

WESTBURY UNION FREE SCHOOL DISTRICT

INVITATION TO BID: Pool Diamond Brite Resurfacing Bid # 2023-24-01 SCHOOL YEAR 2023-2024

NOTICE TO BIDDERS

On behalf of the Board of Education of the Westbury Union Free School District, Old Westbury, New York, in accordance with Section 103 of General Municipal Law, hereby invites the submission of sealed bids from reputable and qualified vendors for the following contract:

Pool Diamond Brite Resurfacing

BID #2023-24-01

Bid Opening: Westbury UFSD

Administration Building, Zaino Conference Room
2 Hitchcock Lane, Old Westbury, NY 11568

Date: October 4, 2023, at 10:00am

Bids will be received until the above-stated hour of prevailing time and date at the Business Office of the Westbury Union Free School District located at 2 Hitchcock Lane, Old Westbury, NY 11568 at which time and place all bids will be publicly opened and read aloud via videoconference or livestream.

The Board of Education reserves the right to waive any informality in the proposal or to reject any or all proposals or to accept any proposal, which in the opinion of the Board of Education will be in the best interest of the school district. The District reserves the right to consider all relevant and reasonable criteria in selecting the successful proposer. There is no expressed or implied obligation for the District to reimburse responding consultants for any expenses incurred in preparing proposals in response to this request for proposals.

The scope of work specifications and BID forms may be obtained on our website, on or after September 27, 2023, at: www.westburyschools.org. Click Menu, Departments, Finance and Operations, Notice to Bidders, Pool Diamond Brite Resurfacing. If you have any difficulty obtaining the bid document from the District's website, please email: pdearmas@westburyschools.org. The contract will be awarded to the best proposer as determined by the District. It is appropriate to emphasize that the lowest proposer may not be the best. The District will evaluate and score each proposal in accordance with the categories presented on the scope of work shown on our website. The District will receive sealed proposals on, or prior to 10 A.M. on October 4, 2023. Proposals received after stated date will be returned to the sender, unopened. Proposals must be submitted in a sealed envelope plainly marked on the outside: **Bid # 2023-24-01, Pool Diamond Brite Resurfacing, WESTBURY UFSD, ATTN: BUSINESS OFFICE/PURCHASING AGENT, 2 HITCHCOCK LANE, OLD WESTBURY 11568 – October 4, 2023, 10am.** Proposals shall be irrevocable for a minimum period of forty-five (45) days from the date of proposal opening. Questions relating to this bid should be referred to Mike Hardy – 516-876-1866.

Mailing Instructions:

Proposals must be submitted in a sealed envelope plainly marked on the outside:

WESTBURY UFSD

ATTN: BUSINESS OFFICE/PURCHASING AGENT

2 HITCHCOCK LANE, OLD WESTBURY 11568

Pool Diamond Brite Resurfacing Bid #2023-24-01, October 4, 10am

All bid packets must include the signed Vendor Acknowledgement, Bid Conditions, Certification, and Forms, and be submitted in writing. Bids must be presented on the standard proposal form in the manner designated and as required by the specifications. The Board of Education further reserve the right to consider experience, service, and reputation in the above referenced fields. In addition, the Board of Education reserves the right to consider the financial responsibility and specific qualifications, set forth in the bid specifications, of the prospective bidder in evaluation of the bids and award of contracts BOARD OF EDUCATION Westbury Union Free School District By: Beverley Cathnott, District Clerk

Note: "The terms and conditions of the contract or contracts awarded under this bid shall be extended to and made available for procurement by another New York School District. All School Districts are free to use any bidding source available to them, to engage a particular service or purchase a product, all as deemed appropriate by that district. This bid is available for piggybacking by other New York School Districts which have not been listed in either the published Notice to Bidders and/or the bid documents. Those School Districts may participate only upon consent by both the Westbury Union Free School District and the awarded vendor(s). School Districts interested in piggybacking on this bid must first contact the Westbury Union Free School District Business Office before making arrangements with the awarded vendor(s) to be serviced and/or receive goods or services under the terms and conditions of this bid.

**Facilities Director's Office
Westbury Union Free School District
Director of Facilities and Operations
6 Hitchcock Lane, Old Westbury, NY
516-876-5103**

Non-Collusive Bidding Certification

By Chapter 675 of the Laws of 1966, which will become effective September 1, 1996, a change has been made in Section 103-d of the General Municipal Law relating to the requirement for submission of a statement of non-collusion in connection with bids and proposals.

As of September 1, this Section will read as follows:

S103-d. Statement of non-collusion in bids and proposals to political subdivision of the state. Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation, or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor, and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award, nor shall any award be made where (a), (1) (2) and (3) above have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons thereof. Where (a), (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that the bidder (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers or proposed or pending publication of new or revised price lists for such items or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning the subparagraph one (a). Any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation or local law, and where such bid contains the certification referred to in subdivision one of the sections, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion there in of the certificate as to non-collusion as the act and deed of the corporation.

References

Bidders shall include with their bid submittals a list of at least three (3) references, where they have provided Marble Dusting Services. This reference list shall consist of the name of the firm, address, a contact person's name, and the telephone number.

VENDOR INFORMATION & ACKNOWLEDGMENT FORM

The undersigned proposer declares, affirms and certifies (1) that he/she has carefully examined the terms and conditions, specifications, and General Conditions of this invitation to bid; (2) that this proposal is signed with the full knowledge and acceptance of all the provisions thereof; (3) that the proposer is fully qualified to provide the required goods and services as indicated herein; and (4) he/she offers and agrees, if his/her proposal is accepted to furnish the goods/services proposed at the prices indicated on the Pricing Form.

Company Name _____
(as shown on your W-9)

Street Address _____

City _____ State _____ Zip Code _____

Telephone () _____ Fax () _____ E-mail _____

Signature _____ Date _____

Print Name _____ Title _____

Please indicate the representative from your company who should receive all correspondence relating to this bid:

Name: _____ Title: _____

Address: (if different from above) _____

Telephone: _____ Fax: _____ Email: _____

Vendor Acknowledgement

Vendor, by checking and signing below, confirms that he/she has read and understands and will comply with the terms, conditions and specifications/scope of this bid and any addenda, if issued.

Yes No

Signature of Authorized Official: _____

Printed Name of Official/Title: _____

REFERENCES

All bidders will be required to complete this form providing three (3) references of past performance. References should involve projects and/or service situations of similar size and scope to this bid. References must have had dealings with the Bidder within the last thirty-six (36) months. The Westbury UFSD reserves the right to contact any or all of the references supplied for an evaluation of past performance in order to establish the responsibility of the Bidder before the actual award of the bid and/or contract. Completion of the reference form is required.

Company Name: _____

Address: _____

Contact Person: _____

Telephone: _____

Dates of Contract(s) _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone: _____

Dates of Contract(s) _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone: _____

Dates of Contract(s) _____

Proposer's Name: _____

VENDOR DISCLOSURE CERTIFICATION

Vendor must complete either Section A or B below and returned with your proposal

- A. This is to certify that the principal members of the company listed below are not related to any Board members, officers or employees of the Westbury UFSD and no Board member, officer or employee of the Westbury UFSD is directly or indirectly interested in this bid or the supplies, materials, equipment, work or services which are related to it, or in any portion of the profits thereof.

Bidders Authorized Signature

Company Name

Printed Name of Official and Title

- B. This is to certify that the following Westbury UFSD Board members, officers or employees are related to principal members of the company listed below or have a direct or indirect interest in this bid or the supplies, materials, equipment, work, or services which are related to it, or in any portion of the profits thereof.

NAME	RELATIONSHIP	NAME OF WUFSD RELATION

Signature of Authorized Official

Company Name

Printed Name of Official/Title

Sworn to before me this
____ day of _____, 20__

Notary Public
Dated:

Non-Collusive Bidding Certification

By submission of this bid or proposal, the bidder certifies that the conditions of Section 103-d of the General Municipal Law have been complied with.

Signed: _____

Print Name: _____

Title: _____

**Company or
Corporation:** _____

Date: _____

(SEAL OF THE CORPORATION)

Westbury Union Free School District
Westbury High School Pool Diamond
Brite Resurfacing Bid

SCOPE OF WORK

Start Date is October 21, 2023

*Pool shall be up and running for swim team
by November 11, 2023*

<u>PART/MATERIALS</u>	<u>DESCRIPTION</u>	<u>Rate</u>
<u>P/P POOL PUMP</u>	<u>PREP POOL</u> Pump out pool, saw around pool tile, saw cut around pool wall fittings, and saw cut around underwater lights to allow for smooth transition of new pool surface. Etch pool surface to prepare for new finish.	\$ _____
<u>MASONRY</u>	<u>MASONRY WORK</u> Saw cut tile lane markers, steps, and targets to allow a smooth transition for the new pool surface.	\$ _____
<u>CAULKING</u>	<u>CAULKING SPECIFIED AREAS</u> Remove caulking from expansion joint and re-caulk expansion joint area in pool. Caulk under gutter between pool beam and stainless-steel gutter.	\$ _____
<u>BASECRETE</u>	<u>WATERPROOF BONDCOAT</u> Basecrete is a waterproof bonding underlayment agent for use in all applications, especially swimming pools. In addition Basecrete protects the underlying structure against the corrosive elements often found in water such as salt. Basecrete is also completely resistant to all the chemicals used in pool maintenance. Basecrete will of course protect the underlying structure against the destructive effects of many acids and other corrosive agents. The unique polymers impart an exceptional degree of impermeability while the specialized cement adds a degree of adhesion that is unrivalled in the industry today. Not only will it adhere to the surface the product is applied to but will provide the new pool surface with a permanent adhesion without delamination.	\$ _____
<u>MD</u>	<u>MARBLE DUSTING</u> Diamond Brite, or comparable product, is an exposed aggregate pool finish that sets the industry standards for quality and excellence and durability. Quartz aggregate, unlike marble, is completely insoluble even in the presence of highly corrosive water. The cement paste is intentionally removed to expose a colorful, slip resistant and extraordinarily durable surface. Diamond Brite is a true advancement over the existing pool plaster technology.	\$ _____
<u>CHEMICALS</u>	<u>REBALANCE AND REFILL</u> Refill pool and rebalance the chemicals in the pool and include 6 months of rebalancing chemicals	\$ _____
TOTAL		\$ _____

The Board of Education hereinafter referred to as ("Board") reserves the right to reject any or all proposals that it considers not to be in the best interest of the District. During the evaluation process, the District reserves the right, where it may serve the District's best interest, to request additional information and clarifications from proposers, or to allow corrections of errors or omissions.

The proposer agrees to indemnify the District. The Provider will indemnify the District with respect to all claims, charges, costs, and expenses arising out of negligence of the Provider, its agents, or employees, or with respect to the Provider's breach of its obligations hereunder and for any liabilities, claims and demands made upon the Provider or the District, arising out of the performance of the Provider's duties hereunder. The Provider shall defend (with counsel selected by the District and reasonably approved by the Provider), indemnify, and hold harmless the District, and its agents, members, representatives, and employees from any and all claims, costs, expenses (including, but not limited to, attorney fees) related, directly or indirectly, to this indemnity.

The proposer agrees to comply with all local, New York State and Federal laws applicable to this bid. **Required Insurance at the time of Contract signature:**

- **Commercial General Liability Insurance**
\$1,000,000 per occurrence, \$2,000,000 aggregate
- **Vehicle (Truck/Auto) Liability**
\$1,000,000 combined single limit for owned, hired, and borrowed and non-owned motor vehicles
- **Workers' Compensation and New York State Disability**
Statutory Workers' Compensation, Employers' Liability and New York State Disability Benefits Insurance for all employees

Proposer acknowledges that failure to obtain such insurance on behalf of the District constitutes a material breach of contract. The proposer is to provide the District with a certificate of insurance evidencing that the above requirements have been met prior to the commencement of work or use of facilities. The failure of the District to object to the contents of the certificate of the absence of same shall not be deemed a waiver of any and all rights held by the District.

BIDDER'S NAME: _____

ADDRESS: _____

DATE: _____ **TELEPHONE NO.** _____

SIGNATURE AND TITLE: _____

APPLY CORPORATE SEAL:

BID VENDOR ACKNOWLEDGEMENT

All items that request a sample must have a sample included at the time that the bids are opened. You will be jeopardizing your chance of being awarded the bid for that item, if it does not have the required sample. The sample also must be representative at the time that is bid, and not an "almost" or "something like it".

Price must be held for one year from the date of the Bid award for each item October 4, 2023, through October 3, 2024. We will not accept that your supplier is raising the price for items or materials. Failure to comply may result in denial of future participation in bidding.

Items must be delivered within one (1) week of placing any order. Vendors must take the order verbally or by copy of a Purchase Order.

Fuel surcharges should be figured into cost of the item, not as a separate cost on top of any order. Deliveries must be done by tailgate trucks to areas specified.

THIS PAGE MUST BE SIGNED AND RETURNED WITH THE BID PACKET AND BID PROPOSAL CERTIFICATION IN ORDER TO HAVE THE BID CONSIDERED.

I ACCEPT AND ACKNOWLEDGE ALL ABOVE STIPULATIONS TO BID

Signature of Authorized Representative of Vendor

Print Name and Title

Date

IRAN DIVESTMENT ACT COMPLIANCE RIDER
FOR SCHOOL DISTRICTS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the District, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

- (a) The person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- (b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the SFL and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award, nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder’s certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the SFL. In any case where the bidder or proposer cannot certify that it is not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The District may award a bid to a bidder who cannot make the certificate on a case-by-case basis if:

- (1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
- (2) The District makes a determination that the goods or services are necessary for the District to perform its functions and that, absent an exemption, the District would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

**PROPOSER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT OF 2012**

In accordance with General Municipal Law §103-g, which generally prohibits the School District from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

Proposer's Certification

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created by the Office of General Services (OGS) pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
_____, 20__

Name of Bidder/Proposer

Signature of Authorized Official

Printed or Typed Name of Official and Title

Sworn to before me this
____ day of _____, 20__

Notary Public

Dated:

142681

CERTIFICATION – SEXUAL HARRASSMENT POLICY

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at minimum, meet the requirements of section two hundred one-g of the labor law.

Company Name_____

Address_____

Date_____ **Phone #**_____

Signature of Authorized Official_____

Printed Name of Official/Title_____

GENERAL CONDITIONS

The within document includes detailed provisions BID #2023-24-01 and services to be performed in accordance with these specifications. The document is incorporated by reference into all contracts to be awarded and should be reviewed carefully by the Bidder to whom the award of contract is made. Consultation with an attorney and insurance representative is advised.

ARTICLE 1 DEFINITIONS

- A. The “**Director of Facilities**” is the individual in the participating school district charged with the supervision of the plants and facilities in the school district.
- B. “**Central Administration**” refers to the Superintendent of Schools, his/her Assistant Superintendents, and Director of Plant & Facilities.
- C. The “**Bidder**” refers to the entity engaged by the School District to perform all or a part of the work on its behalf.
- D. The “**Bid Specifications**” is the bound document which includes the Notice to Bidders, Information to Bidders, Bid Proposal Form, Prevailing Wage Rate schedule and the written requirements for labor, materials, equipment, construction systems and the like necessary for the Bidder to complete the capital improvement work for which it has been engaged.
- E The “**Owner**” refers to the Board or its designee.
- F. A “**Subcontractor**” is a person or entity who has a direct contract with the Bidder to provide material and/or labor for the work on or off the site, or to otherwise furnish labor, material, or other services with respect to a portion of the Bidders work. A “Sub-subcontractor” is a person or entity who has a direct or indirect contract with a Subcontractor engaged by the Bidder to perform a portion of the Subcontractors work at the site, or to otherwise furnish labor, material, or other services with respect to a portion of the Subcontractors work.

ARTICLE 2 BIDDERS REPRESENTATIONS

- A. Upon submission of its bid to the Owner, the Bidder expressly represents:
 - 1. The Bidder represents and warrants that it performed a detailed investigation of the site(s) and that such investigation was sufficient to disclose the conditions of the site(s) at which work is to be performed by it and all improvements thereon, and the conditions under which the work is to be performed, including, but not limited to (a) the location, condition, layout and nature of the site and surrounding areas; (b) the cost of labor, materials and equipment necessary to perform the work, the availability; (c) the areas of the work which will cause a disruption to the necessary and proper operation of the facilities by the Owner; and (d) other pertinent limitations on the performance of its work.
 - 2. The Bidder certifies that it is experienced and familiar with the requirements and conditions imposed during the construction of similar work in the area. This includes, but is not limited to, the requirement of normal out of sequence or come back work for the removal of plant, equipment, temporary wiring, or plumbing, etc. This out of sequence work may also include phasing of construction activities to accommodate the installation of the work at various locations

and orderly fashion and the completion of work at various locations and/or levels at various times. This phasing out of sequence or come back work shall be done at no cost to other trade bidders, the Owner.

B. The Bidder warrants to the Owner that (1) the materials and equipment furnished under its contract will be of good quality and new, and of recent manufacture, unless otherwise required or permitted by the Contract Documents, (2) that its work will be free from defects not inherent in the quality required or permitted, and (3) that its work will conform with the terms and conditions of its agreement with the Owner. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective and shall be removed and replaced at the Bidders cost and expense.

C. The representations set forth herein shall survive expiration and/or termination of the Bidders agreement with the Owner.

ARTICLE 3 BIDDERS CONSTRUCTION PROCEDURES

A. 1. The Bidder shall be solely responsible for and have control over the means, methods, techniques, sequences, and procedures required for the proper execution of its work. Where the bid specification makes reference to particular means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in connection with the Bidders work, such reference is intended only to indicate that the Bidders work is to produce at least the quality of the work implied by the operations described, but the actual determination as to whether or not the described operations may be safely or suitably employed in the performance of the Bidders work shall be the sole responsibility of the Bidder. All loss, damage, liability, or cost of correcting defective work arising from the employment of a specific construction means, method, technique, sequence, or procedure shall be borne solely by the Bidder.

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

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

C. The Bidder shall only employ labor in connection with its work capable of working harmoniously will all trades, crafts and any other individuals associated with the capital improvement work to be performed. There shall be no strikes, picketing, work stoppages, slowdowns, or other disruptive activity for any reason by anyone employed or engaged by the

Bidder to perform its portion of the work. There shall be no lockout by the Bidder. The Bidder shall be responsible for providing the manpower required to proceed with the work under any circumstance. Should it become necessary to create a separate entrance of a bidder involved in a labor dispute, all costs associated with creating that entrance shall be borne by the bidder involved in the dispute. Such costs shall include, but not be limited to, signage, fencing, temporary roads and security personnel as deemed necessary by the Owner for the safety of the occupants of the site.

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

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

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

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

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

F. The Bidder shall employ a competent, full-time superintendent to be approved by the Owner or its representative, and such necessary assistants who shall be in attendance at each site whenever and wherever work is in progress to provide for the expeditious completion of the work. To the extent work is being performed contemporaneously at different facilities, the Bidder shall assign different superintendents for each facility at which work is being performed. The superintendent(s) assigned by the Bidder shall not be changed except with the consent of Owner unless the superintendent or such assistant proves to be unsatisfactory to the Bidder and/or ceases to be in its employ. The superintendent shall represent the Bidder, and communications given to the superintendent shall be as binding as if given to the Bidder. Oral communications to the superintendent(s) or his/her assistant(s) shall be confirmed in writing by the Owner. The Bidder shall forward to the Owner a copy of the resumes for each of its superintendents and their assistants. The Owner shall have the right to have any supervisory or management staff removed with or without cause.

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

H. Prior to the commencement of work, the Bidder shall provide the Owner with:

1. A written list of the names addresses and telephone numbers of the members of its organization who can be contacted in the event of an off-hours emergency at the building site, including cellular telephone numbers and personal/home telephone numbers.
2. A written list of subcontractors, sub-subcontractors, suppliers and vendors with names, addresses, telephone numbers, and descriptions of the work they shall perform or furnish.
3. The name, address, and telephone number of the bonding company for the Bidder employed by the Bidder including the name, address, and telephone number of each bonding company's primary contact representative.

I. The Bidder shall, if required by ordinances, laws, codes, rules and/or regulations of the governing agencies
having jurisdiction, retain a licensed professional engineer to supervise the construction of the work.

J. 1. The Bidder shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work. If the Bidder fails to give such notices, it shall be liable for and shall indemnify and hold harmless (a) the Owner, its consultants, employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorney's fees, imposed on, or incurred by the parties indemnified hereunder. The Bidder shall pay any costs or fees incurred in such compliance and any fines or penalties imposed for violation thereof and any costs or fees incurred by the Owner due to such violation.

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

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

4. If the Bidder fails to give such notices, it shall be liable for and shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers, and agents, and against any resulting fines, penalties, judgments, or damages, including reasonable attorney's fees, imposed on, or incurred by the parties indemnified hereunder.

ARTICLE 4
BIDDERS USE OF SITE

A. The Bidder shall confine operations at the site to the areas at which construction is to be performed and to such areas permitted by law, ordinances, permits and as set forth in detail in the bid specifications.

B. General Safety and Security Standards:

1. All construction materials shall be stored in a safe and secure manner.
2. Fences around construction supplies or debris shall be maintained.
3. Gates shall always be locked unless a worker is in attendance to prevent unauthorized entry.

Overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.

C. The Bidder shall not unreasonably encumber the site with materials or equipment during the performance of its work. Only materials and equipment which are to be used directly in the performance of the Bidders work shall be brought to and stored on the premises of the School District. After equipment is no longer required for its work, the Bidder shall promptly remove such equipment from the premises of the School District. The Bidder shall be solely responsible for the protection of materials and equipment stored on the premises from weather, theft, damage, and all other adversity.

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

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

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

3. The Owner shall not be responsible for any overtime charges incurred by the Bidder. Any and all costs associated with work which is performed at hours requiring the payment of such overtime by the Bidder to its workers shall be the Bidders responsibility.

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

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

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

I. 1. Without the prior approval of the Owner, the Bidder shall not permit any workers to use any existing School District facilities, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner. Employees, vehicles, and equipment of the Bidder and of all others engaged by the Bidder for the performance of its work shall enter onto the premises of the School District for which construction work is to be performed only at those locations designated or approved by the Owner.

2. The Bidder shall ensure that its work, at all times, is performed in a manner that affords reasonable access to both vehicles and individuals, to the premises of the School District and all adjacent areas. The Bidder's work shall be performed, to the fullest extent possible, in such a manner that areas in and around the construction area shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation to any other provision of the agreement between the Bidder and the Owner, the Bidder shall use its best efforts to minimize any interference with the occupancy of areas, buildings, entrances, and parking areas in and around the premises at which work is being performed. Free access to fire hydrants and standpipe connections shall be maintained at all times during construction operations, and portable fire extinguishers shall be provided by the Bidder and made conveniently available throughout the construction site.

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

the basis for a claim (for either time or money) for delay to the Work or to the Bidder, its Subcontractors, or Suppliers.

4. Without limitation of any other provision of the agreement between the Owner and Bidder, the Bidder shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the premises of the School District. The Bidder shall immediately notify the Owner in writing if during the performance of its work, the Bidder finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternative through which the same results intended by such portion of the rules and regulations can be achieved. The Owner may, in the Owners sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

J. No drinking of alcoholic beverages, smoking or use of controlled substances is permitted on the grounds. The Bidder shall insure that none of its or its Subcontractors, its employees, agents, and/or consultant's report to the site impaired by alcohol or controlled substances. The Bidder bears the responsibility of determining if its, or its subcontractors, employees are in any way impaired and whether the safety of the public, the employees of other Bidders and their Subcontractor and the Owner are jeopardized.

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

L. The Bidders employees, representatives, agents, and consultants, and all of its Subcontractors employees, representatives, agents, and consultants at the site are to wear shirts, long pants, and proper footwear.

M. The Bidder shall be responsible for the control of chemical fumes, gases and other contaminates produced by welding, gasoline, or diesel engines to ensure that they do not enter occupied portions of the building or air intakes.

ARTICLE 5 SUBCONTRACTORS

A. 1. As soon as practicable after receipt of Letter of Intent to Award, Notice to Proceed or other form of official notice of award of the Contract, but not more than thirty (30) days after receipt of official notice of award of the Contract, the Bidder shall furnish the Owner, in writing, with the name, trade and subcontract amount for each Subcontractor. Copies of all Subcontractor contracts, fully executed, are to be provided to the Owner, including but not limited to all addenda, appendices, and/or exhibits including scope of work sheets. All such subcontracts shall be submitted to the Owner within thirty (30) days of the Owners award of the contract to the Bidder.

2. Upon review of the Bidders list of Subcontractors, the Owner will advise the Bidder in writing stating whether or not the Owner, after due investigation, accepts or rejects, any proposed Subcontractor. Subcontractors will not be acceptable unless, when requested by the Owner, evidence is furnished that the proposed subcontractor has satisfactorily completed similar

subcontracts as contemplated under this prime contract, and has the necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent to the Documents. As verification of financial ability, the Owner reserves the right to request and receive up to five (5) years' worth of financial statements, bank references, bond/insurance company references and all other information required to assess financial ability.

3. If the Owner has reasonable objection to a person or entity proposed by the Bidder, the Bidder shall propose another to whom the Owner have no objection. No increase in the Contract Sum shall be allowed where a sub-bidder is rejected by the Owner who is (1) deemed unqualified to perform the particular work subcontracted by the Bidder, (2) does not have the necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract, or (3) has a history of poor performance in work of similar nature. The Owners determination shall be final and binding on the Bidder and its Subcontractor and the Bidder hereby waives any and all claims it, or its subcontractor might have against the Owner concerning the rejection of such Bidder and shall require its subcontractors to execute such similar waiver in its agreement with the Bidder.

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

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

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

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

E. If the Work in connection with a subcontract has been suspended for more than ninety (90) days after termination of the Contract by the Owner and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall not be adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

F. All subcontracts over \$5,000 shall be in writing.

ARTICLE 6 BIDDERS USE OF SPECIFICATIONS

A. The Agreement between the Owner and Bidder, and all documents incorporated therein by reference, including but not limited to, the bid specifications shall be signed by the Bidder and the Owner.

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

C. The Bidder shall be responsible for securing and maintaining for the duration of the contract: all permits, P.E. Licenses, connection fees, inspections, etc. applicable to, or customarily secured for the work. This provision includes any permits to be issued in the name of the Bidder required for the work. Originals of all permits are to be issued in the name of the Bidder as required for the work. The Bidder shall furnish the Owner with original copies of all permits prior to the commencement of the work and shall prominently display a copy of all permits at a location approved by the Owner.

D. Equivalents. In the Specifications, one or more kinds, types, brands, or manufacturers or materials are regarded as the required standard of quality and are presumed to be equal. The bidder may select one of these items or, if the bidder desires to use any kind type, brand, or manufacturer or material other than those named in the specifications, they shall indicate in writing, and prior to award of contract, what kind, type, brand, or manufacturer is included in the base bid for the specified item. The Bidder shall follow the submission requirements for substitutions as set forth in Article 6.X(1)(2)(3) and (4) below.

E. 1. Substitutions. If the Bidder desires to substitute any kind, type, brand, or manufacturer of material other than those named in the Specifications, the Bidder shall request in writing that it be permitted to make a substitution for the specified manufacturer or materials and shall indicate the following:

- a. For which specified material or equipment the request for substitution is being made.
- b. What kind, type, brand, or manufacturer is sought to be substituted for the specified items.
- c. Written documentation evidencing that the substituted material or equipment meets or exceeds the specifications for materials and/or equipment set forth in the bid specifications. Such documentation shall include a full explanation of the proposed substitution, together with a submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution. All such data shall be provided to the Owner at the Bidder's sole expense. The Bidders written explanation shall also include a list of reasons the substitution is advantageous and necessary, including the benefits to the Owner in the event the substitution is acceptable. Additionally, the Bidder shall submit to the Owner information describing in specific detail how the proposed substituted product differs from the quality and

performance required by the base specifications, and such other information as may be required by the Owner.

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

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

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

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

d. Represents that it will coordinate the installation of the accepted substitute, making all such changes to the drawings effected by the change, as may be required for the work to be complete in all respects.

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

3. Proposals for substitutions shall be submitted in triplicate to the Owner in sufficient time to allow the Owner no less than ten (10) working days for review.

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

5. All proposed substitutions shall be submitted to the Owner within twenty-one (21) days of the award of the contract to the Bidder. *(This provision 6(W)(5) shall not apply to equivalents.)*

ARTICLE 7 BIDDERS SAFETY/SECURITY PROGRAM

A. 1. The Bidder shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of its work. Prior to beginning any work, the bidder shall submit a copy of its corporate safety plan to the Owner. The Bidder shall make the participation of its subcontractors in its safety program mandatory. A list of key personnel, with addresses and telephone numbers for emergency purposes shall be forwarded to the Owner. The Owner shall establish a fire coordination procedure and shall forward same to the Bidder for its use during the performance of its work.

2. The Bidder and its subcontractors shall conduct their operation in accordance with the Safety Guides for Construction as issued by the SED, and the Bidders' Safety Program.

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

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

5. The Owner reserves the right to have all operating equipment periodically inspected by an independent inspector whose finding will be binding. The Bidder, at its own expense, must make corrections within two (2) working days of receiving a written report.

6. All flagmen required for deliveries to the site are to be furnished by the Bidder or its Subcontractors.

B. The Bidder shall schedule safety meetings regularly and each of its subcontractors must be properly represented at such meetings. The Bidder shall designate a responsible member of the Bidder's organization at the site whose duty shall be the prevention of accidents. This person shall be the Bidder's superintendent unless otherwise designated by the Bidder in writing to the Owner. The Bidder shall take all necessary steps to prevent its employees from disturbing and/or damaging the facility and shall be responsible for preventing the escape of fires set in connection with the construction. The Bidder shall notify its employees and subcontractors of the location of the nearest fire alarm box at all locations where the work is in progress. On a weekly basis, the Bidder shall submit to the Owner minutes of its safety meetings, which minutes shall include a list of the individuals present at such meetings.

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

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

E. The Bidder shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for security and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

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

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

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

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

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

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

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

K. The Bidder shall promptly remedy damage and loss to all property of the Owner, or adjacent to the Owners property (other than damage or loss covered by insurance) caused in whole or in part by the Bidder, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Bidder.

L. The Bidder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, person injury, or property damage, giving full details

and statements or any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

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

N. Any and all fines or citations levied against the Owner, due to the failure of the Bidder to comply with regulations of any governing authority, shall be paid for by the Bidder. This shall include any interest or late charges which accrue due to the Bidders failure to remit payment upon receipt of such levies.

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

P. The Bidder acknowledges that the Labor Law of the State of New York, and regulations adopted thereunder, place upon both the Owner and Bidder certain duties and that liability for failure to comply therewith is imposed on both the Owner and Bidder regardless of their respective fault. The Bidder hereby agrees that, as between the Owner and the Bidder, and to the extent permitted by law, the Bidder is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract.

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

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

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

ARTICLE 8 PAYMENTS

A. 1. Prior to commencing its work, the Bidder shall submit to the Owner, a schedule of values which allocates the amount of money it has allocated in its bid price for the following items of work which are applicable to the Bidders work.

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

3. The Schedule of Values prepared by the Bidder must be approved by the Owner prior to the payment of any sums due the Bidder.

B. 1. The Bidder shall submit its applications for payment to the Owner on a periodic basis. The form shall reflect in separate line items for the work:

- a. Total value of the work listing labor and material separately
- b. Percentage of work completed at the time of submission of the application for payment
- c. Value of the work completed at the time of submission of the application for payment
- d. Percent of previous amount billed
- e. Previous amount billed
- f. Current percent completed
- g. Value of work completed to date
- h. Percent remaining to be completed by the Bidder; and
- i. Value of work remaining to be completed by the Bidder

2. The Owner shall review the application for payment submitted by the Bidder and shall advise the Bidder of any adjustments to be made thereto. The Owner may make such adjustments under the following circumstances:

- a. the Bidders failure to remedy defective work;
- b. the filing of third-party claims or reasonable evidence that there is a probability that such claims will be filed;
- c. receipt by the Owner of a notice of withholding from the New York State Department of Labor or other administrative agencies having jurisdiction;
- d. the Bidders failure to make proper payments to its subcontractors or material suppliers for labor, materials and/or equipment;
- e. reasonable evidence that the Bidder will not complete its work for the unpaid balance of the remaining monies on its contract;

- f. damages caused to the Owner or another bidder as a result of the Bidders performance of its work;
- g. reasonable evidence that the Bidder will not complete its work in accordance with its agreement with the Owner, and/or that the remaining monies available on the Bidders contract will not be sufficient to cover actual or liquidated damages for the anticipated delay;
- h. the Bidders failure to carry out its work in accordance with the contract drawings and/or specifications;
- i. such other acts and/or omissions by the Bidder in connection with the performance of its work;
- j. The amount requested exceeds the percent completion of work on the site.

3. After any such adjustments are made to the Bidders application for payment, the Bidder shall submit four (4) copies of the final draft of its application for payment to the Owner, which shall be accompanied by the following documentation:

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

4. Upon submission of its application for payment, the Bidder represents that it is entitled to payment in the amount for which it seeks payment.

5. The Owner shall make payment to the Bidder within forty-five days of receipt of the Bidders invoice for services.

6. Upon receipt of payment by the Owner, the Bidder shall promptly make payment to each of its subcontractors and/or material suppliers for which it has received payment from the Owner. This provision does not obligate the Owner to ensure payment to the Bidders subcontractors and/or material suppliers.

7. a. In the event a subcontractor and/or material supplier files with the Owner a public improvement lien, the Owner shall withhold payment on previously certified applications for payment which have not yet been paid or subsequent applications for payment submitted by the Bidder an amount equal to 150% of the amount set forth in such public improvement lien. This provision is in addition to and does not supersede the indemnity provisions set forth in Article 12 of these General Conditions.

b. The Owner may release any payment withheld due to the filing of a public improvement lien if the Bidder obtains security acceptable to the Owner or a lien bond which is : (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less the 150% of such lien claim. The cost of the premiums for any such bond posted shall be borne solely by the Bidder. By posting a lien bond or other acceptable security, however, the Bidder shall not be relieved of its obligations pursuant to these General Conditions, including but not limited to the indemnity provisions set forth in Article 12 of these General Conditions.

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

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

ARTICLE 9 INSURANCE REQUIREMENTS

A. The Bidder, at its sole cost and expense, shall provide the Owner with the following insurance coverage whether the operations to be covered thereby are through the Bidder or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Workers= Compensation

Coverage

Statutory

Extensions

Voluntary Compensation

All states coverage employers

Employer's liability - unlimited

2. Commercial General and Umbrella Liability

Coverage

Occurrence using ISO
CG 00 01 07 98
or later form

occurrence Form

Limits Per Project

General Aggregate
\$2,000,000.00

Products – Completed/Operations
\$1,000,000.00

Personal & Advertising Injury
\$1,000,000.00

Fire Damage (any one fire)
\$50,000.00

Medical Expenses (any one person)
\$10,000.00

Umbrella - \$2,000,000.00

3. Automobile Liability

(All Vehicles hired or non-hired)
\$1,000,000.00 per accident

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

B. The insurance required to be procured by the Bidder pursuant to paragraph A of this Article 10 shall be purchased from and maintained by an insurance carrier licensed to do business in the State of New York, with an A.M. Best rating of A secured@ or better. The Bidder must submit the Certificate of Insurance to the Owner for approval prior to the commencement of any work.

C. All insurance coverage to be provided by the Bidder pursuant to paragraph A of this Article 10 shall include a cancellation notice to the Owner of at least thirty days.

D. All insurance coverage to be provided by the Bidder shall name the Owner as additional insured on the policy. Additionally, the insurance coverage to be provided by the Bidder pursuant

to paragraph A of this Article 10 shall state that the Bidders coverage shall be the primary coverage for the Bidders work.

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

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

G. The Bidder shall require all subcontractors to carry similar insurance coverage and limits of liability as set forth in paragraph A of this Article 10 and adjusted to the nature of subcontractors' operations and submit same to the Owner for approval prior to start of any work. In the event the Bidder fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, the Bidder shall indemnify, defend, and hold harmless the Owner and their agents or employees from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation provided in the Contract.

H. The Bidder assumes responsibility for all injury or destruction of the Bidders materials, tools, machinery, equipment, appliances, shoring, scaffolding, false and form work, and personal property of Bidders employees from whatever cause arises. Any policy of insurance secured covering the Bidder or Subcontractors leased or hired by them and any policy of insurance covering the Bidder or Subcontractors against physical loss or damage to such property shall include an endorsement waiving the right of subrogation against the Owner for any loss or damage to such property.

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

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

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

ARTICLE 10 REQUIRED BONDS

A. The Bidder shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of New York.

- B. All Surety companies are subject to the approval of the Owner and may be rejected by the Owner without cause.
- C. Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.
- D. Bonds shall be executed by a responsible surety licensed to do business in New York with an A.M. Best Rating of "A-" or better as to Policy Holder Ratings, and "IX" or better as to "Financial Size Category." Such bonds shall remain in effect for a period not less than two (2) years following final completion of the work by the Bidder.
- E. Bonds shall further be executed by a surety that is currently listed on the U.S. Treasury Department Circular 570 entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as amended.
- F. A Bid Bond or certified check in the full amount of the calculated low bid price should be included with the bid submittal package.
- G. Every Bond must display the Surety's Bond Number.
- H. Each bond must be accompanied by an original Power of Attorney, giving the names of Attorneys-in-fact, and the extent of their bonding capacity.
- I. A rider including the following provisions shall be attached to each Bond:
1. Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Such addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Bidder to the other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.
 2. Surety further agrees that in event of any default by the Owner in the performance of the Owner's obligations to the Bidder under the Contract, the Bidder or Surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner, and the Owner shall have thirty (30) days from time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to Lender and the Owner.
- J. The Bidder shall deliver the required bonds to the Owner prior to beginning activity at the site, but no later than 7 days after execution of the Contract.
- K. The Owner may, in the Owner's sole discretion and without prior notice to the Bidder, inform surety of the progress of the Bidders work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Bidders work.

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

ARTICLE 11 INDEMNIFICATION

A. The Bidder and its subcontractors shall indemnify and hold harmless the Owner and all their employees, agents or servants or any third parties from and against any and all claims, damages, losses, suits, obligations, fines, penalties, costs, charges and expenses, including but not limited to attorney's fees, which may be imposed upon or incurred by or asserted against any of them by reason of any act or omission of such Bidder or any of its subcontractors or any person or firm directly or indirectly employed by such Bidder, for the act(s) and/or omission(s) of any Bidder or Subcontractor that resulted in an incident and/or accident causing personal injury and/or property damage.

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

D. The Bidder shall be liable for and shall indemnify and hold harmless the Owner, its consultants, employees, officers, and agents, against any fines, penalties, judgments, or damages, including reasonable attorney's fees, imposed on, or incurred by the parties indemnified hereunder which are incurred as a result of the Bidders failure to give the notices required by Article 6(T) of these General Conditions.

E. The Bidder shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers, and agents, against any actions, lawsuits or proceedings or claims of liens brought against

each or any of them as a result of liens filed against the Bidders funds, including all the cost and expense of said liens, and including but not limited to attorney's fees incurred by each or any of them.

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

ARTICLE 12 DEFICIENT AND INCOMPLETE WORK

A. The Owner will have the authority to reject work performed by the Bidder which does not conform to the requirements of the drawings and/or specifications.

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

C. The Bidder shall promptly correct work rejected by the Owner or failing to conform to the requirements of its contract with the Owner, whether observed before or after completion of the work by the Bidder and whether or not installed or completed. The Bidder shall bear all costs of correcting such rejected work. If prior to the date of completion, the Bidder, a Sub-bidder or anyone for whom either is responsible uses or damages any portion of the Work or premises, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment or other mechanical device, the Bidder shall cause such item to be restored to "like new" condition at no expense to the Owner.

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

E. 1. If the Bidder defaults or neglects to carry out its work in accordance with its agreement with the Owner and fails within a three (3) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate deduction from payments then or thereafter due the

Bidder the cost of correcting such deficiencies. If payments then or thereafter due the Bidder are not sufficient to cover such amounts, the Bidder shall pay the difference to the Owner.

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

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

ARTICLE 13 FINAL COMPLETION AND CLOSEOUT

A. 1. If within two (2) years after the date of completion of the Bidders work or designated portion thereof, or after the date for commencement of warranties established pursuant to these General Conditions, or by terms of in applicable special warranty required by the agreement between the Owner and the Bidder, any of the Work is found to be not in accordance with the requirements of said agreement, the Bidder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Bidder a written acceptance of such condition. This period of two (2) years shall be extended with respect to portions of the Bidders work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of such work. The obligation set forth hereunder shall survive acceptance by the Owner of the Bidders and/or termination of the Bidders agreement with the Owner. The Owner shall give such notice within a reasonable period of time after discovery of the condition.

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

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

ARTICLE 14 RELEVANT STATUTORY PROVISIONS

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

B. In accordance with Section 220-E of the Labor Law of the State of New York, it is agreed that:

1. In the hiring of employees for the performance of this contract or any sub-bidder hereunder, no bidder, sub-bidder, nor any person acting on behalf of such bidder or sub-bidder shall by reason of race, creed, color, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.

2. No bidder, sub-bidder, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, color, creed or national origin.
 3. There may be deducted from the amount payable to the Bidder a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract.
 4. This Contract may be canceled or terminated by the Owner and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract.
 5. The aforesaid provisions of this section shall be limited to operations performed within the territorial limits of the State of New York.
 6. The successful Bidder shall conform to the guidelines spelled out in the Nassau-Suffolk Affirmative Action Program.
- C. The Bidder and each of its subcontractors shall comply with Prevailing Wage Rates as issued by the State of New York Department of Labor for the location and duration of the Bidder's work and shall comply with all requirements governing its payments to its employees as set forth in Labor Law, section 220 et seq of the New York State Labor Law.
- D. The Bidder shall comply with all of the provisions of the Immigration Reform and Control Act of 1986 and regulations promulgated pursuant thereto and shall require its subcontractors to comply with same. The Bidder shall and does hereby agree to fully indemnify, protect, defend, and hold harmless the Owner, Owner's agents, and employees from and against any penalties, fees, costs, liabilities, suits, claims, or expenses of any kind or nature, including reasonable attorney's fees, arising out of, or resulting from any violation or alleged violation of the provisions of said laws in connection with the work performed hereunder.
- E. This Contract shall be void if the Bidder fails to install, maintain, and effectively operate appliances and methods for the elimination of harmful dust when a harmful dust shall have been identified in accordance with Section 22-1 of the Labor Law of the State of New York.
- F. No smoking is allowed anywhere on school property per New York State and County law. Violators are subject to a \$1,000 fine and/or banishment from the property.
- G. Applicable codes and standards for material furnished and work installed shall include all state laws, local ordinances, requirements of governmental agencies having jurisdiction, and applicable requirements.
- H. Wherever in the specifications reference is made to ANSI or ASTM Standards, Federal Specifications, Consumer Product Standards, or similar recognized standards, the latest edition of the respective publishing agency in effect at the date of "Bid Issuance" shall be accepted as establishing the technical requirements for which compliance is required.
- I. The Owner shall be entitled to request of Bidder or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of its agreement in the event

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

ARTICLE 15 TERMINATION OR SUSPENSION

- A. 1. The Owner may terminate the Bidders agreement in the event the Bidder:
- a. refuses or fails to supply sufficient skilled workers or suitable materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful, and careful manner;
 - b. refuses or fails to correct deficient work performed by it;
 - c. fails to make prompt payments to subcontractors for labor, materials, and/or equipment in accordance with the respective agreements between the Bidder and the Subcontractors;
 - d. disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
 - e. disregards the instructions of the Owner;
 - f. is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Bidder's creditors, or a trustee or receiver is appointed for Bidder or for any of its property, or files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or similar laws; or
 - g. fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Bidder's ability to complete the Work in compliance with all the requirements of the Contract Documents; or
 - h. fails after commencement of the Work to proceed continuously with the completion of the Work for more than ten (10) days;
 - i. fails to keep the site free from strikes, work stoppages, slowdowns, lockouts, or other disruptive activity;
 - j. or otherwise does not fully comply with the Contract Documents.

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

- a. take possession of the site and of all materials, equipment, tools, and equipment and machinery thereon owned by the Bidder;
- b. take possession of materials stored off site by the Bidder;
- c. take assignments of the Bidders subcontractors in accordance with these General Conditions;
- d. finish the Work by whatever reasonable method the Owner may deem expedient.

3. When the Owner terminates the Contract for one of the reasons stated in Subparagraph 1 hereof, the Bidder shall not be entitled to receive further payment until the completion of the Bidders work. If the Owners costs to complete the Bidders work, the Bidder shall be liable to the Owner for such excess costs. This provision shall survive termination of the Bidders agreement with the Owner.

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

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

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

3. The Bidder shall continue to prosecute that portion of its work which has not been terminated by the Owner pursuant to this paragraph. If the Bidders work is so terminated, the Owner shall not be liable to the Bidder by reason of such termination except that the Bidder shall be entitled to payment for the work it has properly executed in accordance with its agreement and prior to the effective date of termination (the basis for such payment shall be as provided in the

Contract) and for costs directly related to work thereafter performed by Bidder in terminating such Work, provided such work is authorized in advance by the Owner. No payment shall be made by Owner, however, to the extent that such work is, was, or could have been terminated under the Bidders agreement with the Owner.

4. In case of a termination pursuant to this paragraph B, the Owner shall make any required adjustment to the sum of contract monies remaining to be paid to the Bidder. The Owner shall be credited for (1) payments previously made to the Bidder for the terminated portion of the Work, (2) claims which the Owner has against the Bidder under the Contract and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Bidder that are part of the Contract Sum; multiplied by 15% representing the Bidders overhead and profit.

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

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

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

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

3. The Owner shall incur no liability to Bidder by reason of such suspension, delay, or interruption except that Bidder may request an extension of its time to complete its work in accordance with Article 8 hereof.

ARTICLE 16 CLAIMS AND DISPUTES

A. Definition. A "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or

other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Bidder arising out of or relating to the Contract.

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

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

D. Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in the Contract Documents, then notice by the Bidder shall be given to the Owner promptly before conditions are disturbed and in no event later than five (5) days after first observance of the conditions; and, (3) in the case of a condition at the site which involves a hazardous or toxic substance, as those terms are defined by OSHA or AHERA, notice to the Owner shall be given immediately upon discovery of such hazardous or toxic substance. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Bidder's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both.

ARTICLE 17 MISCELLANEOUS PROVISIONS

A. The agreement between the Owner and the Bidder shall be governed by the law of the place where the work to be performed is located; venue to be in the County in which the School District is located.

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

C. All notices to be given hereunder shall be in writing and may be given, served, or made (1) by depositing the same for first class mail delivery in the United States mail addressed to the authorized representative of the party to be notified; (2) by depositing the same in the United States mail addressed to the authorized representative of the party to be notified, postpaid and registered or certified with return receipt requested; (3) by depositing the same for overnight delivery (prepaid by or billed to the party giving notice) with the United States Postal Service or other nationally recognized overnight delivery service addressed to the authorized representative of the party to be

notified; or (4) by delivering the same in person to the said authorized representative of such party. Notice deposited in the mail by certified mail or overnight delivery in accordance with the provisions hereof shall be effective from and after the fourth (4th) day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. All notices to be given to the parties hereto shall be sent to or made at the addresses set forth hereinbelow. By giving the other parties at least seven (7) days' written notice thereof, the parties hereto shall have the right to change their respective addresses and specify as their respective addresses for the purposes hereof any other address in the United States of America.

D. Except as expressly provided in the agreement between the Owner and the Bidder, duties and obligations imposed by such agreement and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law, or in equity or by other agreement, and such rights and remedies shall survive acceptance of the Bidders work and/or any other termination of the Bidders agreement with the Owner.

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

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

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

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

I. In the event the Owner commences legal proceedings against the Bidder, or same is commenced against the Owner by the Bidder, the Bidder shall be liable to the Owner for the expenses incurred by the Owner in connection with said proceeding in the event the Owner is the prevailing party. Said expenses shall include reasonable attorneys' fees, costs, interest, penalties, and/or witness fees.

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

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

L. The Bidder hereby expressly waives any rights it may have in law or in equity to lost bonding capacity as a result of any of the actions of the Owner taken in connection with the Bidders work.

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

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

WESTBURY UFSD
PURCHASING DEPT, 2 HITCHCOCK LANE
OLD WESTBURY, NY 11568 516-876-5006/FAX: 516-876-2351

CONFLICT OF INTEREST CERTIFICATION

THE PROPOSER DECLARES AND CERTIFIES:

1. THAT SAID PROPOSER, CONSULTANT, ORGANIZATION, OR ETC.(KNOWN HEREIN AS PROPOSER) IS OF LAWFUL AGE AND THE ONLY ONE INTERESTED IN THIS PROPOSAL, AND THAT NO ONE OTHER THAN SAID PROPOSER HAS ANY INTEREST HEREIN.
2. THAT THIS PROPOSAL IS MADE WITHOUT ANY PREVIOUS UNDERSTANDING, AGREEMENT OR CONNECTION WITH ANY OTHER PERSON, FIRM OR CORPORATION MAKING A PROPOSAL FOR THE SAME PURPOSE AND IS IN ALL RESPECTS FAIR AND WITHOUT COLLUSION OR FRAUD.
3. THAT NO MEMBER OF THE BOARD OF EDUCATION OF THE WESTBURY UFSD, NASSAU COUNTY, NEW YORK NOR ANY OFFICER OR EMPLOYEE OR PERSON WHOSE SALARY IS PAYABLE AS A WHOLE OR IN PART FROM THE TREASURY OF SAID BOARD OF EDUCATION, IS DIRECTLY OR INDIRECTLY INTERESTED IN THIS PROPOSAL OR IN THE SUPPLIES, MATERIALS, EQUIPMENT, WORK OR SERVICES TO WHICH IT RELATES, OR IN ANY PORTION OF THE PROFITS THEREOF.
4. THAT SAID PROPOSER HAS CAREFULLY EXAMINED THE SPECIFICATIONS IN THE RFP AND SCHEDULES, IF APPLICABLE, PREPARED UNDER THE DIRECTION OF THE BOARD OF EDUCATION, AND WILL, IF SUCCESSFUL IN THIS PROPOSAL, FURNISH AND DELIVER AT THE PRICES PROPOSED AND WITHIN THE TIME STATED, ALL MATERIALS, SUPPLIES, GOODS, WARES, MERCHANDISE, SERVICES, OR LABOR FOR WHICH THIS PROPOSAL IS MADE.
5. THAT THE PRICES QUOTED ARE NET AND EXCLUSIVE OF ALL FEDERAL, STATE AND MUNICIPAL SALES AND EXCISE TAXES.

SUBSCRIBED AND SWORN TO BEFORE

THIS _____ DAY _____

NOTARY PUBLIC

PERSON FIRM OR CORPORATION

AUTHORIZED SIGNATURE