



**Board of Education  
Decatur Public School District #61**

<b>Date:</b> August 22, 2017	<b>Subject:</b> Tolling Agreement – HVAC Units at Eisenhower and MacArthur High Schools
<b>Initiated By:</b> Mike Sotiroff , Interim Director of Buildings and Grounds	<b>Attachments:</b> Tolling Agreement
<b>Reviewed By:</b> Dr. Paul Fregeau, Superintendent	

**District Goal #3: Align organizational structure and resources to improve efficiency, effectiveness, and the financial health of the school district**

**BACKGROUND INFORMATION:**

In January, 2011, the District entered into a contract with BLDD to design and administer the project know as “Renovations and Additions to the MacArthur and Eisenhower High Schools”.

BLDD engaged C.M. Engineering as a consultant to design the Heating, Ventilation and Air Conditioning (HVAC) systems for the project. District Maintenance Department staff and BLDD are currently working together to identify and correct problems with the HVAC systems that became apparent once the systems went into operation. At this time, all parties are committed to correcting the problems.

**CURRENT CONSIDERATIONS:**

The timeframe established in the Illinois Statute of Limitations to file a lawsuit for the Eisenhower High School and MacArthur High School Project will expire in January, 2018 and March, 2019 respectively. Since all parties have a common interest in continuing to work together to correct issues without resorting to litigation or other forms of dispute resolution, Administration and the District’s legal counsel recommend entering into a Tolling Agreement with BLDD. The Tolling Agreement is a legal document which allows for the pausing or delaying of the running of the period of time set forth by a statute of limitations. The Tolling Agreement expires automatically on the date that is two years after the Tolling Date. Upon expiration of the Agreement, the District has 60 days to file a claim if necessary.

**FINANCIAL CONSIDERATIONS:**

The Tolling Agreement provides additional time to ensure the services purchased and paid for by the Board of Education for this project result in HVAC systems that operate as specified.

**STAFF RECOMMENDATION:**

The Administration respectfully requests the Board of Education approve the Tolling Agreement for HVAC Units at Eisenhower and MacArthur High Schools as presented.

**RECOMMENDED ACTION:**

- Approval
- Information
- Discussion

**BOARD ACTION:** \_\_\_\_\_

**TOLLING AGREEMENT**

**DECATUR SCHOOL DISTRICT**  
**EISENHOWER HIGH SCHOOL**  
**MACARTHUR HIGH SCHOOL**

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

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 Projects at Eisenhower and MacArthur, with XL Specialty as its insurer.

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 Projects (the “Architect Agreement”). BLDD engaged C.M. Engineering, a Missouri Corporation, as a consultant with respect to the performance of services for the District’s Projects, specifically as to HVAC systems, and as contemplated by the Architect Agreement.

E. The Parties are currently investigating and/or working in cooperation with each other to correct heating, ventilation, air conditioning and/or other problems and/or defects that have become manifest in certain elements of the Projects at both Eisenhower High School and MacArthur High School.

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 and/or the Projects' components relating to Eisenhower High School and/or MacArthur High School (collectively the "Timing Defenses"), are hereby tolled and shall cease to accrue or run until the earlier of sixty (60) days after expiration or termination of this Agreement, as provided below (the "Tolling Period").

2. **Expiration of Agreement.** This Agreement shall expire automatically on the date that is two (2) years after the Tolling Date, unless the Agreement is sooner terminated as provided below or unless the parties agree in writing to an extension of this Agreement's duration.

3. **Termination of Agreement.** Any Party may, at any time and for any reason in its sole discretion, terminate this Agreement by delivering written notice of termination, via certified mail with return receipt requested, to each of the designees for the 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:**

Todd A. Covault, EdD  
Chief Operational Officer  
Decatur Public School District #61  
101 West Cerro Gordo Street  
Decatur, Illinois, 62523

**And to:**

Kenneth Florey, Esq.  
Eugene J. Hanses, Jr., 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  
Peoria, IL 61601-6199

4. **Effect of Expiration or Termination.** In the event of expiration under Section 2 or termination in accordance with Section 3, 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, the Performance Bond and/or the Project, shall recommence to run on the date that is sixty (60) days after such expiration occurs or such notice of termination is received by each of the Parties' respective designees identified above.

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: PRINCIPAL

Date: 8.11.17



## Board of Education Decatur Public School District #61

<b>Date:</b> August 22, 2017	<b>Subject:</b> Retrofit Agreement – MacArthur and Eisenhower High School
<b>Initiated By:</b> Mike Sotiroff , Interim Director of Buildings and Grounds	<b>Attachments:</b> Retrofit Testing Agreement
<b>Reviewed By:</b> Dr. Paul Fregeau, Superintendent	

**District Goal #3: Align organizational structure and resources to improve efficiency, effectiveness, and the financial health of the school district**

**BACKGROUND INFORMATION:**

In January, 2011, the District entered into a contract with BLDD to design and administer the project known as “Renovations and Additions to the MacArthur and Eisenhower High Schools.”

BLDD engaged C.M. Engineering as a consultant to design the Heating, Ventilation and Air Conditioning (HVAC) systems for the project. District Maintenance Department staff and BLDD are currently working together to identify and correct problems with the HVAC systems that became apparent once the systems went into operation.

**CURRENT CONSIDERATIONS:**

District Maintenance Staff continue to monitor and document temperature and humidity levels in the high schools. Data indicates the temperature in the classrooms are cool, but the humidity level is too high resulting in an uncomfortable learning environment. Each classroom is equipped with a heat pump manufactured by Bard, Inc. that provides both heating and cooling to the space. C.M. Engineering specified the Bard units without “hot gas reheat”. The hot gas reheat feature is designed to control humidity at a specific level in the conditioned space. Bard engineers designed a way to retrofit their equipment to include the hot gas reheat feature. To test the equipment retrofit, the Bard unit in two classrooms at each high school has been retrofitted with the hot gas reheat feature. Subsequent temperature and humidity data collection in the affected classrooms indicate comfortable levels exist. Now that school is in session, the classrooms with hot gas reheat will continue to be monitored to ensure the Bard units are capable of maintaining optimal temperature and humidity levels when students are using the spaces.

**FINANCIAL CONSIDERATIONS:**

BLDD has agreed to pay Twenty Five Thousand Dollars (\$25,000.00) to the District for costs associated with the installation and testing of an equipment retrofit for a sample of HVAC units at Eisenhower High School and MacArthur High School.

**STAFF RECOMMENDATION:**

The Administration respectfully requests the Board of Education approve the Retrofit Testing Agreement in substantially the form as presented and contained in the Board packet, subject to final approval by the Board’s legal counsel.

**RECOMMENDED ACTION:**

- Approval
- Information
- Discussion

**BOARD ACTION:** \_\_\_\_\_

**DRAFT: 08/04/17**

**RETROFIT TESTING AGREEMENT  
BY AND BETWEEN  
DECATUR SCHOOL DISTRICT NO. 61 AND BLDD ARCHITECTS, INC.  
FOR  
EISENHOWER HIGH SCHOOL AND MACARTHUR HIGH SCHOOL**

This Retrofit Testing Agreement (“Agreement”) is executed on the date last written below, by and between The Board of Education of Decatur Public School District No. 61, (“District”) and BLDD Architects, Inc. (“BLDD”), collectively the “Parties”.

**Recitals**

**WHEREAS**, the District is a body politic and corporate, organized and existing under the Illinois School Code, 105 ILCS 5/10-2; and

**WHEREAS**, the District is the owner of ongoing construction projects commonly known as “Renovations of and Additions to the MacArthur and Eisenhower High Schools,” BLDD Project Nos. 091-EX03.400 and 091-EX03.401 (collectively “Projects”) and BLDD provided services thereunder for the District’s Eisenhower High School and MacArthur High School renovations; and

**WHEREAS**, 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 Projects at Eisenhower and MacArthur; and

**WHEREAS**, on or about January 19, 2011, the District entered into a contract with BLDD, pursuant to which BLDD agreed to design and administer the Projects (the “Architect Agreement”); and

**WHEREAS**, the Parties are currently investigating and working in cooperation with each other to correct heating, ventilation, air conditioning and/or other problems and/or defects that have become manifest in certain elements of the Projects at both Eisenhower High School and MacArthur High School; and

**WHEREAS**, 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. **Incorporation of Recitals.** The preamble recitals of this Agreement are hereby adopted and incorporated herein by the Parties.

2. **Retrofit Testing Work.** In connection with a claim by District relating to the problems and/or defects referenced above, BLDD has agreed to pay Twenty Five Thousand Dollars (\$25,000.00) to the District for costs associated with the installation and testing of an equipment retrofit for a sample of HVAC units at District's Eisenhower High School and at District's MacArthur High School.
3. **No Admission of Liability.** The Parties agree that the payment made by BLDD pursuant to this Agreement is being made as a sign of good faith in ongoing negotiations, is not an admission of liability on the part of BLDD, and is not to be admissible in any future litigation. Moreover, neither this Agreement nor any action performed pursuant to this Agreement shall be construed as an admission of any wrongdoing or liability by either Party. The Parties agree that the work described in this Agreement, together with the related negotiations leading to this Agreement, are expressly subject to the provisions of Illinois Supreme Court Rule 408 relating to Compromises and Offers of Compromise.
4. **No Waiver.** The Parties agree and acknowledge that neither Party, whether by executing this Agreement, accepting its terms, and/or tendering or receiving payment hereunder, is waiving any claim, counterclaim, defense, action, right, remedy, and/or any other demand it may have against the other Party with respect to the underlying Projects. Nothing contained in this Agreement, nor any action contemplated hereunder, shall be construed as any waiver.
5. **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.
6. **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.
7. **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.
8. **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.
9. **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.



10. **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 to 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: \_\_\_\_\_