

# MEDIATION

November 15, 2007

*Ingle-Barr, Inc. v. OSFC and the  
Eastern Local School District*

*And*

*Ingle-Barr, Inc. v. OSFC and the  
Scioto Valley Local School District*

KEGLER BROWN  
HILL & RITTER  
A LEGAL PROFESSIONAL ASSOCIATION

OUR FIRST ORDER OF BUSINESS IS KNOWING YOURS

tabbles®

13

EXHIBIT

# Scioto Valley School Projects

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General Trades Contract:  
\$2.683 Million

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Site Improvements Contract:  
\$332,232.00

Scioto Valley:  
\$2.683 Million General Trades Contract between Ingle-Barr  
and the State of Ohio

State of Ohio  
Ohio School Facilities Commission

CONTRACTOR CONTRACT

THE CONTRACT, evidenced by this Contract Form, made and entered into by and between:

*Ingle-Barr, Inc.*

(the "Contractor") and the State of Ohio (the "State"), through the President and Treasurer of the Scioto Valley Local School District Board (the "School District Board") on the date executed by the School District Board.

1.1 The Contractor shall perform the entire work described in the Contract Documents and reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, for:

ARTICLE 1

1.1 The Contractor shall perform the entire Work described in the Contract Documents and reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, for:

Bid Package 31: General Trades  
Scioto Valley Local School District  
Addition & Renovations to  
Jasper Elementary  
Piketon, Ohio

to additions and deductions by Change Order as provided in the Contract Documents, the amount of \$2,683,000.00 (the "Contract Price"), based upon the Bid Form, dated July 30, 2002 submitted

**General Trades Contract Completion Date: Nov. 4, 2003**  
**General Trades Liquidated Damages: \$2,000 per day**

ARTICLE 3

3.1 The Contractor shall diligently prosecute the Work and shall complete all Work so that Contract Completion can occur on or before November 4, 2003, unless the Contractor timely requests and

within the established time for Contract Completion, and that each applicable portion of the Work shall be completed upon the respective milestone completion date, unless the Contractor timely requests and the School District Board grants an extension of time in accordance with the Contract Documents.

3.3 Upon failure to have all Work completed within the period of time above specified, or failure to have the applicable portion of the Work completed upon any milestone completion date, the State shall be entitled to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the following table for each and every day thereafter until Contract Completion, unless the Contractor timely requests and the School District Board grants an extension of time in accordance with the Contract Documents.

3.3 Upon failure to have all Work completed within the period of time above specified, or failure to have the applicable portion of the Work completed upon any milestone completion date, the State shall be entitled to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the following table for each and every day

More than \$10,000,000	\$3,000
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3.4 The amount of Liquidated Damages is agreed upon by and between the Contractor and the State

More than \$2,000,000 to \$5,000,000	\$2,000
--------------------------------------	---------

4.1 The Contract Documents embody the entire understanding of the parties and form the basis of the Contract between the State and the Contractor. The Contract Documents shall be considered to be incorporated by reference into this Contract Form as if fully rewritten herein.

4.2 The Contract and any modification, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio.

4.3 If any term or provision of the Contract, or the application thereof to any person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other persons or

# Site Improvements Contract \$332,232 Contract Completion January 15, 2004

State of Ohio  
Ohio School Facilities Commission

~~CONFIDENTIAL CONTRACT~~

THE CONTRACT, evidenced by this Contract Form, made and entered into by and between:

*Ingle-Barr, Inc.*

(the "Contractor") and the State of Ohio (the "State"), through the President and Treasurer of the Scioto Valley Local School District Board (the "School District Board") on the date executed by the School District Board.

Documents, for:

## Bid Package 37; Site Improvements

Piketon, Ohio

### ARTICLE 2

- 2.1 The School District Board shall pay the Contractor for the performance of the Contract, subject to additions and deductions by Change Order as provided in the Contract Documents, the amount of \$332,232.00 (the "Contract Price"), based upon the Bid Form, dated June 28, 2002 submitted by the Contractor.

Base Bid \$332,232.00  
No Alternates

- 3.1 The Contractor shall diligently prosecute the Work and shall complete all Work so that Contract Completion can occur on or before January 15, 2004, unless the Contractor timely requests and the School District Board grants an extension of time in accordance with the Contract

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HILL & RITTER

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K-1

CM

December 2000

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# Scioto Valley Site Improvements Contract

## Liquidated Damages of \$500 Per Day

Documents.

3.3 Upon failure to have all Work completed within the period of time above specified, or failure to have the applicable portion of the Work completed upon any milestone completion date, the State shall be entitled to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the following table for each and every day thereafter until Contract Completion, unless the Contractor timely requests and the School District Board grants an extension of time in accordance with the Contract Documents.

More than \$50,000 to \$150,000	\$250
More than \$150,000 to \$500,000	\$500
More than \$500,000 to \$2,000,000	\$1,000
More than \$2,000,000 to \$5,000,000	\$2,000
More than \$5,000,000 to \$10,000,000	\$2,500
More than \$10,000,000	\$3,000

3.4 The amount of Liquidated Damages is agreed upon by and between the Contractor and the State because of the impracticality and extreme difficulty of ascertaining the actual amount of damage

### Contract Amount

### Dollars Per Day

\$1 to \$50,000

\$150

More than \$50,000 to \$150,000

\$250

More than \$150,000 to \$500,000

\$500

valid and enforced to the fullest extent permitted by law.

4.4 The Contract shall be binding on the Contractor and State, their successors and assigns, in respect to all covenants and obligations contained in the Contract Documents, but the Contract may not be assigned by the Contractor without the prior written consent of the School District Board.

K-2

CM

December 2000

# Both Projects Not Complete Until August 16, 2004

## First Cause Of Action – Breach Of Contract

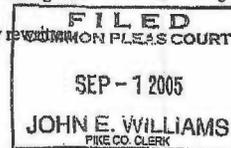
4. After mediation proceedings on May 10, 2005, Plaintiff IBI and Defendant School District Board, executed a written Agreement dated May 16, 2005, a copy of which is attached hereto, marked Exhibit "A", and incorporated herein by reference.
5. Under the provisions of Paragraph 1 of the parties' Agreement, Defendant School District Board agreed to pay to Plaintiff IBI "the total sum of Two Hundred Eighty-Five Thousand Dollars (\$285,000.00) . . . within five (5) business days after the School District Board's approval at a meeting (anticipated to occur on Monday, May 16, 2005) to vote its approval of this settlement agreement".

7. Paragraph 3 of the parties' Agreement provided that "The parties hereby acknowledge and agree that the School District Board accepted and occupied the entire Jasper Elementary School Project on August 16, 2004 (the "Completion And Acceptance Date") upon which date Final Completion by IBI occurred."

demands by Plaintiff IBI that it do so.

## Second Cause Of Action – Interest From "Final Completion" Date

9. Plaintiff IBI hereby incorporates by reference all of the allegations set forth in Paragraphs 1 through 8, inclusive, hereof as if the same were herein fully repeated.



# Forum Selection Clause in all Ingle-Barr-Ohio Contracts

## State of Ohio Ohio School Facilities Commission

### INSTRUCTIONS TO BIDDERS

#### ARTICLE 1 - CONTRACT INFORMATION

##### 1.1 PROJECT BID REQUIREMENTS

- 1.1.1 When the entire cost of the Project exceeds \$50,000, the School District Board is required by applicable law to solicit separate bids for, at least, the following branches of Work:

## 8.2 FORUM FOR MONEY DAMAGES

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

- 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 other Contractor performing Work on the Project. Each Contractor shall cooperate with the Architect, the Construction Manager and any other Contractors to minimize interference, disruption, hindrance or delay of any Work on the Project.

# Ingle-Barr Sues in Pike County

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- Eastern Local School District Board Moves to Dismiss
- Scioto Valley Local School District Board Moves to Dismiss
- Motions Pending



# Ingle-Barr Cashes First Pay App. #3 payment

Scoto Valley Local School District * P.O. Box 600										Check No. 77224	
INVOICE NUMBER	PO NUMBER	FI	FUND	FUNC	OBJ	SBCC	SUBJ	DEPT	PL	AMOUNT	NET AMOUNT
0000003	0054896	05	010	5500	423	9991	000000	000	00	000	\$ 104466.00
										TOTAL	\$ 104466.00

Vendor No. 032763 - INGLE-BARR, INC.  
MESSAGE:

Scoto Valley Local School District  
P.O. Box 600  
Piketon, Ohio 45661

Fifth Third Bank  
Waverly, Ohio

No. 77224

DATE 08/19/2004 .56-773/422

PAY

*VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID*

\$\*\*\*104,466.00

TO THE ORDER OF INGLE-BARR, INC.  
PO BOX 874  
CHILLICOTHE OH 45601

NON-NEGOTIABLE

Scoto Valley Local School District  
P.O. Box 600  
Piketon, Ohio 45661

INGLE-BARR, INC.  
PO BOX 874  
CHILLICOTHE OH 45601

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# 2nd Pay Application No. 3" Paid -- \$102,466

OUR # 21522

**Application and Certification for Payment**

To School District: Jasper Elementary School,  
3185 Jasper Rd.  
Project Name: Piketon, Ohio 45661

From Contractor: Ingle-Barr Inc.  
P.O. Box 874  
Chillicothe, Ohio 45601

Contract Number: \_\_\_\_\_  
Contract Date: \_\_\_\_\_

**Application No.: 03**

Construction Manager: Gilbane/Regency/Polytech  
Milverd, Ohio

Architect: \_\_\_\_\_

OSFC Project #: SITE WORK

**Contract Invoice Summary**

1. Original Contract Value	332,232.00	Total Value:
2. Net Change by Change Orders		Labor
3. Contract Value To Date	332,232.00	Material
4. Total Completed & Stored To Date	308,900.00	Completed Value:
5. Completed Labor Retainage (8%)		Labor
6. Stored Material Retainage		Material
7. Total Retainage	8,292.00	

**Current Payment Due 102,466.00**

11. Balance to Finish, including Retainage 31,624.00

Change Order Summary	Additions	Deductions
Total changes in previous months		
Total approved this month		
<b>Totals</b>		

**Net Changes by Change Order**

The Contractor certifies that the work covered by this pay request has been completed in accordance with the Contract Documents and that all progress payments previously paid by the State have been applied by the Contractor to discharge in full all of Contractor's obligations incurred in connection with the work covered by all prior pay requests.

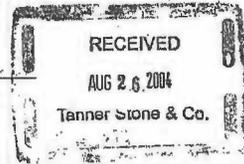
Contractor Signature: [Signature] Date: 8/18/04

Based upon on-site observations, the firms affirm that the work has progressed to the percentage of completeness indicated on the pay request.

Construction Manager: [Signature] Date: 8.22.04

Architect: [Signature] Date: 8-27-04

Approved by: School District Treasurer: [Signature] Date: 8.7.04



# Actual Payments were \$405,704.00

- Site Improvements Contract payments:

<u>Pay App.</u>	<u>Amount</u>	<u>Paid Date</u>	<u>Check #</u>
• #1:	\$106,548.00.	1/8/04	75769
• #2:	\$ 91,594.00.	4/19/04	76498
• #3:	\$104,466.00	8/19/04	77224
• 2nd "#3":	<u>\$102,466.00</u>	9/7/04	77368
	<b>\$405,704.00</b>		

- TOTAL Paid: \$405,074.00.
- Site Improvements Contract Sum: \$332,232.00.
- **Over-Payment (Before Backcharges): \$ 72,842.00**

# Ingle-Barr Hides Receipt of Payment

Law Offices of  
**Timothy G. Crowley**  
150 West Wilson Bridge Road  
Suite 101  
Worthington, Ohio 43085

Telephone 614-848-7883  
Fax 614-431-8120

March 25, 2005

Richard D. Cardwell, Esq.  
PECK SHAFFER & WILLIAMS, LLP  
175 South Third Street, Suite 600  
Columbus, Ohio 43215-3528

Re: Scioto Valley Local School District  
Jasper Elementary School  
Bid Package No. 37: Site Improvements  
OSFC Project No. 10-0067  
Ingle-Barr Project No. 21522

Dear Mr. Cardwell:

Pursuant to our recent telephone conferences, enclosed please find duplicate copies of the following documents related to the above project upon which my client, Ingle-Barr, Inc., is owed the sum of \$74,286.83:

A. "Contractor Contract" dated February 25, 2004 for \$332,232.00 Contract Price

The gross amount billed by Ingle-Barr was \$376,894.83. The total of payments received is \$302,608.00. Therefore, the balance due and owing is the \$74,286.83 stated above.

C. Application and Certificate for Payment documents totalling \$76,286.83 (of which \$2,000.00 has been paid):

1.	No. 4	\$43,980.68	current payment due
2.	No. 5	\$32,306.15	current payment due

The gross amount billed by Ingle-Barr was \$376,894.83. The total of payments received is \$302,608.00. Therefore, the balance due and owing is the \$74,286.83 stated above.

Please deliver the second set of copies to the Ohio School Facilities Commission for its review and consideration. In the event that this matter cannot be resolved without litigation in the Court of Claims, these documents will be incorporated by reference into Ingle-Barr's Complaint filed therein.

KEGLER BROWN  
HILL & RITTER  
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# Ingle-Barr Refuses to Credit the School Board and OSFC for the \$104,466 payment

Affidavit ¶15, Williams Affidavit ¶27 only serves to underscore Defendant's institutional

IBI could reasonably and justifiably assume that an institution that provides education would itself possess certain skills and study habits:

- Do your homework.
- Bring your books and materials to class.
- Know what subjects you will be tested on.
- Possess a proficiency in mathematics.
- Double check your answers before turning in your test for grading.

There Is No Basis For This Court To Reform Or Rescind The \$285,000.00 Settlement Agreement.

No teacher in Defendant's schools would accept a student's excuse that he or she reasonably and justifiably relied upon someone else (particularly not an adversary) to provide the test answers.

real estate because of previous owners' deeds. It has no application to the facts and legal considerations in the instant case.

The clear intent of the parties herein was to agree upon a "global settlement" of all claims related to the Jasper Project for a settlement sum of \$285,000.00 ["Affidavit Of Rodney

14

JRT

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RODNEY E. WILLIAMS  
PIKE CO. CLERK

# **Court of Common Pleas Rejects Ingle-Barr's arguments**

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- **Ingle-Barr Complaint Against Scioto Valley, seeking enforcement of the Settlement Agreement is dismissed, and the Agreement found null and void on grounds of fraud or mistake.**

# **Pike County Court Dismisses Ingle-Barr's Suit Against Scioto Valley for Fraud or Mistake**

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- **Ingle-Barr Refiles a Complaint in Pike County arising out of the Scioto Valley Projects in the Court of Common Pleas, this time as a Breach of Contract Action.**
- **School Board Moves to Dismiss on *Res Judicata* and Forum Selection Grounds.**
- **Court sets Oral Argument on the School Board's Motion to Dismiss Set for November 27, 2007.**

# Scioto Valley Contracts

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## The Backcharges

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# Scioto Valley Project Accounting

## **Bid Package 31: General Trades Contract:**

Total Contract (through Pay App. #15): \$3,092,970.85

Paid to date: \$2,981,512.68

Contract Balance (*Before Backcharges*): \$ 111,458.17

## **Site Improvements Contract**

**Contract Sum:** \$332,232.00

Paid to date: \$405,074.00

**Over-Payment (*Before Backcharges*): \$ 72,842.00**

# \$121,249 Claim by Mechanical Construction Co. arising out of Ingle-Barr Caused delays

		<b>The Ohio School Facilities Commission</b> 10 West Broad Street 14th Floor Columbus, Ohio 43215 Phone : 614-466-6290 Fax: 614-466-7749	
<b>Change Order</b>			
<input checked="" type="checkbox"/> ADD		<input type="checkbox"/> DEDUCT	
<input type="checkbox"/> NO CHANGE			
Contractor's Contract No. <input type="checkbox"/> <input type="checkbox"/> - <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
Change Order No. <input type="checkbox"/> <input type="checkbox"/> 1 <input type="checkbox"/> 9 - Change Order Date: 8/12/2007		Contract Days Changed _____ Revised Completion Date _____	
Contractor Name <u>Mechanical Construction Co.</u>		Reason For Change Order Design Clarification or Correction _____ Field Condition _____ Field Dispute Resolution <input checked="" type="checkbox"/> School District Board Request _____ Local Funded Initiative (List breakdown % below) _____	
Project Name <u>Scioto Valley Local School District</u>		% Project Construction Fund _____ % Local Initiative Fund _____ Other: Post Bid Substitution Request _____	
Location _____		Original Contract \$1,828,870 Previous Changes _____ This Change <b>\$41,029</b> Revised Contract _____	
Description/Justification (Add more pages if necessary)  This change order fully compensates Mechanical Construction for all work included under the hvac and plumbing scope of work. Furthermore, Mechanical Construction has agreed to drop all future and existing claims against the Scioto Valley School District and/or the Ohio School Facilities Commission. The following Change Order was accepted by all parties at a dispute settlement			

Mechanical Construction originally requested \$121,249 for a calender extension of 193 days due to other contractors failures.

Construction accepted the counter proposal and has supplied a final wavier of lien for this project.

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	ARCHITECT'S RECOMMENDATION	SCHOOL DISTRICT ACCEPTANCE
Mechanical Construction Co. 2302 Eight Street Portsmouth, Ohio 45662 Contractor Signature & Date <i>David Jackson</i> 8-22-07	Tanner Stone & Company 1010 Coles Boulevard Portsmouth, Ohio 45662 Architect Signature & Date <i>Mark Tanner</i> 8-23-07	Scioto Valley School District PO Box 600 Piketon, Ohio 45661 SDCD Signature & Date (Bydard Pres. if over \$25k) <i>Paul E. Wheeler</i> 9-7-07
CM RECOMMENDATION Gilbane Building Company 13054 US Route 224 Attica, Ohio 44807 Construction Manager Signature & Date <i>[Signature]</i>	OSFC Signature & Date <i>[Signature]</i>	If over \$25k, District Treasurer Signature & Date <i>Megan Williams</i> 9/1/07

Scioto Valley General Trades Contract  
Mechanical Construction Backcharge: \$41,029.00

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**The OSFC, Gilbane, Tanner Stone,  
and the School District negotiated a  
settlement of that claim for  
\$41,029.00.**

# Scioto Valley: Liquidated Damages\*

**On Site Improvements Contract: \$112,500.00**

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Site Improvements Contract Completion Date: **January 4, 2004**

Site Improvements Liquidated Damages: **\$500.00 per day**

Actual Completion date: **August 16, 2004\***

**Unexcused Days Late: 225 days**

**225 X \$500 = \$112,500\***

\*LDs estimated are conservative as actual completion date was later

**KEGLER BROWN  
HILL & RITTER**  
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## Scioto Valley:

**Liquidated Damages\* on General Trades Contract: \$572,000.00**

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General Trades Contract Completion Date: Nov. 4, 2003

General Trades Per Diem Liquidated Damages: \$2,000 per day

Actual Completion Date: August 16, 2004\*

**Unexcused Days Late: 286 days**

**286 x \$2,000 = \$572,000\***

\*LDs estimated are conservative as actual completion date was later

**KEGLER BROWN**

**HILL & RITTER**

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# **Total Backcharges Scioto Valley Projects:**

**\$725,529**

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**Site Improvements LDs – \$112,500**

**General Trades LDS – \$572,000**

**Mechanical Constr. Delay Claim + \$ 41,029**

**Total Backcharges Scioto Valley: \$725,529**

# Scioto Valley Combined Contract Balance

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**Both Contracts Balance: \$38,616.17**

(\$111,458.17 - \$72,842 overpayment)

*Less*

**Combined Backcharges: \$725,529**

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**Due from Ingle-Barr \$686,912.83**

# Eastern Local School District

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**The same OSFC standard  
contracts as used for the  
Projects in Scioto Valley**

# Eastern Local School Projects

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**New Athletic Fields Contract:**

**\$596,877.00**

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**Site Improvements (Parking Lot)**

**Contract: \$590,963.00**

# Eastern Local Contracts: Bid Package 12D – Site Improvements

State of Ohio  
Ohio School Facilities Commission

EXHIBIT  
A

CONTRACTOR CONTRACT (OSFC) 12D-12

THE CONTRACT, evidenced by this Contract Form, made and entered into by and between:

*Ingle-Barr Inc.*  
*20 Plyleys Lane*  
*Chillicothe, Ohio 45601*

(the "Contractor") and the State of Ohio (the "State"), through the President and Treasurer of the

- 1.1 The Contractor shall perform the entire Work described in the Contract Documents and reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents.

*Bid Package 12D-2, Site Improvements*  
*Eastern High School*  
*1170 Tile Mill Road*  
*Beaver, Ohio 45613*

- 2.1 The School District Board shall pay the Contractor for the performance of the Contract, subject to additions and deductions by Change Order as provided in the Contract Documents, the amount of ~~\$590,663.00 (the "Contract Price")~~ based upon the Bid Form dated October 14, 2002, submitted **\$590,663.00 (the "Contract Price")**.

*Base Bid; \$590,963.00*

*Alternate SI-1 – Utilize Lime Stabilization; (\$35,000.00)*

*Alternate SI-2 – Supply & Install Exterior Benches, Tables; \$18,000.00*

*Alternate SI-3 – Supply & Install Bus Drive Gates; \$19,500.00*

*Alternate SI-4 – Supply & Install Additional Landscaping; \$19,200.00*

*Alternate SI-5 – Utilize Extruded Curbs; (\$22,000.00)*

- 2.2 The Contract Price shall be paid in current funds by the School District Board upon Applications for Payment submitted by the Contractor and approved by the State as provided in the Contract Documents.

KEGLER BROWN  
HILL & RITTER

A LEGAL PROFESSIONAL ASSOCIATION

K-1

OSFC

December 2000

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# Eastern Local -- Athletic Fields LDs: \$1,000 Per Day

## Site Improvements LDs: \$1,000 Per Day

### ARTICLE 3

3.1 The Contractor shall diligently prosecute the Work and shall complete all Work so that Contract Completion can occur on or before *December 12, 2002*, unless the Contractor timely requests and the School District Board grants an extension of time in accordance with the Contract Documents.

3.3 Upon failure to have all Work completed within the period of time above specified, or failure to have the applicable portion of the Work completed upon any milestone completion date, the State shall be entitled to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the following table for each and every day thereafter until Contract Completion, unless the Contractor timely requests and the School District Board grants an extension of time in accordance with the Contract Documents.

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1 to \$50,000	\$150
More than \$50,000 to \$150,000	\$250
More than \$150,000 to \$500,000	\$500
More than \$500,000 to \$2,000,000	\$1,000
More than \$2,000,000 to \$5,000,000	\$2,000

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1 to \$50,000	\$150
More than \$50,000 to \$150,000	\$250
More than \$150,000 to \$500,000	\$500
More than \$500,000 to \$2,000,000	\$1,000

is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other persons or

# Notice of Breach to Ingle-Barr on Athletic Fields

**Gilbane**

Gilbane  
2 Easton Oval, Suite 110  
Columbus, OH 43219  
Telephone 614.418.3000  
Facsimile 614.418.3030  
www.gilbaneco.com

**Gilbane**

Gilbane  
2 Easton Oval, Suite 110  
Columbus, OH 43219  
Telephone 614.418.3000  
Facsimile 614.418.3030  
www.gilbaneco.com

As authorized under paragraph GC 5.3.2, if such deficiencies are not cured within three (3) working days after your receipt of this notice, the Eastern Local School District may employ upon the Work the additional force, or supply the materials or such part of either as is appropriate, to correct the deficiency in your Work, and issue a Change Order deducting the cost of correcting such deficiencies from payments

cover  
have  
in an  
1.3 of

Ingle-Barr, Inc.  
20 Plyleys Lane  
Chillicothe, Ohio 45661  
(740) 702-6117

Re: Eastern Local School District

If you have any questions regarding this issue, please do not hesitate to contact me.

Sincerely,  
Gilbane Building Co.

then or thereafter due your company. If the payments then or thereafter due are not sufficient to cover such costs, you and your surety will be liable for the insufficiency.

Subject: Sitework/Seeding Repairs

Gentleman:

This notice is provided to you in accordance with the provisions of paragraphs GC 5.3 and 6.1.

Generally, under paragraph GC 6.1.1, time is of the essence to the Contract Documents and all obligations thereunder. By executing the Contract, you acknowledged that the time for Contract Completion, and by signing the Construction Schedule, that any specified milestone completion dates, are reasonable. Moreover, under paragraphs GC 6.1.1.3 and 6.1.1.4, you are required to prosecute the

D. Gupta, ESQC  
S. Roka, OSFC  
T. Brannon, OSFC  
D. Berry RLI Surety  
L. Heil, Berwanger Overmyer Associates  
R. Cardwell, Peck, Schaffer & Williams  
L. Beldassarre, CS&F  
J. Temponeras, TSCo  
B. Butler, GBCo  
CF

Pursuant to paragraph GC 5.3.1, your company has provided Defective Work and has failed and neglected to prosecute the Work for the above-referenced Contract with the necessary diligence so as to complete the Work within the time specified in the Contract Documents or any portion of the Work by the applicable milestone dates as set forth within the Construction Schedule as follows:

Finally, please note that failure to complete all Work by the Contract Completion date, or failure to have the applicable portion of the Work completed upon any milestone completion date may result in an assessment of Liquidated Damages against a future Application for Payment pursuant to Section 3.3 of the Contract and paragraphs GC 3.2.4, 9.2.3, 9.6.1 and 9.6.2.

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an  
ad  
yo

KEC  
HILL & RITTER  
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# Notice of Breach to Ingle-Barr on Site Improvements

**Gilbane**

Gilbane  
2 Easton Oval, Suite 110  
Columbus, OH 43219  
Telephone 614.418.3000  
Facsimile 614.418.3030  
www.gilbaneco.com

July 29, 2004

Pursuant to paragraph GC 5.3.1, your company has provided Defective Work and has failed and neglected to prosecute the Work for the above-referenced Contract with the necessary diligence so as to complete the Work within the time specified in the Contract Documents or any portion of the Work by the applicable milestone dates as set forth within the Construction Schedule as follows:

1. See Attached letter from CTL dated July 28, 2004.
2. Repairs to the wearing course of asphalt at the parking lot south of the running track.
3. Repairs to the access drive servicing the track and ball fields, insufficient depth of asphalt.
4. Repairs to the parking lot immediately south of the building to provide positive drainage.

Completion, and by signing the Construction Schedule, that any specified milestone completion dates, are reasonable. Moreover, under paragraphs GC 6.1.1.3 and 6.1.1.4, you are required to prosecute the Work in a reasonable, efficient and economical sequence, in cooperation with the other Contractors, the Construction Manager and the Architect and in the order and time as provided in the Construction Schedule, and in a manner so as not to interfere with, disturb, hinder or delay the Work of other Contractors and such other Contractors' Subcontractors and Material Suppliers.

Pursuant to paragraph GC 5.3.1, your company has provided Defective Work and has failed and neglected to prosecute the Work for the above-referenced Contract with the necessary diligence so as to complete the Work within the time specified in the Contract Documents or any portion of the Work by the applicable milestone dates as set forth within the Construction Schedule as follows:

1. See Attached letter from CTL dated July 28, 2004.
2. Repairs to the wearing course of asphalt at the parking lot south of the running track.
3. Repairs to the access drive servicing the track and ball fields, insufficient depth of asphalt.
4. Repairs to the parking lot immediately south of the building to provide positive drainage.

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# Both Contracts Terminated for Cause

## August 18, 2004

**Gilbane**

Gilbane  
2 Easton Oval, Suite 110  
Columbus, OH 43219  
Telephone 614.418.3000  
Facsimile 614.418.3030  
www.gilbaneco.com

August 18, 2004

CERTIFIED MAIL

Rod Poole  
Vice President  
Ingle-Barr, Inc.  
20 Plyleys Lane  
Chillicothe, Ohio 45661  
(740) 702-6117

Re: Eastern Local School District  
New Eastern K-12 School  
Bid Package No. 11: Phase IIB - New Athletic Fields

Subject: Work Supplementation Notice

Gentleman:

This letter serves as notice that in accordance with the two letters dated July 29, 2004 regarding Sitework Repairs

This letter serves as notice that in accordance with the two letters dated July 29, 2004 regarding Sitework Repairs and Asphalt Repairs, the project is proceeding with correction of all defective work and completion of all incomplete work. This work will be performed by another contractor(s) in accordance to the contract documents. As such, Ingle Barr is directed to cease and desist stop all work on the aforementioned contracts.

  
Warren Whitesell  
Project Manager

Cc: L. Howard, ESLSD  
S. Roka, OSFC  
T. Brannon, OSFC  
D. Berry RLI Surety  
L. Hall, Berwanger Overmyer Associates  
R. Cardwell, Peck, Schaffer & Williams  
L. Baldassarre, CS&F  
J. Temponeras, TSCo  
B. Butler, GBCo  
CF

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# 01-13-04 Separation of asphalt

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# Why Terminated?

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## **Ingle-Barr's Work:**

- **Poor**
- **Slow**
- **Substandard**

# 01-13-04 Separation of Asphalt South End



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01-15-04 muddy slurry asphalt core



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# 01-15-04 Unprotected slope



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01-15-04 Unprotected storm drain



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# 1-20-04a Water Ponding on Upper Lot



1. 20. 2004

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1-23-2004 Grading and Backup of Pavement BP



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# 1-23-2004 Debris in Ballpark



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# 1-23-2004 Erosion at Catch Basin in Ballpark



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# 1-23-2004 Pond and Exposed Natural Gas Line



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# 1-23-2004 Poor Grading at Pond

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# 1-23-2004 Erosion at Pond



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1-26-04 Asphalt joints upper lot



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# 1-26-04 Poor Grading Front of Building



1. 26. 2004

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1-26-04 Incorrect Benches



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1-26-04 Incorrect concrete curb



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1-26-04 Unsealed catch basin



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1-26-04 - Water Ponding on Concrete Stairs



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# 1-26-04 Water Ponding on Upper Lot



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# Debris-Clogged Drainage



2. 18. 2004

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03-29-04 Strawbales



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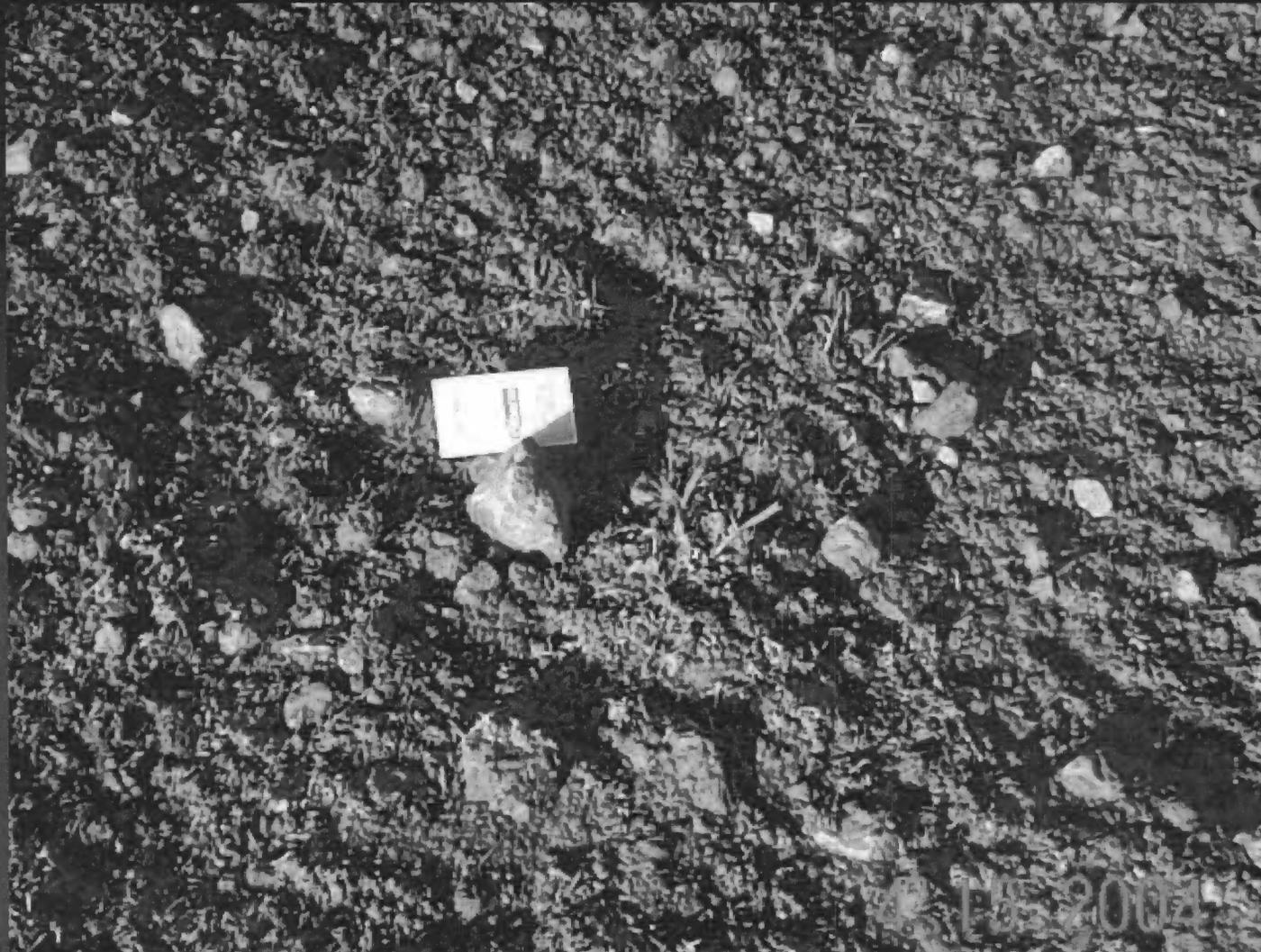
# 04-15-04 Large Rocks at Temporary Track Access



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# 04-15-04 Large Rocks in Topsoil



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# 04-15-04 Large Rocks in Topsoil by Building



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04-15-04 Large Rocks in Topsoil South  
of Main Building



4-15-2004

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# Parking Lot Damage



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# Parking Lot Damage Close-up



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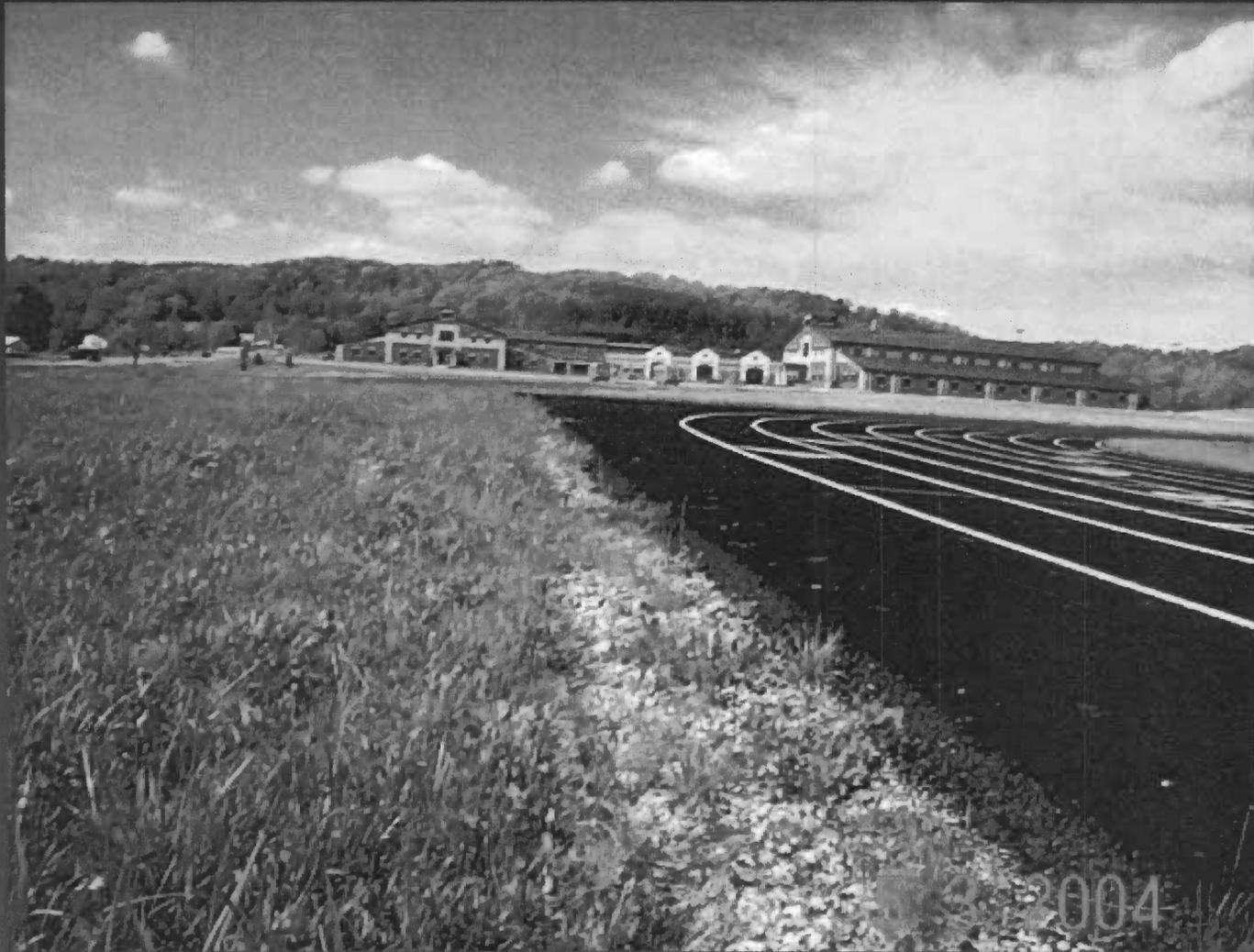
# Sloppy Work



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05-03-04 -- 4 - 6 inch Drop from Track Surface



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# Baseball Field: Uneven even from Afar



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4.15.2004 YOURS

# Poor Grading, Poor Seeding, Poor Work

05-03-04 Cattails in Baseball Field



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# 05-03-04 Baseball Infield From Home Plate



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# 05-03-04 Baseball Outfield



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05-03-04 Baseball Infield West



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# Substandard Work

## 05-03-04 Pitcher's Mound



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# 05-03-04 Front Detention Pond



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# Horrible Grading

05-03-04 Ponding Water Inside Track E Side



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05-03-04 Ponding Water Inside Track (East Side)



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05-03-04 SE Catch Basin at Track



2004

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# 05-03-04 Soil Back Up to Track Surface



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## Eastern Local: Costs to Repair and Complete Ingle-Barr's Work

Date	Vendor	Description	Amount
Oct. 20, 2004	Lowell Howard	Supervision	\$ 7,350.00
Nov. 16, 2004	Allard Excavating	Parking Lot	<b>\$136,144.63</b>
Nov. 16, 2004	J&G Paving	Asphalt Replacement	<b>\$160,216.42</b>
Nov. 16, 2004	JAG Milling	Milling Back Parking Lot	\$ 11,469.46
Nov. 20, 2004	Lowell Howard	Supervision	\$ 350.00
Dec. 20, 2004	Lowell Howard	Supervision	\$ 525.00
Jan. 20, 2005	Allard Excavating	Parking Lot	\$ 50,062.51
Feb. 4, 2005	Lowell Howard	Supervision	\$ 1,050.00
Oct. 30, 2005	Wal•Mart	Grass Seed/Turf	\$ 51.76
Nov. 17, 2005	John Fuller	Landscape Direct	\$ 2,000.00
May 31, 2006	John Moore	Landscaping Work	\$ 10,000.00
Jun. 30, 2006	Darren King	Seeding/Fertilizing	\$ 1,075.00
Sept. 28, 2006	KC Landscaping	Landscaping/Fertilizing	\$ 6,061.50

**TOTAL REPAIR & COMPLETION**

**\$388,765.25**

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# Eastern Local Athletic Fields Liquidated Damages

**\$831,000.00**

**Athletic Fields Contract Completion  
Date:**

**May 10, 2002**

**Athletic Fields Liquidated Damages:**

**\$1,000.00 per day**

**Date of Termination:**

**August 18, 2004**

**Unexcused Days Late:**

**831 days**

# Eastern Local Site Improv. Liquidated Damages

**\$286,000**

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- **Site Improvements**
- **Contract Completion Date — Dec. 12, 2002**
- **Date of Termination — August 18, 2004**
- **Unexcused days late: 286 days**

**Liquidated Damages = \$286,000**

# Eastern Local: Total Backcharges

**\$1,505,765.25**

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\$286,000.00      12D Site Improvements LDs

+

\$831,000.00      Athletic Fields LDs

+

\$388,765.25      Completion and Correction Costs

=

**\$1,505,765.25      Total Eastern Local  
Project Backcharges**

# Liquidated Damages Alone

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- **Scioto Valley Projects:** **\$ 684,500\***  
(**\$572,000 + \$112,500**) (\*conservative est. of lds)
  - **Eastern Local Projects:** **\$ 1,117,000**  
(**\$286,000 + \$415,500**)
- Combined Liquidated Damages: \$1,801,500***

**Conclusion: Completion and Correction Backcharges alone  
exceed combined Ingle-Barr Claims**

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**Ingle-Barr Claims (excl. interest): \$414,020.42**  
*(\$267,134.43 for Scioto Valley Projects +  
\$146,885.99 for Eastern Local Projects)*

**OSFC & School District Backcharges for only  
Completion/Correction/Delay Claims by Others  
(excl. interest): \$429,794.25\***  
*(Scioto Valley \$41,029.00 + Eastern Local \$388,765.25)*

*\*Not Including Contractually Specified Liquidated Damages for Delay*

# A Reasonable Settlement

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**OSFC and the School Districts are committed to resolving the outstanding issues related to Ingle-Barr's contracts at Eastern and Scioto Valley.**

**For purposes of the mediation, the OSFC and both School Districts are willing to recognize and discuss some of the "Change Orders" that Ingle-Barr is asserting.**

**Any settlement, though, must take into consideration and resolve the backcharges for delay, repair, and completion on each respective Project.**