

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

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IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING COMPANY, :
INC., :

Plaintiff, :

v. :

OHIO SCHOOL FACILITIES :
COMMISSION, :

Defendant/Third-Party :
Plaintiff, :

v. :

STEED HAMMOND PAUL, INC. dba :
SHP LEADING DESIGN, :

Third-Party Defendant, :

and :

LEND LEASE (US) CONSTRUCTION, :
INC., :

Third-Party Defendant/Third :
(Fourth) Party Plaintiff, :

v. :

G. STEPHENS, INC. :
133 North Summit Street :
Akron, OH 44304, :

Third-Party (Fourth-Party) :
Defendant. :

**ANSWER, COUNTERCLAIM AND THIRD-PARTY (FOURTH-PARTY) COMPLAINT
OF THIRD-PARTY DEFENDANT/THIRD-PARTY (FOURTH-PARTY) PLAINTIFF
LEND LEASE (US) CONSTRUCTION INC.**

ON COMPUTER

Case No. 2013-00349

Referee Wampler

**ANSWER OF THIRD-PARTY DEFENDANT LEND LEASE (US)
CONSTRUCTION, INC. TO THIRD-PARTY COMPLAINT OF
THIRD-PARTY PLAINTIFF OHIO SCHOOL FACILITIES COMMISSION**

INTRODUCTION

Now comes Third-Party Defendant Lend Lease (US) Construction, Inc. (hereinafter "Lend Lease"), by and through counsel, and for its Answer to the Third-Party Complaint of Ohio School Facilities Commission (hereinafter "OSFC"), states the following:

1. Lend Lease admits that the action is styled as one for indemnification as alleged in Paragraph 1 of the Third-Party Complaint.

2. Lend Lease is without knowledge or information sufficient to determine the truth or accuracy of the allegations set forth in Paragraph 2 of the Third-Party Complaint and they are accordingly denied.

3. Lend Lease is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 3 of the Third-Party Complaint and they are accordingly denied.

4. Lend Lease admits that the action described in the pleadings of this matter occurred in connection with the design and construction of the new Ohio State School for the Blind and Ohio School for the Deaf Residential Dorm Project ("Project"), and that the Project design began on, in or during calendar year 2005, all as set forth in Paragraph 4 of the Third-Party Complaint.

5. Lend Lease admits the allegations set forth in Paragraph 5 of the Third-Party Complaint.

6. Lend Lease states that the allegations set forth in Paragraph 6 of the Third-Party Complaint are alleged against another Defendant, Steed Hammond Paul, Inc. dba SHP Leading Design (hereinafter "SHP"), and therefore those allegations are denied by Lend Lease.

7. Lend Lease admits that SHP was the architect of record for the Project as set forth in Paragraph 7 of the Third-Party Complaint and denies the remaining allegations in that paragraph for lack of knowledge or information.

8. Lend Lease acknowledges that OSFC entered into a contract with SHP and that a copy of the SHP contract is purportedly attached to the Third-Party Complaint as Exhibit A, all as alleged in Paragraph 8 by OSFC.

9. Lend Lease states that the allegations set forth in Paragraph 9 of the Third-Party Complaint are alleged against another party and they are accordingly denied.

10. Lend Lease admits that it is a foreign professional corporation licensed to do business in Ohio and engaged in providing construction management and other construction related services as alleged in Paragraph 10 of the Third-Party Complaint.

11. Lend Lease admits that it was the Construction Manager-advisor ("CMA") for the Project as alleged in Paragraph 11 of the Third-Party Complaint.

12. Lend Lease acknowledges and admits that it entered into a contract to serve as the CMA for the Project (the "Lend Lease Contract") as alleged in Paragraph 12 of the Third-Party Complaint. Answering further, Lend Lease acknowledges that a copy of the Lend Lease Contract along with amendments and interim contracts, are attached as Exhibits B through F to the Third-Party Complaint.

13. Lend Lease admits the allegations set forth in Paragraph 13 of the Third-Party Complaint, and answering further states that the actions of Lend Lease were all subject to the direction, agreement, control, approval, supervision, and consent of OSFC and its employees.

14. Lend Lease acknowledges that the Lend Lease Contract incorporates by reference the Ohio School Design Manual General Conditions, Plans and Specifications, Special Conditions, Manufacturers Specifications and Installation Guidelines, applicable building codes, and executed Amendments, as alleged in Paragraph 14 of the Third-Party Complaint, and states further that the Lend Lease Contract provisions speak for themselves.

15. Lend Lease states that the allegations set forth in Paragraph 15 of the Third-Party Complaint are aimed at other parties and they are accordingly denied.

16. Lend Lease denies that OSFC has performed all of its obligations under the Lend Lease Contract, as alleged in Paragraph 16 of the Third-Party Complaint, and they are accordingly denied.

17. Lend Lease acknowledges that Transamerica has filed a complaint in this matter against OSFC for money damages as set forth in Paragraph 17 of the Third-Party Complaint.

18. Lend Lease acknowledges the allegations set forth in Paragraph 18 of the Third-Party Complaint, and answering further states that the Transamerica Amended Complaint speaks for itself.

19. Lend Lease acknowledges the incorporation by reference by OSFC in Paragraph 19 of the Third-Party Complaint, and answering further states that the incorporation does not call for any substantive response from Lend Lease; accordingly those allegations are, for purposes of this Answer, denied.

20. Lend Lease acknowledges the incorporation by reference and, to the extent necessary, denies any allegations not specifically admitted in the preceding 19 paragraphs of the Answer to the Third-Party Complaint.

21. Lend Lease admits that the allegations set forth in Paragraph 21 of the Third-Party Complaint are alleged against another party and they are accordingly denied by Lend Lease.

22. Lend Lease acknowledges the incorporation of OSFC in Paragraph 22 of the Third-Party Complaint and to the extent not previously admitted, denies each and every allegation set forth in the incorporated paragraph not specifically admitted.

23. Lend Lease denies that it is liable to OSFC for contribution and indemnification set forth in Paragraph 28 (sic) of the Third-Party Complaint and specifically denies it has engaged in any negligent or inappropriate conduct for which it can be held liable to OSFC; Lend Lease denies that it can be held liable for OSFC's negligence, breaches of contract, or fraudulent or negligent misrepresentations by OSFC.

24. Lend Lease denies each and every allegation set forth in the Third-Party Complaint not specifically admitted hereto in.

AFFIRMATIVE DEFENSES

AFFIRMATIVE DEFENSES INVOKED ON BEHALF OF OSFC

25. The allegations of Plaintiff ("Transamerica") fail to state a claim upon which relief can be granted.

26. The claims of Transamerica for equitable relief are barred by the equitable doctrine of unclean hands.

27. The damages claimed by Transamerica against OSFC are caused by persons other than OSFC and cannot be recovered from OSFC.

28. Transamerica has failed to provide the statutorily required and contractually required notices and substantiation of its claims in a timely fashion.

29. Transamerica has breached the contract with OSFC and that breach bars recovery against OSFC.

30. Transamerica's claims against OSFC are barred by the applicable statutes of limitation.

31. Lead Lease incorporates each of the defenses and affirmative defenses raised by OSFC in its answer to the Amended Complaint of Transamerica.

**AFFIRMATIVE DEFENSES ON BEHALF OF LEND LEASE
AGAINST THIRD-PARTY PLAINTIFF OSFC**

32. The Third-Party Complaint of OSFC fails to state a claim upon which relief can be granted.

33. The Third-Party Complaint of OSFC is barred by the equitable doctrines of unclean hands, laches, and estoppel.

34. With regard to the claim for contribution among joint tort feasers, Lend Lease states that OSFC fails to state a claim upon which relief can be granted due to the application of the Economic Loss Doctrine; Lend Lease owes no duty to Transamerica, cannot be held liable to Transamerica in negligence, and therefore, cannot be a joint tort feaser with OSFC from whom contribution can be obtained by OSFC.

35. OSFC's claim for indemnity fails to state a claim upon which relief can be granted due to the absence of an allegation in the underlying Transamerica Amended Complaint

of bodily injury, personal injury, sickness, disease or death of any person, or damage to or destruction of property which is the proximate cause of Transamerica's claimed damages.

36. OSFC has breached the duty of good faith and fair dealing implied in the Lend Lease Contract, which breach bars OSFC's right to recovery.

37. OSFC's claim for indemnity is barred by OSFC's active and primary negligence.

38. The damages for which OSFC claims recovery from Lend Lease are the result of errors and omissions of other parties in this action, and not the direct and proximate result of any action or inaction of Lend Lease.

39. OSFC's comparative negligence or fault is of a degree compared to that of Third-Party Defendant that Lend Lease's liability is barred or reduced.

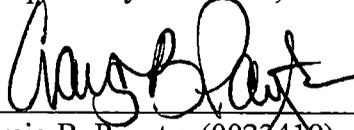
40. OSFC has failed to mitigate its damages for which indemnity and contribution are sought from Lend Lease.

41. At all times relevant herein, Lend Lease acted in the good faith performance of its duties.

42. The claims of OSFC against Lend Lease are barred by the applicable statutes of limitation.

WHEREFORE, Lend Lease requests that the Court enter judgment in its favor against OSFC on the Third-Party Complaint, and award it such other legal and equitable relief as the Court deems just.

Respectfully submitted,



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*Attorneys for Third-Party Defendant/Third-Party
(Fourth-Party) Plaintiff Lend Lease (US)
Construction, Inc.*

**COUNTERCLAIM OF LEND LEASE AGAINST OSFC FOR FAILURE
TO PAY ADDITIONAL SERVICES AND COSTS INCURRED BY LEND LEASE
IN THE CONSTRUCTION OF THE PROJECT**

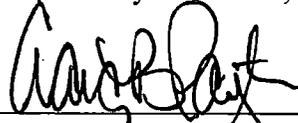
For its Counterclaim against Third-Party Complainant (OSFC), Lend Lease states as follows:

1. Lend Lease incorporates each and every admission contained in its Answer to the Third-Party Complaint of OSFC.
2. Lend Lease has fulfilled its obligations to OSFC undertaken pursuant to the Lend Lease Agreement.
3. Lend Lease has also incurred costs and expenses, including attorneys' fees and out-of-pocket expenses, while performing Additional Services, as that phrase is understood and defined in Article III of the CMA Lend Lease Agreement.
4. OSFC has refused to execute any change orders for those Additional Services; yet continues to demand in writing ongoing performance by Lend Lease.
5. Lend Lease continues to perform the services and to incur costs, attorneys' fees and other damages as a result.
6. OSFC has breached its agreement with Lend Lease through its refusal to execute any Change Orders for additional services, which breach is ongoing and continuous.
7. OSFC has anticipatorily breached its obligation to pay for Additional Services.
8. OSFC has an equitable obligation to execute and pay for the Change Orders that results from its written and oral demands for performance of services by Lend Lease.

9. Lend Lease has incurred damages to date in the amount of \$260,000.00 as a direct and proximate result of the failure of OSFC to pay for damages, costs and attorneys' fees incurred by Lend Lease and services provided, all of which continue to accumulate.

WHEREFORE, Lend Lease seeks judgment against OSFC in the amount of not less than \$260,000.00, plus costs and expenses, which damages continue to accumulate, together with such other legal and equitable relief the Court deems just.

Respectfully submitted,



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Celia M. Kilgard (0085207)

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*Attorneys for Third-Party Defendant/Third-Party
(Fourth-Party) Plaintiff Lend Lease (US)
Construction, Inc.*

**THIRD-PARTY (FOURTH-PARTY) CLAIM OF LEND LEASE AGAINST
THIRD-PARTY (FOURTH-PARTY) DEFENDANT G. STEPHENS, INC.**

For its Third-Party (Fourth-Party) Claims against G. Stephens, Inc. (“Stephens”), Lend Lease states as follows:

FIRST CLAIM

1. G. Stephens, Inc. is a company licensed to do business in the State of Ohio and, at all times relevant to the Project, performs architectural, construction management, civil, mechanical and structural engineering, sustainability business management, marketing and finance services (including scheduling, creation and maintenance). Stephens also does business as Glen Stephens, Inc.

2. Lend Lease entered into a Contract dated November 18, 2009 with OSFC as the Construction Manager-advisor on the Blind and Deaf School Projects (the “Project”). A copy of this Agreement is attached to the Third-Party Complaint as Exhibit B.

3. In the Lend Lease CMA Agreement, the Third-Party (Fourth-Party) Defendant, G. Stephens, Inc., was identified as a certified, minority-owned, EDGE participant subconsultant to Lend Lease.

4. Lend Lease entered into a Subconsultant Agreement with Stephens; Schedule A of the Stephens Subconsultant Agreement with Lend Lease required Stephens to provide all scheduling services for the Project:

...

1. Provide Scheduling Services for the Ohio State School For The Blind and the Ohio School For The Deaf New Academic and Dormitory Projects in Columbus, Ohio.

2. Scheduling Services shall consist of baseline bid schedule creation, creation of the "Contractor Approved" Project Construction Schedule based on Contractor input through sign-off of contractor schedule and schedule updating at a minimum of two times per month and as needed or whenever a recovery or re-sequencing is required per the contract documents. G. Stephens will utilize Pre-Construction Schedulers and Project Managers, per the rate schedule attached as Schedule C, as needed for creation of the baseline bid schedules. G. Stephens will provide one full time on-site staff member for all work outside the base bid schedule and once trailers are mobilized on site. The on-site staff member will be utilized for scheduling services as described herein and for additional services typically provided by a P.E. as time permits throughout the duration of the project after scheduling responsibilities are met. Services to commence on or about November 2009 through June 2011.

...

5. Job duties to include all aspects of the scheduling requirements as outlined in the OSFC Contract between Bovis Lend Lease, Inc. [nka Lend Lease] and the Ohio School Facilities Commission attached as Exhibit G and as called out within the specifications per section 013200 attachment H, Submittal review and processing, Change Order processing, RFI processing, Project Documentation and other typical job duties of a P.E.

...

A copy of the pertinent provisions of the Subconsultant Agreement is attached hereto as Exhibit

A.

5. Stephens did provide services for the Project in accordance with the Subconsultant Agreement.

6. Lend Lease has fulfilled its obligations to Stephens under the Subconsultant Agreement.

7. Under Paragraph 4 of the Subconsultant Agreement, Stephens has agreed to indemnify, hold harmless and defend Lend Lease in connection with its negligent acts, errors or omissions, or breaches of the Subconsultant Agreement.

8. Lend Lease has denied, and continues to deny, liability to OSFC. To the extent that Lend Lease is found liable to OSFC as a result of the negligent acts, errors or omissions, or breaches of the Subconsultant Agreement, Stephens owes Lend Lease the duty of indemnification and must hold Lend Lease harmless for costs, attorneys' fees, expenses, and damages incurred by Lend Lease, as set forth in Paragraph 4.

9. To the extent Stephens has been negligent in the discharge of its obligations under the Subconsultant Agreement, or to the extent Stephens has acted erroneously or has omitted actions it should have taken, or to the extent Stephens has breached its Subconsultant Agreement and those acts of negligence, errors, omissions and breaches have resulted in Lend Lease liability to OSFC, Lend Lease has been directly and proximately harmed by Stephens in the amount Lend Lease is ordered to pay OSFC.

SECOND CLAIM

10. Lend Lease hereby incorporates each and every allegation set forth previously in the Third-Party (Fourth-Party) Complaint as if fully rewritten.

11. Lend Lease alleges alternatively that to the extent Stephens claims it did not perform all scheduling activities on the Project, and consistent with a professional standard of care, Stephens has breached its Subconsultant Agreement with Lend Lease.

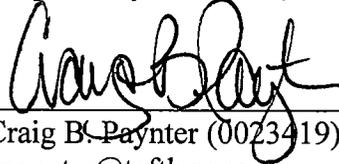
12. As a direct and proximate result of that breach, Lend Lease will have been damaged in the amount of \$202,740.00, plus any amounts Lend Lease may be ordered to pay

OSFC for scheduling failures, breaches of the Contract, and failure to perform in accordance with a professional standard of care.

WHEREFORE, Lend Lease requests judgment be entered against Stephens in favor of Lend Lease:

1. For indemnity as may be consistent with Paragraph 4 of the Subconsultant Agreement;
2. Alternatively, for the sum of \$202,740.00, plus any amounts Lend Lease may be found liable to OSFC, resulting from Stephens' performance of its Subconsultant Agreement;
3. Any liability, damages, claims, losses, expenses (including legal fees and disbursements) sustained or incurred by Bovis to the extent arising out of, or in connection with, the negligent acts, errors or omissions, or breaches of the Subconsultant Agreement by Stephens;
4. Such other legal and equitable relief as the Court deems just.

Respectfully submitted,



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*Attorneys for Third-Party Defendant/Third-Party
(Fourth-Party) Plaintiff Lend Lease (US)
Construction, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Answer, Counterclaim and Third-Party (Fourth-Party) Complaint of Third-Party Defendant/Third-Party (Fourth-Party) Plaintiff Lend Lease (US) Construction Inc.* was served by regular U.S. Mail, postage prepaid, this 27th day of February 2015, upon the following:

Ronald P. Friedberg
Anne L. Meyers
Debra J. Horn
Meyers, Roman, Friedberg & Lewis
28601 Chagrin Boulevard, Suite 500
Cleveland, Ohio 44122

*Attorneys for Plaintiffs
Jutte Electric, Ltd. and Southwest Marine
and General Insurance Company*

David M. Rickert
Dunlevey Mahan & Furry
110 North Main Street
Dayton, Ohio 45402-1738

Attorney for Third-Party Defendant SHP

Michael J. Kelley
Lane, Alton & Horst, LLC
Two Miranova Place, Suite 500
Columbus, Ohio 43215-7052

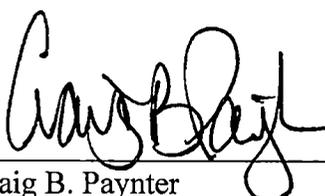
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Berardi Partners, Inc.*

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Columbus, Ohio 43215-3130

*Attorneys for Defendant/Third-Party
Plaintiff Ohio School Facilities
Commission*

George Carr, Of Counsel
Janik LLP
9200 South Hills Boulevard, Suite 300
Cleveland, Ohio 44147

*Attorney for Third-Party (Fourth-Party)
Defendant G. Stephens, Inc.*



Craig B. Paynter

SUBCONSULTANT AGREEMENT

THIS AGREEMENT is made as of April 26, 2010 by and between Bovis Lend Lease, Inc., having its office at 111 West Rich Street, Suite 280, Columbus, Ohio 43215 ("Bovis") and G. Stephens, Inc. 133 N. Summit Street, Akron Ohio, 44304. ("Subconsultant").

WITNESSETH

WHEREAS, Bovis has been retained by The Ohio School Facilities Commission (the "Owner") to perform certain Construction Management Services in connection with the Ohio State School For The Blind and The Ohio School For The Deaf New Academic and Residential Dorm Building Project. (the "Project").

WHEREAS, it is the desire of the parties to enter into an agreement whereby Subconsultant shall perform a portion of the services required to be performed by Bovis pursuant to the Owner/Bovis Agreement; and

WHEREAS, Subconsultant has represented to Bovis that Subconsultant has the requisite skill, manpower and resources to provide such services.

NOW THEREFORE, in consideration of the mutual covenants and promises herein and other good and valuable consideration, the parties agree as follows:

1. The Work

1.1 Bovis hereby engages Subconsultant to act as an independent contractor to provide services to the Project as specifically set forth in the Scope of Services attached hereto as Schedule A.

1.2 The Owner/Bovis Agreement is incorporated by reference herein and specifically made a part of this Agreement.

2. Compensation and Payment

2.1 Subconsultant shall be compensated for the services performed and reimbursed for costs incurred pursuant to this Agreement in an amount and to the extent set forth in Schedule A & C. The total of this contract is not to exceed \$203,071.50

B. Subconsultant shall submit to Bovis monthly requisitions for progress payment, including invoices and all receipts, affidavits of payment, waivers of lien and any other documentation required by Bovis or Owner.

2.2 Subconsultant agrees to provide all services under this Agreement as an independent contractor and to pay all costs, taxes and expenses incurred in the performance of this Agreement unless otherwise provided herein. Nothing in this Agreement or the Owner/Bovis Agreement shall be deemed to be construed as creating a joint venture or other partnership relationship between Bovis and Subconsultant.

2.3 SUBCONSULTANT UNDERSTANDS AND AGREES THAT BOVIS SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY REASON WHATSOEVER FOR ANY AMOUNTS DUE OR CLAIMED TO BE DUE TO SUBCONSULTANT EXCEPT TO THE EXTENT THAT BOVIS HAS ACTUALLY RECEIVED FUNDS FROM OWNER. RECEIPT OF SUCH FUNDS BY BOVIS SHALL BE A CONDITION PRECEDENT TO BOVIS' LIABILITY AND RESPONSIBILITY TO PAY SUCH FUNDS TO SUBCONSULTANT.

2.4 The acceptance by Subconsultant of final payment under this Agreement, or any final payment due on earlier termination of this Agreement under Article 6 hereof, shall constitute a full and complete release of Bovis and Owner from any and all claims, demands and causes of action whatsoever which Subconsultant and/or its successors or assigns have or may have against Bovis and Owner under the provisions of this Agreement, it being expressly understood and agreed that termination of this Agreement pursuant to Article 6 hereof shall not give rise to any claim by Subconsultant or its sub-subconsultants against Bovis or Owner for damages, compensation or otherwise, and that under such circumstances, Bovis' liability hereunder on account of any and all services rendered

hereunder shall be limited to the payments set forth in such Article 6.

3. Insurance

3.1 Subconsultant shall provide all insurance as set forth in Schedule B attached hereto. No payment shall be made to Subconsultant under this Agreement until Bovis has received evidence that the required insurance is in place.

4. Indemnification

4.1 To the extent permitted by law, Subconsultant shall indemnify, and hold Bovis and Owner, their officers, directors and employees (the "Indemnitees"), harmless of and from liability, damage, loss, claim, demand, action and expense (including reasonable legal fees and disbursements) sustained or incurred by Bovis or Owner and to the extent arising out of or in connection with the negligent acts, errors or omissions of, or breach of this Agreement by Subconsultant, its agents or employees. With respect to professional obligations, however, Subconsultant shall only be required to indemnify Bovis from liability damage and claims.

5. Assignment

5.1 Subconsultant shall not assign nor sublet the Agreement as a whole, nor assign any monies due or to become due under the Agreement, without the prior written consent of Bovis. Any such assignment or subletting of the Agreement or of monies due under the Agreement without the prior written consent of Bovis shall be void, and the purported assignee shall acquire no rights in, under or to the Agreement or monies.

6. Termination

6.1 This Agreement may be terminated by Bovis, with or without cause, at any time upon 10 working days written notice to Subconsultant. If this Agreement is so terminated, Bovis shall pay to Subconsultant all amounts due to Subconsultant under this Agreement prior to the effective date of termination and not yet reimbursed by Bovis to the extent Bovis is entitled to and receives such amounts from the Owner. Bovis shall not be liable for any costs incurred by

Subconsultant subsequent to the effective date of termination. In the event of such termination and payment in full all sums due subconsultant, Bovis and the Owner shall be entitled to retain all data theretofore received or developed pursuant to this Agreement.

6.2 This Agreement may be terminated by either party at any time upon seven (7) days written notice by registered or certified mail, return receipt requested. The notice shall contain a stated cause and the notified party may cure its default within such period (or commence to and expeditiously continue to cure same if such default cannot be cured within 30 days), in which event the termination notice shall be deemed null and void.

7. Legal Requirements

7.1 Subconsultant shall endeavor to comply, consistent with its professional standard of care, and cooperate with Bovis, other consultants, and/or Owner in complying with any and all requirements of law, code, permit, regulation, rule, order, judgment, decree, ordinance, or provision of any federal, state or local government, agency, authority, or court pertaining to the services to be performed hereunder ("Legal Requirements").

8. Advertising

8.1 Subconsultant may not use the name of Bovis, the Owner or the Project in any advertising, publicity and/or press releases or otherwise without the prior written consent of Bovis.

9. Audits

9.1 Except for lump sum contracts, Bovis and the Owner shall have the right to perform, or cause to be performed, audits of the books and records of Subconsultant in connection with this agreement and inspection of all places where work is undertaken in connection with this Agreement. Subconsultant shall keep such books and records available for such purpose for three (3) years after the conclusion of its performance under this Agreement.

10. Confidentiality; Work-Product

10.1 Subconsultant will endeavor to treat all Project information that becomes known or is made available to Subconsultant in a

confidential manner. Subconsultant and its employees or subcontractors will not copy, use or disclose this information except if part of the process of consulting under this Agreement.

10.2 All materials prepared by Subconsultant as part of the Work shall be owned by Bovis or the Owner according to the agreement between Owner and Bovis. Subconsultant shall not copy, use or sell these materials without Bovis' or Owner's prior written consent. Bovis or Owner shall retain all common law, copyright, statutory and other reserved rights with respect to such materials, and Subconsultant agrees to execute, or cause execution of, such documents and agreements as may, in Bovis' or Owner's judgment, be necessary to transfer to or vest in Bovis or Owner all such rights. Subconsultant shall furnish copies of all materials as requested by Bovis. However, Bovis nor Owner shall utilize Subconsultants work product on any other project without Subconsultants written approval which shall not be unreasonably withheld. Subconsultant shall not be responsible for unauthorized subsequent use by Owner or Bovis or alterations not made by the Subconsultant.

11. Acceptance of Qualifications

11.2 Subconsultant shall replace assigned Project personnel at any time during the work deemed by Bovis to be unsuitable for the work for any reason. In such case, Subconsultant shall promptly submit the name and qualifications of a replacement to Bovis for approval.

12. Notices

12.1 Any notice, approval, consent, acceptance, request, demand or statement hereunder from either party to the other shall be in writing and shall be deemed given when delivered by hand or overnight express mail service to the other party with an appropriate receipt obtained, addressed to the parties at the addresses on the first page of this Agreement and to the attention of the contact personnel as follows:

To Bovis:

Bovis Lend Lease, Inc.
111 West Rich Street
Suite 280
Columbus, Ohio 43215
Attn: James A. Swartzmiller, Jr.
Project Executive

To Subconsultant:

G. Stephens, Inc.
133 North Summit Street
Akron, OH 44304
Attn: Glen Stephens
President

13. Miscellaneous

13.1 This agreement constitutes the entire agreement and understanding of the parties, superceding all prior communications, whether written or oral. This Agreement may not be orally amended, modified or terminated. No amendment or modification shall be binding upon Bovis unless signed by its President, Senior Vice President or Vice President. This Agreement shall bind any successors and assigns of the respective parties.

13.3 This Agreement shall be governed by the laws of the State of Ohio (without regard to its choice of law provisions) and all disputes shall be attempted to be resolved by mediation as a prerequisite to litigation in an Ohio court of competent jurisdiction.

13.4 Nothing contained in this Agreement shall be deemed to create a contractual relationship with or a cause of action in favor of any third party against Bovis or Subconsultant.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, the day and year first above written.

G. Stephens, Inc.

By: _____

Printed Name: Glen L Stephens

Title:

Bovis Lend Lease, Inc.

By: _____

Printed Name: George Keppler

Title: Sr. Vice President

SCHEDULE A
SCOPE OF SERVICES

To assist Bovis Lend Lease, Inc. in the performance of construction management services for the Project as required by the Owner/Bovis Agreement Subconsultant shall assist in providing:

1. Provide Scheduling Services for the Ohio State School For The Blind and the Ohio School For The Deaf New Academic and Dormitory Projects in Columbus Ohio.
2. Scheduling Services shall consist of baseline bid schedule creation, creation of the "Contractor Approved" Project Construction Schedule based on Contractor input through sign-off of contractor schedule and schedule updating at a minimum of two times per month and as needed or whenever a recovery or re-sequencing is required per the contract documents. G. Stephens will utilize Pre-Construction Schedulers and Project Managers, per the rate schedule attached as Schedule C, as needed for creation of the baseline bid schedules. G. Stephens will provide one full time on-site staff member for all work outside the base bid schedule and once trailers are mobilized on site. The on-site staff member will be utilized for scheduling services as described herein and for additional services typically provided by a P.E. as time permits throughout the duration of the project after scheduling responsibilities are met. Services to commence on or about November 2009 through June 2011.
3. Rates are to be equal to rates submitted February 15, 2010 via e-mail and attached as Schedule C [based on a 160 hour month, for actual hours worked up to eight hours a day, 40 hours per week. Any additional hours in excess of 40 hours per week (overtime) will require prior authorization from Bovis Project Manager. G. Stephens to be responsible to meet the project time frame and hours per the implementation plan through June 2011 as shown in exhibits D and E. Rates to be monitored to meet the same requirements with Bovis' requirements of the OSFC contract as included via attachment G. Fees are included in the hourly billing rate as established in exhibit H and Schedule C. Total cost of Contract shall not

exceed \$202,740.00 including fee, labor, taxes, Fringes, Insurance, Workers Compensation, etc and a \$2,500.00 reimbursable allowance.

4. All reimbursable expenses to have prior approval from Bovis Lend Lease, Inc. and be in accordance with the approved reimbursable schedule per the OSFC signed agreement included in the implementation plan submitted by Bovis Lend Lease to OSFC. A \$2,500.00 allowance is incorporated into the base contract to cover expenses per the procedures described previously. Any adjustments above or below the allowance incorporated into the project will be done via change order to this contract.
5. Job duties to include all aspects of the scheduling requirements as outlined in the OSFC Contract between Bovis Lend Lease, Inc. and the Ohio School Facilities Commission attached as Exhibit G and as called out within the specifications per section 013200 attachment H, Submittal review and processing, Change Order processing, RFI processing, Project Documentation and other typical job duties of a P.E.
6. It will be G. Stephens responsibility to adhere to the implementation plan provided as Exhibit E and to maintain service throughout the project. It will be G. Stephens responsibility to manage to the hours and cost as specified in the implementation plan made part of this contract.

Bovis shall have final prior approval of all Sub-Consultant personnel assigned to this project. No changes in staff assignments or replacement of personnel shall occur without the written approval of Bovis.

SCHEDULE B
INSURANCE REQUIREMENTS

Agreement and for a period of five (5) years after completion of the Project.

Subconsultant shall procure and maintain, at its expense, during the terms of the agreement, the following insurance, with at least the limits of liability as set forth below, and upon such other terms and conditions as are customarily included in such lines of insurance written for companies in the same type of business as Subconsultant:

- (a) Worker's compensation insurance complying with the laws of the State of Ohio and any other state of applicable jurisdiction;
- (b) Employer's liability insurance in the amount of \$500,000;
- (c) Automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and for property damage combined;
- (d) Commercial general liability insurance including contractual liability insurance in the combined single limit of \$1,000,000 per occurrence and in the aggregate to apply on a per project basis. Such insurance to include completed operations insurance;
- (e) Excess liability in the amount of \$2,000,000 per occurrence/aggregate; and
- (f) Professional liability insurance. The Professional Liability Insurance shall be written by a nationally recognized insurance company authorized and qualified to do business in the State of Ohio and rated "A" or better by A. M. Best & Company, with minimum limits of \$1,000,000 with a maximum deductible or self insured retention of \$50,000. The Professional Liability Insurance Policy shall provide that the insurance carrier will promptly notify Bovis and the Owner of any failure by Subconsultant to renew such policy on each anniversary date of the policy for a period of at least five (5) years from the completion of the Project. Subconsultant shall keep the policy in full force and effect for a period of five (5) years following completion of the Project. Subconsultant shall deliver to Bovis a certificate of insurance evidencing the aforesaid policy at least once each year following the date of this

Subconsultant shall name Bovis and Owner as additional insureds as respects insurance coverage under item (d) and (e) above for any liability incurred as a result of Subconsultant's work and services under this agreement. All Subconsultant's insurance shall include a waiver of subrogation. Subconsultant shall provide Bovis and Owner with a duly authorized and issued insurance certificate upon execution of this agreement, and from time to time thereafter at the request of Bovis confirming the foregoing insurance is in force and effect. Upon demand, Subconsultant shall provide copies of all insurance coverage referenced in such duly authorized and issued certificate. Any insurance carrier shall provide Bovis and Owner with any notice of cancellation or change of coverage regarding the policies specified above within thirty (30) days of any such action. During the course of Subconsultant's Agreement, and for a period of five (5) years subsequent to the date of completion of the Project, Subconsultant shall promptly provide to Bovis written notice of any claim asserted, the entry of any settlement, or the rendering of any judgment which may be covered by the insurance policies listed above and which either individually or in the aggregate exceeds twenty five percent (25%) of the available policy limits of any such insurance policies. If required by Bovis and provided same is available at reasonable market rates, Subconsultant shall obtain additional insurance coverage so that coverage available equals the amounts specified in paragraph (f) above.

**G. Stephens Inc.
 Schedule C
 Compensation Breakdown
 Ohio State School for The Blind and
 Ohio School for The Deaf New Buildings
 Project**

Contract Breakdown

Hourly Personnel Billing Rates

<u>Position</u>	<u>Period</u>	<u>Rate</u>
Pre-Con Scheduler	December 2009 - February 2010	\$109.66
Project Manager	December 2009 - February 2010	\$67.60
Project Manager	February 2010 - May 2011	\$79.20
PE/Scheduler	February 2010 - August 2010	\$57.20
PE/Scheduler	September 2010 - May 2011	\$59.49

IMPLEMENTATION PLAN

	<u>Estimated Hours</u>	<u>Estimated Cost</u>
Ohio State School for the Blind and Ohio School for the Deaf DPE and Fee	2,640	\$200,240.00(Total, Not-To-Exceed)
Reimbursable Expenses Allowance		\$2,500.00
Total Contract		<u>\$202,740.00</u>

All invoices shall be submitted on a monthly basis and are subject to terms as set forth in Article 5 of the Owner/Bovis Lend Lease Agreement.

1. Consultant shall reconcile hourly wage and associated cost.
2. Hours/Costs in excess of the total amount of this agreement to be approved by Bovis Lend
3. Rates per e-mail dated 2/15/10 with durations modified to meet implamentation plan.
4. Hourly Rates to include subconsultant's direct personnel expenses and fee.
5. This agreement reflects the participation for Final agreement #3. This agreements reflects the Bovis Lend Lease agreement with the Ohio School Facilities Commission and is incorporated as part of this agreement.

Exhibits Attached

Exhibit A-Standard Pay Application Form

Exhibit B- Standard Lien Waiver Form

Exhibit C- Standard Final Lien Waiver Form

Exhibit D-Bovis Lend Lease/Owner approved Implementation Plan – Executive Summary

Exhibit E-Bovis Lend Lease/Owner approved Implementation Plan – Summary

Exhibit F-Bovis Lend Lease/Owner approved Implementation Plan – Reimbursables

Exhibit G-Signed Bovis Lend Lease/Owner Agreement Dated 11/18/09.

Exhibit H- Construction Schedule specification section 013200

