

BID
ADDENDUM NO. 1
TO
CONTRACT DOCUMENTS
AND
TECHNICAL SPECIFICATIONS
FOR
PHYSICAL EDUCATION DEPARTMENT RENOVATIONS
AT
WESTLAKE HIGH SCHOOL
AT
825 WEST LAKE DRIVE
THORNWOOD, NY 10594
NYSED #66-08-01-06-0-005-020

Mount Pleasant Central School District
825 West Lake Drive
Thornwood, NY 10594

Telephone No. 914-769-5500

Contact: Dr. Kurtis Kotes,
Superintendent of Schools

LAN Job #4.1449.08
January 13, 2021

Michael J. McGovern, RA
NYS #022257

1.0 General: The original contract documents dated **July 9, 2020** issued to the New York State Education Department for this project are hereby amended as noted in this addendum which shall become part of said contract documents, as if originally included therein. Bidders must acknowledge receipt of this addendum and all other addenda on the proposal form when submitting proposals. In case any bidder fails to acknowledge receipt of addenda, his proposal will nevertheless be construed as though it has been received, acknowledged, and the submission of his proposal shall constitute acknowledgment by the bidder of the receipt of same.

Note that there will be a Zoom virtual pre-bid conference on Tuesday, January 19, 2021 at 3:00 p.m. Please refer to section 7.0 Clarifications below for information.

Note that the bid due date and time shall be **Thursday, January 28, 2021 at 3:00 p.m.**

2.0 Amendment to Application:

N/A

3.0 Amendments to Specifications:

Section No.	Page No.	Addendum Requirements
007000	All	The General Conditions provided in section 007000 are revised.

4.0 Amendments to Drawings:

Drawing No.	Addendum Requirements
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N/A

5.0 Requests for Information (RFIs):

No.	Comment / Response
A6.10	<p>Door elevation types 'A' and 'C' provided on drawing A6.10 indicate the glazing shall be "Firelite Plus for rated doors and safety glazing for non-rated doors." The schedule does not note which doors are rated or non-rated. Please clarify.</p> <p>Door DA01 shall be fire rated for 60 minutes.</p> <p>Doors DA03, DA06, DA09, DA11, DB01, DB02, DB03, DB04, DB06, DB08, DB13, DB14, DB15, DB16, DB18 & DB19 shall be fire rated for 20 minutes.</p> <p>Doors DB03, DB06, DB08, DB13, DB18 & DB19 shall be installed with Firelite Plus glazing (or equivalent).</p> <p>Doors DA02, DA04, DA06, DA07, DA08, DA10, DB05, DB07, DB09, DB10, DB11, DB12, DB17, DB20, DB21 do not require a fire rating and clear tempered glazing is acceptable.</p>

6.0 Substitution Requests:

Specification
Section No.

096723	Resinous Flooring	Approved Equal:	Tennant Eco-Crete SL Flake DB Tennant Company-Architectural Coatings 701 Lilac Drive North Minneapolis, MN 55440 T. 763-513-2182
105113	Metal Athletic Lockers	Rejected:	Tufftec Lockers Scranton Products 801 E. Corey Street Scranton, PA 18504 T. 570-348-0997 www.scrantonproducts.com Tufftec Lockers as manufactured by Scranton Products are constructed of high density polyethylene (HDPE). The project manual specifies a metal locker. These products are not equivalent and the Tufftec Locker is not approved for use on this project.
124813	Entrance Floor Mats and Frames	Approved Equal:	KDCM Aluminum Rollout Mat Kadee Industries, Inc. 7160 Krick Road Walton Hills, OH 44146 T. 800-321-3827 / F. 440-439-6889

7.0 Clarifications:

No.

- 1 Zoom link for the virtual pre-bid conference on Tuesday, January 19, 2021 at 3:00 p.m. is as follows:

<https://us02web.zoom.us/j/82665435694?pwd=cjd6aStpcU1SUHZSTjAxN3I2cngvdz09>

Meeting ID: 826 6543 5694

Passcode: 224265

One tap mobile

[+19292056099,,82665435694#,,,224265#](tel:+19292056099,,82665435694#,,,224265#)

Note that a prebid video

END OF ADDENDUM NO. 1

Attachments: #1 – Revised Specification Section 007000

GENERAL CONDITIONS
of the
CONTRACT for CONSTRUCTION

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

The within document includes detailed provisions concerning the capital improvement work to be performed by the Contractors engaged by the School District. This document contains provisions which relate particularly to capital improvement projects in the school district setting in New York State. The document is incorporated by reference into all contracts to be awarded and should be reviewed carefully by the Contractor to whom the award of contract is made. Consultation with an attorney and insurance representative is advised.

ARTICLE 1 DEFINITIONS

- A. "Addendum" or "Addenda" refers to revised drawings and/or written requirements for the capital improvement work issued by the Architect prior to the time indicated for submission of a bid by a contractor.
- B. The "Architect" is the design professional engaged by the School District to perform design related functions respecting the capital improvement projects to be performed in the School District.
- C. "Board of Education" refers to the Board of Education of the School District.
- D. "Central Administration" refers to the Superintendent of Schools, his/her Assistant Superintendents, and Director of Plant & Facilities.
- E. The "Construction Manager" is the entity engaged by the School District to act as its representative during the course of construction of the Project.
- F. The "Contractor" refers to the entity engaged by the School District to perform all or a part of the capital improvement project on its behalf.
- G. The "Drawings" are the plans, elevations, sections, details, schedules and diagrams developed by the Architect for the capital improvement projects to be performed in accordance with the project manual of which these General Conditions of the Contract for Construction form a part.
- H. The "Project" refers to the entire capital improvement project to be performed in accordance with the project manual and may include work by the Owner.
- I. The "Project Manual" is the bound document which is issued simultaneously with the project Drawings and includes the Notice to Bidders, Information to Bidders, Bid Proposal Form, Prevailing Wage Rate schedule and the written requirements for labor, materials, equipment, construction systems and the like necessary for the Contractor to complete the capital improvement work for which it has been engaged.

J. The "Owner" refers to the School District, the Board of Education, its officers, agents and employees.

K. A "Subcontractor" is a person or entity who has a direct contract with the Contractor to provide material and/or labor for the project on or off the site, or to otherwise furnish labor, material or other services with respect to a portion of the Contractor's work. A "Sub-subcontractor" is a person or entity who has a direct or indirect contract with a Subcontractor engaged by the Contractor to perform a portion of the Subcontractor's work at the site, or to otherwise furnish labor, material or other services with respect to a portion of the Subcontractor's work.

L. The term "Specialist" or "Specialty Contractor" as used in these specifications shall mean an individual or firm of established reputation, or, if newly organized, whose personnel have previously established a reputation in the same field, which is regularly engaged in, and which maintains a regular force of workers skilled in either manufacturing or fabricating items required by the Contract, installing items required by the Contract, or otherwise performing work required by the Contract.

M. "Accepted", "directed" "permitted," "requested," "required," and "selected" mean, unless otherwise explained, "accepted by the Architect and/or Owner" "directed by the Architect and/or Owner," "permitted by the Architect and/or Owner," "requested by the Architect and/or Owner," "required by the Architect and/or Owner," and "selected by the Architect and/or Owner." However, no such implied meaning will be interpreted to extend the Architect's responsibility into the Contractor's area of construction supervision.

N. "As accepted" "or acceptable substitute", and "for review" mean the Architect is the sole judge of the quality and suitability of the proposed substitutions. Where used in conjunction with the Architect's response to submittals, requests, applications, inquiries, reports, and claims by the Contractor, the meaning will be held to the limitations of the Architect's responsibilities and duties as stated in the General Conditions. In no case will "accepted by the Architect" be interpreted as an assurance to the Contractor that the requirements of the Contract Documents have been fulfilled.

O. "Furnish" means supply and deliver to the Project site or other designated location, ready for unloading, unpacking, storing, assembly, installation, application, erection, or other form of incorporation into the Project, and maintained ready for use. Supply and deliver products requiring additional or supplemental fitting, assembly, fabrication, or incorporation into other elements of the Project directly to the fabricator, installer or manufacturer as required.

P. "Install" means unload, unpack, use, fit, attach, assemble, apply, place, anchor, erect, finish, cure, protect, clean, and similar operations required to properly incorporate work into the Project.

Q. "Provide" means furnish and install.

R. "Replace" means remove designated, damaged, rejected, defective, unacceptable, or non-conforming work from the Project and provide new work meeting the requirements of the Contract Documents in place thereof.

S. The word "include", in any form other than "inclusive", is non-limiting and is not intended to mean all-inclusive.

ARTICLE 2 CONTRACTOR'S REPRESENTATIONS

A. Upon submission of its bid to the Owner, the Contractor expressly represents:

1. The Contractor represents and warrants that it performed a detailed investigation of the site(s) and that such investigation was sufficient to disclose the conditions of the site(s) at which work is to be performed by it and all improvements thereon, and the conditions under which the work is to be performed, including, but not limited to (a) the location, condition, layout and nature of the project site and surrounding areas; (b) the cost of labor, materials and equipment necessary to perform the work, the availability; (c) the areas of the work which will cause a disruption to the necessary and proper operation of the facilities by the Owner; and (d) other pertinent limitations on the performance of its work.

2. The Contractor represents and warrants that it has carefully studied and compared the drawings and pertinent provisions of the project manual and that any errors, omissions, ambiguities, discrepancies or conflicts found in said documents have been brought to the attention of the Architect for clarification prior to the Contractor's submission of its bid. If, in the interpretation of Contract Documents, requirements within the Drawings and Specifications conflict, or it appears that the Drawings and Specifications are not in agreement, the requirement to be followed shall be decided by the Architect. Where there is a discrepancy in quantity, the Contractor shall provide the greater quantity; where there is a discrepancy in quality, the Contractor shall provide the superior quality. Addenda supersede the provisions that they amend.

3. Each contractor certifies that it is experienced and familiar with the requirements and conditions imposed during the construction of similar work in the area. This includes, but is not limited to, "out of sequence" or "come back" work for the removal of plant, equipment, temporary wiring or plumbing, etc. This "out of sequence" work may also include phasing of construction activities to accommodate the installation of the work at various locations and orderly fashion and the completion of work at various locations and/or levels at various times. This "phasing", "out of sequence", or "come back" work shall be done at no cost to other contractors, the Owner, Architect or the Construction Manager.

B. The Contractor warrants to the Owner that (1) the materials and equipment furnished under its contract will be of good quality and new, and of recent manufacture, unless otherwise required or permitted by the Contract Documents, (2) that its work will be free from defects not inherent in the quality required or permitted, and (3) that its work will conform with the terms and conditions of its agreement with the Owner. Work not conforming to these requirements,

including substitutions not properly approved and authorized, shall be considered defective and shall be removed and replaced at the Contractor's cost and expense. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

C. Except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions, by executing the Agreement, the Contractor represents the following:

1. The drawings and accompanying specifications found in the project manual issued simultaneously with said drawings are sufficiently complete and detailed for the Contractor to (a) perform the work required to produce the results intended by the Owner and (b) comply with all the requirements of its contract with the Owner.

2. The work required to be performed by the Contractor including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform its work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (a) good and prevailing and accepted industry standards applicable to its work; (b) requirements of any warranties applicable to its work; and (c) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of its work.

3. The Drawings and Specifications for the Contract have been prepared with care and are intended to show as clearly as is practicable the work required to be done. Work under all items in the Contract must be carried out to meet field conditions to the satisfaction of the Architect and Owner and in accordance with his instructions and the Contract Drawings and Specifications.

4. All dimensions shown on the Drawings are for bidding purposes only. It is the responsibility of the Contractor to verify all dimensions in the field to insure proper and accurate fit of materials and items to be installed.

D. The representations set forth herein shall survive expiration and/or termination of the Contractor's agreement with the Owner.

ARTICLE 3 CONTRACTOR'S CONSTRUCTION PROCEDURES

A. 1. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures required for the proper execution of its work on the project. Where the drawings and/or project manual make reference to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in connection with the Contractor's work, such reference is intended only to indicate that the Contractor's work is to produce at least the quality of the work implied by the operations described, but the actual determination as to whether or not the described operations may be safely or suitably employed in the performance of the Contractor's work shall be the sole

responsibility of the Contractor. All loss, damage, liability, or cost of correcting defective work arising from the employment of a specific construction means, method, technique, sequence or procedure shall be borne solely by the Contractor.

2. Neither the Architect, the Construction Manager or the Owner will have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided herein.

3. The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, rigging, water, heat, utilities, light, transportation, and other facilities and services necessary for proper execution and completion of its work, whether temporary or permanent and whether or not incorporated or to be incorporated in its work.

B. The Contractor shall be responsible for coordinating the work of its own forces and the work of subcontractors engaged by it to perform the work of the project on its behalf. The Contractor shall supply to its own work forces, and subcontractors engaged by it to perform portions of its work, copies of the drawings and project manuals for the work to be performed by such individuals/entities on its behalf. The Contractor shall review any specified or installation procedure with its employees and/or subcontractors, including those recommended by any product manufacturer, prior to the commencement of the relevant portion of the work to be performed. The Contractor shall be responsible to the Owner for the acts and/or omissions of the Contractor's employees, the Contractor's Subcontractors, the Contractor's material suppliers, and/or their respective agents and employees, and any other persons performing portions of the work on behalf of the Contractor.

C. The Contractor shall be responsible for the inspection of portions of the project performed by its own work force and/or subcontractors engaged by it for the purpose of determining that said work is in proper condition to receive subsequent work.

D. The Contractor shall perform its work in accordance with the standards of the construction industry applicable to work in the locale in which work is to be performed.

E. The Contractor shall only employ labor on the project or in connection with its work capable of working harmoniously will all trades, crafts and any other individuals associated with the capital improvement work to be performed. There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity at the project for any reason by anyone employed or engaged by the Contractor to perform its portion of the work. There shall be no lockout at the project by the Contractor. The Contractor shall be responsible for providing the manpower required to proceed with the work under any circumstance. Should it become necessary to create a separate entrance for a contractor involved in a labor dispute, all costs associated with creating that entrance shall be borne by the contractor involved in the dispute. Such costs shall include, but not be limited to, signage, fencing, temporary roads and security personnel as deemed necessary by the Owner for the safety of the occupants of the site.

F. 1. If the Contractor has engaged the services of workers and/or subcontractors who are members of trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect, the Construction Manager or the Owner, any conflict between its agreement with the Owner and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

2. In case the progress of the capital improvement work to be performed by the Contractor is effected by any undue delay in furnishing or installing any items or materials or equipment required pursuant to its agreement with the Owner because of a conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive but in no case shall the amount of such change be charged by the Contractor to the Owner as an additional cost to perform the capital improvement work pursuant to its contract.

3. The Contractor shall ensure that its work continues uninterrupted during the pendency of a labor dispute.

4. The Contractor shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes or strikes.

G. The Contractor shall enforce strict discipline and good order among the Contractor's employees and its Subcontractors' work forces and other persons carrying out the performance of its work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Owner reserves the right to object to any person to be hired or who is employed by the Contractor. Upon the request of the Owner, said person shall be removed from the Project and not again be assigned to perform the Contractor's work without the written permission of the Owner.

H. Within one (1) week after a Notice to Proceed is received, the Contractor shall employ a competent, full-time Project Manager and On Site Superintendent to be approved by the Owner or its representative, and such necessary assistants who shall be in attendance at each project site whenever and wherever work is in progress to provide for the expeditious completion of the work. Said Project Manager and On Site Superintendent shall be employed until punchlist and closeout of the Project. To the extent work is being performed contemporaneously at different facilities within the School District, the Contractor shall assign different superintendents for each facility at which work is being performed. The Project Manager and On Site Superintendent assigned by the Contractor shall not be changed except with the consent of Owner, unless the Project Manager or On Site superintendent or such assistant proves to be unsatisfactory to the Contractor and/or ceases to be in its employ. The Project Manager and On Site Superintendent shall represent the Contractor, and communications given to the Project Manager or On Site Superintendent, whether verbal or written, shall be as binding as if given to the Contractor. Oral communications to the superintendent(s) or his/her assistant(s) and/or project manager shall be confirmed in writing by the Owner or Architect. The Contractor shall forward to the Owner a copy of the resumes for each of its superintendents, project managers and their assistants. The

Owner, the Construction Manager or the Architect shall have the right to have any supervisory or management staff removed from the project with or without cause.

I. Each Contractor shall provide, or otherwise see that, the project manager, or on site superintendent site managers, and/or responsible workers of each Contractor and major subcontractor are equipped with cellular phones and radios. Each Contractor shall provide the Owner, the Construction Manager and the Architect with the number for each phone and worker.

J. The Contractor's supervisory personnel, including superintendents and their assistants, shall be versed in the English language. In the event the Contractor's supervisory personnel, superintendents and/or their assistants are not versed in the English language, the Contractor shall employ the services of a full-time on-site interpreter to facilitate communications with such supervisory personnel, superintendents and/or assistants.

K. Prior to the commencement of work, the Contractor shall provide the Construction Manager and the Architect with:

1. a written list of the names, addresses and telephone numbers of the members of its organization who can be contacted in the event of an off-hours emergency at the building site, including cellular telephone numbers and personal/home telephone numbers.
2. a written list of subcontractors, sub-subcontractors, suppliers and vendors with names, addresses, telephone numbers, and descriptions of the work they shall perform or furnish.
3. The name, address and telephone number of the bonding company, banking and insurance company for the Prime Contractor employed by the Prime Contractor including the name, address and telephone number of each bonding company's primary contact representative for this project.
4. Detailed subcontractor schedules indicating the approximate quantity of shop drawings, sequence, timing and man loading.
5. A cash flow projection for the life of the project, including a schedule and graph showing the amount of work projected to be completed each month or billing period and a dollar value for the anticipated billings each month or billing period. This shall be completed after an agreed upon schedule of values has been approved by the Construction Manager.

L. 1. Tests, inspections and approvals of portions of the Contractor's work required by the drawings and/or specifications shall be made at an appropriate time. Unless otherwise provided, the Contractor shall consult with the Architect and the Construction Manager concerning the need for testing and/or inspection of its work pursuant to the Contract Documents and, after consulting with the Architect and Construction Manager, the Construction

Manager shall advise the Owner to make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Owner shall bear all costs associated with the tests, inspections or approvals required by the drawings and/or specifications except as set forth in subparagraph 3 hereof.

2. Tests, inspections and approval of portions of the Contractor's work required by laws, ordinances, rules, regulations or orders of public authorities or governmental agency having jurisdiction shall be made at an appropriate time. The Contractor shall consult with the Architect and the Construction Manager concerning the need for testing and/or inspection of its work pursuant to law, ordinance, regulation or orders of public authorities or governmental agencies and shall advise the Owner in writing that it has made arrangements for such tests, inspections and approvals with the appropriate public authority or governmental agency. The Contractor shall be solely responsible for making timely notice of the need for a test, inspection and/or approval with the relevant public authority or governmental agencies and shall bear all costs associated with such testing, inspection or approval required by such public authority or governmental agency.

3. If the Architect, the Construction Manager, the Owner, or public authorities or governmental agencies having jurisdiction determine that portions of the Contractor's work require additional testing, inspection or approval due to the Contractor's failure to perform its work in accordance with the requirements of the Contract Documents and/or laws, ordinances, rules, regulations or orders of public authorities or governmental agencies having jurisdiction, the Architect and the Construction Manager will advise the Owner of the need for such additional inspections or tests and the Owner shall make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner. The Contractor shall bear the costs of such additional testing as provided in Article 14.

M. The Contractor shall, if required by ordinances, laws, codes, rules and/or regulations of the governing agencies having jurisdiction over this project, retain a licensed professional engineer to supervise the construction of this project including, but not limited to, foundations, structural work, soils, welding, reinforced masonry and the like.

N. The Contractor recognizes and acknowledges that the within project is governed by and subject to the provisions of New York State General Municipal Law, section 101, governing the award of contracts on public improvement projects. As such, the Contractor recognizes and acknowledges that other contractors will be performing work on the project in conjunction with it. As such the Contractor agrees to cooperate with such other contractors performing work on the project and shall perform its work as follows:

1. The Contractor shall not interfere with the erection, installation or storage upon the premises of any work, materials, supplies or equipment which is to be performed and furnished by other contractors, and the Contractor shall properly connect and coordinate its work therewith.

2. The Contractor shall not commit or permit any act which will interfere with the performance of the work of any other contractor performing work on the project. If the Contractor sustains any damage through any act or omission of other contractors having a contract with the Owner for the performance of work upon the site or of work which may be necessary to be performed for the proper execution of the work to be performed hereunder, or through any act or omission of a subcontractor of such contractor, the Contractor shall promptly notify the Owner and the Construction Manager of such damage.

3. The Contractor agrees to defend and indemnify Owner, Architect, Construction Manager, its Consultants and Sub-consultants, from all claims made against any of them arising out of Contractor's acts or omissions or the acts or omissions of any subcontractor of the Contractor which have caused damage to the Owner, Architect, Construction Manager or other contractor(s) on the project. The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, or by the exercise of any other remedy provided for by the contract or by law. Further, the Owner shall withhold from an offending contractor's contract sum an amount sufficient to cover such damage and all expenses and costs associated with the damage sustained.

4. When the work of the Contractor or its subcontractors overlap or dovetail with that of other Contractors, materials shall be delivered and operations conducted to carry on the work continuously, in an efficient, workmanlike manner.

5. In case of interference between the operations of different Contractors, the Construction Manager will be the sole judge of the rights of each Contractor and shall have the authority to decide in what manner the work may proceed, and in all cases its decision shall be final. Any decision as to the method and times of conducting the work or the use of space as required in this paragraph shall not be basis of any claim for delay or damages by the Contractor.

6. The Contractor, including its subcontractors, shall keep itself informed of the progress of other contractors and shall notify the Architect or the Construction Manager immediately in writing of lack of progress on the part of other contractors where such delay will interfere with its own operations. Failure of the Contractor to keep informed of the work progressing on the project and failure to give notice of lack of progress by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's own work.

7. Delays or oversights on the part of any contractor or subcontractor in getting any or all of their work done in the proper way, thereby causing cutting, removing and replacing work already in place, shall not be the basis for a claim for extra compensation.

8. If part of the Contractor's work depends for proper execution or results upon construction or operations by the Owner or another contractor, the Contractor shall, prior to proceeding with that portion of its work, promptly report to the Architect and Construction Manager apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall

constitute an acknowledgment that the Owner's or other contractor's completed or partially completed construction is fit and proper to receive the Contractor's work.

9. The Contractor shall promptly correct discrepancies or defects in its work which have been identified by other contractors as affecting proper execution and results of the work of such other Contractor.

O. 1. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities or governmental agencies bearing on performance of the Work. If the Contractor fails to give such notices, it shall be liable for and shall indemnify and hold harmless (a) the Owner, its consultants, employees, officers and agents, (b) the Architect and its consultants, employees, officers and agents, and/or (c) the Construction Manager and its consultants, employees, officers and agents against any resulting fines, penalties, judgments, or damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified hereunder.

2. The Contractor shall pay any costs or fees incurred in such compliance and any fines or penalties imposed for violation thereof and any costs or fees incurred by the Owner due to such violation. If the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification to the drawings and/or specifications.

3. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect, the Construction Manager and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs and shall bear the total cost for correction of same.

4. If the Contractor fails to give such notices, it shall be liable for and shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers and agents, (2) the Architect and its consultants, employees, officers and agents, and (3) the Construction Manager, its consultants, employees, officers and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified hereunder. The Contractor shall pay any costs or fees incurred in such compliance and any fines or penalties imposed for violation thereof and any costs or fees incurred by the Owner due to such violation.

P. The Contractor recognizes and acknowledges that job meetings will be held at the job site weekly unless otherwise designated by the Owner or the Architect. The Contractor shall have responsible representation at the MANDATORY weekly job meetings held at the Construction Manager's job office. These meetings will be held to arrange for satisfactory coordination of all trades on the project so as not to impede job progress. Contractors or subcontractors failing to attend job meetings shall be responsible for delays and/or expenses incurred due to coordination difficulty.

Q. The Contractor shall provide copies of its daily construction reports to the Construction Manager's Field Superintendent. These reports shall be submitted no later than 10:00 am the following workday. The daily reports shall provide detailed information concerning the Contractor's activities and operations, including work activities on site and manpower. A "Daily Construction" form is included in these specifications and shall be used for reporting these activities. In addition, the Contractors are to submit a Two Week Look Ahead schedule for upcoming work. A "Two Week Look Ahead" form is included in these specifications for the Contractor's use.

ARTICLE 4 CONTRACTOR'S USE OF SITE

A. The Contractor shall confine operations at the site to the areas at which construction is to be performed and to such areas permitted by law, ordinances, permits and as set forth in detail in the project manual and drawings forming a part of its contract with the Owner.

B. Five (5) days after receipt of the Notice to Proceed, the Contractor shall provide two (2) copies of a video-taped recording of all existing conditions to the Construction Manager. This taping shall provide a record of all existing buildings, grounds, exterior conditions and interior conditions. The Contractor shall schedule a representative of both the Owner and the Construction Manager to be present at this taping. In the absence of this record, the Contractor shall be responsible for paying the costs associated with any and all repairs in an area where the Contractor is working or has worked, as may be deemed necessary by the Owner or the Construction Manager.

C. The occupied portion of any school building shall always comply with the minimum requirements necessary to maintain a certificate of occupancy.

D. General Safety and Security Standards for Construction Projects:

1. All construction materials shall be stored in a safe and secure manner.
2. Fences around construction supplies or debris shall be maintained.
3. Gates shall always be locked unless a worker is in attendance to prevent unauthorized entry.
4. During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.
5. The Contractor shall exert utmost care and diligence when working in or near any existing buildings or sitework. The absence of protection around such items shall not excuse the Contractor from its liability to provide protection. Any damage to existing buildings, sitework or facilities shall be repaired and charged to the Contractor responsible for the damage.

6. The Contractor shall be responsible for the removal and replacement of existing ceiling tiles and grid in areas of the existing building where its work is required and new ceilings are not scheduled for installation. In the event that the existing ceilings are damaged and cannot be replaced to the satisfaction of the Owner, the responsible contractor shall be liable for the costs of replacing in kind, the existing ceilings with new tile and grid.

7. All disconnect and/or tie-in work involving any utilities that would interfere with the ongoing operations of the Owner shall be completed after hours when the facility is not in use. The performance of this work shall be projected on all schedules required to be prepared by the Contractor. Additionally, the Contractor shall give the Construction Manager and the Owner at least forty-eight (48) hours advance notice of its intention to perform this type of work. All overtime and standby personnel necessary to complete these tie-ins shall be the responsibility of the Contractor performing the work.

E. 1. Separation of construction areas from occupied spaces: Construction areas which are under the control of a contractor and therefore not occupied by district staff or students shall be separated from occupied areas. Provisions shall be made to prevent the passage of dust and contaminants into occupied parts of the building. Periodic inspection and repairs of the containment barriers must be made to prevent exposure to dust or contaminants. Gypsum board must be used in exit ways or other areas that require fire rated separation. Heavy duty plastic sheeting may be used only for a vapor, fine dust or air infiltration barrier, and shall not be used to separate occupied spaces from construction areas. Methods of dust and fume control shall include, but not be limited to:

- a. Adequate ventilation;
- b. Wetting down;
- c. Keeping bags of insulating materials, cement, etc., closed.
- d. Controlled mixing of materials under field conditions;
- e. Special attention should be utilized in sawing of insulation and certain acoustical materials and storage of materials.
- f. Job housekeeping must be maintained;
- g. Advising all personnel of hazardous conditions, including supervisors and workers;

Each contractor is responsible for instituting the above policies to insure minimal impact to surrounding occupied areas.

2. A specific stairwell and/or elevator should be assigned for construction worker use during work hours. In general, workers may not use corridors, stairs or elevators designated for students or school staff.

3. Large amounts of debris must be removed by using enclosed chutes or a similar sealed system. There shall be no movement of debris through halls of occupied spaces of the building. No material shall be dropped or thrown outside the walls of the building.

4. All occupied parts of the building affected by renovation activity shall be cleaned at the close of each workday. School buildings occupied during a construction project shall maintain required health, safety and educational capabilities at all times that classes are in session.

F. 1. Storage space will be allotted to the Contractor by the Owner to the extent such space, in the sole discretion of the Owner, is available. The Contractor shall be responsible for securing appropriate space for its material with the Construction Manager prior to delivery. If insufficient space is available on the site, the Contractor shall provide local off-site storage, storage containers, etc. at its own cost and expense. Should any of the material stored on-site obstruct the progress of any portion of the work or the project, this material shall be removed by the Contractor without reimbursement of cost, from place to place or from the premises, as the Construction Manager may direct.

2. The Contractor shall schedule delivery of materials and equipment to minimize long term storage at the Project, to prevent overcrowding of construction spaces, and to ensure minimum holding time for items that are flammable, hazardous, easily damaged, or sensitive to deterioration, theft and other losses.

3. The Contractor shall deliver materials and equipment to the Project in an undamaged condition in manufacturer's original sealed container or other packaging system, complete with labels and instructions for handling, storing, unpacking, protecting and installation. The Contractor shall inspect materials and equipment upon delivery to ensure compliance with the Contract Documents and to ensure that products are undamaged and properly protected. The Contractor shall store products to allow for inspection and measurement of quantity or counting of units. The Contractor shall store materials in a manner that will not endanger the Project structure. The Contractor shall store products that are subject to damage by the elements, under cover in a weathertight enclosure above ground, with ventilation adequate to prevent condensation. The Contractor shall comply with product manufacturer's written instructions for temperature, humidity, ventilation, and weather-protection requirements for storage.

4. The Contractor shall not unreasonably encumber the site with materials or equipment during the performance of its work. Only materials and equipment which are to be used directly in the performance of the Contractor's work shall be brought to and stored on the premises of the School District. After equipment is no longer required for its work, the Contractor shall promptly remove such equipment from the premises of the School District. The Contractor

shall be solely responsible for the protection of construction materials and equipment stored on the premises from weather, theft, damage and all other adversity. The Contractor shall at all times provide the proper housekeeping to minimize potential fire hazards and shall provide approved spark arresters on all steam engines, internal combustion engines and flues.

5. A construction entrance will be designated for deliveries. A separate entrance will be established for entering and exiting the site only. All deliveries shall be scheduled and coordinated with the Construction Manager and the Owner's Security department. Unexpected or uncoordinated deliveries may be turned away by the Owner or the Construction Manager at the discretion or necessity of the Owner. The Owner's enforcement of this provision shall not be construed by any contractor or subcontractor as the basis for a claim of delay in time or monetary damages alleged to have been incurred as a result of refusal of delivery.

6. The Contractor for General Construction shall provide necessary and required security measures to adequately safeguard the construction site from vandalism and intrusion of unauthorized persons. The Contractor for General Construction shall submit its means and methods of security to the Construction Manager for review and comment. The project site(s) must be secured 24 hours a day, 7 days a week including holidays. The General Construction Contractor's failure to secure the site as required by this paragraph will result in the Owner engaging the services of such necessary personnel so as to provide such security. No notice will be given the Contractor for General Construction of the Owner's intention to engage such security services and all costs and expenses associated with the Owner's security of the site in this regard will be back charged to the Contractor for General Construction. While the Owner may have security guards patrolling the project areas, the function of such security guards is not for the purpose of specifically guarding the Contractor's property or operations of work.

G. The Contractor's right to entry and use of the School District premises arises solely from the permission granted by the Owner pursuant to the agreement between the Contractor and the Owner. This permission shall be deemed to be withdrawn upon the termination of the Contractor's agreement with the Owner.

H. 1. The Contractor shall be required to perform its work with no interruption to the School District's operations, including its administrative and business operations. Any work which will interfere with the School District's operations and/or which is to be performed when the School District's facilities are in operation shall be performed on evenings and weekends. Additionally, the Contractor shall conduct its work in compliance with federal, state, county or local ordinances. All costs incurred by the Owner to make the facilities available during evening and weekends shall be borne by the Contractor. The Owner reserves the right to determine what work will "interfere" with its operations and said determination shall be final.

2. The Contractor may request access to the site during times beyond the work hours permitted. Approval is solely at the discretion of the Owner. If approval is given, the Contractor is responsible for paying all additional costs incurred by the Owner, Architect and the Construction Manager for providing the site to the Contractor during the additional time periods.

3. In the event the Contractor fails to complete all work under this contract by said scheduled dates, the Contractor will not be permitted to perform any work during normal school hours. Such work shall only be performed after school hours, Saturdays, Sundays, holidays or periods when school is unoccupied at no additional cost of any kind to the Owner. In addition to damages incurred by the Owner in connection with the Contractor's delay, the Contractor shall be liable for all costs incurred by the Owner to provide staff, Architect and Construction Manager personnel as required to make facility accessible by Contractor and perform inspections during such off hours.

4. The Owner shall not be responsible for any overtime charges incurred by the Contractor during the course of this project. Any and all costs associated with work which is performed at hours requiring the payment of such overtime by the Contractor to its workers shall be the Contractor's responsibility.

I. Construction and maintenance operations shall not produce noise in excess of 60 dba in occupied spaces or shall be scheduled for times when the building or affected building spaces are not occupied or acoustical abatement measures shall be taken.

J. The Contractor shall provide all required temporary access walkways, both interior and exterior, and the like necessary to complete its work. The Contractor shall maintain an unobstructed condition at all entrances and/or exits from present buildings. No equipment, other than equipment with rubber tires, will be allowed on any existing or new pavement, UNLESS THE CONTRACTOR HAS OBTAINED THE PRIOR APPROVAL OF THE CONSTRUCTION MANAGER AND THE PAVEMENT HAS BEEN FIRST PROTECTED WITH PLANKING OR BY OTHER MEANS APPROVED BY THE CONSTRUCTION MANAGER.

K. The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the premises of the School District without the prior written consent of the Owner, which consent may be withheld at the sole discretion of the Owner.

L. 1. Without the prior approval of the Owner, the Contractor shall not permit any workers to use any existing School District facilities, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. Employees, vehicles, and equipment of the Contractor and of all others engaged by the Contractor for the performance of its work shall enter onto the premises of the School District for which construction work is to be performed only at those locations designated or approved by the Construction Manager. The parking for construction personnel shall be limited to the designated trailer park area only. Failure to abide by this rule will result in towing of cars at the expense of the contractor who employs the individual.

2. The Contractor shall ensure that its work, at all times, is performed in a manner that affords reasonable access to both vehicles and individuals, to the premises of the School District and all adjacent areas. The Contractors' work shall be performed, to the fullest extent possible, in such a manner that areas in and around the construction area shall be free from all debris, building materials and equipment likely to cause hazardous conditions, and do not close

or obstruct walkways, roadways or other occupied facilities or facilities to be used by the Owner. Without limitation to any other provision of the agreement between the Contractor and the Owner, the Contractor shall use its best efforts to minimize any interference with the occupancy of areas, buildings, entrances, and parking areas in and around the premises at which work is being performed. Free access to fire hydrants and standpipe connections shall be maintained at all times during construction operations, and portable fire extinguishers shall be provided by the Contractor and made conveniently available throughout the construction site.

3. The Construction Manager, in conjunction with the Owner and the Architect, shall designate locations at the site at which the Contractor, its subcontractors and employees may utilize in connection with its work. The Contractor's employees and the employees of the Contractor's Subcontractors and others engaged by the Contractor to perform its work are prohibited from trespassing or leaving any vehicle on any property not assigned by the Owner as set aside for the use of the Contractor. The Contractor's employees and the employees of the Contractor's Subcontractors and other engaged by the Contractor to perform its work are restricted to the immediate area at which work is to be performed. Only persons having official business will be admitted to the construction site. NO COMMUNICATION BETWEEN THE CONTRACTOR, ITS EMPLOYEES, SUBCONTRACTORS' EMPLOYEES, OR OTHERS ENGAGED BY THE CONTRACTOR FOR THE PERFORMANCE OF ITS WORK AND STUDENTS OR STAFF WILL BE PERMITTED.

4. The Contractor, its employees, its Subcontractors and their employees or agents, and all others engaged by the Contractor in connection with the performance of its work are required to wear photographic identification badges at all times. The Contractor shall provide such individuals with said photographic identification badges. These badges shall be worn so as to be readily and easily visible. All workers and representatives of the Contractor, its subcontractors or suppliers shall wear these badges while on school property. The information on these badges shall be as prescribed by the Owner and the Construction Manager. Each person seen without a photo identification badge (or otherwise failing to comply with this requirement in the opinion of the Owner or the Construction Manager) shall be ordered to leave school property. No warnings shall be necessary. The Contractor(s) and their subcontractor(s) employing the offending person(s) shall be solely responsible for making-up and paying for any loss of production or required progress in the Work resulting from this action (including any claims by other Contractors dependent on the work of this Contractor). All parties agree that any action taken to enforce this requirement shall not be construed by any Contractor or its subcontractors or suppliers as the basis for a claim (for either time or money) for delay to the Work or to the Contractor, its Subcontractors, or Suppliers.

5. Without limitation of any other provision of the agreement between the Owner and Contractor, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the premises of the School District. The Contractor shall immediately notify the Owner in writing if during the performance of its work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternative through which the same results intended by such portion of the rules and regulations

can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations.

M. No drinking of alcoholic beverages, smoking or use of controlled substances is permitted on the grounds. The Contractor shall insure that none of its or its Subcontractors, its employees, agents, and/or consultant's report to the site impaired by alcohol or controlled substances. The Contractor bears the responsibility of determining if its, or its subcontractors, employees are in any way impaired and whether the safety of the public, the employees of other Contractors and their Subcontractors, the Owner, Architect, or Construction Manager are jeopardized. Each contractor shall provide drinking water for its own employees.

N. The Contractor's employees, representatives, agents and consultants, and all of its Subcontractors' employees, representatives, agents and consultants at the site are to refrain from using indecent language. All doing so will be removed from the site. Artwork or decoration found on vehicles belonging to Contractor or Subcontractor employees parked on or near the school property which contain indecent language or pictures shall either be covered or removed from the location.

O. The Contractor's employees, representative, agents and consultants, and all of its Subcontractors' employees, representatives, agents and consultants at the site are to wear shirts, long pants and proper footwear.

P. Each contractor shall keep the premises and surrounding area in which it is working free from accumulation of waste materials or rubbish caused by the performance of all of the work being performed on-site and in the buildings. On a daily basis at the conclusion of work on the project, each contractor shall clean the areas in which it has performed work and shall remove all waste, materials, rubbish, its tools, construction equipment, machinery and surplus materials. Each Contractor shall broom sweep all construction areas in which it has performed worked every day. The Construction Manager shall perform an inspection each afternoon to determine that the work areas of the contractors have been properly cleaned. In the event the work areas are not cleaned, the Construction Manager shall advise the offending contractor to provide cleaning as required herein. If any contractor fails to keep the site safe and clean within four (4) hours of being notified by the Construction Manager, either verbally or in writing, the Construction Manager will have the clean-up work performed and back charged to the offending contractor without further notification to the Contractor. The cost of such cleaning company, together with the cost of any custodial costs of the School District, at prevailing overtime rates plus 15% will be charged to the offending contractor. Notice to field personnel shall be deemed notice to the Contractor.

Q. The Contractor shall provide ventilation of enclosed areas during construction as may be required to permit proper curing and drying out and to prevent excessive humidity, moisture and condensation. Ventilation shall be by natural or artificial means as required by conditions involved.

R. The Contractor shall be responsible for the control of chemical fumes, gases and other contaminants produced by welding, gasoline or diesel engines, roofing, paving, painting, etc. to ensure that they do not enter occupied portions of the building or air intakes.

S. The Contractor shall be responsible for ensuring that activities and materials which result in "off-gassing" of volatile organic compounds such as glues, paints, furniture, carpeting, wall covering, drapery, etc. are scheduled, cured or ventilated in accordance with manufacturers' recommendations before a space can be occupied.

T. From the commencement to the completion of the Project, the Contractor shall keep the parts of the work and the buildings free from accumulation of water no matter what the source or cause of water.

U. 1. The General Contractor shall construct temporary partitions where shown on drawings or where otherwise required for safety of the public or to prevent dust from entering occupied areas. Partitions shall be dust-proof from floor to slab or structure above (if existing condition is a drop in tile ceiling, Contractor shall remove tile and install partition to structure above). In addition to framing and sheetrock, the Contractor shall install fire resistant plastic partitions on the work area side of its work. If an access door is required, an alternating 3-layer plastic system shall be used. The door shall be a standard hollow metal door with lockset and closer. Keys shall be distributed to the Owner's other contractors, the Owner and the Architect.

2. All cutting and welding performed within an occupied building or adjacent to a window or intake vent shall be performed during off hours.

V. 1. The Contractor shall control the safe handling and storage of all welding materials, acetylene and oxygen tanks, and other equipment required for welding and cutting work at the job site. Such storage shall be in compliance with OSHA regulations.

2. Welding materials and equipment shall be removed promptly from the premises upon completion of the welding and cutting work.

W. The Contractor shall be responsible for all costs incurred by the Owner caused by false security/fire alarms set off by the Contractor. Costs shall include custodial response charges etc.

X. The Contractor shall be responsible for broken glass, and at the completion of the Work shall replace such damaged or broken glass. After damaged or broken glass has been replaced, the Contractor shall remove all labels, wash and polish both sides of all glass. In addition to general broom cleaning, the General Contractor shall perform the following final cleaning for all trades at completion of the Work:

1. Remove temporary protections;
2. Remove marks, stains, fingerprints and other soil or dirt from painted, decorated and natural finished woodwork and other Work;

3. Remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;
4. Clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition;
5. Clean aluminum in accordance with recommendations of the manufacturer; and
6. Clean all floors thoroughly in accordance with recommendations of the manufacturer.

Y. Where a contractor other than the General Contractor is the only contractor engaged to perform work, the responsibilities allocated to the General Contractor in these General Conditions shall be performed by such other contractor.

ARTICLE 5 SUBCONTRACTORS

A. 1. As soon as practicable after receipt of Letter of Intent to Award, Notice to Proceed or other form of official notice of award of the Contract, but not more than ten (10) days after receipt of official notice of award of the Contract, the Contractor shall furnish the Owner and the Architect, in writing, with (1) the name, trade and subcontract amount for each Subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. Copies of all Subcontractor contracts, fully executed, are to be provided to the Construction Manager, including but not limited to all addenda, appendices, and/or exhibits including scope of work sheets. All such subcontracts shall be submitted to the Construction Manager within ten (10) days of the Owner's award of the contract to the Contractor.

2. Upon review of the Contractor's list of Subcontractors, the Architect will advise the Contractor in writing stating whether or not the Owner, the Construction Manager or the Architect, after due investigation, accepts or rejects, any proposed Subcontractor. Subcontractors will not be acceptable unless, when requested by the Architect, evidence is furnished that the proposed subcontractor has satisfactorily completed similar subcontracts as contemplated under this prime contract, and has the necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent to the Documents. As verification of financial ability, the Owner reserves the right to request and receive up to five (5) years' worth of financial statements, bank references, bond/insurance company references and all other information required to assess financial ability.

3. If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager and Architect have no objection. No increase in the Contract Sum shall be allowed where a sub-contractor is rejected by the Architect, Construction Manager or Owner who is (1) deemed unqualified to perform the particular work subcontracted by the Contractor, (2) does not have the necessary experience, personnel, equipment, plant and financial ability to complete the subcontract, or (3) has a history of poor performance in work of similar

nature. Upon receipt of a rejection of a subcontractor by the Architect, the Contractor shall have the right to request a meeting with the Architect, Construction Manager and the Owner to discuss the reasons it believes the subcontractor is qualified to perform the work. Upon review of such reasons, the Architect shall re-consider its determination and shall advise the Contractor of its determination upon such review. If the Architect still finds that such subcontractor does not meet the requirements above-stated, it shall advise the Contractor. The Architect's determination upon such review shall be final and binding on the Contractor and its Subcontractor and the Contractor hereby waives any and all claims it or its subcontractor might have against the Owner, the Construction Manager and/or the Architect concerning the rejection of such Contractor and shall require its subcontractors to execute such similar waiver in its agreement with the Contractor.

4. The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such change.

B. By appropriate agreement, the Contractor shall require each Subcontractor to be bound to the Contractor by terms of the Contractor's agreement with the Owner, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by said agreement, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contractor's agreement with the Owner so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by its agreement with the Owner, has against the Owner. However, the Subcontract agreement between the Contractor and Subcontractor shall not provide, nor shall this Agreement be deemed to provide any rights, remedies or redress by the Subcontractor(s) against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.

C. The Contractor shall promptly notify the Owner, Construction Manager and Architect of any material defaults by any Subcontractors and/or whether it has terminated its agreement with any of its subcontractors for any reason.

D. The Contractor hereby assigns all of its rights in its agreements with its Subcontractor(s) and hereby does assign, transfer and set over to the Owner all of its rights and/or interests in its agreements with its Subcontractor(s), but only in the event of termination of the Contractor's agreement with the Owner pursuant to Article 17, paragraph A of these General Conditions of the Contract for Construction and only to the extent the Owner implements its rights to take such assignment of contract by notifying the Subcontractor in writing of its intention to do so. Such an assignment is subject to the prior rights of the surety, if any, obligated to the Owner pursuant to a performance bond submitted in connection with the Contractor's work.

E. If the Work in connection with a subcontract has been suspended for more than ninety (90) days after termination of the Contract by the Owner and the Owner accepts assignment of

such subcontract, the Subcontractor's compensation shall not be adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

F. It shall be the Contractor's responsibility, when sub-contracting any portion of his work, to arrange or group items of work under particular trades to conform with then prevailing customs of the trade, regardless of the particular Divisions and Sections of the Specifications in which the work is described.

G. All subcontracts must be in writing.

ARTICLE 6 CONTRACTOR'S USE OF DRAWINGS/SPECIFICATIONS

A. The Agreement between the Owner and Contractor, and all documents incorporated therein by reference, including but not limited to, the drawings and project manual shall be signed by the Contractor and the Owner.

B. The intent of the agreement between the Owner and the Contractor is to include all items necessary for the proper execution and completion of the work to be performed by the Contractor. The documents comprising the agreement between the Contractor and the Owner are complementary, and what is required by one shall be as binding as if required by all.

C. 1. In the event of inconsistencies within or between parts of the agreement between the Contractor and the Owner or between the agreement between the Contractor and the Owner and applicable standards, codes and ordinances, the Contractor shall (a) provide the better quality or greater quantity of Work or (b) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation.

2. On the Drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small scale drawings.

3. Before ordering any materials or performing any of its work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Architect for resolution before proceeding with the performance of the work.

4. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for the approval by the Architect before making the change.

5. Drawings, in general, are made to scale, but all working dimensions shall be taken from the figured dimensions or by actual measurements at the job and in no case by scaling. The Contractor shall study and compare all Drawings and verify all figures before laying out or

constructing the work and shall be responsible for any and all errors in his work which might have been avoided thereby. Whether or not an error is believed to exist, deviation from the Drawings and the dimensions given thereon shall be made only after approval in writing is obtained from the Architect.

6. In the event addendum (a) are issued and contain changes to the Drawings and/or Specifications, the provisions in the addendum (a) supersede previously issued Drawings and/or Specifications.

D. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control Contractor in dividing the work among Subcontractor or in establishing the extent of Work to be performed by any trade.

E. Unless otherwise stated in the agreement, words and abbreviations which have well-known technical or construction industry meanings are used in the agreements in accordance with such recognized meanings.

F. The Contractor, and all Subcontractors, shall refer to all of the Drawings, including those showing the work of others performing work in connection with the project, including but not limited to the General Contractor (if any), the Plumbing Contractor, the Heating, Ventilation, Air Conditioning Contractor, Electrical Contractor and other specialized trades, and to all of the Divisions of the Project Manual, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results.

G. All indications or notations on the drawings which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the drawings or project manual. All work mentioned or indicated in the drawings or project manual shall be performed by the Contractor unless it is specifically indicated therein that the work is to be performed by others.

H. The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Contractor's work is to be performed. The Contractor may retain one contract record set during the course of the project. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work.

I. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects without the specific written consent of the Owner and Architect. The

Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the performance of its work pursuant to its agreement with the Owner. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

J. The Owner shall furnish surveys describing physical characteristics of the site, upon written request of the Contractor and to the extent such survey is in existence at the time of said request, legal limitations and utility locations for the project sites. Nothing herein shall be construed as requiring the Owner to generate any document which it does not possess at the time of the request by the Contractor. In the event that the survey provided does not clearly delineate the metes and bounds of the Owner's property, the Contractor shall stop work and immediately notify the Architect, Construction Manager and the Owner. The Contractor shall NOT proceed with its work until it receives written permission from the Construction Manager and/or the Architect. The Contractor shall be fully responsible for all costs arising from non-compliance with this provision. Any delays associated with this provision shall not serve as a basis for a claim by the Contractor.

K. From the basic data established by the Owner, the General Contractor shall establish reference control points and complete the layout of the work. Each Contractor is responsible for utility markouts as it pertains to the scope of their work and maintain markout during work. Sketch of layout with reference points to be given to Construction Manager and Architect at the time of markout.

L. The Contractor shall be responsible for all measurements that may be required for execution of the work to the exact position and elevation as prescribed in the specifications, shown on the drawings, or as the same may be modified at the direction of the Architect to meet changed conditions.

M. The General Contractor shall be responsible for the establishment of points, wall and partition lines required by the various Prime Contractors and subcontractors in laying out their work.

N. Each Contractor shall furnish such stakes and other required equipment, tools and materials, and all labor as may be required in laying out any part of the work from the base lines and benchmarks established by the Owner.

O. 1. The General Construction Contractor shall establish a baseline and benchmark system for each building addition, area of renovation or component using the services of a licensed professional surveyor. The surveyor(s) employed to establish this system or to extend and maintain an existing benchmark system for the work of other trades shall have not less than five years of experience in performing construction surveys similar to the work they will perform

for this project. The remaining Contractors and their respective subcontractors shall be responsible for extending these lines, levels and grades, and for performing all layout for their own work. The Contractor is solely responsible for any damage or loss due to incorrect extension of lines, level or grades in their layout. The Contractor and its subcontractors shall be responsible for the accuracy with respect to the layout of their work. Any discrepancies or errors in the drawings, perceived by another contractor or subcontractor shall be immediately reported to the Construction Manager. If any corrections are necessary, they shall be executed in accordance with the terms and provisions of these General Conditions.

2. The Contractor and its subcontractors shall be responsible to offset or to protect their markings from anything that may disturb them.

3. Every contractor shall work off the lines and elevations established and maintained as the baseline and benchmark system.

4. Each Contractor is responsible for the accuracy of his own work.

P. The Architect may require that construction work be suspended at any time when location and limit marks established by the Contractor are not reasonably adequate to permit checking completed work or the work in progress.

Q. Except for the basic building permit, the Contractor shall be responsible for securing and maintaining for the life of the project: all permits, P.E. Licenses, connection fees, inspections, etc. applicable to, or customarily secured for the work. This provision includes any permits to be issued in the name of the Contractor required for the work. Originals of all permits are to be issued in the name of the Contractor as required for the work. The Contractor shall furnish the Construction Manager with original copies of all permits prior to the commencement of the work and shall prominently display a copy of all permits at a location approved by the Construction Manager.

R. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

S. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contracts, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, utilities and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner.

T. 1. The Contractor shall give the Architect timely notice of any additional design drawings, specifications, or instructions required to define its work in greater detail, or to permit the proper progress of its work. To the extent the Architect advises the Contractor that the existing design drawings, specifications and/or instructions given are sufficiently detailed for the Contractor to perform its work, the Architect shall be under no obligation to further clarify or define the work to be performed. In all other circumstances, the Architect shall issue a field order which responds to the request for information.

2. Requests for Information (RFIs) are for requests on clarifications or questions on contract drawings and specifications, not contract terms, scheduling items, or general correspondence, nor, as a means to describe or request approval of alternate construction means, methods or concepts or substitution of materials, systems means and methods. The Contractor shall fill all RFIs out in accordance with the provisions of the Project Manual. Neither the Architect nor the Construction Manager shall fill said forms out on the Contractor's behalf.

U. The Contractor shall, prior to the start of any portion of the Work:

1. review any specified construction or installation procedures, including those as may be recommended by the proposed manufacturer.
2. advise the Architect if the specified procedure(s) deviates from good construction practice.
3. advise the Architect if following said procedure(s) will affect any warranty, including the contractor's general warranty.
4. advise the Architect of any objections the Contractor may have to the specified procedure(s).
5. propose any alternative procedure(s) which the Contractor will warrant.

V. 1. To the fullest extent possible, the Contractor shall provide products of the same kind, from a single source. When two or more items of same material or equipment are required (pumps, valves, air conditioning units, etc.), they shall be of the same manufacturer. Product manufacturer uniformity does not apply to raw materials, bulk materials, pipe, tube, fittings (except flanged and grooved types), sheet metal, wire, steel bar stock, welding rods, solder, fasteners, motors for dissimilar equipment units, and similar items used in the work, except as otherwise indicated. The Contractor shall provide products which are compatible within systems and other connected items. If Contractor is given option of selecting between two or more products for use on Project, product selected shall be compatible with products previously selected, even if previously selected products were also options.

2. The Contractor is responsible for providing products and construction methods compatible with products and construction methods of other contractors. If a dispute arises between contractors over concurrently selectable but incompatible products, Architect will determine which products shall be used.

3. With respect to sitework materials, all products submitted for use and incorporated into this project shall be on the Approved List of Materials and Equipment published by the NYSDOT Materials Bureau, most recent edition.

4. All products submitted for use and incorporated into this project shall be asbestos free.

W. Equivalents. In the Specifications, one or more kinds, types, brands, or manufacturers or materials are regarded as the required standard of quality and are presumed to be equal. The Contractor may select one of these items or, if the contractor desires to use any kind type, brand, or manufacturer or material other than those named in the specifications, they shall indicate in writing, and prior to award of contract, what kind, type, brand or manufacturer is included in the base bid for the specified item. The Contractor shall follow the submission requirements for substitutions as set forth in Article 6.X below.

X. 1. Substitutions. If the Contractor desires to substitute any kind, type, brand, or manufacturer of material other than those named in the Specifications, the Contractor shall indicate the desired substitution in its bid, including the following:

a. For which specified material or equipment the request for substitution is being made;

b. What kind, type, brand, or manufacturer is sought to be substituted for the specified items;

c. Written documentation evidencing that the substituted material or equipment meets or exceeds the specifications for materials and/or equipment set forth in the project manual. Such documentation shall include, but not limited to, a full explanation of the proposed substitution, together with a submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, significant qualities of proposed substitution (e.g. performance, weight, size, durability and visual effects), and other like information necessary for a complete evaluation of the substitution. Additionally, the Contractor shall provide material test reports from a qualified testing agency indicating and interpreting test results for compliance with requirements indicated. All such data shall be provided to the Architect and Owner at the Contractor's sole expense. The Contractor's written explanation shall also include a list of reasons the substitution is advantageous and necessary, including the benefits to the Owner and the project in the event the substitution is acceptable. Additionally, the Contractor shall submit to the Architect information

describing in specific detail how the proposed substituted product differs from the quality and performance required by the base specifications, and such other information as may be required by the Owner or the Architect.

d. Coordination information, including a list of changes or modifications needed to other parts of the Work and to construction performed by Owner and separate contractors that will be necessary to accommodate proposed substitution.

e. Samples, where applicable or requested.

f. Detailed comparison of Contractor's Construction Schedule using proposed substitution with products specified for the Work, including effect on the overall Contract Time. If specified product or method of construction cannot be provided within the Contract Time, include letter from manufacturer, on manufacturer's letterhead, stating lack of availability or delays in delivery.

g. Detailed comparison of the difference in cost between the specified product and the proposed substitution including any and all costs associated with changes or modifications needed to other parts of the work and to construction performed by the Owner and/or separate Contractors that will be necessary to accommodate proposed substitution. In the event the substitution is accepted, the Contractor proposing the use of the substitution shall bear all costs associated with said changes or modifications.

2. By making said requests in conformance with procedures established herein and elsewhere in the Project Manual, the Contractor:

a. Represents that a representative of it has personally investigated the proposed substitute product and has determined that it is equal to or superior in all respects to that specified.

b. Represents that the warranty for the substitution will be the same, or greater than, that applicable to the specified product.

c. Certifies that the cost data is complete and includes all related costs under this contract, including professional services necessary and/or required for the architect and engineers to implement said substitution and waives any and all claims for additional costs related to the substitution which subsequently become apparent.

d. Represents that it will coordinate the installation of the accepted substitute, making all such changes to the drawings effected by the change, including but not limited to the electrical, plumbing, site work and heating and ventilating specifications as may be required for the work to be complete in all respects.

e. An affidavit stating that (1) the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect; and the proposed substitution will have no effect on the construction schedule.

3. Proposals for substitutions shall be submitted with the Contractor's bid.

4. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

Y. 1. Submittal of shop drawings, product data, material safety data sheets, samples or similar submittals shall be in accordance with the provisions of the project manual.

2. The Contractor represents and warrants that all shop drawings have been prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer, job specific, reviewed by Contractor and stamped by the Contractor.

3. If the Contractor elects to perform its work without approvals, such work shall be at the Contractor's own risk and expense.

4. By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of its work.

5. The Contractor shall not be relieved of responsibility for deviations from requirements of its work by the Architect's approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors and/or omissions in the shop drawings, product data, samples or other of its submittals to the Architect, by the Architect's approval thereof.

6. The Architect shall review, approve, reject or take other appropriate action respecting submittals made by the Contractor as set forth in the Project Manual. The Architect shall check for conformance with information given in the drawings and project manual and the design concept expressed in the agreement between the Owner and the Contractor. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor. Further, the Architect's review shall not constitute

approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures.

The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

7. Upon the Architect's rejection of the Contractor's shop drawings, product data, samples and/or other documentation submitted by the Contractor to the Architect, the Contractor shall review the rejection and re-submit such shop drawing, product data, sample and or other document in accordance with the Architect's instruction. The Contractor shall direct the Architect's specific attention in writing or on re-submitted shop drawings, product data, samples, or similar submittals, to revision which have been made, including revisions not specifically requested by the Architect. Resubmission of rejected documents shall be performed within two (2) calendar days. No claim for delay or cost shall be accepted as a result of rejected documents.

8. When professional certification of performance criteria of materials, systems or equipment is required of the Contractor, the Architect shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications provided, however, if the Architect, in its reasonable and professional judgment considers it advisable, the Architect shall verify the accuracy and completeness of any and all such calculations and/or certifications. In the event any and all such calculations and/or certifications are found to be inaccurate and/or incomplete by the Architect, the Contractor shall assume full responsibility and bear all costs attributable or related thereto, including, without limitation, the expense of the Architect's additional services associated with the verification of such calculations and/or certifications and the expense of the Architect's additional service made necessary by the failure of such calculations and/or certifications to be accurate or complete.

9. If the Architect is required to review the Contractor's submittal more than twice, the Contractor shall bear the cost and expense associated with such additional review as set forth in the Project Manual.

Z. The Architect will interpret and decide matters concerning performance under and requirements of the drawings and/or technical specifications on written request of the Contractor. Such interpretations may, at the Architect's option, be issued in the form of additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Contractor's work. Such drawings or instructions may be forwarded by the Architect to the Contractor by field order, construction change directive or other notice to the Contractor. The Contractor shall execute the work for which it requested an interpretation in accordance with such additional drawings or instructions without additional cost or extension of its contract time. After a decision has been rendered by the Architect on a matter for which the Contractor sought the Architect's interpretation of the drawings and/or technical specifications, the Contractor shall proceed with the work as directed by the Architect. Failure to proceed with the work in

accordance with the Architect's interpretation may be used as a basis for termination of the Contractor's contract pursuant to Article 17 of these General Conditions.

AA. The Contractor shall maintain at the site one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and the Construction Manager and shall be delivered to the Construction Manager for submittal to the Owner upon the completion of its work.

BB. The Contractor shall maintain at the site, and shall make available to the Owner, Construction Manager and Architect, one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Contractor's work. The prints for Record Drawing use will be a set of black line prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs, etc.; (v) architectural and/or structural changes in the design; and (vi) such other information as either Owner or Architect may reasonably request. At the completion of the work, Contractor shall transfer all information on record drawings to reproducible drawings with new information clouded and noted. Such drawings shall be stamped with the Contractor's name and "AS-BUILT" in the lower right-hand corner. The colored record drawing and the as-built reproducible drawing shall be forwarded to the Construction Manager for delivery to the Owner. Final payment and any retainage shall not be due and owing to Contractor until the Record and/or As Built drawings receive the approval from the Architect and the Owner (and all other closeout requirements are met).

CC. The Contractor shall maintain all approved permit drawings in a manner so as to make them accessible to government inspectors and other authorized agencies. All approved drawings shall be wrapped, marked and delivered to the Owner within sixty (60) days of final completion of the Contractor's work.

DD. Each Prime Contractor shall be furnished, free of charge, 3 copies of the Contract Documents and Project Manuals, including all Addenda. Any and all additional copies will be furnished to the Contractor at the cost of reproduction, postage and handling.

ARTICLE 7 CONTRACTOR'S SAFETY/SECURITY PROGRAM

A. 1. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of its work.

Prior to beginning any work, the contractor shall submit a copy of its corporate safety plan to the Owner and the Architect. Two (2) weeks after receipt of the Notice to Proceed, the Contractor shall provide a Site Safety/Logistics Plan to the Owner and the Architect. The site logistics plan should minimally include locations of the eight-foot high temporary fence and gates, traffic plans for deliveries and removals, refuse container locations, crane locations, pick locations, boom radius, and lift locations, stockpiles, toilet locations, site water and power locations, and safety. This plan shall also show the location of all staging and storage areas, clearly separating construction and school areas. The logistical information represented by the construction documents shall serve as a minimal guide. Each contractor is required to submit their corporate safety policy within ten (10) days of receipt of the Notice to Proceed. Said policy must minimally meet OSHA standards and define details concerning the maintenance of a safe work environment and shall also define practices for the maintenance of hygiene and minimizing the spread of infectious/contagious diseases. The Contractor shall make the participation of its subcontractors in its safety program mandatory. A list of key personnel, with addresses and telephone numbers for emergency purposes shall be forwarded to the Owner and the Architect. The Owner and the Architect shall establish a fire coordination procedure and shall forward same to the Contractor for its use during the performance of its work.

2. The Contractor shall provide its COVID-19 Safety Plan to the Owner prior to the start of any work. The Contractor shall designate a person on its staff to be responsible to monitor wearing of Personal Protective Equipment (PPE) by each person on site working with or for the Contractor. All Center for Disease Control guidelines and Local, State & Federal Orders must be strictly followed.

3. All laborers, workers, and mechanics employed in the performance of the work of this Project shall be certified as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least ten (10) hours in duration.

The Contractor and its subcontractors shall conduct their operation in accordance with the Safety Guides for Construction as issued by the SED and the Contractors' Safety Program.

4. All safety equipment including hard hats and weather protective gear required for the Contractor to perform its work are to be supplied by the Contractor and/or its subcontractors. Within the designated construction areas, the Contractor's employees, superintendents, and/or other agents, and its subcontractors, employees, superintendents, and/or other agents are required to wear hard hats and other required and/or essential safety equipment. Each person seen without a hard hat, or otherwise failing to comply with this requirement, will be ordered to leave the project. No prior warnings will be given by the Owner or Construction Manager and Architect. The Contractor and its subcontractors shall be solely responsible for making up and paying for any loss of production or required progress resulting from the removal of personnel from the project as set forth herein including any costs incurred by the Owner in connection with the work of other contractors.

5. The Contractor and its subcontractors shall provide blankets and auxiliary fire protection as part of its construction safety program to prevent damage to adjacent work or materials as a result of its welding or burning operations. Additionally, as part of its construction safety program, the Contractor and its subcontractors shall provide a fire watch, with a fire extinguisher, which is acceptable to the Owner and the Construction Manager.

6. The Construction Manager and/or Owner reserve the right to have all operating equipment periodically inspected by an independent inspector whose finding will be binding. The Prime Contractor, at its own expense, must make corrections within two (2) working days of receiving a written report.

7. All flagmen required for deliveries to the site are to be furnished by the Contractor or its Subcontractors responsible for the delivery. Any and all deliveries crossing the site or student traffic areas shall be escorted by flagmen. All flagmen shall wear orange vests.

B. The Contractor shall schedule weekly safety meetings and each of its subcontractors must be properly represented at such meetings. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. The Contractor shall notify the Construction Manager in writing its "OSHA Competent Person Regarding Safety". Said person must be an individual capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Construction Manager and Architect. The Contractor shall take all necessary steps to prevent its employees from disturbing and/or damaging the facility and shall be responsible for preventing the escape of fires set in connection with the construction. The Contractor shall notify its employees and subcontractors of the location of the nearest fire alarm box at all locations where the work is in progress. On a weekly basis, the Contractor shall submit to the Construction Manager and Architect minutes of its safety meetings, which minutes shall include a list of the individuals present at such meetings.

C. The Contractor and each of its subcontractors shall conduct its/their operation in accordance with all applicable laws, regulations and order of local, state and federal governments. The Contractor agrees, in order that the work will be completed with the greatest degree of safety to conform to the requirements of the Occupational Safety and Health Act of 1970 (OSHA) and the Construction Safety Act of 1969, including all standards and regulations that have been since or shall be promulgated by the governmental authorities which administer such acts.

D. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

E. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for surety and protection, including posting

danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

F. The Contractor shall take reasonable precautions for the safety and protection of employees at the project site and other person who may be affected by its work, including but not limited to students, staff, employees and agents of the Owner, the Construction Manager and the Architect.

G. The Contractor shall protect and secure its work and the materials and/or equipment to be utilized in connection with its work, whether stored on or off the site and whether in its care, custody and control or that of its Subcontractors, subcontractors to its subcontractors, or material suppliers.

H. The Contractor shall take all steps necessary to protect all property at or adjacent to the site, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

I. All delivery vehicles/trucks/machinery/etc. permitted on the site must be equipped with back-up alarms and enter through the designated access points. The Contractor's failure to demonstrate this ability will result in cancellation of delivery or stoppage of work. All delays associated with this cancellation will be the responsibility of the contractor responsible for the work involved.

J. All crane picks, materials delivery, etc. must be coordinated so as not to lift over any occupied area of the building. If absolutely necessary, this work shall be done on off hours to insure the safety of the building occupants. Crane location must be approved by the Construction Manager to insure the safety of building occupants.

K. The Owner or Construction Manager reserves the right to have all hoisting equipment periodically inspected by an independent inspector whose findings will be binding. The Contractor, at its own expense, must make corrections cited by the inspector before continuing work. The Owner or Construction Manager will not assume any responsibility for the safe operation of any hoisting equipment by exercising this right. The Contractor and/or its subcontractor(s) shall cooperate with the inspector by allowing time for the inspection. The Contractor shall be notified twenty-four (24) hours prior to the time of the inspection. These inspections do not release the Contractor if its responsibility to provide all engineering, permits and inspections as required by OSHA or the New York State Education Department prior to use of any hoisting equipment.

L. The Contractor shall use the entrances designated on the site logistic plans and drawings for personal vehicles, trucks, equipment, deliveries and the like.

M. All interior temporary partitions and emergency egress barriers (if required) are to be installed on an after hours basis (weekends/school holidays).

N. 1. When use or storage of hazardous materials or equipment or unusual construction methods are necessary to perform its Work, the Contractor shall obtain the Owner and the Construction Manager's consent for the use of such materials, equipment or unusual construction methods. In the event the Owner determines that the use of such hazardous material or equipment or unusual construction methods can be performed by the Contractor with alternative means, methods and/or techniques, the Contractor shall employ such alternate means of prosecuting its work at no additional cost to the Owner.

2. In the event the Owner approves the use or storage of such hazardous materials, equipment or unusual construction methods, the Contractor shall provide for the Owner's and the Construction Manager's use a full set of safety instructions relating to all such materials. Additionally, when the Owner and/or the Construction Manager reviews the use of storage of such hazardous materials, equipment and or unusual construction methods, the Contractor shall exercise the highest degree of care and carry on such activities under supervision of properly qualified personnel.

3. Transportation, storage, and use of explosives shall be in strict accordance with all local, state and federal regulations, statutes, and requirements. All safety precautions as set forth in the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc. shall be observed.

4. The Contractor is responsible for its own storage and personnel trailers at the site. The Contractor will be required to supply man trailers and storage box trailers as required. All costs related to delivery, construction, protection, power, etc. for said trailers are the responsibility of the contractor utilizing the space. The Owner WILL NOT PROVIDE STORAGE SPACE. The placement of personnel and/or storage trailer will be strictly limited to pre-determined locations. The Contractor shall obtain the written approval of the placement of any trailer or storage box from the Construction Manager.

O. During construction, the General Contractor shall be responsible for maintaining a watertight structure. This shall include additions and existing buildings. The contractor shall be responsible for temporary roofing, tarps and other protection at roofs, cavity walls, etc. Should the contractor fail to provide adequate protection, causing flooding, damage or other disturbance to the existing building, contractor shall be responsible for all costs associated with clean up and repairs. Inasmuch as flooding and damage have safety implications to the general public, clean up and repairs may be made by the Owner without warning to the Contractor. Administration costs incurred by the Owner and Architect will also be back charged to the Contractor. The Contractor, by entering into contract with the Owner agrees to be liable for these costs.

P. When all or a portion of the Contractor's work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the work, as necessary, from injury by any cause.

Q. 1. The Contractor shall promptly remedy damage and loss to all property of the Owner, or adjacent to the Owner's property (other than damage or loss covered by insurance)

caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

2. Title to all completed or partially completed work at the job site, and to all materials delivered to and stored at said job site which are intended to become a part of the completed work covered by the agreement between the Contractor and the Owner, shall be in the name of the Owner. Notwithstanding the foregoing, and prior to acceptance of the completed work by the Owner, the Contractor shall be liable for all loss of or damage to said completed work, partially completed work, materials furnished by the Contractor, and/or materials or equipment furnished by others, the custody of which has been given to the Contractor, arising from any cause other than those against which the Owner herein undertakes to carry insurance. In the event of loss or damage from cause other than those against which the Owner undertakes to carry insurance, the Contractor shall replace or repair the said work or materials at his own cost and expense, to the complete satisfaction of the Owner, the Construction Manager and the Architect.

R. The Contractor shall promptly report in writing to the Owner, the Architect and the Construction Manager all accidents arising out of or in connection with the Work which cause death, person injury, or property damage, giving full details and statements or any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner, Construction Manager and the Architect.

S. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

T. Any and all fines or citations levied against the Owner, Architect, or Construction Manager due to the failure of the Contractor to comply with regulations of any governing authority, shall be paid for by the Contractor. This shall include any interest or late charges which accrue due to the Contractor's failure to remit payment upon receipt of such levies.

U. The Contractor shall indemnify and hold harmless the Owner, Construction Manager and Architect from any and all claims, damages, losses, suits, obligations, fines, penalties, costs, charges and expenses which may be imposed upon or incurred by or asserted against any of them by reason of any act or omission of such Contractor or any subcontractor or any person or firm directly or indirectly or indirectly employed by such Contractor, with respect to violations of OSHA requirements, rules and/or regulations.

V. The Contractor acknowledges that the Labor Law of the State of New York, and regulations adopted thereunder, place upon both the Owner and Contractor certain duties and that liability for failure to comply therewith is imposed on both the Owner and Contractor regardless of their respective fault. The Contractor hereby agrees that, as between the Owner and

the Contractor, and to the extent permitted by law, the Contractor is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract.

W. The Contractor shall indemnify and hold harmless the Owner, Architect, and Construction Manager, of and from any and all liability for violation of such laws and regulations and shall defend any claims or actions which may be brought against the Owner as the result thereof. In the event that the Contractor shall fail to refuse to defend any such action, the Contractor shall be liable to the Owner for all costs of the Owner, Architect or Construction Manager in defending such claim or action and all costs of the Owner, including attorney's fees, in recovering such defense costs from the Contractor.

X. The Contractor and its subcontractors shall indemnify and hold harmless the Owner, Construction Manager and Architect from any and all claims, damages, losses, suits, obligations, fines, penalties, costs, charges and expenses which may be imposed upon or incurred by or asserted against any of them by reason of any act or omission of such Contractor or any subcontractor or any person or firm directly or indirectly employed by such Contractor, for the act and/or omissions of any Contractor or Subcontractor that resulted in an incident and/or accident causing personal injury and/or property damage.

Y. The Construction Manager, the Owner, and/or the Architect will not assume any responsibility for the safe operation of any cranes or equipment by exercising this right. The Contractor and its subcontractors shall cooperate with the inspector by allowing time for inspection. The Contractor will be notified 24 hours prior to the time of the actual inspection. The Contractor is obligated to perform all engineering, obtain permits, and to have all hoisting equipment inspected as required by OSHA, Village, Town, County, State, and Federal regulations as well as any other agency having jurisdiction. Copies of all inspection reports and certificates must be transmitted to Construction Manager as soon as possible.

ARTICLE 8 CHANGES IN THE WORK

A. Without invalidating the agreement between the Owner and the Contractor, and without notice to the Contractor's surety, the Owner may, at any time or from time to time, order additions, deletions or revisions in the Contractor's work. Such additions, deletions or revisions will be authorized by field order, change order, or construction change directive.

B. Field Orders are an interpretation of the contract drawings and/or specifications which order minor changes in the Contractor's work which will not result in an increase or decrease in the Contractor's total contract sum. From time to time, the Architect may issue field orders to the Contractor. The work included in such field order shall be performed by the Contractor at no additional cost to the Owner and shall not form the basis for a claim for an extension of time of the Contractor's time to complete its work. Hence, the Contractor shall perform the work included in field orders so as to cause no delay to its work and/or the work of other contractors engaged by the Owner in connection with the project. All field orders shall be given to the

Contractor and the Construction Manager by the Architect in writing.

C. 1. When the Owner or Architect (in association with the Construction Manager) request that the Contractor perform work which is not included in the contract drawings or specifications and which will result in additional cost to the Owner, the Architect/Construction Manager shall issue a PCO Number and shall request that the Contractor submit its proposal for performing such additional work. The Contractor shall submit its proposal to the Construction Manager and Architect for review. The Contractor's proposal shall include a complete itemization of the costs associated with performing its work including labor and materials. All proposals for any work that a Contractor, its subcontractor(s) or subcontractor(s) of subcontractor(s) perform in connection with additional work shall be submitted using the following format and in no event shall the total for overhead and profit on any change order exceed fifteen percent (15%) of the cost of the work.

1.	Materials (Itemized Breakdown) including quantities and cost	
2.	Labor (Itemized Breakdown)	
3.	Subtotal (Add lines 1 and 2)	
4.	Credit for work not required due to additional or changes to the work reflected in the within change order (if any)	
5.	Overhead (10% x line 3)	
6.	Subtotal (Add lines 3 through 5)	
7.	Sub-Contract Work (Include itemized breakdown. Sub-Contractor(s) overhead and profit allowed is 10%)	
8.	Subtotal (Add lines 6 and 7)	
9.	Profit (5% x line 8)	
10.	Subtotal (Add lines 8 and 9)	
11.	Rental Value of Equipment (Itemized Breakdown)	
12.	Actual additional charges for bonds	
13.	TOTAL CHANGE ORDER (Add lines 10, 11 and 12)	

2. All proposals submitted by the Contractor without the itemization indicated herein will be returned to the Contractor for re-submission by the Contractor. For any work performed by the Contractor's own forces, fifteen percent (15%) for overhead and profit will be allowed for labor and material related costs. Costs to which overhead is to be applied shall be limited to cost of labor and materials including the cost of delivery. Under no circumstances shall any change order proposal exceed fifteen percent (15%) of the cost of overhead and profit.

The Contractor shall not be entitled to recover overhead and profit on the rental value of equipment and machinery. "Equipment and machinery" shall not include (1) tools customarily used by the contractor's trade, including but not limited to hand tools, and/or (2) equipment and machinery already on site and being utilized by the Contractor for the original scope of work.

The Contractor shall submit with its change order proposals actual invoices from its insurance

broker reflecting actual additional costs associated with the procurement of bonds.

3. The Contractor's subcontractor's proposal for any work it is to perform in connection with the additional work shall only include ten percent (10%) for the subcontractor's overhead and profit including sub-subcontracted work. The Contractor is entitled to five percent (5%) on work performed by its subcontractor in accordance with paragraph C (1) of this Article 8. Costs to which overhead is to be applied shall be limited to cost of labor and materials including the cost of delivery. Under no circumstances shall the Contractor or the Contractor's subcontractor(s) be entitled to be reimbursed for overtime, except when specifically approved by the Owner in writing and not as an Extraordinary Measure as set forth in Article 13, and in such event the Contractor shall be paid for by the Owner on the basis of premium payment.

4. Notwithstanding the foregoing, work which is performed pursuant to an allowance included in the Contractor's base contract, the provisions of Article 9, paragraph B, concerning itemization of such work shall be controlling.

5. a. A change in the Contract Sum shall be accomplished only by a written Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim as defined in Article 18 of these General Conditions to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. **No amount shall be payable by the Owner to the Contractor for performance of work without a written and fully executed Change Order.**

b. Upon the Contractor's completion of the change order work, and prior to payment being made to the Contractor for such work, the Contractor shall provide the Owner with the following information:

1. Certified payrolls itemizing the labor actually utilized in connection with the change order work.
2. Copies of invoices from subcontractors supplying work in connection with the change order work.

D. 1. When the Owner or Architect request that portions of the Contractor's work originally included in the contract drawings or specifications be deleted and which will result in a reduction of the Contractor's original contract sum, the Architect shall request that the Contractor submit its proposal for deleting the scope of such work from its contract. The Contractor's proposal shall include a complete itemization of the costs associated with deducting such work including labor and materials and shall be submitted using the format set forth in Article 8, paragraph C(1) of these General Conditions of the Contract for Construction or the schedule of values, whichever is greater. The Contractor shall not be entitled to retain its overhead and/or profit for such work nor shall any of its subcontractors which were to perform the work being deducted from the Contractor's scope of work. Additionally, the Contractor shall

reflect the reduced cost of premiums on bonds which are to be supplied herein as a result of such change. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase/decrease with respect to that change.

2. The Owner may in its sole discretion deduct and/or reduce the scope of the Contractor's contract with or without any specific reasons therefor.

E. 1. In the event the Contractor and the Owner cannot agree on the sum by which its contract with the Owner is to be increased or reduced based upon changes to the scope of the work as described in Article 8, the Architect shall issue a construction change directive reflecting the deduction and/or reduction of the scope of the Contractor's contract and the Contractor will (a) in the case of additional work to be performed by the Contractor, perform such additional work in an expeditious manner so as not to delay the work of this or other contractors working at the site, and (b) in the case of work to be deducted from the scope of the Contractor's work, refrain from taking any steps in connection with the work associated with the deduction and/or reduction of the scope of the Contractor's work. The construction change directive shall include (a) a description of the work being added or deducted from the Contractor's scope of work; (b) the amount the Owner has determined to be the cost associated with the additional work or deduction and/or reduction of the scope of the Contractor's contract until the Owner and the Contractor agree upon the increase or decrease in the Contractor's contract sum, or until a claim filed by the Contractor has been determined; (c) the extent to which the contract time will be adjusted as a result of the change in the scope of work. Any claims must be filed in accordance with the requirements set forth in Article 18 of these General Conditions. Failure to timely file any claim in accordance with requirements set forth therein shall constitute a waiver of such claim.

2. In the event the Contractor and the Owner reach agreement on the amount by which the Contractor's contract sum is to be increased or decreased based upon changes to the scope of the Contractor's work as described in Article 8, the Architect, Owner, Construction Manager and Contractor shall sign a change order reflecting such agreement. The change order shall include (a) the description of the change in the scope of the Contractor's work; (b) the amount of the adjustment to the Contractor's contract sum, if any; and (c) the length of time by which the time to complete the contract will be adjusted, if any. Agreement between the Owner and the Contractor in connection with any change order shall constitute a final settlement of all matters relating to the change in the Contractor's work as reflected in said change order, including but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contractor's contract sum and the construction schedule. All such change orders for which the Owner and the Contractor have reached agreement shall be included as a separate line item in the Contractor's applications for payment as if originally part of the Contractor's agreement with the Owner.

F. Neither the Owner, the Construction Manager nor Architect may issue instructions to the Contractor to change the amount of the Contract, except by properly executed Change Orders. Instructions are issued by the Owner or the Construction Manager through the Architect, to the

Contractor. The instructions shall not be carried out by the Contractor prior to a written order in the form of a Change Order, signed by the Owner, Architect and Contractor, authorizing a change in the Contract amount or an adjustment to the Contract Sum. No amount shall be payable by the Owner to the Contractor for performance of work without an executed Change Order.

ARTICLE 9 PAYMENTS

A. 1. Prior to commencing its work on the project and within one (1) week of receipt of a Notice to Proceed, the Contractor shall submit to the Construction Manager and the Architect, a schedule of values which includes the amount of money it has allocated in its bid price for the following items of work which are applicable to the Contractor's work. Said schedule of values shall include each of the CSI division sections reflected in the specifications and applicable to the contract for which the Contractor has been awarded the contract, together with the requirements for bonds/insurance (based upon actual invoice amount), general conditions, meeting attendance and meeting documentation (at least two (2) percent of the contract sum), shop drawing/product data/sample submissions (at least one (1) percent of contract sum), labor and materials on line items as applicable, temporary utilities and services, HVAC balance reports, coordination drawings, punchlist (at least one (1) percent of the contract sum), warranties/guarantees and close out of the project (at least three (3) percent of the contract sum), and allowance, where applicable.

2. Any schedule of values which fails to include sufficient detail, is unbalanced or exhibits "front loading" of the value of the Contractor's work will be rejected. Furthermore, if the schedule of values has been approved by the Construction Manager and the Architect and is subsequently used, but later is found by the Construction Manager or Architect to be improper for any reason, sufficient funds shall be withheld from the Contractors' future applications for payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Contractor's work.

3. The schedule of values shall be drafted so as to reflect multiple construction sites, multiple locations within each site, additions versus renovations of work, and the like so as to satisfy any New York State Education Department requirements for the project.

4. The Schedule of Values prepared by the Contractor must be approved by the Construction Manager and the Architect prior to the payment of any sums due the Contractor.

B. The Contractor shall include in its contract sum all allowances stated in the specifications. However, the Contractor's costs for unloading and handling at the site, overhead, profit and other expenses contemplated for the stated allowance amounts shall be included in its contract sum and not in the allowances.

C. The Contractor shall submit its applications for payment to the Construction Manager and the Architect on a periodic basis. The form to be used by the Contractor shall be AIA G732 and 703/CMA approved by the Construction Manager, the Architect and the Owner for use in

connection with the Contractor's work. The form shall be divided in sufficiently in the same form as the Contractor's schedule of values and shall reflect in separate line items for the work:

1. Total value of the work listing labor and material separately
2. Percentage of work completed at the time of submission of the application for payment
3. Value of the work completed at the time of submission of the application for payment
4. Percent of previous amount billed
5. Previous amount billed
6. Current percent completed;
7. Value of work completed to date
8. Percent remaining to be completed by the Contractor; and
9. Value of work remaining to be completed by the Contractor

D. 1. Payments to the Contractor shall be based upon materials and equipment delivered and suitably stored at the site and/or incorporated into the Contractor's work, together with the labor utilized by the Contractor in connection with its work. The Contractor may be paid for materials and/or equipment which has been delivered to the Owner's facilities but which, at the time of submission of its application for payment, has not yet been incorporated into the Contractor's work upon such conditions and requirements as the Owner, the Construction Manager and/or the Architect may advise the Contractor it must satisfy.

2. The Construction Manager and Architect shall review the application for payment submitted by the Contractor and shall advise the Contractor of any adjustments to be made thereto. The Construction Manager and/or the Architect may make such adjustments under the following circumstances:

- a. the Contractor's failure to remedy defective work;
- b. the filing of third party claims or reasonable evidence that there is a probability that such claims will be filed;
- c. receipt by the Owner of a notice of withholding from the New York State Department of Labor or other administrative agencies having jurisdiction over the project;
- d. the Contractor's failure to make proper payments to its subcontractors or material suppliers for labor, materials and/or equipment;
- e. reasonable evidence that the Contractor will not complete its work for the unpaid balance of the remaining monies on its contract;
- f. damages caused to the Owner, Construction Manager, the Architect or another contractor as a result of the Contractor's performance of its work;

- g. reasonable evidence that the Contractor will not complete its work in accordance with its agreement with the Owner, and/or that the remaining monies available on the Contractor's contract will not be sufficient to cover actual or liquidated damages for the anticipated delay;
- h. the Contractor's failure to carry out its work in accordance with the contract drawings and/or specifications;
- i. the Contractor's failure to notify the Architect of errors or inconsistencies between and among the contract drawings and specifications;
- j. the Contractor's and/or its subcontractors' failure to comply with the requirements for maintaining record drawings;
- k. the Architect's and/or the Construction Manager's discovery or observation of work which has been previously paid for by the Owner which is defective and/or incomplete;
- l. such other acts and/or omissions by the Contractor in connection with the performance of its work.
- m. The amount requested exceeds the percent completion of work on the site.

3. After any such adjustments are made to the Contractor's application for payment, the Contractor shall submit four (4) copies of the final draft of its application for payment to the Construction Manager and Architect, which shall be accompanied by the following documentation:

- a. A current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material suppliers in the requested progress payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;
- b. Duly executed waivers of public improvement liens from all Subcontractors and material suppliers and lower tiered Subcontractors or material suppliers establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and AIA Form G706 or G706A.
- c. Certified payroll for employees of the Contractor and employees of subcontractors performing work on the Project.

- d. Copies of invoices submitted to the Contractor by its subcontractors and/or material suppliers.
 - e. Such other information which the Owner, Construction Manager and/or the Architect request the Contractor furnish in connection with its application for payment, including but not limited to, contractor change order log, contractor submittal log and as built drawings to date.
4. Upon submission of its application for payment, the Contractor represents that it is entitled to payment in the amount for which it seeks payment.
5. In addition to the right to make adjustments to the amount the Contractor claims is due (as set forth in subparagraph 2 of this Paragraph D), the Owner may withhold payment from the Contractor and the Architect and/or Construction Manager may withhold certification for payment, if any of the reasons set forth in subparagraph 2 exist.
6. The Owner shall make payment to the Contractor within forty-five days of receipt of the Contractor's requisition of payment unless such requisition of payment is not in accordance with the terms of the Construction Documents.
7. Upon receipt of payment by the Owner, the Contractor shall promptly make payment to each of its subcontractors and/or material suppliers for which it has received payment from the Owner. This provision does not obligate the Architect, the Construction Manager and/or the Owner to ensure payment to the Contractor's subcontractors and/or material suppliers.
8. a. In the event a subcontractor and/or material supplier files with the Owner a public improvement lien, the Owner shall withhold payment on previously certified applications for payment which have not yet been paid or subsequent applications for payment submitted by the Contractor an amount equal to 150% of the amount set forth in such public improvement lien. This provision is in addition to and does not supersede the indemnity provisions set forth in Article 12 of these General Conditions.
- b. The Owner may release any payment withheld due to the filing of a public improvement lien if the Contractor obtains security acceptable to the Owner or a lien bond which is: (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less the 150% of such lien claim. The cost of the premiums for any such bond posted shall be borne solely by the Contractor. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of its obligations pursuant to these General Conditions,

including but not limited to the indemnity provisions set forth in Article 12 of these General Conditions.

E. 1. The Contractor shall not be entitled to payment for materials and/or equipment stored off the site unless previously approved in writing by the Owner, Architect, and/or the Construction Manager and upon the Contractor meeting any and all conditions which the Owner, the Architect and/or Construction Manager may impose in connection with such materials and/or equipment, including but not limited to insurance for such materials and cost of storage and transportation associated with such materials and/or equipment. No payment will be made for "commodity type" stored materials such as block, studs, sheetrock, roofing, insulation, piping, fittings, conduit work, etc.

2. In connection with materials and/or equipment stored off the project site, the Contractor must submit with its application for payment the following information:

- a. Type of material must be specifically identified by the Contractor;
- b. The Contractor must furnish an invoice from its supplier showing the total value of material and/or equipment being stored off site and must provide the bill of lading for such material and/or equipment;
- c. The Contractor must provide a Certificate of Insurance in a form approved by the Owner for the full value of the item plus 10%.
- d. The Contractor must execute a security agreement, together with an executed UCC-1 form;
- e. The materials must be stored in a bonded warehouse;
- f. The Contractor must furnish a bill of sale for stored material and/or equipment;

Contractor still has liability for all materials whether paid or not until installed.

3. Any and all materials and/or equipment for which the Contractor has been paid shall be titled in the Owner upon installation by the Contractor and shall be stored in a bonded facility. For payment to be made to the Contractor, the Contractor must provide the Owner with a waiver of lien and general release from its supplier in connection with its provisions of such materials and/or equipment. Notwithstanding payment by the Owner, any and all warranties and/or guarantees required by this agreement shall not begin to run until the Contractor has completed all of its work.

4. Prior to payment by the Owner, the Contractor may be required to provide the Architect and the Construction Manager with an opportunity to visually inspect the materials

and/or equipment for the purpose of determining that such materials are in fact in storage, are the materials specified for the Contractor's work and for any other purpose which the Owner, Construction Manager and/or Architect deem necessary for payment to be made to the Contractor.

F. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to its agreement with the Owner, including but not limited to these General Conditions of the Contract for Construction, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained herein to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contractor's contract sum by an amount equal to that which the Owner is entitled.

G. The Contractor may not assign any monies due or to become due to it pursuant to its agreement with the Owner without the Owner's written consent. Any such assignment shall be in a form acceptable to the Owner. If the Contractor attempts to make such an assignment without such consent from the Owner, the Contractor shall nevertheless remain legally responsible for all obligations under its agreement with the Owner.

H. Progress payments and all other payments shall be made in accordance with Section 106 (b) of the General Municipal Law.

I. At the same time the Contractor submits its insurance certificate to the Owner and the Construction Manager, it shall also submit to the Construction Manager the labor rates of each category of labor for which it and/or its subcontractors shall employ (either directly or indirectly).

This information shall be itemized in the format shown below:

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

Contractor's Name					
Contractor's Address					
Contractor's Office Phone					
Contractor's Fax Number					
Contractor's Email Address					
Labor Rate Breakdown					
Worker's Title		Journeyman	1.5 Rate	Foreman	1.5 Rate
Base Hourly Rate					
Payroll Tax & Insurance:	\$ Per Hr.				
FICA					
Federal Unemployment					
State					
Workers Compensation					
Disability					
Other (Explanation Required)					
Subtotal					
Benefits:	\$ Per Hr				
Vacation					
Health & Welfare					
Pension					
Annuity					
401K Fund					
Other (Explanation Required)					
Other Explanation Required)					
Subtotal					
Hourly Labor Rate					

ARTICLE 10 INSURANCE REQUIREMENTS

A. Within ten (10) days of the award of the bid, the Contractor, at its sole cost and expense, shall provide the Owner with the following insurance coverage whether the operations to be

covered thereby are through the Contractor or by a Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Workers' Compensation and Disability:

Coverage	Statutory
Extensions	Voluntary compensation All states coverage employers Employer's liability - unlimited

2. Commercial General and Umbrella Liability

Coverage	Occurrence using ISO occurrence Form CG 00 01 07 98 or later form
Limits per project	\$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate - on a per project basis Products/Completed Operations - \$2,000,000.00 Personal & Advertising Injury - \$1,000,000.00 Fire Damage (any one fire) - \$100,000.00 Medical Expenses (any one person) - \$10,000.00

3. Owners and Contractors Protective Liability Insurance:

- a. \$2,000,000 per occurrence, \$4,000,000 general aggregate for contracts greater than \$1,000,000, or any contracts involving scaffolds or work above a height of one story.
- b. \$1,000,000 per occurrence, \$2,000,000 general aggregate for contracts less than or equal to \$1,000,000 that do not involve scaffolds or work above a height of one story.

Excess Liability (excess coverage shall be on a follow-form basis):

- a. \$10,000,000 for contracts greater than \$1,000,000, or any contracts involving scaffolds or work above a height of one story

- b. \$5,000,000 for contracts less than or equal to \$1,000,000 that do not involve scaffolds or work above a height of one story.
- 4. Automobile Liability
(all vehicles hired or non hired) \$1,000,000.00 per accident
- 5. If this project requires the removal of asbestos and/or hazardous materials, Contractors shall provide hazardous material liability insurance as follows:

\$2,000,000 per occurrence/\$2,000,000 aggregate, including products and completed operations. Such insurance shall include coverage for the Contractor's operations including, but not limited to, removal, replacement enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. If a retroactive date is used, it shall pre-date the inception of the Contract. If motor vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948), as well as proof of MCS 90. Coverage shall fulfill all requirements of this Article 10 and shall extend for a period of three (3) years following acceptance by the District of the Certificate of Completion.
- 6. Testing Company Errors and Omission Insurance

\$1,000,000 per occurrence/\$2,000,000 aggregate for the testing and other professional acts of the Contractor performed under the Contract with the Owner.

Notwithstanding any terms, conditions or provisions, in any other writing between the parties, Contractor hereby agrees to effectuate the naming of the Owner, Architect and Construction Manager as an additional insured on the Contractor's commercial general liability and excess liability insurance policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.

- a. The policy naming the Owner, Architect and Construction Manager as an additional insured shall:
 - i. Be an insurance policy from an A.M. Best rated "Secure" insurer, licensed in New York State.
 - ii. State that the coverage shall be primary and non-contributory coverage for the District, its Board, employees, volunteers, Architect and Construction Manager.

- b. The Owner, Architect and Construction Manager shall be listed as an additional insured by using endorsement CG 2038 or equivalent for ongoing operations and CG 2037 for completed operations. The decision to accept an alternative endorsement rests solely with the Owner and its consultants. A completed copy of the endorsement must be attached to the certificate of insurance.
- c. The certificate of insurance must describe the work that is covered by the liability policies.
- d. At the Owner's request, the Contractor shall provide a copy of the declaration page of the liability and excess policies with a list of endorsements and forms. If so requested, the Contractor will provide a copy of the policy endorsements and forms.
- e. The Contractor agrees to indemnify the Owner, Architect and Construction Manager for any applicable deductibles and self-insured retentions.

If written on a "claims-made" basis, the retroactive date must pre-date the inception of the Contract or agreement. Coverage shall remain in effect for two years following the completion of work. The testing company shall also provide proof of Workers' Compensation and NY State Disability Benefits Insurance, Commercial General Liability and Excess Liability with limits of \$2,000,000 each occurrence and in the aggregate.

Coverages shall be maintained without interruption from the date of commencement of the work until the date of final payment and termination of any coverage required to be maintained after final payment.

B. Article 10 of the General Conditions shall remain in effect and the Contractor will be required to provide the insurance set forth therein. All insurance documentation must be valid and on file with the Owner prior to commencement of the work. On or before July 15 of each year, the Contractor will substitute said insurance certificates with insurance in strict compliance with Article 10. In addition to any other rights or remedies that the Owner may have in law, equity or pursuant to the General Conditions of Construction set forth in the Agreement between the Owner and the Contractor, in the event the Contractor fails to provide evidence of the insurance required by Article 10 by July 15, the Owner shall assess liquidated damages of \$1,000 for every day the Contractor fails to meet the requirements for insurance as set forth in Article 10 through final completion of the Project or the date the required insurance is submitted, whichever is earlier.

C. The insurance required to be procured by the Contractor, pursuant to paragraph A of this Article 10, shall be purchased from and maintained by an insurance carrier licensed to do business in the State of New York, with an A.M. Best Rating of "secured" or better. The Contractor must submit the Certificate of Insurance to the Architect for the Owner's approval prior to the commencement of any work. **EXCESS OR SURPLUS LINE INSURANCE CARRIERS WILL NOT BE ACCEPTED.**

D. All insurance coverage to be provided by the Contractor, pursuant to paragraph A of this Article 10, shall include a cancellation notice to the Owner pursuant to the policy terms and conditions. All insurance coverage to be provided by the Contractor shall name the Owner, Architect, and Construction Manager as additional insureds on the policy, with the exception of Owners Contractors Policies. Additionally, the insurance coverage to be provided by the Contractor, pursuant to paragraph A of this Article 10, shall state that the Contractor's coverage shall be the primary and non-contributory coverage for the Contractor's work. Contractors shall include a completed copy of the ACORD 855 - NY Construction Certificate of Liability, with explanations of "yes" responses to Items G through L.

E. In the event that any of the insurance coverage to be provided by the Contractor to the Owner contains a deductible, or a self-insured retention, or the insurance provided by the Owner contains a deductible, the Contractor shall indemnify and hold the Owner, Construction Manager, and the Architect harmless from the payment of such deductible or self-insured retention, which deductible shall in all circumstances remain the sole obligation and expense of the Contractor.

F. The Contractor acknowledges that its failure to obtain or keep current the insurance coverage required by paragraph A of this Article 10 shall constitute a material breach of Contract and subjects the Contractor to liability for damages, including but not limited to direct, indirect, consequential, special and such other damages the Owner sustains as a result of such breach. In addition, the Contractor shall be responsible for the indemnification to the Owner, Architect, and Construction Manager, of any and all costs associated with such lapse in coverage, including but not limited to reasonable attorney's fees.

G. The Contractor shall require all Subcontractors to carry insurance coverages and limits of liability, as set forth in paragraph A of this Article 10 and submit same to the Owner for approval prior to start of any work. In the event the Subcontractor is unable to provide insurance by a carrier that is licensed and admitted to do business in New York, the Owner reserves the right to accept Excess or Surplus lines insurance coverage for said Subcontractor, in the Owner's sole discretion. Notwithstanding the foregoing, the Owner is under no obligation to waive the requirement that the insurance be supplied by an insurer licensed and admitted in New York. In the event the Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, the Contractor shall indemnify, defend, and hold harmless the Owner, Construction Manager, the Architect, Engineers, Consultants, and Sub-consultants and their agents or employees from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation provided in the Contract.

H. The Contractor assumes responsibility for all injury or destruction of the Contractor's materials, tools, machinery, equipment, appliances, shoring, scaffolding, false and form work, and personal property of the Contractor's employees from whatever cause arises. Any policy of insurance secured covering the Contractor or Subcontractors leased or hired by them and any policy of insurance covering the Contractor or Subcontractors against physical loss or damage to

such property shall include an endorsement waiving the right of subrogation against the Owner for any loss or damage to such property.

I. The Owner in good faith may adjust and settle a loss with the Contractor's insurance carrier.

J. The Owner and the Contractor waive all rights against each other and any of their Subcontractors, Sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance policy procured, pursuant to paragraph A of this Article 10, or other property insurance applicable to the Contractor's work.

K. Before commencement of its work, the Contractor shall obtain and pay for such insurance as may be required to comply with the indemnification and hold harmless provisions outlined under Article 12 of these General Conditions of the Contract for Construction.

L. Review and acknowledgment of the Certificate of Insurance by the Owner or the Architect shall not relieve or decrease the liability of the Contractor hereunder.

M. If the terms of policies expire, or the lives of the insurance companies terminate, before the Contract is completed or during the period of completed operations coverage, and the Contractor fails to maintain continuance of such insurance, the Owner is entitled to provide protection for itself, to pay premiums, and to charge the cost to the Contractor.

N. All insurance policies maintained by the Contractor shall include a waiver of any and all rights of subrogation of the Contractor or its Insurers against the Owner, Architect and Construction Manager, along with all other Additional Insureds/Indemnified Parties and their agents, officers, directors and employees for recovery of damages. Contractor further waives its rights of subrogation against the Owner or any Additional Insureds or Indemnified Party for any damage or loss to the Contractor's scope of work, tools, equipment, materials or any other loss within the scope of any insurance maintained by the Owner.

ARTICLE 11 REQUIRED BONDS FOR THE PROJECT

A. Within ten (10) days of the award of the bid, the Contractor shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of New York.

B. All Surety companies are subject to the approval of the Owner and may be rejected by the Owner without cause.

C. Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.

D. Bonds shall be executed by a responsible surety licensed to do business in New York with

Mount Pleasant CSD/Physical
Education Department Renovations
at Westlake High School
NYSED #66-08-01-06-0-005-02

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ADD NO. 1

#4.1449.08

an A.M. Best Rating of "A-" or better as to Policy Holder Ratings, and "VII" or better as to "Financial Size Category." Such bonds shall remain in effect for a period not less than two (2) years following final completion of the work by the Contractor.

E. Bonds shall further be executed by a surety that is currently listed on the U.S. Treasury Department Circular 570 entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as amended.

F. The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to 100% of the Contract Sum. The value of each bond shall be adjusted during the Project construction period to reflect changes in the Contract Sum.

G. Every Bond must display the Surety's Bond Number.

H. Each bond must be accompanied by an original Power of Attorney, giving the names of Attorneys-in-fact, and the extent of their bonding capacity.

I. A rider including the following provisions shall be attached to each Bond:

1. Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Such addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.
2. Surety further agrees that in event of any default by the Owner in the performance of the Owner's obligations to the Contractor under the Contract, the Contractor or Surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner, and the Owner shall have thirty (30) days from time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to Lender and the Owner.
3. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within three years after termination by the Owner of the Contractor's contract or within three years after final completion by the Contractor. In the event the Contractor files for bankruptcy, the commencement of the three-year period shall not start to run until the bankruptcy proceeding is finalized or the Owner obtains relief from an automatic stay, whichever is later.

J. The Contractor shall deliver the required bonds to the Owner prior to beginning construction activity at the site, but no later than 10 days of issue date of Notice of Award of Contract. Said bonds shall be in the form set forth in the Project Manual. No work shall be

performed by the Contractor until such bonds have been reviewed and approved.

K. The Owner may, in the Owner's sole discretion and without prior notice to the Contractor, inform surety of the progress of the Contractor's work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Contractor's work.

L. If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of this Article, the Contractor shall within ten (10) days thereafter substitute another Performance and Payment Bond and surety, both of which must be acceptable to the Owner.

ARTICLE 12 INDEMNIFICATION

A. The Contractor and its subcontractors shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers and agents, (2) the Architect and its consultants, employees, officers and agents, and (3) the Construction Manager, its consultants, employees, officers and agents, and any of their respective employees, or agents from and against any and all claims, damages, losses, suits, obligations, fines, penalties, costs, charges and expenses, including but not limited to attorneys' fees, which may be imposed upon or incurred by or asserted against any of them by reason of any act or omission of such Contractor or any of its subcontractors or any person or firm directly or indirectly employed by such Contractor, for the act(s) and/or omission(s) of any Contractor or Subcontractor in connection with the work of the Project.

B. To the fullest extent permitted by law, the Contractor and its subcontractors shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers and agents, (2) the Architect and its consultants, employees, officers and agents, and (3) the Construction Manager, its consultants, employees, officers and agents, and any of their respective employees, or agents from and against claims, damages, losses and expenses including but not limited to attorneys' fees, arising out of or resulting from performance of its work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction, of tangible property including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph B. The Contractor's indemnity obligations under this Paragraph B shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Owner, the Architect, the Architect's consultants and agents and employees of any of them under any applicable statute, rule or regulation including the New York Statute, Occupational Safety and Hazardous Act, and the Federal Occupational Safety and Hazardous Act. In claims against any person or entity indemnified under this Paragraph B by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph B shall not be

limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

C. The Contractor and its subcontractors shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers and agents, (2) the Architect and its consultants, employees, officers and agents, and (3) the Construction Manager, its consultants, employees, officers and agents, and any of their respective employees or agents against any fines, penalties, judgments, or damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified hereunder which are incurred as a result of the Contractor's failure to give the notices required by Article 6(T) of these General Conditions of the Contract for Construction.

D. The Contractor and its subcontractors shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers and agents, (2) the Architect and its consultants, employees, officers and agents, and (3) the Construction Manager, its consultants, employees, officers and agents, and any of their respective employees or agents against any actions, lawsuits or proceedings or claims of liens brought against each or any of them as a result of liens filed against the Contractor's project funds, including all the cost and expense of said liens, and including but not limited to attorneys' fees incurred by each or any of them.

E. The Contractor and its subcontractors shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers and agents, (2) the Architect and its consultants, employees, officers and agents, and (3) the Construction Manager, its consultants, employees, officers and agents, and any of their respective employees or agents of and from any and all liability for violation of any laws and regulations applicable to the Contractor's work and shall defend any claims or actions which may be brought against the Owner as the result thereof. In the event that the Contractor shall fail to refuse to defend any such action, the Contractor shall be liable to the Owner for all costs of the Owner in defending such claim or action and all costs of the Owner, including attorney's fees, in recovering such defense costs from the Contractor.

F. The Contractor and its subcontractors shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers and agents, (2) the Architect and its consultants, employees, officers and agents, and (3) the Construction Manager, its consultants, employees, officers and agents, and any of their respective employees or agents of and from any and all liability for claims made by third parties, including subcontractors, in connection with this Agreement and shall defend any claims or actions which may be brought against the Owner as the result thereof. In the event that the Contractor shall fail to refuse to defend any such action, the Contractor shall be liable to the Owner for all costs of the Owner in defending such claim or action and all costs of the Owner, including attorney's fees, in recovering such defense costs from the Contractor.

G. The indemnification obligations set forth herein shall become effective upon the Owner, Architect or Construction Manager's receipt of a claim for which the Contractor is required to provide indemnification to the Owner, Architect or Construction Manager. In the event the Owner, Architect or Construction Manager is required to bring an action to enforce the indemnification obligation, the Contractor shall be liable to the Owner, Architect, and/or Construction Manager for all costs associated with said action including attorneys' fees.

ARTICLE 13
TIME FOR COMPLETION OF WORK

A. The date of commencement of the Contractor's work shall be as indicated in the agreement between the Contractor and the Owner. The date shall not be postponed or extended by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible to act. Time limits stated in the agreement between the Owner and the Contractor are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

B. The Contractor shall not commence work on the site until two certified copies of all insurance policies and bonds required by Article 10 and Article 11 of these General Conditions of the Contract for Construction are provided to the Owner and accepted by the Owner. The date of commencement and/or completion of the Contractor's work shall not be changed by the effective date of such insurance. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the acceptance of the insurance and bonds required by Article 10 and Article 11 of these General Conditions.

C. The Contractor shall proceed expeditiously with adequate forces and shall achieve substantial completion of its contract in accordance with the schedule set forth in its agreement. The Contractor shall cooperate with the Owner, Architect, Construction Manager, and other Contractors on the Project, making every reasonable effort to reduce the contract time.

D. 1. In the event the Owner determines that the performance of the Contractor's work, as of a milestone date, has not progressed or reached the level of completion required by its contract, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the Contractor progresses its work in compliance with the stage of completion required by its agreement with the Owner. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

2. The Contractor shall not be entitled to an adjustment in its contract sum in connection with Extraordinary Measures ordered by the Owner under or pursuant to this Paragraph D.

3. The Owner may exercise the rights furnished the Owner under or pursuant to this Paragraph D as frequently as the Owner deems necessary to ensure that the Contractor's performance of its work will comply with any Milestone Date or completion date set forth in the Contractor's agreement with it.

4. The Owner reserves the right to withhold payment from the Contractor until such time as the Contractor submits a daily schedule showing work to be again on schedule with the Construction Schedule and/or until its work is being installed according to the project construction schedule, without additional cost to the Owner.

E. The Contractor shall achieve substantial completion of its work in accordance with the schedule for the work set forth in the project manual included as part of its agreement with the Owner. Milestone Dates are dates critical to the Owner's operations that establish when a part of the work is to commence or be complete. All Milestone Dates are of the essence and shall have the same meaning as Substantial Completion for the purpose of Liquidated Damages in this Article 13.

F. Substantial completion shall be achieved by the Contractor when the Contractor has completed ninety-eight (98%) of its work. Work remaining to be completed after substantial completion shall be limited to items which can ordinarily be completed within the period between the payment at the time of substantial completion and final payment.

G. 1. This project is to be physically completed in accordance with the time limits set forth in the agreement between the Owner and Contractor and as further set forth in the project manual and/or bidding documents. Liquidated damages will be assessed in the amount of \$1,000.00 for each and every calendar day after such time allowed for completion.

2. Contractor realizes that time is of the essence on this Contract and the completion date and milestone date for each work item in its agreement, a Milestone Date reflected on the project schedule, or the date of substantial completion of the Contractor's work shall be no later than the date indicated therein. In the event the Contractor fails to complete any work or substantially complete the work under this contract by said schedule date, the sum per calendar day for each date not met, as delineated above, will be subtracted from the payment due the Contractor (or, if the amount due Contractor as payment is insufficient, any deficiency shall be paid by the Contractor to the Owner), except in cases where the Contractor has applied for and been granted an extension of time in accordance with the provisions of this Article 13.

3. The said sum per calendar day shall constitute the Liquidated Damages incurred by the Owner for each day of delay beyond the agreed upon dates of Substantial Completion. Such Liquidated Damages shall be in addition to any other damages (other than by reason of delay) Owner may incur as a result of Contractor's breach of Contract. In the event that substantial completion of its work is not achieved in accordance with the project schedule, inspections will be performed once each week unless the Owner or the Architect determines, at their sole discretion, that additional inspections are not needed. All costs incurred by the Owner, Owner's Representative and the cost of additional inspections, at the rate of One Thousand Dollars (\$1,000) per inspection, will be subtracted from payment due the Contractor. If the amount due the Contractor for payment is insufficient, any deficiency shall be paid by the Contractor to the Owner.

H. 1. Within five (5) calendar days from the occurrence of same, the Contractor must apply in writing to the Owner, its Architect or Construction Manager for an extension of time to complete its work where it has been delayed as a result of: unforeseeable causes beyond the control and without the fault or negligence of the contractor, including acts of God, acts of the public enemy, acts of the federal or state government in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, priority or allocation orders duly issued by the federal government; freight embargoes; changes in the work to be performed by the Contractor. The Contractor may not apply for an extension of time for delays in acquisitions of materials other than by reason of freight embargoes. All other delays of the project, including but not limited to, Architect review and/or approval of shop drawings and/or submittals, requests for information, clarifications, samples, and change orders; Owner schedule; Architect certification of payment; payment by Owner of Contractor's Application for Payment; coordination amongst Contractors; unavailability of materials and/or equipment; surveying/testing; closeout, etc. are deemed to be foreseeable and, therefore shall not form the basis for a claim for an extension of time by the Contractor.

2. All claims for additional time shall be supported by documentation which demonstrates to the Architect and Construction Manager's satisfaction that the Critical path of the Work has been significantly altered by the delays to the activities in question, and that the schedule cannot be maintained by re-ordering other activities within the project at no cost. Upon receipt of the Contractor's request for an extension of time, the Owner will ascertain the facts and extent of the delay, and may, in its sole discretion, extend the time for completion of the Contractor's work when in its judgment such an extension is justified. The Owner's determination will be final and binding in any litigation commenced by the Contractor against the Owner which arises out of the Owner's denial of an extension of time to the Contractor. Any approval of an extension of the Contractor's time to complete its work shall be memorialized by written change order, signed by the Owner, Contractor, Architect and Construction Manager. Where the Owner determines that the Contractor will be granted an extension of time, such extension shall be computed in accordance with the following:

For each day of delay in the completion of its work, the Contractor shall be allowed one day of additional time to complete its contract. The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently; only the actual period of delay as determined by the Owner or its Architect may be allowed.

3. Notwithstanding anything to the contrary in the Contract Documents, an extension in the contract time, to the extent permitted under subparagraph H of this Article 13, shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution, or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity or acceleration; or (4) other similar claims (collective referred to herein as "delay(s)"), unless a delay is caused by the Owner's active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with three (3) days' written notice of such interference. In no event shall the

Contractor be entitled to any compensation or recovery of any damages in connection with any Delay, including, but not limited to, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, but not limited to, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

ARTICLE 14 DEFICIENT AND INCOMPLETE WORK

A. The Owner, through its Architect or Construction Manager, will have the authority to reject work performed by the Contractor which does not conform to the requirements of the drawings and/or specifications.

B. The Owner, through its Architect or Construction Manager, shall have the authority to require additional inspection or testing of the Contractor's work whether or not such work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the work to have performed additional inspection or testing of the work.

C. 1. If a portion of the Contractor's work is covered contrary to the Architect's request or to requirements specifically expressed in the drawings and/or specifications, upon request by the Architect or the Construction Manager, the Contractor shall uncover such work for the Architect's or any governmental authority's observation and be replaced at the Contractor's sole expense without change in the Contract Time or Contract Sum.

2. If a portion of the Contractor's work has been covered which the Architect or any governmental authority has not specifically requested to observe prior to its being covered, the Architect or any governmental authority may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the drawings and/or specifications, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor, at its sole cost and expense, shall uncover and replace such work.

D. The Contractor shall promptly correct work rejected by the Owner, through its Architect or Construction Manager, or failing to conform to the requirements of its contract with the Owner, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including but not limited to the cost of said additional testing and/or inspection, the cost of the Architect's services incurred in conjunction with such additional testing, and any cost, loss or damages to the Owner resulting from such actions. If prior to the date of Substantial Completion, the Contractor, a Sub-contractor or anyone for whom either is responsible uses or damages any

portion of the Work or premises, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

E. If the Contractor (1) fails to correct work which is not in accordance with the requirements of its agreement with the Owner, or (2) fails to carry out its work in accordance with the requirements of its agreement with the Owner, or (3) fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the work within the contract time, or (4) fails to remove and discharge (within ten (10) days) any lien filed upon Owner's property by anyone claiming by, through, or under the Contractor, or (5) disregards the instructions of the Architect, Owner or Construction Manager, the Construction Manager, on behalf of the Owner may order the Contractor to stop its work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, other rights the Owner may have pursuant to these General Conditions or at law.

F. 1. If the Contractor defaults or neglects to carry out its work in accordance with its agreement with the Owner and fails within a three (3) day period after receipt of written notice from the Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect, the Construction Manager and the Owner and such other consultants whose participation is deemed necessary by the Architect, for additional services and expenses made necessary by such default, neglect or failure. Such action by the Construction Manager, including the amounts to be charged to the Contractor as a result of such action are subject to the prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2. Where the Contractor's default and/or neglect to carry out its work in accordance with its agreement with the Owner threatens the health, safety and/or welfare of the occupants of the school district's facilities and/or threatens the structural integrity and/or preservation of the school district's facilities, the Owner may proceed to carry out the Contractor's work upon twenty-four (24) hours' notice of its intention to do so to the Contractor.

G. If the Owner prefers to accept work which is not in accordance with the terms and conditions of the agreement between the Owner and the Contractor, the Owner may, in its discretion, accept such work and reduce the Contractor's contract sum accordingly.

ARTICLE 15
FINAL COMPLETION AND CLOSEOUT OF THE PROJECT

A. 1. When advised by the Construction Manager that the Contractor's work is near substantial completion, the Architect shall visit the site to determine whether the Contractor's work is substantially complete. If the Architect's observations of the Contractor's work discloses any item which has not been performed in accordance with the requirements of the drawings and/or specifications and/or which has not been completed to the point indicated in Article 13 paragraph F of these General Conditions, the Contractor shall complete or correct such items upon receipt of notification from the Architect that a deficiency exists. The Architect shall not issue a certificate of substantial completion for the work of the Contractor until the work has been completed in accordance with Article 13(F). Upon completion of the work outlined by the Architect to it in accordance with this paragraph A, the Contractor shall advise the Architect of the need for an inspection of the work. If the Architect is required to inspect the Contractor's work more than twice, the Contractor shall be liable to the Owner for the services performed by the Architect as a result of additional inspections.

2. Upon determining that the Contractor's work has progressed to the point of Substantial Completion, the Architect shall prepare a punch list of the Contractor's work which shall include only minor items of work remaining to be performed by the Contractor to bring its work into compliance with the requirements of the drawings and/or specifications. The Contractor shall proceed promptly to complete and correct items on the punch list issued by the Architect and shall complete said items within thirty (30) days of its receipt of the punch list from the Architect. At the time of substantial completion, the Owner shall retain 200 percent of the value of the punch list items from the Contractor's remaining contract sum. The value of said remaining work shall be determined by the Architect. Upon completion of the work reflected in the final punch list, the Owner shall release the monies withheld pursuant to this paragraph to the Contractor.

3. The Architect's failure to include an item of deficiency on the punch list issued to the Contractor shall not relieve the contractor of its responsibility to perform its work in accordance with the drawings and/or specifications.

B. 1. If within three (3) years after the date of Substantial Completion of the Contractor's work or designated portion thereof, or after the date for commencement of warranties established pursuant to these General Conditions, or by terms of in applicable special warranty required by the agreement between the Owner and the Contractor, any of the Work is found to be not in accordance with the requirements of said agreement, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of three (3) years shall be extended with respect to portions of the Contractor's work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of such work. The obligation set forth hereunder shall survive acceptance by the Owner of the Contractor's and/or termination of the Contractor's agreement with the Owner. The Owner shall give such notice within a reasonable period of time after discovery of the condition.

2. The Contractor shall, within a reasonable time after receipt of written notice thereof, but in no event no later than seventy-two (72) hours after receipt of such notice, commence to correct, repair, and make good any defects in its work.

3. The obligations of the Contractor pursuant to this paragraph shall cover any repairs to or replacement of work affected by the defective work.

4. In the case of any work performed in correcting defects pursuant to this paragraph, the guarantee periods specified herein shall begin anew from the date of acceptance by the Owner of such work.

C. Upon receipt of written notice from the Construction Manager that the Contractor's work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Contractor's work acceptable pursuant to the terms and conditions of its agreement with the Owner and the Contract fully performed and upon receipt of the closeout documentation required by the Contract Documents and elsewhere in the agreement between the Owner and the Contractor, the Architect will certify to the Owner that the Contractor is entitled to final payment on the project.

D. 1. Prior to receipt of final payment from the Owner, the Contractor shall provide to the Architect the close out documentation required by the Contract Documents.

2. The Contractor shall schedule a close out meeting with the Architect and the Construction Manager for the purpose of delivering the close out documents required pursuant to the Contract Documents and elsewhere in the agreement between the Owner and the Contractor.

E. If the Contractor's work is not accepted by the Owner after final inspection and additional time is required to complete items identified during the final inspection, the date starting the warranty periods described in the Contract Documents shall be set by the Architect at his discretion.

F. If the Architect is required to perform more than one final inspection because the Contractor's work fails to comply with the requirements of the contract, the amount of compensation paid to the Architect by the Owner for additional services shall be deducted from the final payment to the Contractor.

G. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those claims previously made in writing in accordance with the terms of Article 18 hereof and identified by that payee as unsettled at the time of final Application for Payment.

H. Contractor shall submit all documentation identified in this section within ninety (90) days from the date of Substantial Completion. If the documentation has not been submitted, the

Owner will obtain same through whatever means necessary. The Contractor shall solely be responsible for all expenses incurred by the Owner in securing such documentation.

ARTICLE 16 RELEVANT STATUTORY PROVISIONS

A. The Contractor shall at all times observe and comply with all Federal and State Laws and all Laws, Ordinances and Regulations of the Owner, in any manner affecting the work and all such orders decreed as exist at present and those which may be enacted later, by bodies or tribunals having jurisdiction or authority over the work, and the Contractor shall indemnify and save harmless the Owner and all his officers, agents, or servants against any claim or liability arising from, or based on, a violation of any such law, ordinances, regulation, order or decree, whether by himself or by his employee or agents.

B. The Contractor and each of its subcontractors shall comply with Prevailing Wage Rates as issued by the State of New York Department of Labor for the location and duration of this Project and shall comply with all requirements governing its payments to its employees as set forth in Labor Law, section 220 et seq of the New York State Labor Law, as amended.

C. The Contractor and each of its subcontractors shall post a notice at the beginning of the performance of every public work contract on each job site that includes the telephone number and addresses for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification.

D. The Contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended, that:

1. No laborer, workman or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the Contract, shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
2. The wages paid for a legal day's work shall not be less than the prevailing rate of wages as defined by law.
3. The minimum hourly rate of wages to be paid shall not be less than that stated in the Project Manual, and any re-determination of the prevailing rate of wages after the Contract is approved shall be deemed to be incorporated herein by reference as of the effective date of re-determination and shall form a part of this Contract. The Labor Law provides that the Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

a. The stipulated wage scale as provided in Labor Law, Section 220, Sub-division 3, as amended; or

b. The stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

E. The Contractor acknowledges that its work is governed by the provisions of Section 101 of the General Municipal Law of the State of New York.

F. The Contractor specifically agrees, as required by the provisions of the Labor Law of New York, Section 220-E, as amended that:

1. In the hiring of employees for the performance of this contract or any sub-contractor hereunder, no contractor, sub-contractor, nor any person acting on behalf of such contractor or sub-contractor shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
2. No contractor, sub-contractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, color, creed, sex or national origin.
3. There may be deducted from the amount payable to the Contractor a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract.
4. This Contract may be canceled or terminated by the Owner and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract.

The aforesaid provisions of this section covering every Contract for or on behalf of the Owner, the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

G. The successful Contractor shall conform to the guidelines spelled out in the County's Affirmative Action Program, if any.

H. The Contractor shall comply with all of the provisions of the Immigration Reform and Control Act of 1986 and regulations promulgated pursuant thereto and shall require its subcontractors to comply with same. The Contractor shall and does hereby agree to fully indemnify, protect, defend, and hold harmless the Owner, Owner's agents and employees from and against any penalties, fees, costs, liabilities, suits, claims, or expenses of any kind or nature, including reasonable attorney's fees, arising out of or resulting from any violation or alleged violation of the provisions of said laws in connection with the work performed hereunder.

I. This Contract shall be void if the Contractor fails to install, maintain, and effectively operate appliances and methods for the elimination of harmful dust when a harmful dust shall have been identified in accordance with Section 222-a of the Labor Law of the State of New York.

J. The Contractor shall insure that absolutely no asbestos containing material is used in conjunction with the performance of its work. The Contractor bears the sole responsibility to provide assurances that no asbestos containing material is built into the construction, or that any equipment used in the construction contains any asbestos containing material. If asbestos containing material is found, at any time during or after the construction is completed, it shall be the responsibility of the Contractor who installed said material to remove it and replace it with new non-asbestos containing material, as per federal, state and local mandates.

K. Large and small asbestos abatement projects as defined by 12 N.Y.C.R.R. 56 shall not be performed while the building is occupied. As referenced in this section, the term "building" shall mean a wing or major section of a building that can be completely isolated from the rest of the building with sealed non-combustible construction. The isolated portion of the building must contain exits that do not pass through the occupied portion, and ventilation systems must be physically separated and sealed at the isolation barrier. Exterior work such as roofing, flashing, siding or soffit work may be performed on occupied buildings provided proper variances are in place as required, and complete isolation of ventilation systems and windows is provided. Work must be scheduled so that classes are not disrupted by noise or visual distraction.

L. Surfaces that will be disturbed by reconstruction must have a determination made as to the presence of lead. Projects which disturb surfaces that contain lead shall have in the specifications a plan prepared by a certified Lead Risk Assessor or Supervisor which details provisions for occupant protection, worksite preparation, work methods, cleaning and clearance testing which are in general accordance with the HUD Guidelines.

M. No smoking is allowed anywhere on school property per New York State and County law. Violators are subject to a \$1,000 fine and/or banishment from the property.

N. Applicable codes and standards for material furnished and work installed shall include all state laws, local ordinances, requirements of governmental agencies having jurisdiction, and applicable requirements of following codes and standards, including but not limited to:

1. New York State Uniform Fire Prevention and Building Code, and amendments thereto.
2. New York State Energy Conservation Construction Code.
3. State Education Department Manual of Planning Standards.
4. New York State Department of Transportation, Office of Engineering, Standard Specification, Construction and Materials, latest edition.
5. Life Safety Code - NFPA.

O. Wherever in the specifications reference is made to ANSI or ASTM Standards, Federal

Specifications, Consumer Product Standards, or similar recognized standards, the latest edition of the respective publishing agency in effect at the date of "Bid Issuance" shall be accepted as establishing the technical requirements for which compliance is required.

P. The Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of its agreement in the event (1) an order for relief is entered on behalf of the Contractor pursuant to Title 11 of the United States Code, (2) any other similar order is entered under any other debtor relief laws, (3) the Contractor makes a general assignment for the benefit of its creditors, (4) a receiver is appointed for the benefit of its creditors, or (5) a receiver is appointed on account of its insolvency. Failure to comply with such request within ten (10) days of delivery of the request shall entitle the Owner to terminate the Contract in accordance with Article 17 hereof. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner shall be entitled to proceed with the Contractor's work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back charged against the Contractor.

Q. The Contractor shall maintain policies of employment as follows:

1. The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
2. The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

ARTICLE 17 TERMINATION OR SUSPENSION

- A. 1. The Owner may terminate the Contractor's agreement in the event the Contractor:
- a. refuses or fails to supply sufficient skilled workers or suitable materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful, and careful manner;
 - b. refuses or fails to correct deficient work performed by it;

- c. fails to make prompt payments to subcontractors for labor, materials, and/or equipment in accordance with the respective agreements between the Contractor and the Subcontractors;
- d. disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- e. disregards the instructions of the Architect, Construction Manager or the Owner (when such instructions are based on the requirements of the Contract Documents);
- f. is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or similar laws; or
- g. breaches any warranty made by the Contractor under or pursuant to the Contract Documents.
- h. fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents; or
- i. fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents.
- j. fails to keep the Project free from strikes, work stoppages, slowdowns, lockouts or other disruptive activity;
- k. or otherwise does not fully comply with the Contract Documents.

2. When any of the above reasons exists, may without prejudice to any other rights or remedies of the Owner, terminate employment of the Contractor upon three (3) days written notice and may, subject to any prior rights of the surety:

- a. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- b. take possession of materials stored off site by the Contractor;
- c. take assignments of the Contractor's subcontractors in accordance with these General Conditions;

- d. finish the Work by whatever reasonable method the Owner may deem expedient.

3. When the Owner terminates the Contract for one of the reasons stated in Subparagraph 1 hereof, the Contractor shall not be entitled to receive further payment until the completion of the Contractor's work. If the Owner's costs to complete the Contractor's work, including the expenses incurred by the Owner in connection with the services of the Architect, the Construction Manager and/or other consultants, exceed the contract balance remaining on the Contractor's contract, the Contractor shall be liable to the Owner for such excess costs. This provision shall survive termination of the Contractor's agreement with the Owner.

B. 1. In addition to the Owner's right to carry out the work of the Contractor pursuant to its agreement with the Contractor, the Owner may at any time, at will and without cause, terminate any part of the Contractor's work or all of the Contractor's remaining work for any reason whatsoever by giving three (3) days' written notice to Contractor, specifying the portion of the Contractor's work to be terminated and the effective date of termination.

2. Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

- a. cease operation as specified in the notice;
- b. place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;
- c. terminate all subcontracts and orders to the extent they relate to the Work terminated;
- d. proceed to complete the performance of the remaining work on its contract which has not been so terminated; and
- e. take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

3. The Contractor shall continue to prosecute that portion of its work which has not been terminated by the Owner pursuant to this paragraph. If the Contractor's work is so terminated, the Owner shall not be liable to the Contractor by reason of such termination except that the Contractor shall be entitled to payment for the work it has properly executed in accordance with its agreement and prior to the effective date of termination (the basis for such payment shall be as provided in the Contract) and for costs directly related to work thereafter performed by Contractor in terminating such Work, provided such work is authorized in advance by the Architect and the Owner. No payment shall be made by Owner, however, to the extent

that such work is, was, or could have been terminated under the Contractor's agreement with the Owner.

4. In case of a termination pursuant to this paragraph B, the Owner will issue a Construction Change Directive or authorize a Change Order, making any required adjustment to the Date of Substantial Completion and/or the sum of contract monies remaining to be paid to the Contractor. The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum; multiplied by 15% representing the Contractor's overhead and profit.

5. For the remaining portions of the Contractor's work which have not been terminated pursuant to this paragraph B, the terms and conditions of the Contractor's agreement with the Owner shall remain in full force and effect.

6. Upon termination of the Contractor's work or a portion of the Contractor's work pursuant to this paragraph B, the Contractor shall recover as its sole remedy, payment for work which it has properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, overhead and profit related to work terminated by the Owner pursuant to this paragraph B.

C. 1. In addition to Owner's right to suspend, delay, or interrupt Contractor from proceeding with any portion of its work pursuant to the terms and conditions of its agreement with the Owner, the Owner may at any time, at will and without cause suspend, delay, or interrupt any part of the Contractor's work or all work for any reason whatsoever for such period of time as the Owner may determine by giving three (3) days' prior written notice to Contractor, specifying that portion of the Contractor's work which is to be suspended, delayed, or interrupted, and the effective date of such suspension, delay, or interruption, as the case may be.

2. The Contractor shall continue to prosecute that portion of its work which has not been suspended, delayed, or interrupted, and shall properly protect and secure the portion of its work so suspended, delayed or interrupted.

3. The Owner shall incur no liability to Contractor by reason of such suspension, delay, or interruption except that Contractor may request an extension of its time to complete its work in accordance with Article 13 hereof.

D. The Contractor agrees and acknowledges that payments for the work have been obtained through obligations or bonds which have been sold after public referendum. In the event the work is suspended or canceled as a result of the order of any court, agency, department entity or individual having jurisdiction, or in the event the work is suspended or canceled due to the fact that a court, agency, department, entity or individual having jurisdiction has issued an order, the

result of which is that the aforesaid obligations or bonds are no longer available for payment for the work, the Contractor expressly agrees that it shall be solely entitled to payment for work accomplished until a notice of suspension or cancellation is served upon it. The Contractor expressly waives any and all rights to institute an action, claim, cause of action or similar for any damages it may suffer as a result of the suspension or cancellation of the Work and/or its contract pursuant to this section.

ARTICLE 18 CLAIMS AND DISPUTES

A. Definition. A "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

B. Time Limits on Claims. Claims by the Contractor must be made within thirty (30) days after occurrence of the event giving rise to such Claim, or within thirty (30) days after the claimant first recognizes the condition giving rise to the Claim, whichever is earlier. Claims must be made by written notice. An additional Claim made after the initial Claim has been decided by the Owner will not be considered unless submitted in a timely manner. Failure of the Contractor to give timely notice of claim shall constitute waiver of the claim. Claims must be made by written notice to the Construction Manager, Architect and Owner. The responsibility to substantiate Claims shall rest with the Contractor.

C. Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

D. Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the Owner and Architect promptly before conditions are disturbed and in no event later than five (5) days after first observance of the conditions; and, (3) in the case of a condition at the site which involves a hazardous or toxic substance, as those terms are defined by OSHA or AHERA, notice to the Owner, the Construction Manager and the Architect shall be given immediately upon discovery of such hazardous or toxic substance. The Architect, and/or Construction Manager will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Contractor in writing,

stating the reasons.

E. Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum as a result of a Change in the Work pursuant to Article 8 of these General Conditions, written notice as provided in this Article 18 shall be given before proceeding to execute the Work.

F. Claims for Additional Time. If the Contractor wishes to make Claim for an increase in the Contract Time, the Contractor shall comply with the requirements set forth in Article 13.

G. Nothing contained in the Contract Documents shall relieve a Contractor from compliance with any statutory requirement, including, but not limited to those contained in Education Law Section 3813.

ARTICLE 19 MISCELLANEOUS PROVISIONS

A. The agreement between the Owner and the Contractor shall be governed by the law of the place where the project is located; venue to be in the County in which the project is located.

B. Historical lack of enforcement of any law, local or otherwise, shall not constitute a waiver of Contractor's responsibility for compliance with such law in a manner consistent with its agreement with the Owner unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the Agency responsible for the enforcement of such law.

C. All notices to be given hereunder shall be in writing and may be given, served, or made (1) by depositing the same for first class mail delivery in the United States mail addressed to the authorized representative of the party to be notified; (2) by depositing the same in the United States mail addressed to the authorized representative of the party to be notified, postpaid and registered or certified with return receipt requested; (3) by depositing the same for overnight delivery (prepaid by or billed to the party giving notice) with the United States Postal Service or other nationally recognized overnight delivery service addressed to the authorized representative of the party to be notified; or (4) by delivering the same in person to the said authorized representative of such party. Notice deposited in the mail by certified mail or overnight delivery in accordance with the provisions hereof shall be effective from and after the fourth (4th) day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. All notices to be given to the parties hereto shall be sent to or made at the addresses set forth hereinbelow. By giving the other parties at least seven (7) days' written notice thereof, the parties hereto shall have the right to change their respective addresses and specify as their respective addresses for the purposes hereof any other address in the United States of America.

D. Except as expressly provided in the agreement between the Owner and the Contractor, duties and obligations imposed by such agreement and rights and remedies available thereunder

shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law, or in equity or by other agreement, and such rights and remedies shall survive acceptance of the Contractor's work and/or any other termination of the Contractor's agreement with the Owner.

E. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

F. The headings denoting the separately numbered Articles of these General Conditions are specifically set forth for reference purposes only and are not in any way to be deemed explanatory of or limiting of the contents of any paragraph or subparagraph. Furthermore, said headings are not to be deemed part of this Agreement for purposes of interpretation, litigation or as defining or limiting the rights or obligations of the parties.

G. In case any provision of this Agreement should be held to be contrary to, or invalid, under the law of any country, state or other jurisdiction, such illegality or invalidity, shall not affect in any way, any other provisions hereof, all of which shall continue, nevertheless, in full force and effect in any country, state or jurisdiction in which such provision is legal and valid.

H. The rights stated in these General Conditions and the documents which form the agreement between the Owner and the Contractor are cumulative and not in limitation of any rights of the Owner at law or in equity.

I. The Owner shall not be responsible for damages or for loss of anticipated profits on work not performed on account of any termination of the Contractor by the Owner or by virtue of the Owner's exercise of its right to take over the Contractor's work pursuant to its agreement with the Contractor.

J. The Owner shall not be liable to the Contractor for punitive damages on account of any its termination of the Contractor or any other alleged breach of the agreement between it and the Contractor and the Contractor hereby expressly waives its right to claim such damages against the Owner.

K. The Contractor hereby expressly waives any rights it may have in law or in equity to lost bonding capacity as a result of any of the actions of the Owner, the Architect or the Construction Manager taken in connection with the Contractor's work on the Project.

L. Upon determination by legal means (e.g. court action, etc.) that termination of Contractor pursuant to Article 17.A.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Article 17.B.1 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Article 17.B.1.

M. As between the Owner and Contractor:

1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
3. After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to warranties provided in accordance with its agreement with the Owner, the date of any correction of work performed by the Contractor or failure to correct its work, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

N. 1. The Owner may occupy or use any completed or partially completed portion of the Contractor's work at any stage when such occupancy is authorized by public authorities having jurisdiction over the project.

2. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Contractor's work, nor does it waive the Owner's right to liquidated damages. Further such occupancy alone shall not determine when substantial completion and performance has been reached.

3. Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Contractor's work, and in order to prepare a complete punchlist of omissions of materials, faulty workmanship, or any items to be repaired, torn out or replaced.

O. The Contractor agrees not to assign, transfer, convey or sublet or otherwise dispose of this Contract or his right, title and interest therein or his power to execute such Contract, to any other person, firm or corporation without the previous consent in writing of the Owner.

P. The Owner is a tax exempt organization and will take title to materials used in the Project in order to permit tax exemption.

Q. The Owner will furnish a certificate with the Owner's Tax Exemption Number to the Contractor for use in purchasing tangible personal property required for the Project.

R. This exemption shall not apply to machinery, equipment, tools, and other items purchased, leased, rented, or otherwise acquired for the Contractor's use even though the machinery, equipment, tools or other items are used either in part or entirely on the Work. This exemption shall apply only to materials fully incorporated into the Work of the Contract as accepted and approved by the Architect.

S. The Contractor shall, upon request by the Owner, furnish a bill of sale or other instrument indicating the quantities and types of materials purchased directly by the Contractor or subcontractor for incorporation into the Work. Upon delivery of the materials to the site, the Contractor shall mark or otherwise identify the materials to be incorporated into the Work. This exemption shall apply only to materials so identified and accepted.

END OF GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
