.2 SUBSTANTIALLY LOW BID

5.2.1 No Bidder shall be responsible if the Bidder's Bid is more than twenty (20) percent below the median of all higher Bids received for a Contract where the estimate is \$100,000 or more, and no Bidder shall be responsible if the Bidder's Bid is more than twenty-five (25) percent below the median of all higher Bids received for a Contract where the estimate is less than \$100,000, unless the following procedures are followed.

5.2.1.1 The Construction Manager and the Architect conduct an interview with the Bidder to determine what, if anything, has been overlooked in the Bid, and to analyze the process planned by the Bidder to complete the Work. The Construction Manager and the Architect shall submit a written summary of the interview, signed by the Bidder, to the Commission.

5.2.1.2 The Commission reviews and approves the Bidder's responsibility pursuant to IB subparagraph 3.5.3.

5.2.1.3 The Construction Manager notifies the Bidder's Surety in writing that the Bidder with whom the Commission intends to enter a Contract submitted a Bid determined to be substantially lower than the median of all higher Bids.

ARTICLE 6 - BID GUARANTY AND CONTRACT BOND

6.1 BID GUARANTY

6.1.1 The Bidder shall submit a Bid Guaranty with the Bidder's Bid, payable to the Commission, in the form of either:

6.1.1.1 The signed Bid Guaranty and Contract Bond contained in the Contract Documents for the amount of the Base Bid plus all add Alternates; or

6.1.1.2 A certified check, cashier's check or letter of credit in the amount of ten (10) percent of the Base Bid plus all add Alternates. Any letter of credit shall expressly provide that it is revocable only by the Commission.

6.1.2 The Bid Guaranty shall be in form and substance satisfactory to the Commission and shall serve as an assurance that, upon acceptance of the Bid, the Bidder shall comply with all conditions precedent for Contract execution, within the time specified by the Contract Documents. Any Bid Guaranty must be payable to the Commission.

6.1.3 If the blank line on the Bid Guaranty and Contract Bond is not filled in, the penal sum will automatically be the full amount of the Base Bid plus all add Alternates. If the blank line is

filled in, the amount must not be less than the full amount of the Base Bid plus all add Alternates, stated in dollars and cents. A percentage is not acceptable.

- 6.1.4 The Bid Guaranty and Contract Bond must be signed by an authorized agent, with Power of Attorney, from a Surety. The Bid Guaranty and Contract Bond must be issued by a Surety licensed by the Ohio Department of Insurance to transact business in Ohio.
- 6.1.5 The requirements of ORC Section 3905.41 may be applicable requiring an Ohio resident agent to countersign the Bid Guaranty and Contract Bond. The Bidder shall determine the applicability of this provision .
- 6.1.6 Bid Guaranties will be returned to all unsuccessful Bidders ninety (90) days after the bid opening. Bid Guaranties in the form of a certified check, cashier's check, or letter of credit shall be returned to the successful Bidder upon providing the Bond required by Applicable Law in form and substance, and from a Surety satisfactory to the Commission.

6.2 BOND FORFEITURE

- 6.2.1 If for any reason, other than as authorized by IB subparagraph 4.2.1 or IB paragraph 6.3, the Bidder fails to execute the Contract Form, and the Commission awards the Contract to another Bidder that the Commission determines is the lowest responsive and responsible Bidder:
 - 6.2.1.1 The Bidder who failed to execute the Contract Form is liable to the Commission for the difference between its Bid and the Bid of the next lowest responsive and responsible Bidder, or for a penal sum not to exceed ten (10) percent of the bid amount, whichever is less.
- 6.2.2 If the Commission then awards a Contract to another Bidder which the Commission determines is the lowest responsive and responsible Bidder and that Bidder fails or refuses to execute the Contract Form:
 - 6.2.2.1 The liability of the lowest responsive and responsible Bidder shall be the difference between the bid amount of the lowest responsive and responsible Bidder and another Bidder which the Commission determines is the lowest responsive and responsible Bidder, except as provided in IB paragraph 6.3, but not in excess of the liability specified in IB subparagraph 6.2.1.1.
 - 6.2.2.2 Liability on account of an award to the lowest responsive and responsible Bidder beyond the third lowest responsive and responsible Bidder shall be determined in like manner.
- 6.2.3 If the Commission does not award the Contract to another Bidder under IB subparagraph 6.2.2, but submits the Project for re-bidding:
 - 6.2.3.1 The Bidder failing or refusing to execute the Contract Form is liable to the Commission for a penal sum not to exceed ten (10) percent of such Bidder's bid amount or the costs in connection with the resubmission, including printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, whichever is less, except as provided in IB paragraph 6.3.

6.3 EXCEPTION TO BOND FORFEITURE

- 6.3.1 A Bidder for a Contract costing less than \$500,000 may withdraw its Bid from consideration if its Bid for another Contract with the State of Ohio costing less than \$500,000 has already been accepted if:
- 6.3.1.1 The Bidder certifies in good faith that the total price of all its current contracts is less than \$500,000; and
 - 6.3.1.2 The Bidder's Surety certifies in good faith that the Bidder is unable to perform the subsequent Contract because such performance would exceed the Bidder's bonding capacity.
- 6.3.2 If a Bid is withdrawn pursuant to IB subparagraph 6.3.1:
- 6.3.2.1 The Commission may award the Contract to another Bidder which the Commission determines is the next lowest responsive and responsible Bidder or reject all Bids and submit the Project for re-bidding; and
 - 6.3.2.2 Neither the withdrawing Bidder nor such Bidder's Surety shall be liable for the difference between the Bidder's Bid and that of the next lowest responsive and responsible Bidder, for a penal sum, or for the costs of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders.

6.4 CONTRACT BOND

- 6.4.1 Prior to signing the Contract Form, the Bidder shall provide a Bond meeting the requirements of ORC Section 153.54(C), unless the Bidder provided an acceptable Bid Guaranty and Contract Bond at the time of the bid opening.
- 6.4.2 The Bond shall be in the full amount of the Contract to indemnify the Commission against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract and in accordance with the Plans, details, Specifications and bills of material therefor and to pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in carrying forward, performing or completing the Contract.
- 6.4.3 The Bond shall be supported by a Power of Attorney of the agent signing for a Surety. The Bond shall be supported by a current and signed Certificate of Compliance or Certificate of Authority required under ORC Section 9.311, issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in Ohio.

6.5 PERSONAL PROPERTY TAX STATEMENT

- 6.5.1 The successful Bidder shall provide a properly completed and executed Delinquent Personal Property Tax Affidavit in the form contained in the Contract Documents in order to fulfill the requirements of ORC Section 5719.042.

ARTICLE 7 - CONTRACT AWARD AND EXECUTION

7.1 NONCOMPLIANCE WITH CONDITIONS PRECEDENT

7.1.1 The award of the Contract and execution of the Contract Form require the Contractor to comply with all conditions precedent for execution of the Contract Form within ten (10) days of the date of the Notice of Intent to Award.

7.1.1.1 Noncompliance with the conditions precedent for execution of the Contract within ten (10) days of the date of the Notice of Intent to Award shall be sufficient cause for the Commission to cancel the Notice of Intent to Award for the Bidder's lack of responsibility and award the Contract to another Bidder which the Commission determines is the next lowest responsive and responsible Bidder, or submit the Contract for re-bidding, at the discretion of the Commission.

7.1.1.2 The Commission may extend the time for submitting the conditions precedent for execution of the Contract for good cause shown. No extension shall operate as a waiver of the conditions precedent for execution of the Contract.

7.2 TIME LIMITS

7.2.1 The Commission's failure to award the Contract and execute the Contract Form within sixty (60) days of the bid opening invalidates the entire bid process and all Bids submitted, unless the time is extended by written consent of the apparent lowest responsive and responsible Bidder and the Commission.

7.2.1.1 If the Commission awards the Contract within sixty (60) days of the bid opening, any increases in material, labor and subcontract costs shall be borne by the Bidder.

7.2.1.2 If the cause of the failure to execute the Contract within sixty (60) days of the bid opening is due to matters for which the Commission is solely responsible, the Contractor shall be entitled to a Change Order authorizing payment of verifiable increased costs in materials, labor or subcontracts. This increase shall not exceed the difference in price between the successful Bidder and the price of the next lowest responsive and responsible Bidder.

7.2.1.3 If the cause of the failure to execute the Contract within sixty (60) days of the bid opening is due to matters for which the Contractor is responsible, the Commission shall not grant a request for increased costs.

7.3 CONDITIONS PRECEDENT FOR EXECUTION OF CONTRACT

7.3.1 The successful Bidder must submit the items in this IB paragraph 7.3 to the Commission before executing the Contract Form.

- 7.3.2 Bond required by law in form and substance satisfactory to the Commission and from a Surety satisfactory to the Commission. To support the Bond, a current and signed Certificate of Compliance or Certificate of Authority required under ORC Section 9.311, issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in Ohio;
- 7.3.3 Current Ohio Workers' Compensation Certificate;
- 7.3.4 Certificate of Insurance (ACORD form is acceptable) and copy of additional insured or loss payee endorsement. The Commission reserves the right to request and receive a certified copy of the Contractor's insurance policies;
- 7.3.5 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Secretary of State showing the right of the Bidder to do business in the State;
- 7.3.6 If the Bidder is an individual or partnership, nonresident of the State, the Bidder must submit a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under ORC Section 153.05, or under ORC Sections 4123.01 to 4123.94, inclusive.
- 7.3.7 Affidavit of Delinquent Personal Property Tax (Form DPT).
- 7.3.8 Enrollment in good standing in the Ohio Bureau of Workers' Compensation ("OBWC") Drug-Free Workplace Program ("DFWP") or an equivalent OBWC-approved DFWP in accordance with ORC Sections 153.03 through 153.031, inclusive, including placement of its employees in a pool with a random drug testing rate of at least 5%.
- 7.3.9 Commitment of EDGE Business Participation ("EDGE BP Form). By designation on the EDGE BP Form, the Bidder either indicates the intent to meet or exceed the participation goal of 5 percent of each Contract award amount, calculated as a portion of the Base Bid plus all accepted Alternates (Option A); or indicates the intent to meet a lesser participation percentage (Option B) which requires information about the Bidder's good faith efforts to locate and engage the services of EDGE business enterprises in connection with the Project; or indicates the intent to fulfill the requirements of the approved local inclusion/diversity program (Option C).
- 7.3.10 Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization.
- 7.3.11 Certificate of Compliance with Affirmative Action Programs, issued by the Ohio Department of Administrative Services, Equal Opportunity Division. Application form and instructions for completing the form are available at: <http://das.ohio.gov/eod/CC.htm>.
- 7.3.12 Plumbing, electrical, hydronics, refrigeration, and heating, ventilating and air conditioning Contractors must submit proof of current licensing required by Applicable Law.

7.4 NOTICE TO PROCEED AND SUBMITTALS

7.4.1 The Commission shall issue to the Contractor a Notice to Proceed, which shall establish the date for commencement and the calendar days allocated for Contract Completion. The Contractor shall, within ten (10) days of the date of the Notice to Proceed, furnish the Construction Manager with the following submittals:

- 7.4.1.1 Contract Cost Breakdown;
- 7.4.1.2 Preliminary schedule of Shop Drawings and Submittals;
- 7.4.1.3 Form 26 – Subcontractor’s Declaration;
- 7.4.1.4 Form 27 – Manufacturer’s Declaration;
- 7.4.1.5 Form 28 – EDGE Declaration of participation
- 7.4.1.6 Outline of qualifications of the proposed project manager(s) and superintendent(s) and a comprehensive resume of each.

7.5 NOTICE OF COMMENCEMENT

7.5.1 The Commission shall prepare a Notice of Commencement in affidavit form identifying the names and addresses of the Commission, the Project, the Project number, the name, address and trade of all Contractors, the date of execution of the Contracts, and the name and address of the Surety for each Contractor, in addition to the name and address of the Commission’s representative upon whom a Claim Affidavit may be served.

7.5.2 The Notice of Commencement shall be made readily available to the public upon request.

ARTICLE 8 – APPLICABLE LAW AND FORUM

8.1 FORUM FOR EQUITABLE RELIEF

8.1.1 The Court of Common Pleas in the county in which the Project is located shall be the exclusive jurisdiction for any action or proceeding for any injunction or declaratory judgment concerning any agreement or performance under the Contract Documents or in connection with the Project.

8.2 FORUM FOR MONEY DAMAGES

8.2.1 The Ohio Court of Claims shall be the exclusive jurisdiction for any action or proceeding by the Contractor or the Contractor’s Surety for any money damages concerning any agreement or performance under the Contract Documents or in connection with the Project.

IN THE COURT OF CLAIMS OF OHIO

CONVERSE ELECTRIC, INC.,

Plaintiff/Counter-defendant,

v.

OHIO SCHOOL FACILITIES
COMMISSION,

Defendant/Counter-plaintiff.

Case No. 2011-08571

Judge Joseph T. Clark

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FILED
COURT OF CLAIMS
OF OHIO

**DEFENDANT OHIO SCHOOL FACILITIES COMMISSION'S
MEMORANDUM CONTRA MOTION OF CONVERSE ELECTRIC, INC. TO
COMPEL DISCOVERY**

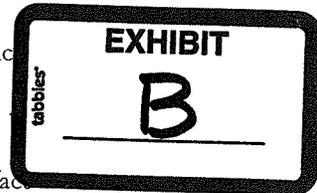
I. Introduction

Plaintiff, Converse Electric, Inc. ("Converse"), filed a rule 37 Motion to Compel on March 30, 2011, against Defendant, the Ohio School Facilities Commission ("OSFC") asking the Court to order deposition testimony from OSFC's agent on the Miami Trace Middle School Project ("Project"), the Quandel Group ("Quandel"), regarding three (3) documents which OSFC maintains are privileged under the work product doctrine and covered by a claw back agreement signed by the parties and filed with the Court as will be more fully explained in the argument set forth below.

The documents in question were attached to Plaintiff's Motion to Compel as Exhibits A, B and C, and are attached hereto by reference.

II. Statement of Facts

On February 18, 2011, near the end of the Project, Converse, the electric contractor, submitted a claim for alleged delays that took place on the Project. In order to determine whether the purported claim had any merit, substance or was grounded in fact,



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and to prepare for the first step in the contractual Dispute Resolution Procedure, an Article 8 hearing field level meeting, OSFC's counsel, the Ohio Attorney General's Office, asked OSFC's agent for the Project, Quandel, to prepare detailed Project time lines and responses to the claim made by Converse. OSFC, again through counsel, hired a consultant, Robert Kelly, to review Converse's claim. A field level Article 8 meeting was held and Converse's claim was denied. Converse appealed the denial. After a meeting to hear the appeal, OSFC again denied the claim.

Discovery has continued during litigation with an appropriate exchange of documents and multiple depositions by each party. During the course of the deposition of Quandel's Project Executive, Mark Massman, counsel for OSFC realized that certain documents in possession of Converse were the detailed Project time lines and responses to Converse's claim that had been prepared by Quandel at the request of counsel. OSFC's counsel objected to the introduction and use of these documents to question its agent during the deposition because they were privileged work product prepared in anticipation of litigation. A similar objection was raised during the deposition of another Quandel employee, Shawn Edmonds. As the Construction Manager on this project, Quandel has served as the agent for OSFC during the course of the construction project, the contractual Dispute Resolution Procedure and the current litigation process.

III. Law and Argument

The documents that Converse seeks production and use of were prepared at the request of counsel and were not prepared by Quandel in the ordinary course of business. This fact was clearly conveyed to counsel for Converse during the depositions of Mark Massman and Shawn Edmonds. Converse cannot dispute the underlying issue that the documents in this matter were prepared at the request of counsel and, therefore, are entitled

to privilege under the Work Product Doctrine.

Plaintiff, at page 2, of its motion argues that it needs to use these documents because Quandel has taken a different position in deposition than a position espoused in Exhibit A. In particular, Plaintiff states that Quandel admitted in Exhibit A:

“The position that Quandel took during this meeting was that due to the anticipated amount of work that was projected **in order to keep the original move-in date** that some additional supervision could be projected and some loss in production could be projected. (emphasis added.)”

While Plaintiff introduces the material from Exhibit A with the phrase, “Quandel acknowledges Converse was entitled to additional compensation for such delays.” and then follows the excerpted material, with the comment that Quandel was now asserting the different position that, “Converse was not entitled to anything on the project for the delays that occurred...” there is nothing in the excerpted material that speaks to compensation for delay. In fact, the excerpted material speaks to additional compensation going forward for additional supervision and lack of productivity in order to meet the original move in date. It is well established that the original move-in date was three and a half months late, and Plaintiff was given additional time to complete the work. Therefore, Plaintiff has failed to establish good cause as to why the documents in question should be produced.

The attorney-client privilege protects against “...any dissemination obtained in the confidential relationship,” and “reaches far beyond” mere “testimonial Speech.” *Am. Motors Corp v. Huffstutler* (1991), 61 Ohio St. 3d 343, 348 575 N.E. 2d 116 (1991). As relevant here, the privilege touches on two (2) categories of information. First, the privilege applies to “...communication between attorneys and their government clients pertaining to the attorneys’ legal advice.” *State ex rel Toledo Blade Co. v. Toledo-Lucas Cnty. Port Auth*, 121 Ohio St. ed. 537, 2009-Ohio-1767, 905 N.E. 2d 1221, ¶ 22. Second, the privilege applies to an

“attorney’s factual investigations” when those investigations facilitate the provision of legal advice or assistance. *Id.* ¶¶ 25-28.

The documents in question in this matter relate to the latter and involve fact finding that facilitated the provision of legal advice or assistance. This fact finding is particularly important in the context of construction cases because of their fact-intensive nature. This need for fact finding in construction matters is further amplified because both sides in a construction dispute will usually enlist the help of an expert consultant to aid them in putting the factual pieces together. These include communications containing information and observations from OSFC to its attorneys and agents as well as communications from and information provided by the agents of OSFC to the attorneys. In this matter, these communications are indisputably privileged because they relate to the rendering of legal services and opinions.

Many of the documents withheld under State privilege law are also protected by a second layer of privilege: work product. This privilege provides a “zone of privacy” in which an attorney may “assemble information, sift what he considers to be relevant from the irrelevant facts, prepare his legal theories and plan his strategies without undue and needless interference.” *Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, 127 Ohio St. 3d 161, 2010-Ohio-4469 ¶¶ 54-55 *quoting* *Hickman*, 329 U.S. at 511). The privilege applies not only to litigation, but to less formal proceedings that are the “functional equivalent” of litigation as, for instance, the Contractual Dispute Resolution Procedure. *Disciplinary Counsel v. O’Neill* 75 Ohio St. 3d 1479, 1480, 664 N.E. 2d 532 (1996).

The documents in question were prepared at the request of counsel for the purposes of the field level Article 8 Dispute Resolution Procedure meeting in this matter that was heard on or about April 20, 2011. Furthermore, the claims of Plaintiff that existed in the

form of outstanding change order requests in October, 2010, in the amount of approximately \$280,000 had ballooned to over \$800,000 four (4) months later. Obviously, these documents were prepared in anticipation of potential litigation as well as serving as fact findings for the underlying field level Article 8 meeting.

Plaintiff's argument cites to the fact that the communications in question were shared with Rob Kelly, a consultant retained by OSFC. Under the Civil Rules, "A party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing of good cause therefor. Civ R. 26(B)(3). Here, Quandel is indisputably the agent of OSFC and Rob Kelly is a consultant retained by OSFC and its attorneys to aid in fact finding for the underlying dispute. Plaintiff's argument overlooks the fact that "an agent acting on behalf of legal counsel...is subject to all the legal implications of the attorney-client and attorney work product privileges." *Am Motors Corp.*, 61 Ohio St. 3d, 575 N.E. 2d 116, at 346; see *State v. Post*, 32 Ohio St. 3d 380, 385, 513 N.E. 2d 754 (1987) (The attorney-client privilege "includes communications through persons acting as the attorney's agents.").

Even 135 years ago it was "well established that the privilege extends as well to communications to or through an agent." *Bowers v. State*, 29 Ohio St. 542, 546 (1876). The privilege attaches "when [the] third person is the agent of either the client or the attorney" and the communications relate to the provision of legal services. *Foley v. Porschke* (1941), 137 Ohio St. 593, 595 131 N.E. 2d 845 (1941). The leading authorities on the subject agree. See e.g., 8 Wigmore, Evidence section 2317, at 618 (McNaughton Rev. 1961) ("A communication ...by any form of agency employed or set in motion by the client is within the privilege.") id section 2301 ("[T]he privilege must include all the persons who act as the attorney's

agents.”); J.P. Ludington, *Persons Other Than Client or Attorney affected By or Included Within, Attorney-Client Privilege*, 96 A.L.R.2d 125 section 4 (“in several cases it has been held or stated that an attorney’s agent is” covered by “ the attorney-client privilege.”); 44 Oh. Jur. Evidence & Witnesses section 765 (“In general, the attorney-client privilege extends to those other than an attorney who, at the attorney’s direction, are aware of confidential information.”).

This unanimity is for good reason. Attorneys “often must rely on the assistance of investigators and other agents,’ and it is therefore “necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.” *United States v. Nobles*, 422 U.S. 225, 238-239 95 S. Ct. 2160, 45 L.Ed 2d 141 (1975). As a result, courts, including Ohio courts, have long “extended the privilege to the substantive advice and assistance of...investigators, interviewers, technical experts...and other specialists.” P. Rice, *Attorney-Client Privilege in the United States* section 3.3 (2d ed. 2010).

Applying those principles to the case at hand, it is clear that the documents in question are privileged. Clearly the documents were created at the direction of counsel. Second, it is undisputed that Mr. Kelly was retained as an expert by the client and counsel in this matter to aid in fact finding relative to the underlying dispute. The privilege applies not only to litigation, but also to the field level Article 8 meeting. Converse’s arguments to the contrary do not take into account the relationships between the Ohio Attorney General, OSFC, Quandel and Mr. Kelly. “In order to obtain discovery of attorney work-product, a proponent had to show both substantial need and undue hardship.” *Harpster v. Advanced Elastomer Sys., L.P.* 9th Dist. No. 22684, 2005-Ohio-6919, ¶8

In a case with similar circumstances, the appellate court found that the trial court had

erred in forcing the production of correspondences from the manufacturer's attorney to the manufacturer's expert because such letters were protected under the attorney work-product doctrine and could not be produced without the requesting party showing good cause. *Helton v. Kincaid*, 12th Dist. No. CA. 2004-08099, 2005-Ohio-274, ¶19 In Converse's argument it has not shown good cause as to why it should be allowed to introduce, use or keep Exhibits A, B and C. In addition, nothing in Converse's argument proves a substantial need or undue hardship. Accordingly, Converse should not be allowed to use the documents, and they should be returned to Defendant pursuant to the claw back agreement executed by the parties.

IV. Conclusion

For the foregoing reasons, Defendant Ohio School Facilities Commission respectfully requests that this Court deny Plaintiff Converse Electric Inc.'s Motion to Compel.

Respectfully submitted,

MICHAEL DeWINE
Ohio Attorney General



David A. Beals (0038495)
James E. Rook (0061671)
Matthew L. Westerman (0067795)
Assistant Attorney General
Court of Claims Defense Section
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7447
Facsimile: (614) 644-9185
Email: david.beals@ohioattorneygeneral.gov

COUNSEL FOR DEFENDANT/
COUNTERPLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was served via regular U.S. mail, postage prepaid, this 10th day of April, 2012, upon the following counsel of record:

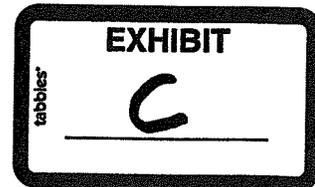
Michael J. Madigan
Kegler Brown Hill & Ritter Co., LPA
65 East State Street, Suite 1800
Columbus, OH 43215

Attorney for Plaintiff



Matthew L. Westerman (0067795)
Assistant Attorney General

Robert Grinch's OSFC Email - Documents Withheld							
BEG DOC	END DOC	TO	FROM	CC	DATE SENT	SUBJECT	BASIS
OSFC-Grinch 000104	OSFC-Grinch 000106	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; 'jwalden@ag.state.oh.us'	Kasai, Jerry		1/16/2008	Subject: Re: D&B 01-16-08 Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000107	OSFC-Grinch 000107	Jon C. Walden <JWalden@ag.state.oh.us>	Kasai, Jerry	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	1/16/2008	Subject: Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000108	OSFC-Grinch 000110	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		1/17/2008	Subject: FW: D&B 01-16-08 Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000111	OSFC-Grinch 000112	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		1/28/2008	Subject: RE: D&B 01-25-08 Conservation Easement - ODE AG Coordination;	AC
OSFC-Grinch 000113	OSFC-Grinch 000113	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Steven.Berezansky@osfc.state.oh.us	1/29/2009	Subject: Re: D&B 01-29-09 Escrow Accounts, OSFC Need to Establish;	AC
OSFC-Grinch 000115	OSFC-Grinch 000115	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Weise, Craig <Craig.Weise@das.state.oh.us>	Canan, Crystal <Crystal.Canan@das.state.oh.us>	<Steven.Berezansky@osfc.state.oh.us>; Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	2/3/2009	Subject: RE: Deaf & Blind Schools;	AC
OSFC-Grinch 000116	OSFC-Grinch 000118	Keith, Clayton <Clayton.Keith@bovislendlease.com>; Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN= =ROB.GRINCH>	<Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; <Jim.Swartzmiller@bovislendlease.com>	2/12/2009	Subject: D&B 01-13-09 Custom Front Ends - Status - Selective Demo and Abatement Packages; Attach: RE_OSSB_OSD (Blind and Deaf Project) - Adoption of Model Bidder Criteria.msg;	AC
OSFC-Grinch 000119	OSFC-Grinch 000120	Swartzmiller, Jim <Jim.Swartzmiller@bovislendlease.com>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Rob.Grinch@osfc.state.oh.us>; <Mike.Shoemaker@osfc.state.oh.us>; <Clayton.Keith@bovislendlease.com>	2/10/2009	Subject: RE: OSSB / OSD (Blind and Deaf Project) - Adoption of Model Bidder Criteria;	AC
OSFC-Grinch 000121	OSFC-Grinch 000122	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry	Steven.Puckett@ode.state.oh.us;; <Mike.Shoemaker@osfc.state.oh.us>; <Cheryl.Lyman@osfc.state.oh.us>; <Eric.Bode@osfc.state.oh.us>; <Steve.Lutz@osfc.state.oh.us>;<Steven.Berezansky@osfc.state.oh.us>	2/28/2008	Subject: Re: D&B 02-26-08 Acceptable Use of \$AM Am Sub HB 699;	AC
OSFC-Grinch 000123	OSFC-Grinch 000125	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Grinch, Rob	<Steven.Berezansky@osfc.ohio.gov>; <Mike.Mendenhall@osfc.ohio.gov>; <Jwalden@ag.state.oh.us>; <Lois.Snyder@osfc.ohio.gov>; <Karen.Kirk@osfc.ohio.gov>; <Lori.Coy@osfc.ohio.gov>; Duresky, Tasheena <Tasheena.Duresky@osfc.ohio.gov>; Brown, Diane <Diane.Brown@osfc.ohio.gov>; Savors, Rick <Rick.Savors@osfc.ohio.gov>	3/9/2010	Subject: D&B 03-09-10 Eufinger - Early Site & Site Electrical - Bid Open & Post Open; Attach: SFC 02-22-10 Eufinger Whereabouts - OFF 03-04 thru 03-11.msg;	AC
OSFC-Grinch 000128	OSFC-Grinch 000130	'Keith, Clayton' <Clayton.Keith@bovislendlease.com>	Grinch, Rob	<John.Eufinger@osfc.ohio.gov>; <Steven.Berezansky@osfc.ohio.gov>	2/22/2010	Subject: D&B 02-22-10 Keith - Early Site & Site Electrical - Post Open & Responsibility Review Mtgs.	AC



BEG DOC	END DOC	TO	FROM	CC	DATE SENT	SUBJECT	BASIS
OSFC-Grinch 000133	OSFC-Grinch 000133	Canan, Crystal <Crystal.Canan@osfc.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=ROB.GRINCH>	<Richard.Hickman@osfc.state.oh.us>; <Steve.Lutz@osfc.state.oh.us>; <Eric.Bode@osfc.state.oh.us>; <Cheryl.Lyman@osfc.state.oh.us>; <Melanie.Drerup@osfc.state.oh.us>; <Bill.Prenosi@osfc.state.oh.us>; <Jerry.Kasai@osfc.state.oh.us>; <Craig.Weise@osfc.state.oh.us>	1/6/2007	Subject: D&B 01-06-07 Finances / Legal Services / AC Front End; ; Re: Ohio School for the Deaf, Ohio State School for the Blind ;	AC
OSFC-Grinch 000134	OSFC-Grinch 000134	James Rook' <jrook@ag.state.oh.us>; <John.Eufinger@osfc.ohio.gov>	Grinch, Rob		3/12/2010	Subject: D&B 03-12-10 City Coordination - Regional Issues - ATTORNEY CLIENT PRIVILEGED; Attach: D&B 01-26-10 SFC Murray Response FINAL - FSWCD .msg; D&B 10-08-09 Cols. City Coordination - ATTORNEY CLIENT PRIVILEGED.msg; D&B 10-07-09 - Cols. City - Bikeway & Sidewalk Coord'n..msg; RE_ D&B 08-11-09 Draft MOU between Columbus & OSFC.msg;	AC
OSFC-Grinch 000139	OSFC-Grinch 000141	'James Rook' <james.rook@ohioattorneygeneral.gov>	Grinch, Rob	Jon C. Walden <jon.walden@ohioattorneygeneral.gov>	10/9/2009	Subject: D&B 10-08-09 Cols. City Coordination - ATTORNEY CLIENT PRIVILEGED; ; ATTORNEY CLIENT PRIVILEGED;	AC
OSFC-Grinch 000144	OSFC-Grinch 000144	corbett, ed <corbett@osd.oh.gov>; 'Bobbie Huebner' <Huebner@osd.oh.gov>	Grinch, Rob	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	9/15/2009	Subject: D&B 09-15-09 City Coord'n. - Right-of-Way Option	AC
OSFC-Grinch 000145	OSFC-Grinch 000148	'James Rook' <james.rook@ohioattorneygeneral.gov>	Grinch, Rob	<Jerry.Kasai@osfc.state.oh.us>; <jon.walden@ohioattorneygeneral.gov>; <Clayton.Keith@bovisiendlease.com>; <jpredovich@shp.com>;<corbett@osd.oh.gov> <cjohnson@osb.oh.gov>; 'Gerard Marcom' <gmarcom@osb.oh.gov>; 'Scott Schaller' <schaller@osd.oh.gov>; David Wojnowski (wojnowski@osd.oh.gov); Perry, Anthony	8/20/2009	MEMORANDUM OF UNDERSTANDING Subject: RE: D&B 08-11-09 Draft MOU between Columbus & OSFC	AC
OSFC-Grinch 000151	OSFC-Grinch 000152	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Grinch, Rob	<jrook@ag.state.oh.us>; <Clayton.Keith@bovisiendlease.com>; <jpredovich@shp.com>; 'Scott Schaller' <schaller@osd.oh.gov>	3/12/2010	Subject: D&B 10-12-10 City of Columbus - Site Compliance Process; Attach: Site_plan_process_6-08.pdf;	AC
OSFC-Grinch 000153	OSFC-Grinch 000153					Attach: Site_plan_process_6-08.pdf;	AC
OSFC-Grinch 000154	OSFC-Grinch 000154					Requirements for release of site compliance plan	AC
OSFC-Grinch 000155	OSFC-Grinch 000157	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Grinch, Rob	Murray, Richard <Richard.Murray@osfc.ohio.gov>; Roush, Erik <Erik.Roush@osfc.ohio.gov>; 'Puckett, Steven' <Steven.Puckett@ode.state.oh.us>	3/12/2010	Subject: D&B 03-12-10 Ravine Crossing - Purpose of Need - DRAFT, Second; Attach: Binder_FSWC_120909.pdf;	AC
OSFC-Grinch 000158	OSFC-Grinch 000159					Attach: Binder_FSWC_120909.pdf;	AC

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OSFC-Grinch 000160	OSFC-Grinch 000160	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Grinch, Rob	<Richard.Murray@osfc.ohio.gov>; Roush, Erik <Erik.Roush@osfc.ohio.gov>; James Rook' <jrook@ag.state.oh.us>	3/12/2010	Subject: D&B 03-12-10 Ref - File Info - City of Columbus Coordination; Attach: D&B 05-06-09 Columbus City Dialog - Sidewalk & Bikeway - Possible Additional Project Costs.msb; Subject: FW: The Ohio State School for the Blind - Sidewalk;	AC
OSFC-Grinch 000167	OSFC-Grinch 000168	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Mike.Shoemaker@osfc.state.oh.us>; <Eric.Bode@osfc.state.oh.us>; <Cheryl.Lyman@osfc.state.oh.us>; <Steve.Lutz@osfc.state.oh.us>; <Steven.Berezansky@osfc.state.oh.us>	5/15/2009	Subject: FW: The Ohio State School for the Blind - Sidewalk;	AC
OSFC-Grinch 000169	OSFC-Grinch 000171	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Drerup, Melanie <Melanie.Drerup@osfc.state.oh.us>; Lyman, Cheryl <Cheryl.Lyman@osfc.state.oh.us>	Barnes, Elaine <Elaine.Barnes@osfc.state.oh.us>	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; James Rook <Jrook@ag.state.oh.us>	5/21/2009	Subject: RE: Deaf and Blind School/Sidewalks/ARRA -- EEBG;	AC
OSFC-Grinch 000172	OSFC-Grinch 000174	James Rook' <jrook@ag.state.oh.us>	Grinch, Rob				
OSFC-Grinch 000176	OSFC-Grinch 000177	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Berezansky, Steven <Steven.Berezansky@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>	7/30/2009	Subject: D&B 06-30-09 City of Columbus - Sidewalk - Bikeways Issues	AC
OSFC-Grinch 000178	OSFC-Grinch 000181					Attach: Draft MOU 5-22-09.doc	AC
OSFC-Grinch 000182	OSFC-Grinch 000182	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Grinch, Rob	'James Rook' <jrook@ag.state.oh.us>; Walden, Jon <jwalden@ag.state.oh.us>	9/14/2009	Attach: Draft MOU 5-22-09.doc	AC
OSFC-Grinch 000183	OSFC-Grinch 000184	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>; Eufinger, John <John.Eufinger@osfc.ohio.gov>	James Rook <james.rook@ohioattorneygeneral.gov>		3/16/2010	Subject: D&B 09-14-09 City Coordination - Sidewalks & Bikepaths; RE: D&B 03-12-10 City Coordination - Regional Issues - ATTORNEY CLIENT PRIVILEGED; Attach: Draft MOU 5-22-09 CITY REDLINE.doc	AC
OSFC-Grinch 000185	OSFC-Grinch 000188					Attach: Draft MOU 5-22-09 CITY REDLINE.doc	AC
OSFC-Grinch 000197	OSFC-Grinch 000200	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Grinch, Rob		3/30/2010	Attach: Draft MOU 5-22-09 Project Construction Counsel - Contractor; Backgrd Checks;	AC
OSFC-Grinch 000201	OSFC-Grinch 000203	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	jon.walden@ohioattorneygeneral.gov'; <Eric.Bode@osfc.state.oh.us>; <Carolyn.McClure@osfc.state.oh.us>	4/6/2009	Subject: RE: D&B 04-06-09 - Fees Summary: Columbus City Bikeways & Pedestrian Access;	AC
OSFC-Grinch 000204	OSFC-Grinch 000205	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Bode, Eric <Eric.Bode@osfc.state.oh.us>; <Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=ROB.GRINCH>	jon.walden@ohioattorneygeneral.gov'; <Eric.Bode@osfc.state.oh.us>; <Carolyn.McClure@osfc.state.oh.us>	4/9/2009	Re: D&B 04-06-09 - Fees Summary: Columbus City Bikeways & Pedestrian Access; D&B 04-09-09 Abatement & Demo Contracts - Bid/AC Phase Status;	AC
OSFC-Grinch 000206	OSFC-Grinch 000209	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Lois.Snyder@osfc.state.oh.us>; <Lori.Coy@osfc.state.oh.us>; <Karen.Kirk@osfc.state.oh.us>; <Diane.Brown@osfc.state.oh.us>;<Tasheena.Duresky@osfc.state.oh.us>;<Jill.Hoobler@osfc.state.oh.us>	4/13/2009	Subject: RE: D&B 04-13-09 Inquiry - Eligible Bidders;	AC
OSFC-Grinch 000210	OSFC-Grinch 000213	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>		4/13/2009	Subject: RE: D&B 04-13-09 Inquiry - Eligible Bidders;	AC
OSFC-Grinch 000214	OSFC-Grinch 000214	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Grinch, Rob		5/14/2009	Subject: D&B 04-14-09 Follow-up to City Mtg - Sidewalks & Bikeways;	AC

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OSFC-Grinch 000215	OSFC-Grinch 000217	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Grinch, Rob	<Steven.Puckett@ode.state.oh.us>; <Richard.Murray@osfc.ohio.gov>; <Erik.Roush@osfc.ohio.gov>; <Corbett@osd.oh.gov>; <cjohnson@osb.oh.gov>; <gmarcom@osb.oh.gov>; <schaller@osd.oh.gov>; <Jim.Swartzmiller@bovislendlease.com>; <Clayton.Keith@bovislendlease.com>; <jpredovich@shp.com>; <Eric.Bode@osfc.ohio.gov>; <Steve.Lutz@osfc.ohio.gov>; <Steven.Berezansky@osfc.ohio.gov>; <Tasheena.Duresky@osfc.ohio.gov>	4/16/2010	Subject: D&B 04-16-10 Contractor Background Checks; Attach: HB 428 - Contractors' Background Checks.pdf	AC
OSFC-Grinch 000218	OSFC-Grinch 000219					Attach: HB 428 - Contractors' Background Checks.pdf	AC
OSFC-Grinch 000220	OSFC-Grinch 000223	Lutz, Steve <Steve.Lutz@osfc.ohio.gov>	Grinch, Rob	<John.Eufinger@osfc.ohio.gov>; Roush, Erik <Erik.Roush@osfc.ohio.gov>	4/16/2010	Subject: D&B 04-16-10 Contractor Background Checks;	
OSFC-Grinch 000224	OSFC-Grinch 000225	<Madison.Dowlen@osfc.ohio.gov>	Kasai, Jerry <Jerry.Kasai@osfc.ohio.gov>	Hager, Todd <Todd.Hager@osfc.ohio.gov>	4/27/2011	Subject: RE: D&B 04-19-11 Notice of Commencement - Update Required	AC
OSFC-Grinch 000229	OSFC-Grinch 000231	<Jerry.Kasai@osfc.ohio.gov>; <Madison.Dowlen@osfc.ohio.gov>	Grinch, Rob	Hager, Todd <Todd.Hager@osfc.ohio.gov>	4/20/2011	Subject: D&B 04-21-11 NOC Postings Inquiry - Response;	AC
OSFC-Grinch 000232	OSFC-Grinch 000235	Gerard Marcom <gmarcom@osb.oh.gov>	Grinch, Rob	'Edward Corbett' <Corbett@osd.oh.gov>; 'Cynthia Johnson' <cjohnson@osb.oh.gov>; 'Scott Schaller' <schaller@osd.oh.gov>; Keith, Clayton <Clayton.Keith@bovislendlease.com>; 'Zannoni, Steven - aboutPMC' <Steven.Zannoni@aboutPMC.com>	4/22/2010	Subject: D&B 04-20-10 Contractor Background Checks; Attach: HB 428 - Contractors' Background Checks.pdf;	Mediation
OSFC-Grinch 000236	OSFC-Grinch 000237					Attach: HB 428 - Contractors' Background Checks.pdf;	AC
OSFC-Grinch 000238	OSFC-Grinch 000238	<Madison.Dowlen@osfc.ohio.gov>; <Rob.Grinch@osfc.ohio.gov>	Kasai, Jerry <Jerry.Kasai@osfc.ohio.gov>	Berezansky, Steven <Steven.Berezansky@osfc.ohio.gov>	4/22/2011	Subject: D&B;	AC
OSFC-Grinch 000239	OSFC-Grinch 000240	Dowlen, Madison <Madison.Dowlen@osfc.ohio.gov>; Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	Kasai, Jerry <Jerry.Kasai@osfc.ohio.gov>	Hager, Todd <Todd.Hager@osfc.ohio.gov>	4/27/2011	Subject: RE: D&B 04-19-11 Notice of Commencement - Update Required; Attach: Notice of Commencement.pdf;	AC
OSFC-Grinch 000241	OSFC-Grinch 000244	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Grinch, Rob	Duresky, Tasheena <Tasheena.Duresky@osfc.ohio.gov>	4/29/2010	Attach: Notice of Commencement.pdf;	AC
OSFC-Grinch 000245	OSFC-Grinch 000247	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	Kasai, Jerry <Jerry.Kasai@osfc.ohio.gov>	<Mike.Shoemaker@osfc.state.oh.us>; <Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; {jrook@ag.state.oh.us}	5/1/2009	Subject: D&B 04-29-10 Grinch - Review Comments - Eufinger PLA Draft; Subject: Deaf & Blind School/City of Columbus Sidewalks;	AC
OSFC-Grinch 000248	OSFC-Grinch 000248						AC
OSFC-Grinch 000249	OSFC-Grinch 000249	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	Kasai, Jerry <Jerry.Kasai@osfc.ohio.gov>		5/5/2009	Subject: FW: The Ohio State School for the Blind;	AC
OSFC-Grinch 000250	OSFC-Grinch 000250	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	Kasai, Jerry <Jerry.Kasai@osfc.ohio.gov>	Jim Rook (jrook@ag.state.oh.us)	5/8/2009	Subject: Deaf & Blind School/Sidewalks;	AC

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OSFC-Grinch 000251	OSFC-Grinch 000252	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Jim Rook (jrook@ag.state.oh.us)	5/8/2009	Subject: RE: Deaf & Blind School/Sidewalks;	AC
OSFC-Grinch 000253	OSFC-Grinch 000254	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>		5/11/2009	Subject: FW: Deaf & Blind Schools/Bldrs. Risk;	AC
OSFC-Grinch 000255	OSFC-Grinch 000256	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Keith, Clayton <Clayton.Keith@bavislendlease.com>	<Rob.Grinch@osfc.ohio.gov>; <Adam.Novak@bavislendlease.com>	5/11/2010	Subject: FW: Background/FBI Check	AC
OSFC-Grinch 000258	OSFC-Grinch 000258	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Jim Rook (jrook@ag.state.oh.us)	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>		5/13/2009	Subject: Deaf & Blind/Bill Moose; Attach: billmoose.jpg;	AC
OSFC-Grinch 000259	OSFC-Grinch 000259					Attach: billmoose.jpg;	AC
OSFC-Grinch 000333	OSFC-Grinch 000336	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	James Rook <james.rook@ohioattorneygeneral.gov>	Mendenhall, Mike <Mike.Mendenhall@osfc.state.oh.us>	5/14/2009	Subject: RE: D&B 05-14-09 Novak - PSI Wetlands Delineation Letter - Remove Acreage Reference; Attach: Conservation Easement 4-6-1999.tif; Attach: Conservation Easement 4-6-1999.tif;	AC
OSFC-Grinch 000337	OSFC-Grinch 000362						AC
OSFC-Grinch 000363	OSFC-Grinch 000363	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN= =ROB.GRINCH>	Bode, Eric <Eric.Bode@osfc.state.oh.us>; Coy, Lori <Lori.Coy@osfc.state.oh.us>	5/15/2009	Subject: D&B 05-15-09 How State May Process (Small) "Purchase Orders" Contracts; Attach: D&B 04-30-09 Gandee Proposal - Add'l. Services - Tank Removal.pdf;	AC
OSFC-Grinch 000364	OSFC-Grinch 000366					Attach: D&B 04-30-09 Gandee Proposal - Add'l. Services - Tank Removal.pdf;	AC
OSFC-Grinch 000367	OSFC-Grinch 000368	<John.Eufinger@osfc.ohio.gov>; <Tasheena.Duresky@osfc.ohio.gov>	Grinch, Rob	'Scott Schaller' <schaller@osd.oh.gov>	5/17/2010	Subject: D&B 05-13-10 PLA - CM & Architect;	AC
OSFC-Grinch 000369	OSFC-Grinch 000369	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>; Heger, Todd <Todd.Heger@osfc.ohio.gov>	Kasai, Jerry <Jerry.Kasai@osfc.ohio.gov>		5/25/2011	Subject: RE: D&B 05-25-11 AE Agreement No 3 - 1st Amendment DRAFT;	AC
OSFC-Grinch 000370	OSFC-Grinch 000371	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Mike.Mendenhall@osfc.state.oh.us>; <Eric.Bode@osfc.state.oh.us>; <Karen.Kirk@osfc.state.oh.us>;<Lori.Coy@osfc. state.oh.us>;<Diane.Brown@osfc.state.oh.us>; <Jill.Hoobler@osfc.state.oh.us>; <Clayton.Keith@bavislendlease.com>; <Adam.Novak@bavislendlease.com>	6/3/2009	Subject: RE: D&B 06-02-09 (Retainage) Escrow Agreement, Need for Document from OSFC;	AC
OSFC-Grinch 000372	OSFC-Grinch 000372	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN= =ROB.GRINCH>	<Mike.Mendenhall@osfc.state.oh.us>; <Eric.Bode@osfc.state.oh.us>; <Karen.Kirk@osfc.state.oh.us>; <Lori.Coy@osfc.state.oh.us>; <Diane.Brown@osfc.state.oh.us>; <Jill.Hoobler@osfc.state.oh.us>; <Clayton.Keith@bavislendlease.com>; <Adam.Novak@bavislendlease.com>	6/2/2009	Subject: D&B 06-02-09 (Retainage) Escrow Agreement, Need for Document from OSFC; Attach: DAS 03-10-09 DAS-SAO Retainage-Escrow Notes - Rita.pdf;	AC
OSFC-Grinch 000373	OSFC-Grinch 000385					Attach: DAS 03-10-09 DAS-SAO Retainage-Escrow Notes - Rita.pdf;	AC
OSFC-Grinch 000386	OSFC-Grinch 000387	Kirk, Karen <Karen.Kirk@osfc.state.oh.us>; Snyder, Lois <Lois.Snyder@osfc.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN= =ROB.GRINCH>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	6/3/2009	Subject: D&B 06-03-09 Kasai - (Retainage) Escrow Agreement, Need for Document from OSFC; Attach: RE_ D&B 06-02-09 (Retainage) Escrow Agreement, Need for Document from OSFC.msg;	AC

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OSFC-Grinch 000388	OSFC-Grinch 000388	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kirk, Karen <Karen.Kirk@osfc.state.oh.us>		6/2/2009	Subject: RE: D&B 06-02-09 (Retainage) Escrow Agreement. Need for Document from OSFC;	AC
OSFC-Grinch 000396	OSFC-Grinch 000397	Eufinger, John <John.Eufinger@osfc.ohio.gov>; Duresky, <Tasheena.Duresky@osfc.ohio.gov>; Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	Keith, Clayton <Clayton.Keith@bovislendlease.com>	<Jim.Swartzmiller@bovislendlease.com>; <Karin.Kirlangitis@bovislendlease.com>; <Lisa.LeMar@bovislendlease.com>; <Adam.Novak@bovislendlease.com>	6/8/2010	Subject: D&B Front end revisions; Attach: 13 OSFC General Conditions DFWP SEARCH- G. Edit.pdf; 05 OSFC Instructions to Bidders DFWP SEARCH- wKasai Edit - UPDATE 3.5.3.pdf; 06 OSFC Bid Form DFWP SEARCH- 01 OSD Academic.pdf;	AC
OSFC-Grinch 000398	OSFC-Grinch 000492					Attach: 13 OSFC General Conditions DFWP SEARCH- G. Edit.pdf; 0	AC
OSFC-Grinch 000493	OSFC-Grinch 000511					05 OSFC Instructions to Bidders DFWP SEARCH- wKasai Edit - UPDATE 3.5.3.pdf	AC
OSFC-Grinch 000512	OSFC-Grinch 000519					06 OSFC Bid Form DFWP SEARCH- 01 OSD Academic.pdf;	AC
OSFC-Grinch 000520	OSFC-Grinch 000520	<John.Eufinger@osfc.ohio.gov>; <Tasheena.Duresky@osfc.ohio.gov>	LeMar, Lisa <Lisa.LeMar@bovislendlease.com>	<jpredovich@shp.com>; <Clayton.Keith@bovislendlease.com>; <Rob.Grinch@osfc.ohio.gov>	6/10/2010	Subject: OSDB Special Conditions; Attach: 14 Special Conditions 2003 Word Doc modified 6.10.10.doc;	AC
OSFC-Grinch 000521	OSFC-Grinch 000524					Attach: 14 Special Conditions 2003 Word Doc modified 6.10.10.doc;	AC
OSFC-Grinch 000525	OSFC-Grinch 000525	<John.Eufinger@osfc.ohio.gov>; <Rob.Grinch@osfc.ohio.gov>; <Tasheena.Duresky@osfc.ohio.gov>	Keith, Clayton <Clayton.Keith@bovislendlease.com>	<Karin.Kirlangitis@bovislendlease.com>; <Lisa.LeMar@bovislendlease.com>; <jpredovich@shp.com>; <Jim.Swartzmiller@bovislendlease.com>	6/11/2010	Subject: D&B Special Conditions;	AC
OSFC-Grinch 000526	OSFC-Grinch 000526	'George R. Crusse' <GCrusse@sismoot.com>	Grinch, Rob </o=ODN/ou=ODNSITE/cn=Recipients/cn=R ob.Grinch>	<Keith, Clayton <Clayton.Keith@bovislendlease.com>	6/30/2010	Subject: D&B 06-30-10 Deaf/Blind Schools Project - Clarification;	AC
OSFC-Grinch 000532	OSFC-Grinch 000533	Eufinger, John; Grinch, Rob	Clayton.Keith@bovislendlease.com	Jim Swartzmiller	7/1/2010	Subject: RE: Deaf/Blind schools project	AC
OSFC-Grinch 000544	OSFC-Grinch 000544	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Snyder, Lois <Lois.Snyder@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>		7/9/2009	Subject: Re: D+B 07-09-09 Retainage Agreement;	AC
OSFC-Grinch 000547	OSFC-Grinch 000547	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Snyder, Lois <Lois.Snyder@osfc.state.oh.us>	Bode, Eric <Eric.Bode@osfc.state.oh.us>	7/11/2009	Subject: RE: D+B 07-09-09 Retainage Agreement;	AC
OSFC-Grinch 000548	OSFC-Grinch 000550	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Coy, Lori <Lori.Coy@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Karen.Kirk@osfc.state.oh.us>; <Lois.Snyder@osfc.state.oh.us>; <Eric.Bode@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>	7/15/2009	Subject: RE: D&B 07-15-09 Deaf & Blind Schools - Abatement & Demo Contract Status;	AC
OSFC-Grinch 000555	OSFC-Grinch 000555	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	Eufinger, John <John.Eufinger@osfc.ohio.gov>		7/20/2010	Subject: Out of Office: D&B 07-20-10 Labor Document Review Inquiry;	AC
OSFC-Grinch 000595	OSFC-Grinch 000595	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	Eufinger, John <John.Eufinger@osfc.ohio.gov>		8/16/2010	Subject: Out of Office: D&B 08-16-10 Bid Attempt No. 01 - Bid & Completion Dates;	AC
OSFC-Grinch 000596	OSFC-Grinch 000598	Bode, Eric <Eric.Bode@osfc.state.oh.us>; Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; <Chad.Miller@osfc.state.oh.us>; <Lois.Snyder@osfc.state.oh.us>	9/22/2008	Subject: RE: D&B 09-19-08 Finances / Legal Services / Front End	AC
OSFC-Grinch 000599	OSFC-Grinch 000599	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Mike.Shoemaker@osfc.state.oh.us>; <Steven.Berezansky@osfc.state.oh.us>	9/22/2008	Subject: RE: D&B 09-21-08 OSD Superintendent Soliciting Contributions from AE & CM;	AC

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OSFC-Grinch 000600	OSFC-Grinch 000602	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; <Chad.Miller@osfc.state.oh.us>; <Eric.Bode@osfc.state.oh.us>; <Lois.Snyder@osfc.state.oh.us>	9/22/2008	Subject: RE: D&B 09-19-08 Finances / Legal Services / Front End;	AC
OSFC-Grinch 000603	OSFC-Grinch 000604	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry	Berezansky, Steven	10/5/2007	Subject: RE: D&B 10-04-07	AC
OSFC-Grinch 000605	OSFC-Grinch 000605	<Chad.Miller@osfc.state.oh.us>; <Rob.Grinch@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Steven.Berezansky@osfc.state.oh.us>	10/8/2008	Subject: Deaf & Blind Schools;	AC
OSFC-Grinch 000606	OSFC-Grinch 000606	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/9/2007	Subject: Deaf & Blind Schools;	AC
OSFC-Grinch 000607	OSFC-Grinch 000608					Attach: 10-8-07 MOU- OSFC draft 2.doc;	
OSFC-Grinch 000609	OSFC-Grinch 000609	steven.puckett@ode.state.oh.us	Kasai, Jerry	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	10/10/2007	Subject: Ohio School Deaf/Ohio State School For Blind;	AC
OSFC-Grinch 000610	OSFC-Grinch 000611					Attach: 10-8-07 MOU- OSFC draft 2.doc	
OSFC-Grinch 000612	OSFC-Grinch 000613	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/10/2007	Subject: RE: D&B 10-10-07 DRAFT No. 3	AC
OSFC-Grinch 000614	OSFC-Grinch 000614	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; steven.puckett@ode.state.oh.us	Kasai, Jerry		10/12/2007	Subject: FW: Deaf & Blind School;	AC
OSFC-Grinch 000615	OSFC-Grinch 000616					Attach: 10-8-07 MOU- OSFC draft 2.doc;	
OSFC-Grinch 000617	OSFC-Grinch 000617	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/12/2007	Subject: Deaf & Blind School;	AC
OSFC-Grinch 000618	OSFC-Grinch 000619					Attach: 10-8-07 MOU- OSFC draft 2.doc;	
OSFC-Grinch 000620	OSFC-Grinch 000621	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/12/2007	Subject: Fw: Follow up from OSB-OSD meeting with Director Sabety;	AC
OSFC-Grinch 000622	OSFC-Grinch 000622	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/13/2007	Subject: OSD/OSSB;	AC
OSFC-Grinch 000623	OSFC-Grinch 000624	Perry, Anthony 'Steven.Puckett@ode.state.oh.us'	Kasai, Jerry	Hicks-Hudson, Paula; Najera, Tracy; Madden, Kathleen; Grinch, Rob	10/13/2007	Subject: RE: Follow up from OSB-OSD meeting with Director Sabety;	AC
OSFC-Grinch 000625	OSFC-Grinch 000626					Attach: 10-12-07 MOU- OSFC draft.doc;	
OSFC-Grinch 000627	OSFC-Grinch 000628	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/15/2007	Subject: RE: D&B 10-15-07 Director Memo Updates;	AC
OSFC-Grinch 000629	OSFC-Grinch 000633	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/15/2007	Subject: Re: D&B 10-15-07 MOU DRAFT No. 5 - Perry Revisions;	AC
OSFC-Grinch 000634	OSFC-Grinch 000640	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/15/2007	Subject: D&B 10-15-07 SP - RPG - JK MOU DRAFT No. 5 - Perry Revisions.;	AC
OSFC-Grinch 000641	OSFC-Grinch 000645	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/15/2007	Subject: Re: D&B 10-15-07 RPG to JK MOU DRAFT No. 5 -	AC
OSFC-Grinch 000646	OSFC-Grinch 000651	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/16/2007	Subject: RE: D&B 10-15-07 RPG - JK MOU DRAFT No. 5 - Perry Revisions;	AC
OSFC-Grinch 000652	OSFC-Grinch 000652	<Jill.Hoobler@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Miller, Chad <Chad.Miller@osfc.state.oh.us>	10/21/2008	Subject: RE: Ohio State School for the Blind/Ohio School for the Deaf AE Agreement;	AC
OSFC-Grinch 000653	OSFC-Grinch 000653	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		10/30/2007	Subject: FW: OSB-OSD MOU;	AC
OSFC-Grinch 000654	OSFC-Grinch 000656					Attach: MOU - OBM Revisions102907.doc;	
						Attach: MOU - OBM Revisions102907.doc;	AC

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OSFC-Grinch 000660	OSFC-Grinch 000663	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Grinch, Rob	Bode, Eric <Eric.Bode@osfc.state.oh.us>	11/3/2008	Subject: D&B 10-31-08 Specialty Contracts, OSFC Administration of;	AC
OSFC-Grinch 000664	OSFC-Grinch 000665	Bode, Eric <Eric.Bode@osfc.state.oh.us>; Miller, Chad <Chad.Miller@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Rob.Grinch@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; <Steven.Berezansky@osfc.state.oh.us>; <Lois.Snyder@osfc.state.oh.us>	11/2/2008	Subject: Re: Ohio State School for the Blind / Ohio School for the Deaf - requested contract modifications;	AC
OSFC-Grinch 000666	OSFC-Grinch 000668	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Bode, Eric <Eric.Bode@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Mike.Mendenhall@osfc.state.oh.us>; <Chad.Miller@osfc.state.oh.us>	11/2/2008	Subject: Re: D&B 10-31-08 Specialty Contracts, OSFC Administration of;	AC
OSFC-Grinch 000669	OSFC-Grinch 000673	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Bode, Eric <Eric.Bode@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; <Chad.Miller@osfc.state.oh.us>	11/3/2008	Subject: RE: D&B 10-31-08 Bode - Specialty Contracts, OSFC Administration of;	AC
OSFC-Grinch 000674	OSFC-Grinch 000675	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Bode, Eric <Eric.Bode@osfc.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=ROB.GRINCH>	<Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; <Chad.Miller@osfc.state.oh.us>	11/3/2008	Subject: D&B 11-03-08 Kasai - Bode Contracts/Costs Beyond AE and CM Services (& Bid Contracts);	AC
OSFC-Grinch 000676	OSFC-Grinch 000681	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Bode, Eric <Eric.Bode@osfc.state.oh.us>	Grinch, Rob		11/3/2008	Subject: D&B 11-03-08 Contingencies, Specialty Contracts, OSFC Administration of;	AC
OSFC-Grinch 000682	OSFC-Grinch 000686	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Bode, Eric <Eric.Bode@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>		11/3/2008	Subject: D&B 11-03-08 Contingencies, Specialty Contracts, OSFC Administration of;	AC
OSFC-Grinch 000687	OSFC-Grinch 000691	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>; Bode, Eric <Eric.Bode@osfc.state.oh.us>	Grinch, Rob		11/3/2008	Subject: D&B 11-03-08 Kasai Response - Specialty Contracts, OSFC Administration of;	AC
OSFC-Grinch 000692	OSFC-Grinch 000692	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry	Canan, Crystal <Crystal.Canan@osfc.state.oh.us>	11/7/2006	Subject: FW: Background Checks;	AC
OSFC-Grinch 000695	OSFC-Grinch 000697	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>		11/17/2008	Subject: FW: D&B 02-26-08 MOU No. 2 Status - Awaiting OBM Edits;	AC
OSFC-Grinch 000705	OSFC-Grinch 000707	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>		11/17/2008	Attach: D&B 02-10-08 Open House No. 2 - Link to Architect's Diagrams.msg;	AC
OSFC-Grinch 000717	OSFC-Grinch 000719	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Kasai, Jerry		12/27/2007	Subject: Re: D&B 02-26-08 MOU No. 2 Status - Awaiting OBM Edits;	AC
OSFC-Grinch 000720	OSFC-Grinch 000720	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	John.Eufinger@osfc.ohio.gov	Roush, Erik <Erik.Roush@osfc.ohio.gov>	5/20/2010	Subject: Deaf/Blind & City of Columbus;	AC
OSFC-Grinch 000721	OSFC-Grinch 000723	Joel P. O'Connell <JOConnell@ag.state.oh.us>; Grinch, Rob <rob.grinch@osfc.state.oh.us>	Jon C. Walden <JWalden@ag.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	1/22/2008	Subject: FW: D&B 01-16-08 Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000724	OSFC-Grinch 000724				11/3/2008	Attach: D&B 07-13-07 Aerial - Conservation Easement.PDF;	AC
					11/3/2008	Fw_ Mid January News_2008.msg;	
					11/3/2008	Emailing_2007_07_CallforAction.msg;	
					11/3/2008	Attach: D&B 07-13-07 Aerial - Conservation Easement.PDF;	AC
					11/3/2008	ConservationAttach: D&B 07-13-07 Aerial - Conservation Easement.PDF;	
					11/3/2008	Fw_ Mid January News_2008.msg;	
					11/3/2008	Emailing_2007_07_CallforAction.msg;	
					11/3/2008	Easement.PDF;	
OSFC-Grinch 000733	OSFC-Grinch 000733	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	John.Eufinger@osfc.ohio.gov		4/28/2010	Subject: FW: Deaf/Blind PLA Draft; Attach: Deaf and Blind PLA.doc;	AC

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OSFC-Grinch 000734	OSFC-Grinch 000756					Attach: Deaf and Blind PLA.doc;	
OSFC-Grinch 000759	OSFC-Grinch 000760	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	James.rook@ohioattorneygeneral.gov		4/28/2010	FW: Ohio School for the Blind;	AC
OSFC-Grinch 000761	OSFC-Grinch 000762	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	James.rook@ohioattorneygeneral.gov		4/28/2010	Subject: FW: Ohio School for the Blind;	AC
OSFC-Grinch 000810	OSFC-Grinch 000810	<Crystal.Canan@osfc.state.oh.us>; <Rob.Grinch@osfc.state.oh.us>; <Craig.Weise@osfc.state.oh.us>; <Bill.Prenosil@osfc.state.oh.us>; <Melanie.Drerup@osfc.state.oh.us>	Canan, Crystal </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=CRYSTAL.CANAN>	<Jerry.Kasai@osfc.state.oh.us>; <Steve.Lutz@osfc.state.oh.us>; <Eric.Bode@osfc.state.oh.us>; <Jackie.Yakubowski@osfc.state.oh.us>	5/11/2007	Subject: RE: A/E & CM Contracts for OSDB	AC
OSFC-Grinch 000816	OSFC-Grinch 000816	<Jennifer.Stokes@osfc.ohio.gov>; <Rob.Grinch@osfc.ohio.gov>;<Robert.Slagle@osfc.ohio.gov>;<Stacey.Thomas@osfc.ohio.gov>;<Rhonda.Hagemeyer@osfc.ohio.gov>;<Chad.Miller@osfc.ohio.gov>;<Todd.Hager@osfc.ohio.gov>;<Franklin.Brown@osfc.ohio.gov>;<Melanie.Drerup@osfc.ohio.gov>;<Madison.Dowlen@osfc.ohio.gov>;<Tamera.Rachel@osfc.ohio.gov>;<Bill.Courson@osfc.ohio.gov>;<Gary.Kasper@osfc.ohio.gov>	Kasai, Jerry <Jerry.Kasai@osfc.ohio.gov>	Berezansky, Steven <Steven.Berezansky@osfc.ohio.gov>	5/12/2011	Subject: Re: Co-Funding of off-site improvements -AC ORC;	-AC
OSFC-Grinch 000820	OSFC-Grinch 000820	Jon C. Walden <JWalden@ag.state.oh.us>; Grinch, Rob <rob.grinch@osfc.state.oh.us>	Joel P. O'Connell <JOConnell@ag.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	1/23/2008	Subject: RE: D&B 01-16-08 Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000821	OSFC-Grinch 000823	Jon C. Walden <JWalden@ag.state.oh.us>; Grinch, Rob <rob.grinch@osfc.state.oh.us>	Joel P. O'Connell <JOConnell@ag.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	1/23/2008	Subject: RE: D&B 01-16-08 Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000824	OSFC-Grinch 000826	Jon C. Walden <JWalden@ag.state.oh.us>; Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	Jon C. Walden <JWalden@ag.state.oh.us>		1/17/2008	Subject: Re: D&B 01-16-08 Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000827	OSFC-Grinch 000830	Jon C. Walden <JWalden@ag.state.oh.us>; <rob.grinch@osfc.state.oh.us>	Jon C. Walden <JWalden@ag.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	1/23/2008	Subject: RE: D&B 01-16-08 Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000831	OSFC-Grinch 000834	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Jon C. Walden <JWalden@ag.state.oh.us>		1/22/2008	Subject: RE: D&B 01-22-08 Deaf & Blind School/Conservation Easement;	AC
OSFC-Grinch 000835	OSFC-Grinch 000837	Jon C. Walden <jon.walden@ohioattorneygeneral.gov>	Savors, Rick <Rick.Savors@osfc.ohio.gov>	<Cheryl.Lyman@osfc.ohio.gov>; <Steven.Berezansky@osfc.ohio.gov>; <Eric.Bode@osfc.ohio.gov>; <Rob.Grinch@osfc.ohio.gov>; <Tasheena.Duresky@osfc.ohio.gov>	2/15/2011	Subject: RE: D&B 02-13-11 PRR 2011-21 Pasquale Manzi - OSSB - OSD - Attorney Client Communication	AC
OSFC-Grinch 000838	OSFC-Grinch 000839	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>; <John.Eufinger@osfc.ohio.gov>	James Rook <james.rook@ohioattorneygeneral.gov>		3/16/2010	Subject: RE: D&B 03-12-10 City Coordination - Regional Issues - ATTORNEY CLIENT PRIVILEGED; Attach: Draft MOU 5-22-09 CITY REDLINE.doc;	AC
OSFC-Grinch 000840	OSFC-Grinch 000843				5/5/2010	Attach: Draft MOU 5-22-09 CITY REDLINE.doc	AC
OSFC-Grinch 000846	OSFC-Grinch 000848	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	James.rook@ohioattorneygeneral.gov		5/15/2010	Subject: RE: D&B 05-05-10 Cols. Coord'n Mtg. -	AC
OSFC-Grinch 000849	OSFC-Grinch 000852	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Keith, Clayton <Clayton.Keith@bovisienlease.com>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>	<Adam.Novak@bovisienlease.com>; <Jim.Swartzmiller@bovisienlease.com>; <Mike.Mendenhall@osfc.state.oh.us>; <sjpredovich@shp.com>; <Brown@osd.oh.gov>	5/14/2009	Subject: RE: D&B 05-14-09 RAZE Intl. (Low Bidder) - Abatement Contract - Bond Amt. Issue;	AC

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OSFC-Grinch 000853	OSFC-Grinch 000856	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	James Rook <james.rook@ohioattorneygeneral.gov>	<John.Eufinger@osfc.ohio.gov>; <jon.walden@ohioattorneygeneral.gov>	6/8/2010	Subject: RE: D&B 06-08-10 Columbus City Coordination- SD Regional Sidewalks & Bikeways	AC
OSFC-Grinch 000860	OSFC-Grinch 000861	Eufinger, John <John.Eufinger@osfc.ohio.gov>	Berezansky, Steven <Steven.Berezansky@osfc.ohio.gov>	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>; Hager, Todd <Todd.Hager@osfc.ohio.gov>	9/7/2010	Subject: RE: D&B 09-02-10 Pending Change Order Asphalt and Site Scope;	AC
OSFC-Grinch 000862	OSFC-Grinch 000863	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>; Kasai, Jerry <jerry.kasai@osfc.state.oh.us>	<Steven.Berezansky@osfc.ohio.gov> Borde, Eric <Eric.Bode@osfc.state.oh.us>	<Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>	9/10/2008	Subject: RE: D&B 09-10-08 CM (Bovis) Contract - Non-Traditional Scope (Reimbursable);	AC
OSFC-Grinch 000864	OSFC-Grinch 000866	Kasai, Jerry <jerry.kasai@osfc.state.oh.us>; Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	Borde, Eric <Eric.Bode@osfc.state.oh.us>	<Steven.Berezansky@osfc.state.oh.us>; <Mike.Mendenhall@osfc.state.oh.us>; <Chad.Miller@osfc.state.oh.us>; <Lois.Snyder@osfc.state.oh.us>	9/22/2008	Subject: RE: D&B 09-19-08 Finances / Legal Services / Front End;	AC
OSFC-Grinch 000867	OSFC-Grinch 000868	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	james.rook@ohioattorneygeneral.gov		9/21/2010	Subject: RE: D&B 09-20-10 ODE & Two Schools Relationship - Appropriate Signatories;	AC
OSFC-Grinch 000869	OSFC-Grinch 000870	Grinch, Rob <Rob.Grinch@osfc.ohio.gov>	John.Eufinger@osfc.ohio.gov		10/7/2010	Subject: RE: D&B 10-06-10 Dorm Re-Bid FBI/BCI background checks	AC
OSFC-Grinch 000873	OSFC-Grinch 000874	Grinch, Rob <Rob.Grinch@osfc.state.oh.us>	jon.walden@ohioattorneygeneral.gov		2/26/2009	Subject: RE: D&B Franklin Co. Water ; ; How did the meeting with FCWCD go?;	AC
OSFC-Grinch 000875	OSFC-Grinch 000875	OSFC <OSFC@osfc.state.oh.us>	Kasai, Jerry <Jerry.Kasai@osfc.state.oh.us>		3/17/2009	Subject: Builders Risk Insurance; Attach: 08 GC Art 11.pdf;	AC
OSFC-Grinch 000876	OSFC-Grinch 000879						AC
OSFC-Grinch 002798	OSFC-Grinch 002801	Carl Brown <Brown@osd.oh.gov>; <jerry.kasai@osfc.state.oh.us>; <Adam.Novak@bovislendlease.com>; <Clayton.Keith@bovislendlease.com>	Grinch, Rob	<jpredovich@shp.com>; <nick.mccullough@kleingers.com>; <jrook@ag.state.oh.us>;<jwalden@ag.state.oh.us>;<Mike.Mendenhall@osfc.state.oh.us>	5/14/2009	Subject: D&B 05-14-09 Conservation Easement Description Whereabouts;	AC
OSFC-Grinch 003526	OSFC-Grinch 003528	'Eric Algoe' <Algoe@osd.oh.gov>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=ROB.GRINCH>	<Steven.Puckett@ode.state.oh.us>; <Mike.Shoemaker@osfc.state.oh.us>; <Jerry.Kasai@osfc.state.oh.us>; <Bill.Prenosi@osfc.state.oh.us>;<Carolyn.McClure@osfc.state.oh.us>;<osfc.temp@osfc.state.oh.us>	10/15/2007	Subject: D&B 10-15-07 Algoe - DRAFT MOU No. 4 to Final (w minor change)	AC
OSFC-Grinch 003533	OSFC-Grinch 003534	Shoemaker, Mike <Mike.Shoemaker@osfc.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=ROB.GRINCH>	<Bill.Prenosi@osfc.state.oh.us>; <Jerry.Kasai@osfc.state.oh.us>; <Algoe@osd.oh.gov>	10/15/2007	Subject: D&B 10-15-07 DRAFT MOU No. 4; Attach: 10-12-07 MOU- OSFC draft.doc;	AC
OSFC-Grinch 003535	OSFC-Grinch 003536						AC
OSFC-Grinch 003537	OSFC-Grinch 003538	'Puckett, Steven' <Steven.Puckett@ode.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=ROB.GRINCH>	<Mike.Shoemaker@osfc.state.oh.us>; <Bill.Prenosi@osfc.state.oh.us>; <Jerry.Kasai@osfc.state.oh.us>	10/15/2007	Subject: D&B 10-15-07 MOU DRAFT No. 4;	AC
OSFC-Grinch 003539	OSFC-Grinch 003541	Perry, Anthony <Anthony.Perry@obm.state.oh.us>; 'Puckett, Steven' <Steven.Puckett@ode.state.oh.us>	Grinch, Rob </O=ODN/OU=ODNSITE/CN=RECIPIENTS/CN=ROB.GRINCH>	<Jerry.Kasai@osfc.state.oh.us>; <Algoe@osd.oh.gov>; <Mike.Shoemaker@osfc.state.oh.us>; <Bill.Prenosi@osfc.state.oh.us>; <Paula.Hicks-Hudson@obm.state.oh.us>; <Kathleen.Madder@obm.state.oh.us>	10/15/2007	Subject: D&B 10-15-07 MOU DRAFT No. 5 - Perry Revisions;	AC
OSFC-Grinch 003546	OSFC-Grinch 003551	Kasai, Jerry <jerry.kasai@osfc.state.oh.us>	Grinch, Rob		10/15/2007	Subject: D&B 10-15-07 RFG - JK MOU DRAFT No. 5 - Perry Revisions	AC

BEG DOC	END DOC	TO	FROM	CC	DATE SENT	SUBJECT	BASIS
OSFC-Grinch 003552	OSFC-Grinch 003556	Kasai, Jerry <jerry.kasai@osfc.state.oh.us>	Grinch, Rob		10/15/2007	Subject: D&B 10-15-07 RPG to JK MOU DRAFT No. 5 - Perry Revisions;	AC
OSFC-Grinch 003564	OSFC-Grinch 003570	'Puckett, Steven' <Steven.Puckett@ode.state.oh.us>	Grinch, Rob	Kasai, Jerry <jerry.kasai@osfc.state.oh.us>	10/15/2007	Subject: D&B 10-15-07 SP - RPG - JK MOU DRAFT No. 5 - Perry Revisions;	AC
OSFC-Grinch 003580	OSFC-Grinch 003587	'Puckett, Steven' <Steven.Puckett@ode.state.oh.us>	Grinch, Rob	Kasai, Jerry <jerry.kasai@osfc.state.oh.us>; Prenosil, Bill <Bill.Prenosil@osfc.state.oh.us>	10/16/2007	Subject: D&B 10-16-07 GO with MOU DRAFT No. 5 - Perry Revisions;	AC
Robert Grinch's OSFC Email - Redactions							
OSFC-Grinch 013595	OSFC-Grinch 013596	Rob Grinch	James Rook <james.rook@ohioattorneygeneral.gov>		4/23/2010	RE: D&B 04-22-10 R-O-W- Coordin with City Officials. Correspondence from AAG Rook redacted.	AC
OSFC-Grinch013597	OSFC-Grinch 013599	James Rook	Robert Grinch	Erik Roush, Brian Sprague, John Eufinger, Tasheena Duresky, Edward Corbett, Cynthia Johnson	4/22/2010	D&B 04-16-10 DAS RE Review Schedule for City Meeting. Correspondence to and from OSFC PM and AAG Rook redacted, and correspondence from Grinch cc: AAG redacted.	AC
OSFC-Grinch0135600	OSFC-Grinch0135600	Rob Grinch	Jon Walden	Earlier in string: Clay Keith, Jim Swartzmiller, Karin Kiriangitis	11/4/2010	FW: Ohio School for the Deaf and Blind Attachment Redacted and correspondence with OSFC council Walden redacted.	AC
OSFC-Grinch135601	OSFC-Grinch135601	Jerry Kasai, Rob Grinch	Madison Dowlen	Todd Hager	4/27/2011	RE: D&B 04-19-11 Notice of Commencement Update Required. Correspondence to Jerry Kasai redacted.	AC
OSFC-Grinch13602	OSFC-Grinch13602	Madison Dowlen	Rob Grinch	Jerry Kasai, Todd Hager	4/19/2011	D&B 04-19-11 Notice of Commencement Update Required. Correspondence to/from OSFC and in house counsel Jerry Kasai redacted.	AC
OSFC-Grinch13603	OSFC-Grinch13603	Jerry Kasai,	Todd Hager	Steve Berezansky, Rob Grinch	5/10/2011	FW: SHP Contract Amendment Summary. Correspondence to/from OSFC and in house counsel Jerry Kasai redacted. Attachment redacted due to mediation information included.	AC
OSFC-Grinch13604	OSFC-Grinch13604	Tasheena Duresky, Jerry Kasai, Rob Grinch, Madison Dowlen	Todd Hager		5/31/2011	RE: D&B 05-25-11 AE Agreement No 3 1st Amendment DRAFT. Correspondence to/from OSFC and in house counsel Jerry Kasai redacted	AC
OSFC-Grinch13606	OSFC-Grinch13606	Kasai, Berezansky	Todd Hager	Duresky, Grinch, Dowlen	6/7/2011	FW: FW: D&B 05-25-11 AE Agreement No 3 1st Amendment DRAFT. Correspondence to/from OSFC and in house counsel Jerry Kasai redacted	AC
OSFC-Grinch013609	OSFC-Grinch013609	Tasheena Duresky, Jerry Kasai, Rob Grinch, Madison Dowlen	Todd Hager			FW: D&B Contract Amendment Attachments Correspondence to/from OSFC and in house counsel Jerry Kasai redacted. Attachments included in following pages.	AC
OSFC-Grinch013618	OSFC-Grinch013618	Dowlen, Grinch	Kasai	Todd Hager	6/15/2011	RE: D&B 06-15-11 OSD & OS&B Maintenance Plans, Lack of. Correspondence to/from OSFC and in house counsel Jerry Kasai redacted	AC

From: Swartzmiller, Jim
To: 'amaletz@shp.com'
Sent: 7/18/2011 10:28:47 AM
Subject: Re: OSDB - Drawing and Specifications Notice

Thank you for your e-mail?

I love that he can't make the meeting and lobs the Scud anyway.

From: Andrew Maletz [mailto:amaletz@shp.com]
Sent: Monday, July 18, 2011 10:17 AM
To: Dowlen, Madison <Madison.Dowlen@osfc.ohio.gov>
Cc: Josh Predovich (jpredovich@shp.com) <jpredovich@shp.com>; Keith, Clayton; Kirlangitis, Karin; Schaller, Scott <Schaller@osd.oh.gov>; Cynthia Johnson (cjohnson@ossb.oh.gov) <cjohnson@ossb.oh.gov>; Swartzmiller, Jim; Berezansky, Steven <Steven.Berezansky@osfc.ohio.gov>; Hager, Todd <Todd.Hager@osfc.ohio.gov>; Slagle, Robert <Robert.Slagle@osfc.ohio.gov>; Chipiga, Eugene <Eugene.Chipiga@osfc.ohio.gov>; Ron Hicks <rhicks@shp.com>
Subject: Re: OSDB - Drawing and Specifications Notice

Madison,

Thank you for your email. We expect to discuss the schedule of both the campus-wide packages and the academic buildings during our meeting today. It is true that there are delays on both of these items and we are working cooperatively with Lend Lease to make certain that the overall schedule is not adversely affected, and will be discussing these strategies today.

It is unprecedented and disappointing that you would suggest, casually, in an email that SHP would be financially responsible for contractor claims. Our overall team's objective should be to work together to avoid such outcomes, rather than arbitrarily assessing liability before any claims have even been contemplated. We all recognize the importance of schedule, and will continue to work hard toward meeting our goals.

However, if you feel that there are larger contract issues of financial responsibility, then I think we should discuss that in a meeting, instead of email.

Thanks for your understanding,

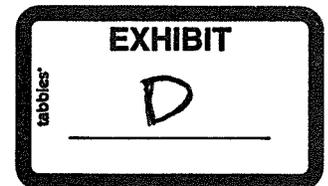
Andrew

Andrew S. Maletz, AIA
Vice President
SHP Leading Design
250 Civic Center Drive, Suite 200
Columbus, Ohio 43215

TEL: 614-223-2124
FAX: 614-223-2130

www.shp.com

END OF MESSAGE



EXHIBIT

OSFC-JS001213

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On Mon, Jul 18, 2011 at 9:30 AM, Dowlen, Madison <Madison.Dowlen@osfc.ohio.gov> wrote:

Andrew and Josh,

I will be unable to attend today's meeting regarding the progress update on the drawings and specifications at your office. However, please note the following due dates for drawings and specifications:

Campus Wide Bid Packages - July 1, 2011

Academic Buildings - August 12, 2011

As you know the dormitories are under construction. Previously an SHP contract amendment was approved. It was understood by all that SHP would meet the above dates. Today is July 17 and drawings and specifications for the Campus Wide Bid Package have not been received. The scope within the campus wide bid package is critical to completing the project. Please note if contractors submit delay claims as a result of drawings and specifications being received late, SHP will be expected to pay those costs.

Thanks,

Mr. Madison W. Dowlen

Project Administrator

Ohio School Facilities Commission

10 West Broad Street

Suite 1400

Columbus, Ohio 43215

Office: [\(614\) 387-1268](tel:6143871268)

Mobile: [\(614\) 204-1748](tel:6142041748)

<http://osfc.ohio.gov>

OSFC-JS001214

From: Keith, Clayton
To: Berezansky, Steven; Slagle, Robert; Dowlen, Madison
CC: Swartzmiller, Jim; Kirlangitis, Karin; Josh Predovich; Andrew Maletz
Sent: 8/30/2011 4:34:35 PM
Subject: LendLease Contract Notification

EXHIBIT

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Steve, Rob and Madison

Please let this email serve as notification that we have not received the corrected drawings for the Blind School Academic Building. Per the schedules agreed to by all parties SHP was to deliver complete drawings by August 12th. Partial drawings were received from SHP on August 15th with the promise that completed and coordinated 500 sheets (details and building cuts) would be received by the end of the week, the 19th. The "Plan" was to have the Blind building estimate complete, or close to complete prior to receiving the Deaf Building, which is due September 2, 2011 (Friday). This delay has impacted our ability to complete the Blind Building and schedule with our staff to keep consistency in our estimating department.

Please be aware that this impact cannot truly be measured until we receive full and final drawings for the Blind and the Deaf Academic Buildings.

Thank you

Clay Keith

Clayton Keith | Sr. Project Manager | Project Management & Construction | Lend Lease
Ohio State School for the Blind and Ohio School for the Deaf
502 Morse Road, Columbus, OH 43214
T 614 732 5275 | F 614 732 5295 | M 614 374 4857
clayton.keith@lendlease.com | www.lendlease.com

ii) Please consider the environment before printing this e-mail.

LL017055



Joshua L. Predovich

From: Keith, Clayton <Clayton.Keith@lendlease.com>
Sent: Tuesday, November 15, 2011 1:01 PM
To: Dowlen, Madison
Cc: Josh Predovich; Smith, Jr., Jim
Subject: D&B TransAmerica

Madison

I have had several conversations with Transamerica regarding the roofing issues. To date they still do not know when the 2 roofers from their sub are going to show. As they put it in the meeting it is a bonus when they are there. The one guy that they were using had appendicitis last week and is not back yet. The roofing manufacturer still has not been on site to let us know if the rubber roof will be warranted. We have sent a previous 96 hour notification to them regarding roofing.

I have two questions for you:

1. Can we go ahead and start assessing LD's based on the roof and window enclosure complete milestone. I do not see another way to really get their attention.
2. Is there an avenue on this project to supplement the roofing work. Remember that we do not have a district to issue a PO. If we do urgent necessity or bid we will lose too much time.

Let me know your thoughts

Clayton Keith | Sr. Project Manager | Project Management & Construction | Lend Lease
Ohio State School for the Blind and Ohio School for the Deaf
502 Morse Road, Columbus, OH 43214
T 614 732 5275 | F 614 732 5295 | M 614 374 4857
clayton.keith@lendlease.com | www.lendlease.com

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SHP 002570

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OHIO SCHOOL FACILITIES COMMISSION

Pre-proposal Conference for Professional Design Services for

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



MEETING MINUTES

1/26/07 ▪ 10:00 to 12:00 a.m.

General Announcements

Crystal Canan, Chief of Projects, announced that the meeting would begin and requested the meeting minutes reflect the time is 10:05 a.m. All parties attending the conference were requested to sign the Attendance Roster at the front desk upon arrival. If anyone did not sign the Roster, they were requested to do so. The Attendance Roster will be scanned and posted on the Commission's website. Minutes will be taken of this Pre-proposal Conference and posted on the Commission's website. Ms. Canan introduced Executive Director Richard Hickman.

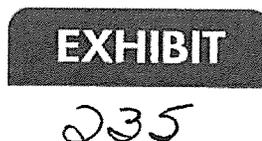
Introductions

Mr. Hickman thanked all in attendance and introduced the following guests and Commission staff members:

Dr. Lou Mazzoli, Superintendent for The Ohio State School for the Blind
Dr. Ed Corbett, Superintendent for The Ohio School for the Deaf
Eric Algoe, Chief Operating Officer, Ohio School for the Deaf & Ohio State School for the Blind
Crystal Canan, OSFC Chief of Projects
Steve Lutz, OSFC Chief of Planning
Craig Weise, OSFC Deputy Chief of Projects
Melanie Drerup, OSFC Deputy Chief of Planning
Bill Prenosil, OSFC Planning Director
Rob Grinch, OSFC Sr. Project Administrator

Mr. Hickman indicated that Craig Weise and Melanie Drerup began the planning process for this project last summer. After this consultant selection phase, the project will be turned over to Rob Grinch, who is the Commission's named Project Administrator for the project, with the assistance of Bill Prenosil, Planning Director for the project.

Mr. Hickman expressed that this is a great project for OSFC and while it involves planning for state agencies who have previously been served by the State Architect's Office, providing school facilities for students with special needs is not new to the Commission. In Ohio's urban centers currently being managed by OSFC, facility space is dedicated for students with special needs. We will build upon that experience for this project. OSFC is excited about the opportunity to do a great job for both schools. Mr. Hickman introduced Craig Weise who will discuss the points outlined on the agenda.



Review the Capital Bill Law

Mr. Weise opened by mentioning a couple of housekeeping items. The materials provided to attendees include an agenda and a section of Am. Sub. H.B. No. 699, the capital bill providing the initial appropriation and direction regarding this project. These two documents will be made available on the Commission's website.

Mr. Weise indicated that funding for this project is unique in that the initial amount of \$4 million for planning and design services is approved at this time. The capital bill specifies that the planning, design, scope and budget of the project will be refined and included in a future appropriation. The specific language is that the OSFC Executive Director shall make these determinations in consultation with the superintendents of the Ohio State School for the Blind and the Ohio School for the Deaf and the Director of Budget and Management. It is estimated at this time that the project budget will be in the amount of \$40 million.

Scope of Services

The Commission is planning for the design to be accomplished in phases. OSFC intends to initially contract for services through the schematic design (SD) phase, and provide for the right to extend the contract through the remaining design phases, bid phase and construction. OSFC would intend to establish the budget for the project at the end of the SD phase, with estimating services provided by a construction management firm that will be separately contracted by the Commission.

This will be a consolidated school on the campus of the current School for the Deaf. It is anticipated that design should reflect current operations in progress while construction is being accomplished.

OSFC is currently engaging an educational planner to work with the schools to develop a Program of Requirements (POR) for the project. After the architect is selected for the project, the architect will have the opportunity to provide input before the POR is finalized.

The Request for Professional Design Services mentioned the need to have a full service team. Given the campus nature, the project will include academic spaces and offices for both agencies as well as a residential dormitory for approximately half the student population. The program is planned for 320 students, with half or 160 students planned for residential facilities. In addition there will be a transportation garage and athletic facilities such as a running track, football field and stadium and stands for viewing of such.

Being that this is a campus project, having a landscape architect is critical to the design team because the education of the students extends into the campus. A focus in the selection is also that there will be design experience with students who are deaf, blind and with multiple handicaps. The design firm will assist the project team to select geotechnical, traffic engineering and site survey services at the appropriate time.

Design Considerations

Design should accommodate special needs students for learning, working and living on this campus. Facilities should allow universal access to all areas. Another important aspect of the design is for both schools to have individual identities inside and outside of the buildings.

To the extent possible, the Ohio School Design Manual (DM) standards and recommendations should be followed. We anticipate it will be easier to follow the DM recommendations for the academic portions of the project. The residential and transportation garage will be a larger challenge. Rob Grinch, OSFC's Project Administrator, will facilitate any required variances to the DM so that architects won't be burdened with a large number of variance submittals.

Timelines

The time frame for this project is five (5) years for design and construction. A key date we are working toward is completing the SD and estimating process to allow the Commission, by October 2007, to determine the budget for the project as required by the capital bill.

Mr. Weise requested all questions to be directed to his attention.

Questions & Answers

Q. Will the OSFC design phase approval process be used for this project?

A. Yes, at each standard phase of design, there will be an estimating process and approvals.

Q. Will a Construction Manager (CM) be selected and when?

A. Yes, the OSFC will contract for CM services in a timeline that is consistent with the design firm selection process. It is anticipated that the CM will also be contracted initially only through the SD phase, with the same extension rights as described earlier.

Q. Has the programming already started?

A. No, we are planning for it now. We will not be in a position to share more information about programming until after the architect selection process is completed.

Q. Is the educational planner developing programming for all facilities?

A. Yes, a fully programmed campus and all facilities will be described in the POR.

Q. Given the separate identity of each school, will the existing structure be a vernacular for design?

A. No, we anticipate all existing structures will be demolished at completion or in phases, so there is no need to match the existing design in the design of new facilities.

Q. Will the existing buildings for the School for the Blind also be demolished?

A. It is anticipated that all existing facilities will be demolished in phases or at completion.

Q. Will the existing School for the Blind campus be sold for development or kept by the State?

A. Mr. Hickman: Right now the Department of Administrative Services, Real Estate Division, is completing an evaluation of options of what to do with that property. It will take a number of months to determine the best use of the properties. There may be selective demolition based on a recommendation of sale or reuse of facilities.

Mr. Weise interrupted the Question & Answer session to request that all firms refrain from contacting or visiting the existing schools. The firms who are identified to be interviewed will all be afforded the same opportunity at a designated time to visit the campus.

Q. Please describe the selection process and how that will occur and the time line for short list and interview?

A. Staff from both schools and the Commission will participate in the proposal evaluation and interview process. At least three firms, if not more, will be identified for an interview. The Commission anticipates the short list to be announced mid-March and interviews to be scheduled the first week of April.

Q. If you are short-listing firms in March and requesting budget numbers by October, is this a realistic time line?

A. At the time the design firm is selected, the POR will be near completion, so yes, we believe there is sufficient time before October for the architect to complete the SD phase for estimating by the CM.

Q. When will the POR be completed and be shared with firms?

A. It is anticipated to be completed in order for the selected architect to provide input in early May.

Q. Is LEED certification part of the program?

A. OSFC believes the DM incorporates many LEED concepts and any other concepts would be under consideration. At this time, it is not intended that the facilities will be LEED certified.

Q. Given the October date, do you have any preliminary locations of buildings on the existing campus?

A. We do not. Given the open nature of the front yard at the Ohio School for the Deaf, it is anticipated that could be utilized. The design professional will be responsible for locating the facilities on the campus.

Q. Is there any site or utility survey information available?

A. No.

Q. The DM provides a cost per square foot, will that be comparable for the academic portion at least?

A. Yes, we will be using the 2007 DM costs those academic facilities.

Q. Given the nature of the population and special needs, the DM currently does not accommodate the needs that would be anticipated for this population, such as room sizes and furniture. Would these types of issues require a variance?

A. The Project Administrator will work with the project team to manage through the variance process in an expedited fashion.

Q. What would OSFC expect the SD design to entail? Would it be a master planning exercise and laying out the buildings on the campus and traffic studies?

A. We mentioned traffic studies and landscape earlier. We will rely on the design professional for a recommendation as to when those services are needed. The SD expectations are similar to the current requirements in the Commission's Design Professional contract. We will supply further definition

with the meeting minutes. *(The Commission's SD phase submission requirements for this project are located on the last page of these minutes.)*

Q. Please elaborate on how the contract structure will be arranged and how it will be extended, as well as copyrights?

A. Ms. Canan: Our intent is to select a firm who will be carrying this project home. We do not have the final budgeting information that would be necessary to offer a firm a certain fee for a defined program. We believe that the best way to proceed is to contract for SD phase services only and then evaluate whether to proceed forward with the selected firm. If we are not satisfied with the services, the contract will not be extended. The schools and commission will reserve the right of ownership of work product provided under the initial agreement. We therefore plan to use the estimated budget published in the Request for Professional Design Services to determine a fee for SD services and proceed from there.

Q. Are you looking for a comprehensive team to be proposed?

A. Yes. We want a full service team for this project.

Q. Would the design firm contract directly with OSFC or with the schools themselves?

A. All contracts will be held and administered by OSFC on this project.

Q. Does OSFC require a specific format of team members' statement of qualifications?

A. No, there is no required format of submission. If you want to use the ADM 255 format, feel free to do so, but it is not required.

Q. Upon selection of the firm, will the fee be only for SD.

A. Yes.

Q. Is there a right to extend after Design Development (DD) phase?

A. We would anticipate at the end of SD phase, we will extend services through the Construction Documents (CD) phase, with another optional extension for the construction period.

Q. Will the initial POR and design accommodate future growth?

A. The planning number of 320 anticipates future growth. The architect should consider design options so that the facilities could accommodate future expansion.

Q. Will EDGE goals be an expectation of the contract?

A. Yes.

Q. Who will hold the contracts for any specialty consultants?

A. OSFC will hold all contracts for the project. The Commission will seek the design firm's input and involvement in selecting specialty service consultants.

Ms. Canan asked for a show of hands of firms in attendance who have experience with the DM or working with the Commission. She estimated approximately 75% indicated affirmatively. Firms not familiar with the DM or the OSFC contracting process may request additional information. We will not provide a link to the DM, but will forward you to the individual to purchase this document at \$100 per binder set or \$10 for the CD. If there are other information pieces that you would like to be provided, please email to Jill Hoobler, Project Coordinator, jill.hoobler@osfc.state.oh.us, and we will offer link to that information.

Meeting adjourned 11:00 a.m.

***MINIMUM PHASE SUBMISSION REQUIREMENTS
ELEMENTS OF SCHEMATIC DESIGN DOCUMENTS***

ARCHITECTURAL – LANDSCAPE ARCHITECTURAL – CIVIL ENGINEERING

- Site Inventory Site Analysis Plan – Show existing topography, above and below ground utilities including fuel storage tanks, vehicular roadways, pedestrian paths, service and loading areas, athletic fields and other site improvements, landmark trees, zoning classification, minimum code required parking space quantity and setbacks, easements, right-of-way limits, and Adena Brook conservation area limits.
- Single-line drawings showing complete building layout, identifying the various Major areas, core areas and their relationships.
- Show preliminary exterior wall section indicating location of openings, and overall thermal transfer value for each element of the exterior wall/envelope.
- Identify roof system, deck, membrane flashing and drainage technique and indicate overall combined heat transfer coefficient value for exterior wall/envelope.
- Show exterior building elevations identifying proposed shell finishes (includes all exterior surfaces, doors and windows).
- Site plan with buildings and preliminary site development information including: Recommended building orientation for energy savings and day lighting opportunities; COTA bus stop; heavy & light duty pavements; service/loading/waste removal area pavements; pedestrian walkways; grading scheme with proposed finished floor elevations, contours, storm water storage areas, major storm sewer piping and drainage structures, retaining and screening walls; landmark trees to remain undisturbed; emergency vehicles access corridors; vehicular parking areas designated by users; athletic fields, perimeter fencing, spectator seating, scoreboards, lighting and associated out-buildings; accessible play equipment; landscape plantings; site lighting; signage; bus/service maintenance building including fueling area; site entry security checkpoint; outdoor education and therapy areas.
- Gross and net area calculations separated to show conformance with Program of Requirements. Each space to be annotated with net square footage.
- Building Code type and occupancy information.

STRUCTURAL

- Main building sections depicting proposed structural systems.
- Preliminary structural floor plan with overall dimensions and floor elevations. Identify structural system and provide preliminary sizes for all main structural members.
- Preliminary foundation plan. Identify foundation system and provide preliminary sizes

PLUMBING AND MECHANICAL

- Provide a narrative detailed description of HVAC systems that appear compatible with loading conditions for subsequent life cycle costing. (LCC not required for systems indicated as standards in Design Manual).
- Floor plan showing all mechanical (HVAC and Plumbing) equipment spaces.
- Floor plan showing all major mechanical equipment and plumbing fixtures (toilets, sinks, urinals, water fountains/coolers, janitor sinks, and fire protection system).

ELECTRICAL

- Lighting and power plans showing conceptual solution for lighting, power, communications, fire alarm and technology.
- Floor plan showing all major electrical equipment,
- Preliminary one-line electrical distribution diagrams. Indicate preliminary location of service entry, switchboards, motor control centers, panels, transformers and emergency generator, etc., if required.

MODEL BUILDING

- Provide 1/8"=1'0" foam core model of main building solution.
- Model shall be durable enough to be handled on numerous occasions and safe-to-touch.