

**BOARD OF EDUCATION - DIVISION OF SCHOOL FACILITIES**

**RS - 29 FORM OF CONTRACT**

THE BOARD OF EDUCATION  
OF THE CITY OF NEW YORK

**REQUIREMENTS / SERVICE CONTRACT**

For

all the work to be performed at \_\_\_\_\_

in accordance with Specification # \_\_\_\_\_

THIS AGREEMENT, made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, in the year  
Two Thousand and \_\_\_\_\_

BETWEEN

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,  
party of the first part

AND (CORPORATION)

\_\_\_\_\_ and licensed  
a corporation organized and existing under the laws of the State of \_\_\_\_\_  
to do business in the State of New York

OR (PARTNERSHIP)

\_\_\_\_\_ AND \_\_\_\_\_  
co-partners doing business under the form name and style of

OR (INDIVIDUAL)

\_\_\_\_\_ doing business under the assumed name and style of

\_\_\_\_\_ party of the second part.

## **WITNESSETH**

That pursuant to all State and local Laws and all By Laws, resolutions, rules and regulations of THE BOARD and THE CITY and its various departments, applicable to this contract, and in consideration of the agreements hereinafter undertaken by each of the parties hereto with the other, the parties hereto, do hereby covenant and agree for their respective successors and legal representatives as follows:

### **DEFINITIONS**

**ARTICLE 1.** The following words and expressions or pronouns used in their stead, shall wherever they appear in this contract be construed as follows unless a different meaning is clear from the context:

- (a) "THE BOARD" means the Board of Education of the City of New York and the party of the first part to this Contract.
- (b) "THE CONTRACTOR" means the party of the second part to this Contract.
- (c) "THE SENIOR DIRECTOR" means the Senior Director of the Division of School Facilities, or other person delegated by The Chancellor to supervise the work of this Contract.
- (d) "THE CONTRACT COMPLIANCE OFFICER" means the person delegated by the Board of Education to administer the implementation of Article 64.
- (e) "THE CITY" means the City of New York.
- (f) "THE COMPTROLLER" and "THE TREASURER" means the Comptroller and the Treasurer of the City of New York, respectively.
- (g) "OTHER CONTRACTOR" means any contractor (other than the party of the second part of this Contract) who has a contract with THE BOARD for work on the building or site.
- (h) "THE CHANCELLOR", "ADMINISTRATOR OF BUSINESS AFFAIRS" means the following officers and employees of THE BOARD, respectively: the Chancellor, Deputy Chancellor and Administrator of Business Affairs.
- (I) "APPROVED," "DIRECTED," "DEEMED NECESSARY" unless otherwise expressed means approved, directed or deemed necessary, as the case may be, by THE SENIOR DIRECTOR.
- (j) "DRAWINGS" means the contract drawings of this work and all detail drawings furnished by THE SENIOR DIRECTOR pertinent or supplemental thereto.
- (k) "WORK" or "WORKS" means all labor, materials, equipment, matters and things herein agreed to be furnished or done by or on the part of THE CONTRACTOR.
- (l) "MATERIALS" means all material of any kind, nature and class as may be specified which becomes a part of or is used in the performance of the work together with all manufactured or prepared materials, articles, accessories, appliances, appurtenances and parts used therein or placed thereon.
- (m) "COMPLETION" means full and complete compliance with every requirement of the contract as

attested by THE SENIOR DIRECTOR.

- (n) "SPECIFICATIONS" means the combined Instructions to Bidders, Standard and Schedule Specification and amendments thereto and all the directions and requirements applying to the work as hereinafter detailed and designated under specifications. The Standard Specifications are set forth in a document separate and apart from the document which includes the Schedule Specifications.
- (o) "CONTRACT", as defined in Article 8.

**ARTICLE 2.** The residence or place of business given in the bid upon which this contract is founded is hereby designated as the place where all notices, letters and other communications addressed to THE CONTRACTOR shall be served, mailed or delivered. Any notice, letter or other communication addressed to THE CONTRACTOR and delivered at the above-named place, or deposited in a post-paid wrapper in any post-office box regularly maintained or authorized by the post office, shall be deemed sufficient service thereof upon and notice to THE CONTRACTOR. The place named may be changed at any time by an instrument in writing, executed and acknowledged by THE CONTRACTOR and delivered to THE SENIOR DIRECTOR. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter or other communication upon THE CONTRACTOR personally.

**ARTICLE 2A.** This written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

### **SCOPE**

**ARTICLE 3.** THE CONTRACTOR shall and will, well and sufficiently, furnish and provide all the work and materials necessary or proper in, toward, or about the said contract according to the several plans and drawings prepared therefor, and the specifications, amendments and addenda herein contained or hereunto annexed, and such other work and materials as may be necessary or as are usually performed and furnished in connection with the above-mentioned work, so as to finish said work in a first class workmanlike manner, complete and perfect in every respect, to the satisfaction of THE SENIOR DIRECTOR and THE BOARD, for the sum herein agreed to be paid at the times and in the manner herein specified.

**ARTICLE 4.** THE CONTRACTOR shall provide and furnish, at THE CONTRACTOR's own cost and expense, any and all manner of materials, equipment, labor, scaffolding, tools, implements, molds, models, and cartage of every description necessary or proper to or for the due and faithful performance of said work, and the true and faithful execution of this contract.

**ARTICLE 5.** THE CONTRACTOR shall not have work performed, nor shall he employ labor or means, in the carrying out of this contract that would in any way cause or result in a suspension, or delay of, or strike upon the work to be performed hereunder of any of the trades working in or about the premises herein described, or in or about any other building of THE BOARD or working upon any of the premises of THE CITY.

**ARTICLE 6.** THE SENIOR DIRECTOR shall in all cases determine the amount, quality, acceptability and fitness of the several kinds of work and materials performed and delivered, which are to be paid for under this contract, and he shall determine all questions in relation to the work and the methods to be adopted and shall

in all cases determine every question which may arise relative to the fulfillment of this contract, and his estimate and decision shall be final, conclusive and binding upon THE CONTRACTOR. THE SENIOR DIRECTOR may delegate, in writing, powers to the Program Manger or any area manager of the said Office. THE SENIOR DIRECTOR may delegate powers to inspectors or other employees of THE BOARD, but no decision or statement made by such inspector or other employee affecting the extent of the work of this contract or the price to be paid therefor, or the terms of the contract, shall be authoritative unless issued in writing by THE SENIOR DIRECTOR or by THE BOARD.

**ARTICLE 7.** If before the final completion of all the work of this contract, it is deemed necessary by THE BOARD to take over, use, occupy or operate any part of the completed or partly completed work, THE BOARD shall have the right to do so and THE CONTRACTOR will not in any way interfere with or object to the use, occupation or operation of such work by THE BOARD.

### **DRAWINGS AND SPECIFICATIONS**

**ARTICLE 8.** The materials and labor to be furnished shall in every respect conform strictly to the specifications, amendments and addenda herein contained or hereto annexed and to the plans and drawings herein mentioned, all of which, together with the advertisement for bids for this contract, the Instructions to Bidders, and the bid for the work herein contracted for including any and all additions to and modifications in any of the same issued and approved by THE BOARD, are hereby declared to form and hereby made part of this contract.

**ARTICLE 9.** The plans, drawings and specifications hereinbefore mentioned are intended to be fully inclusive and co-extensive, so that any matter or thing contained in and shown by one and not by the other shall be of the same effect as if contained in and shown by all, and shall be performed and furnished by THE CONTRACTOR without any extra charge, claim or demand whatsoever.

**ARTICLE 10.** THE CONTRACTOR shall finish and fully complete the whole of the work in a manner described and shown in said specifications and by said plans and drawings and in accordance with such supplemental detail drawings as the specifications may require THE CONTRACTOR to furnish, when same have been duly approved by THE SENIOR DIRECTOR, and in accordance with such further details and instructions as the said Senior Director may from time to time furnish or issue for the purpose of insuring the thorough completion of the work in the most efficient manner.

**ARTICLE 11.** Wherever any article or any class of materials is specified by the trade name or the name of any particular patentee, manufacturer or dealer, or by reference to the catalogue of any such manufacturer or dealer, it shall be taken as intended to mean and specify the articles or materials described or any other equal thereto in quality, finish and durability, and equally as serviceable for the purpose for which it is or they are intended, as may be judged and determined by THE SENIOR DIRECTOR.

### **TIME OF DELIVERY/COMPLETION**

**ARTICLE 12.** The Contractor shall deliver the supplies and services called for in the specifications within the period of the contract and within the delivery time specified on the order or written request, which delivery shall be in accordance with the terms of the contract, the specifications or instructions to bidders.

**ARTICLE 13.** If separate contracts shall be awarded to different contractors for furnishing materials or performing work on one building project, each contractor must begin work when the site, building or location

is ready for his work to proceed and he must coordinate his work with that of other contractors and must carry on his work in such order and manner and at such times so that the entire work of all contractors may be completed within the time specified.

**ARTICLE 14.** When THE CONTRACTOR has been delayed and cannot, in the opinion of THE SENIOR DIRECTOR, make up for such delay by speedier work, THE CONTRACTOR may be granted an extension of time, as determined by THE BOARD, for the time that he was actually and necessarily delayed by one of the following causes:

- (a) Any act or omission of THE CITY or THE BOARD; or for the reason that THE CITY or THE BOARD does not own or has not obtained possession of, or the right to enter upon the land upon which the work is to be performed; or by action of THE BOARD suspending part of the work specified, should THE BOARD deem it necessary to do further work in or about the premises than is provided in this contract.
- (b) Act or omissions of other contractors, other than necessary normal interruptions, as described in Article 15.
- (c) Labor strikes not caused or instituted or provoked by THE CONTRACTOR or by any of his subcontractors, agents or representatives.
- (d) Emergency conditions delaying or making performance temporarily impossible or illegal.
- (e) Abnormal weather as will be more particularly set forth in the second and third paragraph of Article 15.

**ARTICLE 15.** If other contracts are entered into by THE BOARD for performance of other work on the site of this contract, THE CONTRACTOR will not be entitled to any extension of time because of the necessary suspensions of and normal interruptions to his work, required to enable the other contractors to perform their work on the site, as such interruptions to or suspensions of his work were taken into consideration in fixing the time for completion.

In fixing the time for completion, proper consideration was given to delays occasioned by a reasonable or normal amount of adverse weather.

However, THE CONTRACTOR may submit for consideration of THE BOARD a request for extension of time based on excessive delays or interruptions in his work due to other contractors or abnormal weather, but such requests will not be considered unless THE CONTRACTOR submits complete data, which shall include the status of the work when the claimed delays occurred, the reason for this delay, proof as to what extent the entire job was held up by each particular delay, and, if weather conditions are involved, data from the U.S. Weather Bureau for current and past years showing recorded weather conditions.

**ARTICLE 16.** THE CONTRACTOR agrees to make no claim for damages for the delay in the performance of this contract occasioned by any act or omission to act of THE BOARD, THE CITY, or any of their representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.

Neither an extension of time for any reason beyond the date fixed herein for the completion of the contract, nor the delivery and acceptance of any articles or materials, nor the performance of any work called for by this contract after the date aforesaid or after the date fixed by any extension of time for completion of the work hereunder shall be deemed a waiver by THE BOARD of the right to abrogate this contract for

abandonment or delay, or of the right to enforce the other provisions of this contract, and such extension shall not be deemed an admission by THE BOARD or by THE CITY that either was responsible for any delay whatever.

### **DAMAGES FOR DELAY**

**ARTICLE 17.** Liquidated damages for failure to begin or to complete the work in compliance with the terms of this Agreement shall be assessed against the Contractor . In view of the difficulty of accurately ascertaining the loss which The Board of Education will suffer because of failure to perform and/or complete the work of this contract, liquidated damages, in the amount set forth below, are fixed and agreed upon as liquidated damages and not as penalty:

The Board and the Comptroller will deduct and retain out of the monies which may become due under this contract the amount of any such liquidated damages. In case the amount which may become due is less than the damage suffered by the Board, the Contractor will be liable to pay the difference upon demand by the Board.

Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver of the Board's right to indemnification or to any other remedy provided for by the contract or by law.

Liquidated damages, for failure to commence the work at the time specified in each proceed order and for failure to complete the work within the time specified in each proceed order, shall be assessed in the amount of five percent (5%) of the value of the proceed order for each day of delay.

If an item or unit etc., is to be repaired hereunder and such item or unit fails to function properly at any time within fifteen (15) calendar days after a repair has been performed, it shall be deemed that the contractor did not complete the work within the time specified, and liquidated damages shall be assessed in the amount of five percent (5%) of the value of proceed order for each day the unit or item shall fail to function properly until the follow-up repair is completed.

**ARTICLE 18.** (No Text)

**ARTICLE 19.** (No Text)

**ARTICLE 20.** (No Text)

### **DEFAULT**

**ARTICLE 21.** THE BOARD shall have the right to declare THE CONTRACTOR in default on the whole or any part of the work

1. if THE CONTRACTOR becomes insolvent; or if THE CONTRACTOR makes an assignment for the benefit of creditors pursuant to the Statutes of the State of New York; or if a voluntary or involuntary petition in bankruptcy be filed by or against THE CONTRACTOR; or if a receiver or receivers are appointed to take care of THE CONTRACTOR's property or affairs; or
2. if THE CONTRACTOR sublets, assigns, transfers, conveys or otherwise disposes of this contract other than as herein specified; or

3. if THE CONTRACTOR fails to commence work when notified to do so by THE SENIOR DIRECTOR or if THE CONTRACTOR shall abandon the work; or if THE CONTRACTOR refuses to proceed with the work when and as directed by THE SENIOR DIRECTOR; or
4. if at any time THE SENIOR DIRECTOR is of the opinion and shall so certify in writing to THE BOARD that
  - (a) THE CONTRACTOR is or has been willfully or in bad faith violating any of the provisions of this contract, or that
  - (b) the work is not or cannot be substantially completed within the time herein provided therefor; provided, however, that the possibility of timely completion is, in THE SENIOR DIRECTOR opinion, attributable to conditions within THE CONTRACTOR's control, or that
  - (c) THE CONTRACTOR has not maintained a working force sufficient to complete the work within the contract time, or to complete the entire contract within a reasonable time thereafter, and has failed to increase his force when ordered to do so by THE SENIOR DIRECTOR.
  - (d) THE CONTRACTOR is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders.

**ARTICLE 22.** THE BOARD will declare THE CONTRACTOR to be in default under the provisions of Article 21 by having served upon THE CONTRACTOR a notice from the Chief Executive of School Support Services signed by the Chief Executive indicating that THE CONTRACTOR has been declared in default by the Chief Executive acting for the Chancellor under delegation of authority. THE BOARD shall thereupon have the power to take immediate possession of and use such materials, molds, models, centers, scaffolding, planks, horses, derricks, tackle, tools, implements, power plants as may be found upon the premises and line of work and the same shall not be removed so long as the same may be needed for the work.

Upon a finding of default in violation of this contract by the Chief Executive for School Support Services, the contractor shall be deemed not responsible and disqualified from bidding for a period of four years, unless in such finding of default, a lesser penalty is imposed by reason of mitigating circumstances.

**ARTICLE 23.** In case THE BOARD shall declare THE CONTRACTOR in default as to a part of the work only, THE CONTRACTOR shall discontinue such part and shall in no wise hinder or interfere with any other contractors or persons whom THE BOARD may engage to complete such part of the work. THE CONTRACTOR shall continue performing the remainder of the work in conformity with the terms of the contract.

All provisions of this contract relating to declaring THE CONTRACTOR in default as to the entire work shall be equally applicable to a declaration of partial default, except that THE BOARD shall be entitled to utilize for completing such part of the work only the plant, materials, equipment, tools and supplies used or intended to be used by THE CONTRACTOR on such part.

**ARTICLE 24.** The BOARD, after declaring THE CONTRACTOR in default, may direct The CONTRACTOR's surety, if there be one, to complete the contract in accordance with the terms of the Performance Bond. If the surety shall fail to complete the contract, or if there be no Surety required under the

terms of the specification, The Board may have the work completed by such means and in such manner, by contract with or without public letting, or otherwise, utilizing for such purpose such of the plant, materials, equipment, tools and supplies remaining on the site, as it may deem advisable.

**ARTICLE 25.** (No Text)

**ARTICLE 26.** The expense of such completion, as so certified by THE SENIOR DIRECTOR, shall be charged against and deducted out of such monies as would have been payable to THE CONTRACTOR if he had completed the work; the balance of such monies, if any, subject to the other provisions of this contract, to be paid to THE CONTRACTOR without interest after such completion. Should the expense of such completion, so certified by THE SENIOR DIRECTOR, exceed the total sum which would have been payable under the contract if the same had been completed by THE CONTRACTOR, any such excess shall be paid by THE CONTRACTOR to THE BOARD. Any such excess may also be deducted from monies due to the contractor on any other Board contracts.

**INSPECTION, IMPROPER WORK, ETC.**

**ARTICLE 27.** The work, materials, supplies, and services hereby required shall be performed and furnished according to the directions and under the supervision of The Senior Director, subject to the provisions herein contained. Every member of The Board, the representative of The Comptroller and of the Commissioner of Investigation of The City, shall have a right at all times to visit and inspect the said work during the progress thereof.

**ARTICLE 28.** THE SENIOR DIRECTOR may condemn and reject any of the work or materials found by him to be improperly performed or furnished under this contract, and require the same to be taken down and removed from the premises, and other proper work and materials to be performed and furnished instead thereof, by or at the expense of THE CONTRACTOR.

**ARTICLE 28A. POOR PERFORMANCE PROVISION**

**MID-POINT AND FINAL EVALUATIONS**

**Mid-Point Evaluation**

The performance by the Contractor of the specifications, scope of work etc., of this contract will be evaluated on behalf of the Board by the Program Manager monitoring the project. Requirement Contracts will be evaluated at the mid-point, of the term or the dollar value of the contract, and at final completion of the term or dollar value of the contract. An unsatisfactory or marginal rating on the written evaluation form will be submitted to the Contractor for response.

If, after reviewing the Contractor's response (if any) to an unsatisfactory or marginal rating on the written evaluation form, it is the judgment of the Field Inspector's supervisor that the Contractor's performance is not in compliance with the requirements of the contract, he/she will issue a written "Warning of Poor Performance" to the Contractor.

**Final Evaluation**

Within thirty (30) days after final completion of the work or the time within which the Contractor was required to finally complete the work, performance by the Contractor of the specifications, scope of work etc., of this contract will be evaluated on behalf of the Board by the Field Inspector assigned to monitor the project. An unsatisfactory or marginal rating on the written evaluation form will be submitted to the Contractor for response.

If, after reviewing the response (if any) to an unsatisfactory or marginal rating, it is the judgment of the Field Inspector's supervisor that the Contractor's performance is not in compliance with the requirements of the contract, he/she shall advise the Chief Executive for School Support Services of such fact, with recommendations.

If, after his/her review of the evaluation(s) and recommendation(s) of the Field Inspector and his/her supervisor, and the response, if any, of the Contractor, it shall be the determination of the Chief Executive that the Contractor's performance is not in compliance with the requirements of the contract, he/she shall advise the Contractor in writing that it has been determined to be a Poor Performer, and will be barred from bidding for a period of up to two (2) years from the Contractor's receipt of notice of the determination.

Notwithstanding any other provision of this contract, a project having reached substantial completion shall not affect the operation of this provision, i.e., the Contractor may achieve substantial completion and be determined a poor performer hereunder.

The Contractor shall have the right to appeal the determination of the Chief Executive for School Support Services that it is a Poor Performer at a hearing before the Chancellor's Designee. The Contractor must request this hearing within five (5) business days of receiving the Determination of Poor Performance from the Chief Executive.

The opportunity for the Contractor to appeal the Determination of Poor Performance to the Chancellor's Designee should be made with the understanding that the following result(s) may occur:

- a. If the Chancellor's Designee accepts the Contractor's appeal and agrees with the Contractor, the Determination of Poor Performance will be rescinded.
- b. If the Chancellor's Designee agrees with the Chief Executive's for School Support Services determination, it will issue a decision that may, consistent with the Bylaws of the Board of Education, bar the Contractor from bidding for a period of up to two (2) years, unless in connection with its findings, a lesser penalty is imposed by reason of mitigating circumstances.

**ARTICLE 29.** In case THE CONTRACTOR shall at any time, in the opinion of THE SENIOR DIRECTOR, of the Division of School Facilities neglect to faithfully carry on and perform any portion of the work required by this contract, whereby safety and proper construction may be endangered or which may not be subsequently rectified, or whereby damage and injury may result to life and property, or either, then and in every such case THE SENIOR DIRECTOR shall have the right forthwith and without notice to THE CONTRACTOR to enter into and upon the work, and to make good any and all imperfect work and materials and deficiencies arising by reason of such neglect. The expense and cost thereof shall be charged against THE CONTRACTOR, and may be deducted from any payment or money which may be due or subsequently become due under this contract. The opinion and decision of THE SENIOR DIRECTOR in all instances which may arise in respect to the aforesaid shall be final, conclusive and binding upon THE CONTRACTOR.

No action so taken by THE SENIOR DIRECTOR shall release THE CONTRACTOR from any and all consequences and damages which may have arisen, or may arise, owing to such neglect, whether willful or by omission; and THE CONTRACTOR covenants and agrees to hold THE CITY and THE BOARD harmless against and from any and all suits at law and all and every claim, damage and loss whatsoever arising therefrom.

**ARTICLE 30.** Should THE CONTRACTOR fail to commence or perform any work, or otherwise fail to carry out any directions consistent with the terms of this contract within three (3) days after written notice from THE SENIOR DIRECTOR, THE SENIOR DIRECTOR may have such work done, or materials furnished by others and deduct the cost thereof from the monies due, or to become due under the contract.

**ARTICLE 31.** Should The BOARD deem it inexpedient to interrupt the progress of the work by the removal and replacement of defective or damaged work or materials, or those not in accordance with the plans and specifications, the Board shall have the right to accept the work as furnished and to deduct from the contract price an amount to be determined by The Senior Director to cover the cost of having the defective work or materials removed or replaced, or any omitted work performed or other deviation from contract requirements corrected, by others. The Contractor will provide, furnish and deliver to the Board at his own cost and expense, at the times and places and in the manner and under the conditions herein contained or hereto attached, the supplies, articles, goods, wares and merchandise or services mentioned and described in the specifications, and will accept as full compensation therefor the sum set opposite the respective items or articles in the specifications herein contained or hereto attached, the said sums being the amounts at which this contract is awarded to the Contractor after the public letting thereof.

**ARTICLE 32.** Coordination with other contractors. During the progress of the work, other contractors may be engaged in performing other work or may be awarded other contracts for additional work on this project. In that event, THE CONTRACTOR shall coordinate the work to be done hereunder with the work of such other contractors and THE CONTRACTOR shall fully cooperate with such other contractors and carefully fits its own work to that provided under other contracts as may be directed by THE SENIOR DIRECTOR. THE CONTRACTOR shall not commit or permit any act which will interfere with the performance of work by any other contractor.

If THE SENIOR DIRECTOR shall determine that THE CONTRACTOR is failing to coordinate his work with the work of other contractors as THE SENIOR DIRECTOR has directed, then THE SENIOR DIRECTOR shall have the right to withhold any payments due hereunder until THE SENIOR DIRECTOR directions are complied with by THE CONTRACTOR.

**ARTICLE 33.** If THE CONTRACTOR notifies THE SENIOR DIRECTOR in writing that another contractor on this project is failing to coordinate his work with the work of this contract as directed, THE SENIOR DIRECTOR must promptly investigate the charge. If he finds it to be true, he must promptly issue such directions to the other contractor with respect thereto as the situation may require. THE BOARD shall not, however, be liable for any damages suffered by this contractor by reason of the other contractor's failure to promptly comply with the directions so issued by THE SENIOR DIRECTOR, or by reason of another contractor's default in performance, it being understood that THE BOARD does not guarantee the responsibility or continued efficiency of any contractor.

**ARTICLE 34.** THE CONTRACTOR shall indemnify and hold THE BOARD harmless from any and all claims or judgement for damages and from costs and expenses to which THE BOARD may be subjected or which it may suffer or incur by reason of THE CONTRACTOR's failure to comply with THE SENIOR

DIRECTOR directions promptly; and THE COMPTROLLER shall have the right to exercise the powers reserved in Articles 30, 41, 49, 50, and 58 hereof with respect to any claims which may be made for damages due to this contractor's failure to comply with THE SENIOR DIRECTOR direction promptly.

**ARTICLE 35.** Should THE CONTRACTOR sustain any damage through any act of omission of any other contractor having a contract with THE BOARD for the performance of work upon the site or of work which may be necessary to be performed for the proper prosecution of the work to be performed hereunder, or through any act or omission of a subcontractor of such contract, THE CONTRACTOR shall have no claim against THE BOARD for such damages, but shall have to recover such damage from the other contractor under the provision similar to the following provisions which have been or will be inserted in the contracts with such other contractors.

**ARTICLE 36.** Should any other contractor having or who shall hereinafter have a contract with THE BOARD for the performance of work upon the site sustain any damage through any act or omission of THE CONTRACTOR hereunder or through any act or omission of any subcontractor of THE CONTRACTOR, THE CONTRACTOR agrees to reimburse such other contractor for all such damages and to defend at his own expense any suit based upon such claim and if any judgement or claims against THE BOARD shall be allowed THE CONTRACTOR shall pay or satisfy such judgement or claim and pay all costs and expenses in connection therewith and to indemnify and hold THE BOARD harmless from all such claims.

**ARTICLE 37.** THE BOARD's right to indemnification hereunder shall in no way be diminished, waived or discharged, by its recourse to assessment of liquidated damages as provided in Article 17 or by the exercise of any other remedy provided for by contract or by law.

#### **CONTRACTOR'S RESPONSIBILITY, INSURANCE, ETC.**

**ARTICLE 38.** THE CONTRACTOR shall at all times be liable for, and indemnify and save harmless THE CITY and THE BOARD and their successors in office, against and from any and all claim or damage arising from, upon or by reason of the breach by THE CONTRACTOR of any covenants herein contained.

**ARTICLE 39.** (No Text)

**ARTICLE 40.** **Types of Insurance:** From the date the **Contractor** is ordered to commence **Work** and up to the date of **Final Acceptance** of all required **Work**, the **Contractor** shall effect and maintain with companies licensed and authorized by the New York State Department of Insurance to do business in the State of New York, the following types of insurance, in the amounts set forth in the Schedule Specifications in Section **1.27 Insurance Requirements:**

40.A.1 Commercial General Liability Insurance: The Contractor shall provide Commercial General Liability Insurance Policy (with the coverage indicated below) in the **Contractor's** name and naming the Board of Education (Department of Education) of the City of New York and the City of New York as an Additional Insured there under and endorsed to cover the liability assumed by the **Contractor** under the indemnity provisions of this **Contract**. This insurance policy shall be maintained throughout the term of this **Contract** and shall protect the City, the **Contractor** and/or its **Subcontractors** performing **Work** at a Site from claims for property damage and/or bodily injury, including accidental death, which may arise from operations under this **Contract**. The coverage shall be at least as broad as that provided by Insurance Services Office ("ISO") Commercial General Liability Form CG0001 ed. 1/96. The coverage provided must be "occurrence" based rather than "claims-made."

40.A.1 (a) The Commercial General Liability Insurance Policy provided shall include without limitation, the following coverage: Premises Operations, Products or Completed Operations, Contractual Liability, Broad Form Property Damage, Medical Payments, Independent Contractors, Personal Injury (Contractual Exclusion deleted), Explosion, Collapse and Underground Property, and Incidental Malpractice. The Commercial General Liability Insurance Policy provided shall contain each of the following endorsements:

40.A.1 (a)(i) The Board of Education, together with its officials and employees, is an Additional Insured under this policy, with coverage at least as broad as ISO Form CG 2026 (11/85 ed.); and

40.A.1 (a)(ii) Notice under the Policy to the Board of Education shall be addressed to the Insurance Unit, Division of School Facilities 3rd Floor, 44-36 Vernon Boulevard, Long Island City, NY 11101.

40. A.1 (a)(iii) Notwithstanding any provision of this policy to the contrary, notice by or on behalf of the Board or the **City** as Additional Insured of any occurrence, offense, or claim, if such notice is required, will be deemed timely if given to the Insurance Company as soon as practicable after a Notice of Claim adequately specifying the occurrence, offense, or claim as one potentially covered under the policy has been filed with the Board or the **City**; however, in no event shall "as soon as practicable" be a period of less than one hundred and eighty (180) **Days** thereafter; and

40. A.1 (a)(iv) Any notice, demand or other writing by or on behalf of the Contractor to the Insurance Company relating to any occurrence, offense, claim or suit shall also be deemed to be a notice, demand, or other writing on behalf of the Board of Education and/or the **City** as Additional Insured, and any response thereto on behalf of the Insurance Company shall be sent to the **Contractor**, to the Board of Education Law Department at 52 Chambers Street, New York, NY 10007 and to the City at New York City Law Department, Insurance Law Unit, Affirmative Litigation Division, 100 Church Street, New York, NY 10007; and

40. A.1 (a)(v) Notice of Cancellation of Policy: In addition to any other requirements concerning notice of cancellation, this policy shall not be canceled, terminated, modified or changed by the Insurance Company unless thirty (30) Days prior written notice is sent to the Named Insured by Registered Mail and also sent by Registered Mail to the **Insurance Unit, Division of School Facilities** 3rd Floor, 44-36 Vernon Boulevard, Long Island City, NY 11101 nor shall this policy be canceled, terminated, modified or changed by the Named Insured without the prior written consent of the **Director**; and

40. A.1 (a) (vi) Notwithstanding any other provision or endorsement to the contrary, Section V (8) (f) of ISO Form CG0001, ed. 1/96 (or its equivalent), is hereby made a part of this policy; and

40. A.1 (a)(vii) Notwithstanding any other provision or endorsement to the contrary, any provision or endorsement to this policy (other than one required by the Law of the State of New York) which operates in any way to reduce coverage hereunder below that provided under CG0001, ed. 1/96, does not apply to the City, as an Additional Insured, regardless of any reduction of coverage effected thereby upon any other Insured; and

40. A.1(a)(viii) It is agreed that the Insurance Company, in the event of any payment under these policies, will waive its rights of recovery, if any, against the Board of Education and the City; and

40. A.1 (a)(ix) Notwithstanding any other provision or endorsement to the contrary, the Board of Education and the **City** as Additional Insured shall be covered for any "bodily injury" or "property damage" which results from the intentional acts of the **Contractor** or any other Insured under this policy other than the Board or the **City**.

40. A.2 Builders' Risk Insurance: The **Contractor, where required in the Schedule Specifications**, shall provide a Builder's Risk insurance policy covering all risks in completed value form. Completed value shall be as follows:

40. A.2 (a) The policy shall insure the **Contractor, the Board** and the **City** as their respective rights and interests may appear under the **Contract**. The policy shall cover the storage and transportation of materials, equipment, and supplies of any kind whatsoever to be used on or incidental to **Work**. The Builder's Risk policy shall contain the following endorsements:

40. A.2 (a)(i) This policy insures against loss or damage only on **Work** done under the **Contract** with the **Board of Education** of the City of New York for the Work described in the **Contract Documents**, which is susceptible to damage or loss; and

40. A.2 (a)(ii) The policy shall contain under the loss payable clause or endorsement thereon, "loss, if any, payable to the **Board of Education** of the City of New York"; and

40. A.2 (a)(iii) Notice of Cancellation Policy, as set forth in Article 40.A.1(a)(v); and

40. A.2 (a)(iv) The policy shall permit occupancy without the consent of the insurance Company; and

40. A.2 (a)(v) If the insurance policy is that of a Mutual Insurance Company, it shall contain the following: "The additional named insureds under this policy, the Board of Education of the City of New York and the City of New York shall not be liable for any premium or assessment under this policy of insurance. The **Contractor**, referred to in this policy, who has entered into the **Contract** with the Board of Education of the City of New York, is solely liable."

40. A.3 Workers' Compensation Insurance: The **Contractor** and each **Subcontractor** shall provide Workers' Compensation Insurance in accordance with the Laws of the State of New York, on behalf of all employees providing services under this **Contract**.

40. A.3 (a) Pursuant to Section 57 of the New York State Workers' Compensation Law, the Contractor shall have submitted to the Agency proof of Workers' Compensation and disability benefits coverage prior to the execution of this Contract.

40. A.4 Employers' Liability Insurance: The **Contractor** shall provide Employers' Liability Insurance affording compensation due to bodily injury by accident or disease sustained by an employee of the insured arising out of and in the course of his/her employment by the insured.

40. A.5 Automobile Liability Insurance: The **Contractor** shall provide commercial auto liability insurance covering all owned, non-owned and hired vehicles to be used in connection with this **Contract**

(ISO Form CA0001, ed. 6/92, code I "any auto").

**40.B General Requirements for Insurance Policies:** All required insurance policies shall be maintained with companies licensed and authorized to do business in the State of New York by the New York State Department of Insurance.

40.B 1. The **Contractor** shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the **Board** is an insured under the policy.

**40.C Proof of Insurance:** Within ten (10) **Days** of award, the **Contractor** shall, for each policy required under this **Contract**, file a Certificate of Insurance with the **Director**. Such certificates shall certificate insurance coverage in all ways in conformance with this article and shall include the following text: "The above-named broker/producer represents and warrants to the Board of Education and to the **City** that it is an Additional Insured under the insurance policies listed herein and that such policies are in full compliance with the **Contract**".

40.C.1 Certificates confirming renewals of insurance shall be submitted to the office specified in 40.A.1 (a)(ii) not less than thirty (30) **Days** prior to the expiration date of coverage until all operations under this **Contract** are deemed completed.

**40.D Commencement of Operations Under This Contract:** The **Contractor** shall not commence any operations under this contract unless and until all required certificates have been submitted to and accepted by the **Director**. Acceptance by the **Director** of a certificate hereunder does not excuse the **Contractor** from securing a policy consistent with all provisions of this article or of any liability arising from its failure to do so.

40.D.1 The **Contractor** shall be responsible for providing continuous insurance coverage as required by this **Contract** and shall be authorized to Work at the Site only during the effective period of all required coverage.

40.D.2 In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the **Contractor** shall immediately stop all Work at the Site, and shall not recommence **Work** at the Site until authorized in writing to do so by the **Director**. Upon quitting the Site, the **Contractor** shall leave all plant, materials, equipment, tools and supplies on the Site. **Contract** time shall continue to run during such periods and no extensions of time will be granted. Furthermore, the **Director** may declare the **Contractor** in default for failure to maintain required insurance.

40.D.3 As soon as practicable, but no later than thirty (30) days after the occurrence of any accidents or incidents causing bodily injury, personal injury, or property damage arising in the course of operations under the **Contract**, the **Contractor** shall give written notice of such occurrence (a) on its own behalf and on behalf of the Board of Education and/or the City as Additional Insured to the Insurance Company, and (b) to the **Director**. If the **Contractor** fails to give such notice as soon as practicable to the Insurance Company on behalf of the City, the **Contractor** shall indemnify the City for all losses or expenses resulting therefrom.

40.E Materiality/Non-Waiver: The **Contractor's** failure to secure policies in complete conformity with this article, or to give the Insurance Company timely notice of an occurrence, offense, claim or suit on

behalf of the Board or the City, shall constitute a material breach of this **Contract**. Such breach shall not be waived or otherwise excused by any action or inaction by the **Board** at any time.

**ARTICLE 41.** (No text)

**ARTICLE 42.** If the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the work of THE CONTRACTOR, or his subcontractors, in their performance of this contract, or from his or their failure to comply with any of the provisions of this contract or of law, THE CONTRACTOR shall indemnify and hold THE BOARD and THE CITY harmless from any and all claims and judgments for damages and from costs and expenses to which THE BOARD or THE CITY may be subject or which it may suffer or incur by reason thereof. The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against THE CONTRACTOR, THE BOARD or THE CITY.

**ARTICLE 43.** THE CONTRACTOR shall assume all responsibilities for any claims or suits for infringements or on account of any patent rights connected with any or all of the materials, appliances, articles or systems used in the performance of this work, and shall protect THE BOARD and THE CITY and hold them harmless against any such claims or suits which may be brought before or after the completion of the work.

**ARTICLE 43A.** The requirement for insurance pursuant to Article 40 shall continue in effect until the completion of all work required under the contract, unless specific consent is given, in writing, to the termination of such insurance.

**PAYMENTS**

**ARTICLE 44.** This contract shall not be binding or of any force unless THE COMPTROLLER shall indorse hereon his certificate that there remains unexpected and unapplied, as provided in Section 93c-3.0 of the Administrative Code of THE CITY, a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing this contract as certified by the officers making the same.

**ARTICLE 45.** If THE CONTRACTOR shall well and faithfully perform and fulfill this contract and keep every covenant on his part herein contained, THE BOARD will then, but not before, pay to THE CONTRACTOR the sum of

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_dollars \$\_\_\_\_\_

(If contract amount is divisible into separate payments for separate portions, enter the amounts in Article 48.)

**ARTICLE 46.** The Board agrees to pay and the Contractor agrees to accept, as full consideration for the complete and satisfactory performance of the services required herein, the amount set forth in the bid.

Payment(s) shall be made after the filing with the Comptroller of voucher(s) for such payment(s). In the event any items in the billing may be questioned or disputed by the DIRECTOR, these items may be deleted from the billing until their resolution and the remainder of the billing shall be processed within the above period(s).

The Contractor shall submit numbered invoices for payment in accordance with the payment schedule established in the specifications. Such invoices shall set forth the services for which payment is requested, and approval thereof by the SENIOR DIRECTOR shall be a prerequisite to payment.

All pay shall be subject to such provisions for set off as may be set forth in this Agreement and in the Specifications attached hereto.

With each application for installment or progress payment, the Contractor shall submit a detailed schedule of the amount and value of the material installed and the work done.

The Contractor will be required to furnish proof of delivery in each instance and comply with the rules and regulations of the Board, relative to the manner in which bills, etc., shall be furnished.

Payments shall be made out of such monies as may be reserved by the Comptroller of the City of New York for the purpose herein provided.

This contract and all payments hereunder shall be subject to audit by the Board of Education and post audit by the Comptroller of the City in accordance with the New York City Charter and Administrative Code.

**ARTICLE 47.** If provision is specifically made in the specification for progress payments, the sum for which this contract is awarded will be paid in installments, as the work progresses. All such installment payments or progress payments shall be based upon an estimate and certificate made by THE SENIOR DIRECTOR of the materials installed and work done by THE CONTRACTOR.

**ARTICLE 47A.** In accordance with the requirements of Article 70, the Contractor shall promptly repair, replace, restore or rebuild, as the SENIOR DIRECTOR may determine, any furnished work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one-year period subsequent to the date of final acceptance, except where other periods of maintenance and guarantee are provided for.

Notice by the SENIOR DIRECTOR to the Contractor to repair, replace, rebuild or restore such defective or damaged work shall be timely if given not later than ten (10) days subsequent to the expiration of the one (1) year period or other periods provided for herein.

If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged work promptly after receiving such notice, the SENIOR DIRECTOR shall have the right to have the work done by others in the same manner as is provided for the completion of a defaulted contract and to deduct the cost thereof from the amount so deposited hereunder. The balance, if any, shall be returned to the Contractor without interest.

If the amount so deposited be insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency on demand by the SENIOR DIRECTOR.

The SENIOR DIRECTOR certificate setting forth the fair and reasonable cost of repairing, replacing,

rebuilding or restoring any damaged or defective work when performed by one other than the Contractor shall be binding and conclusive as the amount thereof upon the Contractor.

The Contractor shall obtain all manufacturer's warranties and guarantees of all equipment and materials required by this Contract in the name of the Board of Education of the City of New York and shall deliver same to the Board.

**ARTICLE 48.** In case the contract includes work to be performed or materials to be furnished at or upon more than one building, for which separate prices were required in the bid, or for more than one item for which separate bids were required, final payment for each portion shall be made as specified in Article 46 without reference to the work to be performed in other portions.

**ARTICLE 49.** If any claim is made against THE CITY or THE BOARD for any act or omission of THE CONTRACTOR, THE COMPTROLLER may withhold the amount of such claim or so much thereof as he may deem necessary, as security against such claim, from any money due or to become due hereunder, until such time as the commencement of an action thereon would be barred by law or until final adjudication of such action by a Court of competent jurisdiction. THE COMPTROLLER, in his discretion, may permit THE CONTRACTOR to substitute other satisfactory security in lieu of the moneys so withheld.

If no action is commenced upon such claim within the time limited therefor by law, THE COMPTROLLER, upon written demand by THE CONTRACTOR, shall return the amount so withheld without interest.

If an action on such claim is timely commenced and the liability of THE BOARD or THE CITY, or THE CONTRACTOR, or both, shall have been established therein by a final judgement of a Court of competent jurisdiction, or if such claim shall have been admitted by THE CONTRACTOR valid, THE COMPTROLLER shall pay such judgement or admitted claim out of the moneys retained by him under the provisions of this Article, and return the balance, if any, without interest, to THE CONTRACTOR.

**ARTICLE 50.** If, in the opinion of THE BOARD, THE CONTRACTOR is not proceeding with the work in accordance with the provisions of this contract, THE BOARD shall have the right to withhold out of any payments, final or otherwise, such sums as THE BOARD may deem ample to protect THE BOARD against delay or loss.

**ARTICLE 51.** (No text)

**ARTICLE 52.** No certificate given or payment made under this contract and no action by THE BOARD shall operate as, or be held to be, an admission on the part of THE BOARD or THE CITY, that this contract, or any part thereof, has been complied with, or that any detail of the work has been properly performed, in case the fact shall be otherwise, or so as to preclude any action for damages against THE CONTRACTOR, or the deduction and retention of any damages as herein provided, should the work and materials, hereby required, not be performed and furnished in every particular in a substantial and workmanlike manner, and of a good and proper quality, or should this contract not be faithfully executed in every respect.

**ARTICLE 53.** Neither THE CITY nor THE BOARD, nor any department or officer thereof, shall be precluded or estopped by any return or certificate made or given by THE BOARD, any Director or other officer, agent or appointee of THE CITY or of THE BOARD under any provision of this agreement from showing at any time (either before or after the final completion and acceptance of the work and payment therefor pursuant to any such return or certificate) showing the true and correct amount and character of the

work done and materials furnished by THE CONTRACTOR, or any other person under this agreement, or from showing at any time that any such return or certificate is untrue and incorrect or improperly made in any particular, or that the work and materials or any part thereof, do not in fact conform to the specifications; and neither THE CITY nor THE BOARD shall be precluded or estopped, notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from THE CONTRACTOR such damages as it may sustain by reason of his failure to comply with the specifications.

**ARTICLE 54.** All works of art, including paintings, mural decorations, stained glass, statues, has reliefs and other sculpture, monuments, fountains, arches and other structures of a permanent character intended for ornament or commemoration, and every design of the same to be used in the performance of this contract, and the design of all buildings, bridges, approaches, gates, fences, lamps or structures to be erected pursuant to the terms of this contract must be approved by the Art Commission of THE CITY, prior to the erection or placing in position of the same. THE SENIOR DIRECTOR will submit all required data for the approval of the Art Commission. Final payment shall not become due or payable under this contract unless and until the Art Commission shall certify that the design for the work herein contracted for has been approved by the said Commissioner, and that the same has been executed in substantial accordance with the design so approved, pursuant to Section 854 of the New York City Charter.

#### **ERRORS AND CHANGES**

**ARTICLE 55.** If the contract documents contain any errors, inconsistencies, ambiguities, or discrepancies, other than omissions described in Article 9, THE CONTRACTOR shall request a decision by writing THE SENIOR DIRECTOR, whose decision will be binding upon THE CONTRACTOR. If, in THE SENIOR DIRECTOR opinion, changes are required in the extent of the work included in the contract, cost adjustments therefor will be made as described in Article 56.

**ARTICLE 56.** THE BOARD, through THE SENIOR DIRECTOR, reserves the right to make changes from time to time, when it deems necessary, in the plans and specifications. THE CONTRACTOR shall submit a detailed estimate of the value of the work involved. THE SENIOR DIRECTOR will determine the reasonable value of the work or material omitted from or added to the work by the aforesaid changes. The reasonable value of any work or material required to be omitted shall be deducted from and the reasonable value of extra work required to be furnished shall be added to the contract price. Such changes shall be in effect from the date of authorization from THE SENIOR DIRECTOR.

#### **ASSIGNMENTS AND LIENS**

**ARTICLE 57.** THE CONTRACTOR will give his personal attention constantly to the faithful prosecution of the work; he will not assign, transfer, convey, sublet or otherwise dispose of this contract, or his right, title, or interest in or to the same or any part hereof, without the previous resolution of THE BOARD consenting thereto, and a statement that such consent was given by THE BOARD endorsed by The Chief Executive of School Support Services or his designee. THE BOARD, upon the assignments of sub-contracts, filed in the offices of THE BOARD, and of the Treasurer; and he will not assign by power of attorney or otherwise any of the moneys to become due and payable under this contract, unless by and with the previous consent in writing of The Administrator of Business Affairs endorsed upon or attached to the assignment filed in said offices. If THE CONTRACTOR shall, without previous written consent, assign, transfer, convey, sublet or otherwise dispose of this contract or of his right, title, or interest therein, or any of the moneys to become due under this contract to any other person, firm, or corporation, this contract may, at the opinion of THE BOARD, be revoked and annulled and THE BOARD shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to THE CONTRACTOR, and to his assignee or transferee. No right

under this contract, or to any moneys to become due hereunder shall exist against THE CITY or THE BOARD in law or in equity, by reason of any so-called assignment of this contract, or any part thereof, or of any moneys to grow due hereunder, unless authorized as aforesaid. Nothing herein contained shall be construed to hinder, prevent or affect an assignment by THE CONTRACTOR for the benefit of his creditors, made pursuant to the statutes of the State of New York, or of a subletting of any part of this contract in the regular course of business, which subletting has been specifically approved in advance by THE SENIOR DIRECTOR in writing.

**ARTICLE 58.** THE CONTRACTOR will not, at any time, suffer or permit any liens, attachments or other encumbrances, under the law of this State or otherwise, by any person or persons whomsoever, to be filed against the amount due or to become due under this contract for such work or materials, or by reason of any other claim or demand against THE CONTRACTOR; and any such lien, attachment, or other incumbrance, until it is removed or legally bonded to the satisfaction of The Treasure, shall preclude any and all claim or demand for any payment whatsoever under or by virtue of this contract.

If, at any time, before or within thirty days after the whole work herein agreed to be performed has been completed and accepted by THE BOARD, any person or persons claiming to have performed any labor or furnished any material toward the performance and completion of this contract shall file with THE BOARD and with The Treasurer any such notice as is described in the Lien Law or in any Act of the Legislature of the State of New York, then, and in every such case, THE CITY and THE BOARD shall retain, anything herein contained to the contrary notwithstanding, from the moneys under its control and due and to grow due under this agreement, so much of the moneys as shall be sufficient to pay off, satisfy and discharge the amount in such notice alleged to be due to the person or persons filing such notice, together with the reasonable costs of any action or actions that may be brought to enforce such claim or the lien created by the filing of such notice.

The money so retained shall be held by THE CITY and THE BOARD until the lien created by the said act, and the filing of said notice shall be discharged pursuant to the provisions of the said act.

### **SUBCONTRACTING**

**ARTICLE 58A.**

- A. The Contractor agrees not to enter into any subcontracts for the performance of the obligations, in whole or in part, under this Agreement without the prior written approval of the Board. Two copies of each such proposed subcontract shall be submitted to the Director with the Contractor's written request for approval.
- B. All such subcontracts shall contain provisions specifying:
  - 1. that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Board and the Contractor,
  - 2. that nothing contained in such contract shall impair the rights of the Board, and
  - 3. that nothing contained therein, or under the Agreement between the Board and the Contractor shall create any contractual relationship between the subcontractor and the Board.
- C. The Contractor agrees that it is fully responsible to the Board for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.
- D. The aforesaid approval is required in all cases other than individual employer-employee contracts.
- E. The Contractor shall not in any way be relieved of any responsibility under this Agreement by any

subcontract.

### COMPLIANCE WITH LAWS

**ARTICLE 59.** In all operations under this contract, THE CONTRACTOR agrees to comply with the provisions of all Federal and State and local laws, The Administrative Code of THE CITY and all rules and regulations of THE CITY and THE BOARD which may affect such operations.

**ARTICLE 60.** It is the intent and understanding of the parties in this contract that each and every provision of law required to be inserted in this contract should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise any such provision is not inserted or is not inserted in correct form, then this contract shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**ARTICLE 60A.** (a) THE CITY is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to THE CITY pursuant to the provisions of this contract. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to THE CONTRACTOR or a subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated into the completed work (consumable supplies), and THE CONTRACTOR and his subcontractors shall be responsible for and pay any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials.

(b) THE CONTRACTOR agrees to sell and THE CITY agrees to purchase all supplies and materials, other than consumable supplies, required, necessary to proper for or incidental to the construction of the Project covered by this agreement. The sum paid under this agreement for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials under the agreement.

THE CONTRACTOR agrees to construct the Project and to perform all work, labor and services required, necessary or proper for or incidental thereto for the sum shown in the bid for the performance of such work, labor and services, and the sum so paid pursuant to this agreement for such work labor, etc. shall be in full consideration for the performance by THE CONTRACTOR of all his duties and obligations under this agreement in connection with said work and labor.

(c) The purchase by THE CONTRACTOR of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or New York City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials sold under hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or New York City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by THE CONTRACTOR to THE CITY is exempt from the aforesaid sales or compensating use taxes. With respect to such supplies and materials, THE CONTRACTOR, at the request of THE CITY, shall furnish to THE CITY such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to THE CITY title to such supplies and materials, free of liens or encumbrances, and THE CONTRACTOR shall make or otherwise identify all such materials as the property of THE CITY.

- (d) Title to all materials to be sold by THE CONTRACTOR to THE CITY pursuant to the provisions of the contract shall immediately vest in and become the sole property of THE CITY upon delivery of such supplies and materials to the site and prior to its becoming a part of the permanent structure. Notwithstanding such transfer of title, THE CONTRACTOR shall have the full and continuing responsibility to install such materials and supplies in accordance with the provisions of this agreement, protect them, maintain them in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen, or rendered unusable, without cost to THE CITY, until such time as the work covered by the contract is fully accepted by THE CITY. Such transfer of title shall in no way affect any of THE CONTRACTOR's obligations hereunder. In the event that, after title has passed to THE CITY, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to THE CONTRACTOR.
- (e) The purchase by sub-contractors of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale to THE CONTRACTOR (either directly or through other subcontractors) and therefore not subject to the aforesaid Sales or Compensating Use Taxes, provided that the sub-contract agreements provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such sub-contract agreements are in form similar to this contract with respect to the separation of the sale of materials from the work and labor, services, consumable supplies and any other matters to be provided, and provided further that the sub-contract agreements provide separate prices for (1) materials and (2) all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other work and labor and other things to be provided.
- (f) THE CONTRACTOR and his sub-contractors and material men shall obtain any and all necessary contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a contractor Exempt Purchase Certificate or resale certificate to all persons, firms, or corporations from which they purchase supplies and materials for the performance of the work covered by this Contract.
- (g) In the event any of the provisions of the agreement to which this is an addendum shall be deemed to be in conflict with this addendum or shall create any ambiguity, then the addendum shall control.

**ARTICLE 60B.** In accordance with the provisions of Section 1403.3-2.25, Noise abatement contract compliance, of Part III of Chapter 57 of the Administrative Code of THE CITY:

1. Devices and activities which will be operated, conducted, constructed or manufactured pursuant to this contract and which are subject to the provisions of the New York City Noise Control

Code shall be operated, conducted, constructed manufactured without causing a violation of the code.

2. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Administrator of the Environmental Protection Administration. Regulations promulgated pursuant to Section 1403.3-2.25 after the execution of this contract shall not alter its terms, conditions and specifications.

**ARTICLE 61.** If this contract contains any unlawful provision, not an essential part of the general structure of the contract and which shall appear not to have been a controlling or very material inducement to the making thereof, the same shall be deemed of no effect and shall, upon the application of either party, be stricken from the contract without affecting the binding force of the contract as it shall remain the omitting such provision.

**ARTICLE 62.** If the employees engaged on the work to be performed under this contract are required to be insured by the provisions of the Workmen's Compensation Law, and acts amendatory thereof, this contract shall be void and of no effect unless the person, firm or corporation making or performing the same shall secure compensation for the benefit of and keep insured during the life of said Contract, such employees, in compliance with the provisions of said law.

**PREVAILING WAGE AND SUPPLEMENTS**  
**(Section 230, et seq - New York State Labor Law)**

**ARTICLE 63.**

If the work of this contract is covered by the provisions of Labor Law Section §220 (Labor Upon Public Works) or §230 (Building Services), the following provision(s) shall apply:

THE CONTRACTOR must strictly comply with all applicable provisions of the New York State Labor Law, including amendments thereto, and the provisions of Section 6-109 of the New York City Administrative Code, as amended.

No laborer, workmen, or mechanic in the employ of THE CONTRACTOR, subcontractor or other person doing or contracting to do the whole or part of the work contemplated by this 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 cases of extraordinary emergency including fire, flood or danger to life or property, or in case of national emergency when so proclaimed by the President of the United States of America, or in any other case provided by law.

In situations in which there are not sufficient laborers, workmen and mechanics who may be employed to carry on expeditiously the work contemplated by this contract as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement of prosecution or completion without undue delay of the work is necessary for the preservation of the contract site and/or for the protection of the life and limb of the persons using the same, such laborers, workmen and mechanics shall be permitted or required to work more than eight hours in any one calendar day; or five days in any one week; provided however, that upon application of any contractor THE SENIOR DIRECTOR shall have first certified to the industrial Commissioner of the State of New York that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantages to the public; and provided, further, that such Industrial Commissioner shall have determined that such an emergency does in fact exist as provided in Subdivision two of Section§ 220 of the Labor Law.

Failure of THE SENIOR DIRECTOR to make such a certificate to the Industrial Commissioner shall not entitle THE CONTRACTOR to damages for delay or for any cause whatsoever.

No part of the work, labor or services shall be performed or rendered by THE CONTRACTOR in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary and factory inspection laws of the state in which the work is to be performed shall be prima facie evidence of compliance with

- A. The wage which THE CONTRACTOR shall pay for a legal day's work and supplements to be provided to building service employees, as defined in Section 230 of the New York State Labor Law, employed upon the whole or part of the building service work contemplated by this contract, shall not be less than the prevailing rate of wages and any supplements required to be paid to the various classes of employees on such work, ascertained and determined by the Comptroller of the City of New York as set forth in a schedule. Said schedule is attached to this Contract.
- B. No later than the first day upon which work on this contract is to commence, THE CONTRACTOR shall post in a prominent and accessible place on the site of work a legible statement of the wages to be paid to the employees for the building service work contemplated. Such statement shall be in the language(s) spoken on the job site.
- C. An apprentice in a craft or trade may be permitted to work at a wage lower than that established for the journeyman in such craft or trade only if all of the following conditions are met:
  - (1) such apprentice has been individually registered in an apprenticeship program which is duly registered with the New York State Industrial Commissioner in conformity with Article 23 of the New York State Labor Law,
  - (2) such apprentice's registration occurred prior to his/her employment as an apprentice on such craft or trade service work; and
  - (3) written proof of such individual registration is submitted to THE BOARD prior to such apprentice's employment as an apprentice. The proof submitted shall include evidence of the appropriate ratios and apprentice's wage rates. In no event shall the ratio of apprentice to journeyman employed on such service work by greater than the lesser of the following rate:
    - (a) the ratio permitted in the apprenticeship program approved by the industrial commissioner, or
    - (b) the ratio prevailing in the locality where the service work will be performed.

OVERTIME (Section 232 - New York State Labor Law)

All building service employees, who work more than eight hours in any one day or more than forty hours in any work week, shall be paid wages for such overtime by THE CONTRACTOR, at a rate not less than one-and-one-half times his/her prevailing basic hourly rate.

RECORD KEEPING (Section 233 - New York State Labor Law)

A. THE CONTRACTOR shall keep original payrolls or transcripts thereof subscribed and confirmed by it as true, under penalties of perjury, showing the hours and days worked by such employee, the craft, trade or occupation at which he/she was employed, and the wages paid.

B. Where the wages paid include sums which are not paid directly to the employee weekly and which are expended for supplements, the records shall include the hourly payment on behalf of such employee, the supplement for which such payment has been made, and the name and address of the person to whom such payment has been made. In all cases, THE CONTRACTOR shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made.

C. The records required herein shall be kept on the site of the work during all of the time that work hereunder is being performed. Upon a formal order of THE BOARD or the City, THE CONTRACTOR shall produce within five (5) days, on the work site, such records subscribed and affirmed by it as true, under penalties of perjury.

CERTIFICATION OF WAGE AMOUNTS (Section 237 - New York State Labor Law)

As a prerequisite to any payment by THE BOARD, THE CONTRACTOR and its Subcontractors shall file a statement in writing and in form satisfactory to the Comptroller of the City of New York, certifying to the amounts then due for daily or weekly wages on account of labor performed under this Contract, setting forth the names of the persons whose wages are unpaid and the amount due THE CONTRACTOR or Subcontractor on behalf of each respectively. The statement, to be filed, shall be certified by oath of THE CONTRACTOR or Subcontractor that it has been read and that THE CONTRACTOR or Subcontractor knows the contents of the statement to be true of his/her own knowledge.

DAILY SIGN IN SHEETS

THE CONTRACTOR shall maintain daily site sign in sheets, which shall include blank spaces for the employee's name to be both printed and signed, job title, date started and the employee's social security number.

CERTIFIED PAYROLL

At the time THE CONTRACTOR makes application for each partial payment and for final payment, THE CONTRACTOR shall submit to the Director a written payroll certification, in the form provided by this Contract, of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by New York State Labor Law Section 237 and by Section 6-109 of the New York City Administrative Code. This certification, in compliance with this paragraph, shall be a condition precedent to payment, and no payment shall be made to THE CONTRACTOR unless and until each such certification has been submitted to and received by the Director.

**ARTICLE 63A. BOOKS AND RECORDS**

MAINTENANCE

THE CONTRACTOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

RETENTION OF RECORDS

THE CONTRACTOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years following the final payment or termination of this Agreement New York City, New York State, Federal auditors and any other persons duly authorized by the BOARD shall have full access to and the right to examine any of the said materials during the six year period.

NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this Agreement involves use by THE CONTRACTOR of BOARD papers, files, data or records at BOARD facilities or offices, THE CONTRACTOR shall not remove any such papers, files, data or records therefrom without the prior approval of the BOARD'S designated official.

**ARTICLE 64. I. Policy.** It is the policy of THE BOARD in accordance with the Labor Law of the State of New York and other applicable laws to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color or national origin or sexual orientation or

affectational preference and to promote the full realization of equal employment opportunity through an affirmative, continuing program of compliance by all contractors doing business with THE BOARD and their sub-contractors.

II. Implementation. (a) THE CONTRACTOR agrees to abide by and to comply with the policy of THE BOARD as set forth by Section I above and hereby agrees and stipulates to abide by and be bound by his "Program of Affirmative Action" as set forth in the "Instructions To Bidders," the same being incorporated in this contract and made a part thereof.

- (b) THE CONTRACTOR agrees that THE BOARD shall have the sole right to determine whether he has engaged in discriminatory labor practices as hereafter defined.
- (c) Discriminatory labor practices are defined to be existent when a contractor, because of the age, race, creed, color, national origin or sex or sexual orientation or affectational preference of any individual, refuses to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions, or privileges of employment.
- (d) THE CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by THE BOARD setting forth the language of the policy of THE BOARD, the definition of discriminatory labor practices and "Notice of Nondiscrimination in Employment" attached herewith and made a part hereof.
- (e) THE CONTRACTOR agrees that all solicitations or advertisement for employees placed by or on behalf of THE CONTRACTOR will state that all qualified applicants will be considered for employment without regard to race, creed, color, or national origin.
- (f) THE CONTRACTOR agrees to send to each labor union or other representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice with a copy to THE CONTRACT COMPLIANCE OFFICER, advising the labor union or workers' representative of THE CONTRACTOR's commitments under this contract.
- (g) THE CONTRACTOR agrees to furnish THE CONTRACT COMPLIANCE OFFICER all information and reports requested and to permit access to his books, records, and accounts, for the purpose of investigation to ascertain compliance with the terms of this contract pertaining to equal employment contract compliance and questions of discriminatory labor practices.
- (h) It is agreed that if THE CONTRACTOR does not comply with the nondiscrimination labor practice provisions of this contract, as solely determined by THE BOARD, this contract may be cancelled, terminated, or suspended in whole or in part and THE CONTRACTOR may be declared ineligible for further Board of Education contracts and/or subject to such other sanctions as may be imposed and remedies invoked by THE BOARD in its discretion.
- (i) THE CONTRACTOR agrees to submit to THE CONTRACT COMPLIANCE OFFICER monthly reports indicating the breakdown of all of his employees by racial and ethnic classification.
- (j) THE CONTRACTOR agrees that he will include all of the foregoing provisions in every subcontract or purchase order so that such provisions shall be binding upon each sub-contractor or vendor.
- (k) THE CONTRACT COMPLIANCE OFFICER may direct that any bidder or prospective contractor or

sub-contractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, creed, color, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this contract or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of this contract. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement, and such additional factual material as THE BOARD may require.

- (l) Powers And Duties of THE BOARD. THE BOARD shall administer this program through its CONTRACT COMPLIANCE OFFICER, and shall have the following powers and duties:
  - (1) Issue all orders, rules, regulations and procedures as it may deem necessary or convenient for carrying out and implementing the policy set forth in Section I.
  - (2) Examine the employment practices of any contractor or sub-contractor to determine whether or not the contractual provisions set forth herein have been violated.
  - (3) Use its best efforts, directly and through other interested CITY, state and federal agencies, contractors, and all other available instrumentalities, to cause any labor union whose members are engaged in the performance of this contract, or any agency referring workers or providing for supervising apprenticeship or training for or in the course of such Work, to cooperate in the implementation of the policy set forth in Section I.
  - (4) In appropriate cases, notify the concerned contracting agencies, THE CITY Commission on Human Rights, the State Commission for Human Rights, the Equal Opportunity Commission, the U.S. Secretary of Labor, THE CITY Law Department, the U.S. Department of Justice, or other appropriate Federal, State, and CITY agencies whenever it has reason to believe that practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964, or other applicable provisions of Federal, State, or CITY laws.
  - (5) Hold such hearings, public or private, as it may deem advisable for compliance, enforcement or education purposed, or by rule, regulation, or order, designated or direct any officer or employee of THE BOARD to do so.
  - (6) Upon recommendation of THE CONTRACT COMPLIANCE OFFICER, hold, or cause to be held, hearings, prior to imposing, ordering or recommending the imposition of sanctions as provided for in this contract. No order withholding from any contractor further Board of Education contracts shall be made without affording such contractor an opportunity for a hearing.
  - (7) Periodically review the practices and procedures of the various bureaus and officers of THE BOARD administering contract with respect to compliance by them with the provisions of THE BOARD's policy as set forth in Section I herein, and require them to file reports thereon.

- (m) Sanctions and Remedies. In accordance with such rules, regulations procedures or orders as THE BOARD may issue or adopt hereunder, THE BOARD may:
- (1) Recommend to THE CITY Law Department that, in cases where there is substantial or material violation, or the threat of substantial or material violation of the contractual provisions of this contract, appropriate proceedings be brought to enforce such provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent, directly or indirectly, or seek to prevent, directly or indirectly, compliance with the provisions of this contract.
  - (2) Recommend to THE CITY Commission on Human Rights, the State Commission for Human Rights, the Equal Opportunity Commission, the U.S. Secretary of Labor, THE CITY Law Department, or the U.S. Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964, or other applicable provisions of Federal, State, or CITY laws.
  - (3) Recommend that criminal proceedings be brought for the furnishing of false information to THE BOARD.
  - (4) Whenever THE BOARD cancels or terminates a contract or whenever the award of further Board of Education contracts has been withheld under the provisions of this contract because of non-compliance with the contract provisions relating to nondiscrimination, THE BOARD shall promptly notify THE COMPTROLLER of THE CITY.
- (n) In the event that dispute arises between the bidder or prospective contractor and THE BOARD as to whether the proposed program of affirmative action for providing equal employment opportunity submitted by such bidder or prospective contractor complies with such requirements than the matter shall forthwith be referred to the Chief Executive for School Support Services for hearing and determination. The determination of such Chief Executive shall be final and conclusive, subject only to judicial review.
- (o) Miscellaneous. THE BOARD may delegate to any officer, bureau head, or employee any function or duty of THE BOARD set forth under the provisions of this article, except authority to promulgate rules and regulations of a general nature.
- (p) The provisions of Sections I and II shall be deemed supplementary to, and not in lieu of, or in substitution for, the provisions of the New York State Labor Law relating to nondiscrimination, and other applicable Federal, State, or CITY laws, ordinances, rules or regulations.

**ARTICLE 64A.** a. THE CONTRACTOR agrees that neither THE CONTRACTOR nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

- b. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of THE CONTRACTOR or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, THE COMPTROLLER may, at his option, render forfeit and void this contract.
- c. THE CONTRACTOR shall comply in all respects, with the provisions of Section 343-10.0 of the Administrative Code of THE CITY and the rules and regulations issued by THE COMPTROLLER thereunder.

## NO LIABILITY PROVISION

**ARTICLE 65.** Neither the members of the Board nor the Chancellor nor any officer, employee, agent or representative of the Board or of the City shall be personally liable, based upon any theory of law or equity, to the Contractor or to any party claiming on behalf of or through the Contractor, under this Agreement, to act in any way connected with this Agreement, whether or not the action or failure to act complained of shall have been within or without an individual's scope of authority. The Contractor further waives any and all rights to make a claim or commence an action or special proceeding, in law or equity, against any of the aforementioned individuals, and the Contractor hereby assigns its complete right, title, and interest in any such claim, action, or special proceeding to the Board.

## CLAIMS

**ARTICLE 65A.** If THE CONTRACTOR shall claim compensation for any damage sustained by reason of any act or omission of THE BOARD, its agents or if any other person, or should THE CONTRACTOR claim that any work required of him is not required to be performed by the provisions of this contract, he shall, within ten days after sustaining such damage or within ten days after being required to perform work claimed by him not to be required to be performed by the provisions of this contract, make and deliver to THE SENIOR DIRECTOR a written statement of the nature of the damage sustained and of the basis of the claim against THE BOARD. On or before forty-five days after such damage shall have been sustained or such alleged extra work required to be performed by THE CONTRACTOR shall have been ordered to be performed, THE CONTRACTOR shall make and deliver to THE SENIOR DIRECTOR a written itemized statement of the details and amount of such damage or extra work duly verified by THE CONTRACTOR. Unless such statements shall be made and delivered within the times aforesaid, all claims for such compensation shall be deemed conclusively cancelled and invalidated and THE CONTRACTOR shall not be entitled to payment on account of such claims.

In addition to the foregoing statement, THE CONTRACTOR shall, upon notice from THE BOARD, produce for examination by the representatives of THE BOARD, all his books of account, bills, invoices, payrolls, subcontracts, time books daily reports, bank deposit books, bank statements, check books, cancelled checks, showing all of his acts and transactions in connection with or relating to or arising by reason of his contract, and submit himself and persons in his employment, for examination under oath by any person designated by THE BOARD to investigate claims made against THE BOARD. Unless the aforesaid statements shall be made and filed within the time aforesaid and the aforesaid records submitted for examination and THE CONTRACTOR and his employees submit themselves for examination as aforesaid, THE BOARD shall be released from all claims arising under, relating to or by reason of this contract, except for the sums certified by THE BOARD to be due under the provisions of this contract. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions, and that in any action against THE CITY or THE BOARD to recover any sum in excess of the sums certified by THE BOARD to be due under or by reason of this contract, THE CONTRACTOR must allege in his complaint and prove, at the trial, full compliance with the provisions of this article.

And in addition to the foregoing, after the commencement of an action by THE CONTRACTOR arising under or by reason of this contract, THE BOARD shall also have the right by its attorney, upon written notice from said attorney, to require THE CONTRACTOR to produce for examination under oath by said attorney the above described books and documents of THE CONTRACTOR and to submit himself and persons in his employ for examination by said attorney. Unless THE CONTRACTOR submits the said records, himself and his employees for examination by the said attorney as aforesaid, the action of THE CONTRACTOR shall be dismissed.

**ARTICLE 66.** No claim whatsoever shall be made by THE CONTRACTOR against any officer, agent, or employee of THE BOARD or THE CITY for, on account of, anything done or omitted to be done in connection with this contract.

**ARTICLE 67.** No action shall lie or be maintained against THE BOARD or THE CITY upon any claim based

upon this contract or arising out of this contract or out of anything done in connection with this contract, unless such action shall be commenced within one year after the date of acceptance of the work under this contract by THE BOARD; or if the contract provides that any part of the moneys earned under the contract be retained for any periods after such acceptance, actions to recover such retained moneys be commenced within six months from the date when such retained moneys shall become payable under the terms of the contract, or, if this contract be terminated or declared abandoned by THE BOARD under the provisions of Article 21 of this contract, such action by THE CONTRACTOR or anyone claiming under the contract be commenced within six months from the date of such termination or declaration of abandonment by THE BOARD. THE CONTRACTOR or anyone claiming under THE CONTRACTOR, shall not be entitled to any additional time to begin anew any other action if action be commenced within the times herein specified be dismissed or discontinued, notwithstanding any provision of the Civil Practice Laws and Rules to the contrary.

**ARTICLE 68.** (No Text)

**ARTICLE 69.** The acceptance by THE CONTRACTOR, or by his legal representatives or assigns, of the final payment as finally audited and paid by THE COMPTROLLER, whether such payment be made pursuant to any judgment or order of any court or otherwise, shall operate as and shall be a full and complete release of THE BOARD and THE CITY, of and from any and all claims, demands and causes of action whatsoever, which THE CONTRACTOR and any of his sub-contractors, legal representatives or assigns have or may have against THE BOARD or THE CITY, by reason of any matter or thing arising from, connected with or related to this contract and the performance of the work hereunder, except as to such sums which shall be expressly stated by THE BOARD, in its resolution of acceptance of the work, as being sums which are to be retained by THE BOARD and to become payable after the final payment. No interest shall be allowed upon the amount of the final payment as audited by THE COMPTROLLER or upon any part thereof which The Treasurer of THE CITY is ready and willing to pay under the final certificate. THE CONTRACTOR, however, shall not be barred from commencing an action for breach of contract under this provision, provided that a detailed and verified statement of claim is served upon the contracting agency and Comptroller not later than forty days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

**GUARANTY AND WARRANTY**

**ARTICLE 70.** THE CONTRACTOR does hereby warrant all work and materials to be in full and complete accordance with the contract and all plans, drawings, addenda, amendments, specifications and requirements appertaining thereto and that all work and materials are free from any and all defects and imperfections, and fully suitable for the use and purposes for which each and every part is intended. THE CONTRACTOR also agrees that, should any defect develop or appear which THE SENIOR DIRECTOR finds was not caused by improper use, THE CONTRACTOR shall promptly upon demand, fully correct, substitute and make good any such defective material without any cost to THE BOARD and will save THE BOARD harmless against any claim, demand, loss or damage by reason of any breach of this warranty.

Except as hereinafter provided, the period of this warranty shall commence on the date on which THE SENIOR DIRECTOR certifies that all contract work on a proceed order has been satisfactorily completed.

The warranty shall continue to be in full force and effect for the period of one year, except as to those items with regard to which a longer period of warranty is specifically stated in the Specifications, and as to those items the aforesaid warranty shall continue in full force and effect for the respective periods expressly stated therein.

**ARTICLE 71.** Where guarantees and bonds are required by the specification, no final payment shall be due until THE CONTRACTOR provides all such guarantees and bonds required, with sureties satisfactory to THE BOARD and in the form and amount set forth in the specifications. THE CONTRACTOR shall obtain all manufacturers' warranties and guarantees of all equipment and materials required by this contract in the name of THE BOARD, and shall deliver same to THE BOARD.

**ARTICLE 72.** In case any work that may be required to be performed under the terms of a guaranty is not performed by THE CONTRACTOR promptly after such notice from THE SENIOR DIRECTOR, THE BOARD may have such work performed by others and charge the cost thereof to THE CONTRACTOR.

**ARTICLE 72A.** The vendor (CONTRACTOR) hereby assigns, sells and transfers to THE BOARD and THE CITY, all right, title and interest in and to any claim and causes of action arising under the antitrust laws of New York State or the United States relating to the particular goods or services purchased or procured by THE CITY under this contract.

### **INVESTIGATION CLAUSE**

**ARTICLE 73.**

1.1 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York or City of New York governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, leases, permit, or license that is the subject of the investigation, audit or inquiry.

- 1.2a If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into THE CITY, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within THE CITY, or any public benefit corporation organized under the laws of the State of New York, or;
- 1.2b If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a CITY or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with THE CITY, the State, or any political subdivision thereof or any local development corporation within THE CITY, then;
- 1.3a The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- 1.3b If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 1.5 below without THE CITY incurring any penalty or damages for delay or otherwise.
- 1.4 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
  - (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from THE CITY; and/or

- (b) The cancellation or termination of any and all such existing CITY contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional leader for fair value prior to the issuance of the notice scheduling the hearing; without THE CITY incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by THE CITY.
- 1.5 The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate;
- (a) The parties' good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- (b) The relationship of the person who refuses to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with THE CITY.
- (d) The effect a penalty may have on a unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 1.4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 1.3 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- 1.6 (a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
- (b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal, or employee.
- (c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through THE CITY or otherwise transacts business with THE CITY.
- (d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- 1.7 In addition to and notwithstanding any other provision of this agreement the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of THE CITY any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of THE CITY or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by THE CONTRACTOR, or affecting the performance of this contract.

## TERMINATION OF CONTRACT

**ARTICLE 74.** THE SENIOR DIRECTOR may, at any time, terminate this contract by written notice to THE CONTRACTOR and in such event:

1. THE CONTRACTOR shall upon receipt of such notice, unless otherwise directed by THE DIRECTOR:
  - (a) stop work on the date specified in the notice;
  - (b) take such action as may be necessary for the protection and preservation of THE BOARD's materials and equipment;
  - (c) assign to THE BOARD or deliver to the site or any other location designated by THE SENIOR DIRECTOR, any non-cancellable orders for material and equipment that is not capable of use except in the performance of this contract and has been specifically fabricated for the sole purpose of this contract and not incorporated in the work;
  - (d) take no action which will increase the amounts payable by THE BOARD under this contract.
- 2A. On all lump sum contracts, THE BOARD will pay THE CONTRACTOR;
  - (i) its direct costs as hereinafter defined or the fair and reasonable value, whichever is less, for:
    - (a) the portion of the work completed up to the time of termination, and
    - (b) non-cancellable material and equipment that is not capable of use except in the performance of this contract and has been specifically fabricated for the sole purpose of this contract but not incorporated in the work.
- 2B. On all unit price contracts, THE BOARD will pay THE CONTRACTOR:
  - (i) for all completed units, the units, the unit price stated in the contract and
  - (ii) for incomplete units, payment will be made pursuant to the provisions of section 2A, sub-i of the Article.
- 2C. Direct costs as used in this Article shall mean:
  - (i) the actual purchase price of material and equipment plus necessary and reasonable delivery costs.
  - (ii) actual cost of labor involved in construction and installation at the site, and
  - (iii) actual cost of necessary bonds and insurance purchased pursuant to the requirements of this contract less any amounts the have been or should be returned by THE CONTRACTOR's sureties or insurance carriers.
  - (iv) Direct costs shall not include overhead.
- 2D. In no event shall any payments under this Article exceed the contract price for such items.
- 2E. All payments pursuant to this Article shall be in the nature of liquidated damages and shall be accepted by THE CONTRACTOR in full satisfaction of all claims against THE BOARD arising out of the termination.
3. On contracts specifying a ceiling ("not-to-exceed" price), the ceiling is determined, as agreed, to be for limitation purposes only and not as a guaranteed sum of the value of proceed orders to be granted to the Contractor. Each proceed order is to be treated as separate and distinct, the

cumulative totals of which will not be in excess of the contract ceiling.

No additional payments will be paid by the Board, upon termination, of any difference between the contract ceiling ("not-to-exceed" price) and the total of all proceed orders.

4. The Board may deduct or set off against any sums due and payable pursuant to this Article, any claims it may have against the Contractor.
5. All payments pursuant to this Article are subject to audit and the approval of the Comptroller, pursuant to the provisions of the New York City Charter and Administrative Code.

**FORUM PROVISION CHOICE OF LAW,  
CONSENT TO JURISDICTION AND VENUE**

**ARTICLE 75.**

This contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of THE CONTRACTOR, and shall be governed by and construed in accordance with the laws of the State of New York.

The parties agree that any and all claims asserted by or against THE CITY or Board of Education (BOARD) arising under this contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in THE CITY of New York. To effect this agreement and intent, THE CONTRACTOR agrees:

- (a) If THE CITY and/or BOARD initiates any action against THE CONTRACTOR in Federal Court or in New York State Court, service of process may be made on THE CONTRACTOR either in person, wherever such contractor may be found, or by registered mail addressed to THE CONTRACTOR at its address as set forth in this contract, or to such other address as THE CONTRACTOR may provide to THE CITY in writing; and
- (b) With respect to any action between THE CITY and/or BOARD and THE CONTRACTOR in New York State Court, THE CONTRACTOR hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York City.
- (c) With respect to any action between THE CITY and/or BOARD and THE CONTRACTOR in Federal Court located in New York City, THE CONTRACTOR expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
- (d) If THE CONTRACTOR commences any action against THE CITY and/or BOARD in a court located other than in THE CITY and State of New York, upon request of THE CITY and/or BOARD, THE CONTRACTOR shall either consent to a transfer of the action to a court of competent jurisdiction located in THE CITY and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, THE CONTRACTOR shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

**ARTICLE 76.** (No Text)

**ARTICLE 77: LOCALLY BASED ENTERPRISE PROGRAM**

- (a) The Board requests voluntary compliance with the requirements of Administrative Code 6-108.1 and the regulations promulgated thereunder. No contract will be awarded unless and until the Board has evaluated efforts made by THE CONTRACTOR in attempting to comply with these requirement.
- (b) Note that for mayoral agencies:
  - 1. Unless specifically waived by the agency head with the approval of the Office of Economic and Financial Opportunity, if any portion of the contract is subcontracted, not less than ten percent of the total dollar amount of the contract shall be awarded to Locally Based Enterprises ("LBEs"); except that where less than ten percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.
  - 2. The prime contractor shall not require performance and payment bonds from LBE subcontractors.
  - 3. If THE CONTRACTOR has indicated prior to award that no work will be subcontracted, no work shall be subcontracted without the prior approval of the agency head, which shall be granted only if THE CONTRACTOR makes a good faith effort beginning at least six weeks before the work is to be performed to obtain LBE subcontractors to perform the work.
  - 4. If THE CONTRACTOR has not identified sufficient LBE subcontractors prior to award, it shall sign a letter of compliance stating that it complies with Administrative Code, 6-108.1, recognizes that achieving the LBE requirement is a condition of its contract, and shall submit documentation demonstrating its good faith efforts to obtain LBEs. After award, THE CONTRACTOR shall begin to solicit LBEs to perform subcontracted work at least six weeks before the date such work is to be performed and shall demonstrate that a good faith effort has been made to obtain LBEs on each subcontract until it meets the required percentage.
  - 5. Failure of THE CONTRACTOR to comply with the requirements of Administrative Code, 6-108.1 and the regulations promulgated thereunder shall constitute a material breach of contract. Remedy for such breach of contract may include the imposition of any or all of the following sanctions:
    - (a) reducing a contractor's compensation by an amount equal to the dollar value of the percentage of the LBE subcontracting requirement not complied with;
    - (b) declaring THE CONTRACTOR in default;
    - (c) where non-compliance is by an LBE, de-certifying and declaring the LBE ineligible to participate in the LBE program for a period of up to three years.

**ARTICLE 78.** **AUDIT BY THE BOARD AND CITY-** All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by THE BOARD and by THE COMPTROLLER of THE CITY pursuant to the powers and responsibilities as conferred upon said Board and said Comptroller by the New York City Charter and Administrative Code of THE CITY, as well as all orders and regulations promulgated pursuant thereto.

THE CONTRACTOR shall submit any and all documentation and justification in support of expenditures and fees under this agreement as may be required by said Board and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to THE BOARD and to THE COMPTROLLER as they consider necessary.

All books, vouchers, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons

duly authorized by THE CITY.

THE CONTRACTOR shall not be entitled to final payment under the agreement until all requirements have been satisfactorily met.

**ARTICLE 79.** That this agreement is authorized subject to the provisions of the Administrative Code and THE CITY Charter relating to a Code of Ethics and to the policies of THE BOARD relating to conflicts of interest. In the event that THE CONTRACTOR is, employs, retains, or engages the services of any employee of THE BOARD or former employee of THE BOARD in violation of the provisions of the Administrative Code or THE CITY Charter relating to a Code of Ethics or of the policies of THE BOARD relating to conflicts of interest, THE CONTRACTOR shall have no claim in law and/or equity under the agreement nor shall THE CONTRACTOR have any claim in law and/or equity against THE BOARD or any BOARD agent, servant, or employee.

### **MACBRIDE PRINCIPLES**

#### **ARTICLE 80.**

##### **PART I**

IA. In accordance with section 6-115.1 of the Administrative Code of the City of New York, THE CONTRACTOR stipulates that such contractor and any individual or legal entity in which THE CONTRACTOR holds a ten percent or greater ownership interest and any individual or legal entity that holds ten percent or greater ownership interest in the Contract either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride principles, and shall permit independent monitoring of their compliance with such principles.

IB. For purposes of this section, the following terms shall have the following meanings:

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:
  - (a) increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
  - (b) take steps to promote adequate security for the protection of employees from under represented religious groups both at the workplace and while traveling to and from work;
  - (c) ban provocative religious or political emblems from the workplace;
  - (d) publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
  - (e) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
  - (f) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
  - (g) develop training programs that will prepare substantial numbers of current employees from under represented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from under represented religious groups;
  - (h) establish procedures to assess, identify and actively recruit employees from under represented religious groups with potential for further advancement; and

- (i) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

**PART II. ENFORCEMENT OF PART I.**

THE CONTRACTOR agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that THE CONTRACTOR who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give THE CONTRACTOR an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare THE CONTRACTOR in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, THE CONTRACTOR shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to THE CONTRACTOR, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, THE CONTRACTOR shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold THE CONTRACTOR in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of THE CONTRACTOR. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

IN WITNESS WHEREOF, THE BOARD and THE CONTRACTOR, have executed this agreement in triplicate, one of which is to remain with THE BOARD, one other to be filed with THE COMPTROLLER, and the third to be delivered to THE CONTRACTOR.

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, party of the first part

By \_\_\_\_\_ for the Chancellor  
Director, Office of Administration, Division of School Facilities

OR

By \_\_\_\_\_  
Chief Executive for School Support Services

and THE CONTRACTOR, party of the second part

NAME: \_\_\_\_\_ (affix Corporate Seal here)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Office or Title)