

TOLLING AGREEMENT
DECATUR PUBLIC SCHOOL DISTRICT #61
EISENHOWER HIGH SCHOOL

ATHLETIC FIELD CONDITIONS

This tolling agreement (the “Agreement”) is executed on the date last written below, by and between:

- i. The Board of Education of Decatur Public School District #61, (“District”); and
- ii. BLDD Architects, Inc. (“BLDD”);

collectively, the “Parties”).

Recitals

A. The District is a body politic and corporate, organized and existing under the Illinois School Code, 105 ILCS 5/10-2.

B. The District is the owner of an ongoing construction Project commonly known as “Renovations of and Additions to the MacArthur and Eisenhower High Schools,” BLDD Project Nos. 091-EX03.400 and 091-EX03.401 (“Project”), and the Parties provided services thereunder for renovations relating to the District’s Eisenhower High School (“Eisenhower”).

C. BLDD is an Illinois corporation which at all relevant times engaged in the practice of architecture in the County of Macon, State of Illinois, for the Project at Eisenhower.

D. On or about January 19, 2011, the District entered into a contract with BLDD, pursuant to which BLDD agreed to design and administer the Project (the “Architect Agreement”).

E. The Parties are currently investigating and/or working in cooperation with each other to address and attempt to correct soil and/or sod/turf defects at the Eisenhower athletic field that have become manifest with respect to that portion of the Project.

F. The Parties have a common interest in continuing to work together to correct these issues without immediately resorting to litigation or other forms of dispute resolution.

NOW THEREFORE, in consideration of these recitals, and the terms and conditions contained in this Agreement, and intending to be legally bound, the Parties agree as follows:

1. **Tolling Date and Tolling Period.** The date on which all Parties have executed this Agreement shall be defined as the “Tolling Date.” All statutes of limitation, statutes of repose, contractual periods of limitation, contractual periods of notice, and other periods of limitation or notice, and all defenses based upon laches and/or estoppel, or which otherwise relate to the lapse of time, whether contractual, statutory, legal, equitable, or otherwise, which

are applicable to all known and unknown claims and counterclaims that have been or may be asserted by one Party against any other Party or Parties in connection with the Architect Agreement, the Contractor Agreement, the Contract Documents, and/or the Project components relating to Eisenhower High School (collectively the “Timing Defenses”), are hereby tolled and shall cease to accrue or run until sixty (60) days after expiration and termination of this Agreement, as provided below (the “Tolling Period”).

2. **Expiration of Agreement.** This Agreement shall expire when any Party hereto (the “Notifying Party”) delivers written Notice (“Notice of Termination”) to all of the other Parties in accordance with Section 3 hereof.

3. **Termination of Agreement.** Any Party may, at any time and for any reason in its sole discretion, terminate this Agreement by delivering a Notice of Termination, via certified mail with return receipt requested, to each of the designees for the other Parties, at their addresses below. Any Party may change its respective designee, and/or that designee’s address, by sending written notice of such change(s) to each of the other designees at their addresses below.

Notice to the District shall be furnished to:

Dr. Paul D. Fregeau
Superintendent
Decatur Public School District #61
101 West Cerro Gordo Street
Decatur, Illinois, 62523

And to:

Eugene J. Hanses, Jr., Esq.
Kenneth M. Flore, Esq.
Robbins, Schwartz
510 Regency Centre
Collinsville, Illinois 62234

Notice to BLDD shall be furnished to:

Steve Oliver, President
BLDD Architects, Inc.
100 Merchant Street
Decatur, Illinois 62523

And to:

Brad Keller
Heyl Royster
P.O. Box 6199

4. **Effect of Termination.** In the event of termination hereunder, any and all Timing Defenses applicable to all claims and counterclaims that may be asserted by one Party against any other Party or Parties in connection with the Architect Agreement, the Contractor Agreement, the Contract Documents, and/or the Project, shall recommence to run on the date that is sixty (60) days after the date on which the Notice of Termination is delivered to all other Parties.

5. **Pre-Existing Timing Defenses.** This Agreement, and the Tolling Period established in Section 1, shall not nullify or impair any defense or affirmative defense that was available to any Party prior to the Tolling Date, except to the extent of the Tolling Period established in Section 1.

6. **Understanding of Agreement and Advice of Counsel.** The Parties acknowledge that they each understand their right to discuss all aspects of this Agreement with their legal counsel, and have done so if desired. The Parties acknowledge that they have carefully read and fully understand all provisions of this Agreement; that they have the capacity to enter into this Agreement; and that they voluntarily enter into this Agreement.

7. **Binding Effect and Interpretation.** The Parties intend this Agreement to be legally binding upon them and their legal representatives and successors and assigns. The provisions of this Agreement are severable and no provision shall be affected by the invalidity of any other provision. In the event any court or other tribunal determines any provision of this Agreement to be ambiguous, the ambiguity shall not be construed against any Party.

8. **No Admission of Liability.** This Agreement is not intended as an admission of any wrongdoing or liability by any Party, and each Party reserves all claims, defenses, rights and remedies, except as expressly provided in this Agreement.

9. **Choice of Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Illinois, without regard to conflict of law principles.

10. **Integration.** This Agreement contains the entire agreement between the Parties with respect to its subject matter. All prior agreements, whether oral or written, are void to the extent not contained in this Agreement.

11. **Execution in Counterparts.** This Agreement may be executed in counterparts. When all counterparts have been executed by all Parties and exchanged with all Parties electronically or in hardcopy, this Agreement shall be deemed fully executed and binding as if all Parties had signed and exchanged the same originals.

12. **Authority to Execute.** Each signatory to this Agreement represents in his/her individual capacity that s/he has express authority from the respective Party named directly above his/her signature to execute this Agreement for and bind that Party to this Agreement.

Executed on the date last written below:

Board of Education of Decatur Public School District #61

By: _____

Its: _____

Date: _____

BLDD Architects, Inc.

By: _____

Its: _____

Date: _____