

**SCHOOL FACILITIES MANAGEMENT
CONTRACT MANUAL AND SPECIFICATIONS**

for the

CONSTRUCTION OF THE 109 OAK STREET PLAYGROUND AT ENRICO FERMI SCHOOL

BID NO.: ITB-6173

OPENING DATE: AUGUST 16, 2017

YPS JOB # 10809

BOARD OF EDUCATION

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Executive Director
School Facilities Management

YONKERS PUBLIC SCHOOLS
One Larkin Center
Yonkers, New York 10701

GENERAL ENGINEERING AGREEMENT No. 2018-00000235

This GENERAL AGREEMENT (the "General Agreement") is made and entered into this _____th day of _____ in 20____ by and between **THE YONKERS PUBLIC SCHOOLS** acting by and through its Board of Education, a school district established pursuant to New York Education Law ("YPS"); and **PETER J. LANDI, INC.**, located at **13 BRADHURST AVE., HAWTHORNE, NY 10532**, the ("Contractor");

WITNESSETH:

WHEREAS, the YPS desires to obtain the services of Contractor to provide work within the Yonkers Public Schools, and

WHEREAS, it is acknowledged and agreed that pursuant to the terms of that certain intermunicipal agreement ("IMA") by and between YPS, acting by and through its Board of Education ("BOE") and the City of Yonkers ("City") as filed in the Office of the City Clerk on June 16, 2014, the terms of the agreement are subject to review and revision by the City's Corporation Counsel, as well as approval, if applicable, by the City's Board of Contract and Supply ("BOCS");

That the YPS and the Contractor for the consideration stated herein mutually agree as follows:

ARTICLE 1. STATEMENT OF WORK:

The Contractor shall and will well and sufficiently furnish and provide all the labor, materials and equipment required for:

ITB-6173: 109 Oak St. Play Area (Enrico Fermi), inclusive of bid alternates 1 & 2

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, appurtenances, equipment and services, including utility and transportation services and perform and complete all work and required supplemental work for the completion of this Contract in strict accordance with the hereinafter referenced Contract Documents including all addenda thereto, if any, all as prepared by the YPS.

ARTICLE 2. COMPENSATION TO BE PAID TO CONTRACTOR:

The YPS will pay and the Contractor will accept in full consideration for the performance of the Contract, subject to any additions, deductions and retainages as provided herein, in current funds, a sum not to exceed:

Written in Words: Three hundred thirty three thousand Dollars and no Cents

Written in Figures: \$ 333,000.00

Payments shall be made in accordance with the payment provisions herein. In no event shall the YPS be required to make payment to the Contractor for the work hereunder for any claim or damages except as provided in the Contract Documents.

ARTICLE 3. THE CONTRACT DOCUMENTS:

A. Except for titles, subtitles, headings, running headlines, tables of contents, and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this Contract:

| | |
|--|---|
| a. This Agreement | k. Supplemental Technical Specifications, if any |
| b. Addenda, if any | l. Drawings, if any |
| c. The Advertisement | m. Performance & Payment Bonds |
| d. Information For Bidders | n. Certificates of Insurance |
| e. Signed copy of Bid, with all attachments required for the Bidding, including Bidder's Affidavit | o. Exhibits not included as part of the documents as listed above; if any |
| f. Special Conditions, if any | p. Notice to proceed with the work |
| g. General Conditions, if any | q. All provisions required by law to be inserted in this Contract whether inserted or not |
| h. Technical Specification, if any | r. Schedule "A" to the General Agreement |
| i. All addenda issued by the YPS | |
| j. The Notice of Award | |

This Agreement, together with other Documents enumerated in this Article 3, which said other Documents are as fully part of this Agreement as if hereto attached or herein repeated, form the Contract between the parties hereto. If any provision in any component part of this Contract conflicts with or varies from any other component part, the YPS shall determine which shall control and its decision shall be final.

ARTICLE 4. COMMENCEMENT AND PROSECUTION OF THE WORK

A. The work shall commence within ten (10) business days after execution of all required governmental approvals, unless otherwise specified in the bid documents, and shall thenceforth progress continuously and diligently. Inasmuch as the work

contracted for is to be devoted to public use, it is specifically understood and expressly agreed that time is of the essence with respect to each and every one of the various undertakings and obligations including, but not limited to, complying with this time of performance provision, set forth in this Contract. The time for performance of the work under the Contract shall be computed from such date specified on the Notice to Proceed.

- B. **TIME RESTRAINTS:** The site will be available to the Contractor on the dates and times listed below, which availability the Contractor acknowledges it was aware of when it submitted its bid:

PERMITTED HOURS OF OPERATION

a. When School is in Session:

Depending on the nature of the work at hand, the contractor will have limited access to school features while school is in session. The hours on days that school is in Session are generally from 7:30 am to 3:30 pm Monday through Friday as shown on the official school calendar on the District's website: www.yonkerspublicschools.org. Work while school is in session may be permitted by the District under certain conditions and when desirable to the District. The buildings are available for work on days that school is in session from 3:30 p.m. to 11:00 p.m.

b. When School is not in Session:

When school is not in session, work may be done weekdays between 8:00 am and 4:00 pm provided that the District Offices are not on Holiday. Work before 7:00 am, beyond 4:00 pm, on weekends or on District holidays is permitted but must be scheduled with the District and may be subject to additional costs. These costs are to pay for custodial worker overtime at a rate of **\$55/hour, 4 hour minimum** and construction inspector at a rate of **\$125/hour, 4 hour minimum**. These charges do not apply for work scheduled by the District. Additional costs may be required for Holidays or other such costs as may be incurred by the YPS.

Note: Teachers return to their classrooms on August 28, 2017. Starting with this date forward all interior construction work will shift to 3:30 pm to 11:30 pm.

Dates and time outside of the above limits may be worked upon obtaining prior written permission from the YPS and will require the Contractor to pay for custodial worker overtime at a rate of \$55/hour, 4 hour minimum and construction inspector at a rate of \$95/hour, 4 hour minimum. Additional costs may be required for Holidays or other such costs as may be incurred by the YPS.

ARTICLE 5. PROGRESS SCHEDULE

- A. To enable the work to be laid out and performed in an orderly and expeditious manner, the Contractor, within fifteen (15) days after the date of the Notice of Award of this Contract, unless otherwise directed by the Engineer, shall submit to the Engineer a proposed progress schedule, showing:
- 1) The anticipated time of commencement and completion of each of the various operations to be performed under this Contract; and
 - 2) The sequence and interrelation of each of these operations with the others and with those of other related Contracts; and
 - 3) The estimated time required for fabrication or delivery, or both, of all materials and equipment required for the work.
- B. The proposed schedule shall be revised as directed by the Engineer, until finally approved by him, and after such approval, shall be strictly adhered to by the Contractor.

ARTICLE 6. TIME OF COMPLETION; LIQUIDATED DAMAGES

- A. The work shall commence as specified in the Notice to Proceed and shall be completed within the time of completion specified in Schedule "A" to this General Agreement.
- B. The date of commencement and the time for completion, as specified in the Contract, are essential conditions of the Contract.
- C. The Contractor shall perform the work regularly, diligently, and without interruption at such rate of progress as to insure timely completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing at the site.

- D. Should the contractor fail to timely commence or perform any work, or otherwise fail to timely carry out any directions consistent with the terms of the contract after written notice from the YPS, the YPS may have such work done or materials furnished by others and deduct the cost thereof from the monies due, or to become due under the Contract.
- E. If the Contractor shall fail to complete the work within the time specified, or any proper extension thereof the Contractor shall pay to the YPS, as a partial consideration for the Contract, **the amount of \$200.00 per day**, as specified in the Contract as set forth in Schedule "A" to this General Agreement, not as a penalty, but as liquidated damages for breach of contract, for each and every calendar day that the Contractor shall be in default.
- F. The amount of liquidated damages is agreed upon by and between the Contractor and the YPS as set forth in this Article, and in Schedule "A" because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages which the YPS would sustain in said event and such amount is agreed to be in the amount of damages which the YPS or its beneficiaries would sustain and said amount shall be retained by the YPS.
- G. In the event the Contractor shall fail to complete the work within the time fixed for such completion in this Article, and Schedule "A" to this General Agreement, plus authorized time extensions, or if the Contractor, in the sole determination of the YPS, has abandoned the work, the Contractor must pay to the YPS the sum fixed in this Article, and the Schedule "A" to this General Agreement, for each and every calendar day that the time consumed in completing the work exceeds the time allowed therefore.
- H. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the YPS's right to indemnification under Article 14, or the Contractor's obligation to otherwise indemnify the YPS, or to any other remedy provided for by Contract or by law.
- I. The YPS will deduct and retain out of the moneys which may become due hereunder, the amount of such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the YPS, the Contractor shall be liable to pay the difference upon demand by the YPS.
- J. Time is of the essence for each and every portion of the work. In any instance in which additional time is allowed for completion, the new time of completion established by the relevant change order shall be of the essence. The Contractor shall not be charged with liquidated damages or any excess cost if the Engineer determines in writing that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the YPS. In any event, the Contractor shall not be charged with liquidated damages or any excess cost if the delay in completion is due to an unforeseeable cause beyond the control and without the fault of, or negligence of the Contractor, and approved by the YPS, including, but not limited to Acts of God or of public enemy, acts of the YPS, epidemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather.
- K. The time for completion can only be extended by change order pursuant to Article 21 and may be extended for all the work, or only that portion of the work altered by the change order.
- L. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or its subcontractors or material men, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.
- M. Permitting the Contractor to continue with the work after the time for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operate as a waiver on the part of the YPS of any of its rights under this Contract.
- N. Application for Extension of Time
 - 1) Before a change order for the time extension request may be approved, the Contractor must, within five (5) days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the Engineer identifying:
 - a) the Contractor, the Contract number, and project description;
 - b) liquidated damages assessment rate, as specified in the Contract;
 - c) original bid amount;
 - d) the original Contract start date and completion date;
 - e) any previous time extensions granted (number and duration); and
 - f) the extension of time requested.
 - 2) In addition, the application for extension of time shall set forth in detail:
 - a) the nature of each alleged cause of delay in completing the work;
 - b) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
 - c) a statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive, and

- d) a statement indicating the Contractor's understanding that the time extension is granted only for the purpose of permitting continuation of Contract performance and payment for work performed and that the YPS retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.
- O. Notwithstanding the procedures set forth in this Article, the Engineer in his discretion can grant a one-time extension, in writing, not to exceed 30 days.

ARTICLE 7. DEFINITIONS

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Contract, be construed as follows, unless a different meaning is clear from the context: (*The use of any third person pronoun is not meant to be gender indicative.)

"ADDENDUM" or **"ADDENDA"** shall mean the additional Contract provisions issued in writing by the YPS prior to the receipt of bids.

"A/E" shall mean the professional Architect or Engineer employed by the YPS whose name appears on the specifications.

"BOARD OF EDUCATION" shall mean the Yonkers Board of Education.

"CITY" shall mean the City of Yonkers

"CM" shall mean the Construction Manager employed by the YPS.

"CONTRACT" or **"CONTRACT DOCUMENTS"** shall mean each of the various parts of the Contract referred to in Article 3 hereof, both as a whole and severally.

"CONTRACTOR" shall mean the party defined in the preamble hereto, whether corporation, firm or individual, or any combination thereof, and its, their or his* successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted in its place under this Contract.

"CONTRACT DRAWINGS" shall mean only those drawings specifically entitled as such and listed in the specifications or in any addendum, or any detailed drawings furnished by the Engineer, pertaining or supplemental thereto.

"CONTRACT WORK" shall mean everything required to be furnished and done by the Contractor by any of the parts of the Contract referred to in Article 3 hereof, except Extra Work as herein defined; it being understood that in case of any inconsistency in or between any part or parts of this Contract, the Engineer shall determine what shall prevail.

"ENGINEER" shall have the meaning set forth in Article 8 below.

"EXTRA WORK" shall mean work needed to complete the project that was not required by the Contract at time of its execution.

"FINAL ACCEPTANCE" shall mean acceptance by the YPS of the Work as evidenced by written approval of the Engineer.

"LAW" or **"LAWS"** shall mean the Constitutions of the United States and the State of New York, the Yonkers City Charter and Code, a statute of the United States or the State of New York, a local law of the City of Yonkers, and any ordinance, rule, regulation or judicial decision having the force of law.

"MATERIALMAN" shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor, or any Subcontractor to fabricate or deliver or who actually fabricates or delivers plant, materials or equipment to be incorporated in the work.

"MEANS AND METHODS OF CONSTRUCTION" shall mean the labor, materials in temporary structures, tools, plant and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Contract.

"MATERIAL IN SHORT OR CRITICAL SUPPLY" shall mean material, as determined by the YPS upon written application by the Contractor pursuant to the terms of the Contract, which is not generally available in a timely manner to permit completion of the work.

"MATERIAL SPECIFICALLY FABRICATED" shall mean material, as determined by the YPS upon written application by the Contractor pursuant to the terms of the Contract, which is not generally available as a standard item(s) without special fabrication.

“OTHER CONTRACTORS” shall mean any Contractor (other than the “Contractor” as defined herein or his Subcontractors) who has a contract with the YPS for work on or adjacent to the building or site of the work.

“PROJECT” shall mean the public improvement to which this Contract relates.

“REQUIRED QUANTITY” in a unit price Contract shall mean the actual quantity of any item of work or materials which is required in order to comply with the Contract.

“SITE” shall mean the area upon or in which the Contractor’s operations are carried on, and such other areas adjacent thereto as may be designated as such by the Engineer.

“SPECIFICATIONS” shall mean all of the directions, requirements and standards of performance applying to the work needed to complete the Project.

“SUBCONTRACTOR” shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the Site.

“THE WORK” shall mean everything required to be furnished and done by the Contractor under the Contract and shall include both Contract Work and Extra Work.

“YPS” shall mean the Yonkers Public School and the Yonkers Board of Education.

ARTICLE 8. POWERS OF THE EXECUTIVE DIRECTOR OF SCHOOLS FACILITIES MANAGEMENT

- A. The Executive Director of Schools Facilities Management (hereinafter “Engineer”) or his designee shall be the representative of the YPS at the site and shall have the power, in the first instance, to inspect the performance of the work. The Engineer shall give all orders and directions contemplated under the Contract relative to the execution of the work. The Engineer shall have the power to supervise and control the performance of the work as contemplated under the Contract.
- B. The Engineer, in addition to those matters elsewhere herein delegated to the Engineer and expressly made subject to his determination, direction or approval, shall have the power:
- 1) To determine the amount, kind, quality, and location of the work to be paid for hereunder;
 - 2) To determine all questions in relation to the work, to interpret the Contract Drawings, Specifications and Addenda, and to resolve all inconsistencies or ambiguities therein;
 - 3) To determine how the work of this Contract shall be coordinated with work of other contractors engaged simultaneously on this project, including the power to suspend any part of the work, but not the whole thereof;
 - 4) To make changes in the work as the Engineer deems necessary, including the issuing of change orders for extra work, as designated in writing by the YPS;
 - 5) To omit Contract work whenever it deems it in the interest of the YPS to do so provided, however, such omitted work shall not be performed by another contractor during the life of this Contract;
 - 6) To amplify the Contract Drawings, add explanatory information and furnish additional specifications and drawings consistent with the intent of these Contract Documents;
- C. The foregoing enumeration shall not imply any limitation upon the power of the Engineer, for it is the intent of this Contract that all of the work shall generally be subject to his determination, direction and approval, except where the determination, direction or approval of someone other than the Engineer is expressly called for herein.
- D. The Engineer may hire an A/E to provide administration of the Contract. The A/E:
- 1) Will be the Board's representative (1) during construction, (2) until final payment is due and (3) with the YPS's concurrence, from time to time during the correction period. The A/E will advise and consult with the YPS. The A/E will have authority to act on behalf of the YPS only to the extent provided in the Contract, unless otherwise modified by written instrument in accordance with other provisions of the Contract.
 - 2) Will have authority to reject Work which does not conform to the Contract Documents. Whenever the A/E considers it necessary or advisable for implementation of the intent of the Contract Documents, the A/E will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed.
 - 3) The A/E will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The A/E's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the YPS, Contractor or separate contractors, while allowing sufficient time in the A/E's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such

as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The A/E's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract. The A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the A/E, of any construction means, methods, techniques, sequences or procedures. The A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 4) The A/E will prepare Change Orders and Construction Change Directives.
- 5) The A/E will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Board for the Board's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- 6) Interpretations and decisions of the A/E will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the A/E will endeavor to secure faithful performance by both YPS and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.
- 7) The A/E's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract.

ARTICLE 9. POWERS OF THE BOARD OF EDUCATION

The Board shall have the powers set forth in the pursuant to N.Y. State Law and as set forth herein. The Board in addition to those matters elsewhere herein expressly made subject to its determination, direction or approval, shall have the power:

- A. To approve the performance of change orders for extra work;
- B. To approve the use of all Subcontractors proposed by the Contractor;
- C. To hold the Contractor in default and/or to terminate the Contract; and,
- D. To approve the assignment of the Contract.

ARTICLE 10. WORKMANSHIP AND MATERIALS

- A. The Contractor shall, in a good workmanlike manner, perform all the work required by the Contract within the time specified in the Contract to the satisfaction of the YPS.
- B. The Contractor shall provide, erect, maintain, and remove such construction, plant and temporary work as may be required. The Contractor shall be responsible for the safety, efficiency, and adequacy of the Contractor's plant, appliances and methods, and for damage which may result from failure or improper construction, maintenance or operation of said plant, appliances and methods.
- C. Contractor's Title to Materials
 - 1) No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that the Contractor has full, good and clear title to all materials and supplies used by the Contractor in the work, or resold to the YPS pursuant to the Contract free from all liens, claims or encumbrances.
 - 2) All materials, equipment and articles which become the property of the YPS shall be new unless specifically stated otherwise.
- D. "Or Equal" Clause
 - 1) Whenever a material, article or piece of equipment is identified on the plans or in the specification by reference to manufacturers' or vendors' names, trade names, catalogue number, or make, said identification is intended to establish a standard. Any materials, articles or equipment of other manufacturers and vendors which performs the same duties imposed by the general design may be considered equally acceptable provided that, in the opinion of the YPS, the material, article or equipment so proposed is of equal quality, substance and function and the Contractor shall not provide, or install any such proposed material, article or equipment without the prior written approval of the YPS.
 - 2) Where the YPS, pursuant to the provisions of this Article, approves a product proposed by the Contractor and the proposed product requires a revision or redesign of any part of the work, all such revisions and redesigns and all new drawings, and details required therefore shall be provided by the Contractor and shall be approved by the YPS.
Where the YPS, pursuant to the provisions of this Article, approves a product proposed by the Contractor and the

proposed product results in additional work or added costs, the Contractor proposing the product is solely responsible for such costs and added work.

E. Quality, Quantity and Labeling

- 1) The Contractor shall furnish materials and equipment of the quality and quantity specified in the Contract.
- 2) When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet such standards.
- 3) The above requirements shall not restrict or affect the YPS's right to test materials as provided in the Contract.

F. Payment for Concrete of Deficient Strength

- 1) The Contractor recognizes the fact that the concrete mix specified was selected to yield concrete of desired strength and durability and the Contractor agrees that should he fail to supply concrete of the specified strength in the construction, that the deficiency in strength will result in construction of which the durability and useful life are impaired, and he further agrees that the YPS will suffer damages due to such impairment of durability and curtailment of useful life. Since the YPS will suffer by reason of such loss of durability and useful life, it is further agreed that the YPS will deduct and retain out of such moneys as may become due hereunder the amount determined in the manner as hereinafter set forth.
- 2) The Contractor agrees that the strength of the concrete shall be determined by test cylinders made and tested in accordance with the specifications and he further agrees that said cylinders so made and tested give a reasonably satisfactory index of the strength of the concrete as incorporated in the construction. Such tests are to be paid for by the Contractor.
- 3) The Contractor hereby agrees that the concrete mix proportions indicated in the specifications are for the Contractor's guidance only and they represent proportions which, in the experience of the YPS and other responsible public agencies, have given the strengths specified, using locally available sands and coarse aggregates and commercially available cements.
- 4) Before the Contractor begins to manufacture concrete, he shall secure the Engineer's approval of the formula he proposes to use, and he shall certify such formula to the Engineer as yielding concrete of the desired strength, density and workability, but in no case shall the cement be less, nor the water/cement ratio more than that specified.
- 5) He shall submit for this purpose a statement in writing of the sources of all ingredient materials, the type and brand of the cement, and the number of pounds of each of the materials in a saturated surface dry condition, making up one (1) cubic yard of concrete. The range of water/cement ratios within which the concrete will be manufactured and the method of mixing to be employed shall also be stated.
- 6) The formula as finally approved shall not be changed without the written permission of the Engineer.

ARTICLE 11. CONTRACTORS

A. Superintendence by Contractor

- 1) The Contractor shall employ a full-time competent construction superintendent and necessary staff; the construction superintendent shall devote full time to the work and shall have full authority to act for the Contractor at all times.
- 2) If at any time the superintendent is not satisfactory to the YPS, the Contractor shall, if requested in writing by the YPS, replace said superintendent with another superintendent satisfactory to the YPS.

B. Subsurface or Site Conditions Found Different

- 1) The Contractor acknowledges that the Contract consideration includes such provisions which the Contractor deems proper for all subsurface or site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract, or borings, reports, rock cores foundation investigation reports, topographical maps or other information available to the Contractor or from the Contractor's inspection and examination of the site prior to submission of bids.
- 2) Should the Contractor encounter subsurface or site conditions at the site materially differing from those shown on or described in or indicated in the Contract, the Contractor shall immediately give notice to the Engineer of the differing conditions and shall not disturb the differing conditions until directed to do so by the YPS.

C. Verifying Dimensions

- 1) The Contractor shall take all measurements at the site and shall verify all dimensions at the site before proceeding with the work. If said dimensions are found to be in conflict with the Contract, the Contractor immediately shall give notice to the YPS. The Contractor shall comply with any revised Contract Documents.
- 2) During the progress of work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.
- 3) The Contractor shall consult all Contract Documents to determine exact location of all work and verify spatial relationships of all work. Any question concerning location or spatial relationships may be submitted to the Engineer in a manner approved by the Engineer.

- 4) Special locations for equipment, pipelines, ductwork and other such items of work, where not dimensioned on plans, shall be determined in consultation with the Engineer.
 - 5) The Contractor shall be responsible for the proper fitting of the Work in place.
- D. Meetings
The Contractor shall attend all scheduled progress meetings and any other special meetings as directed by the Engineer at no additional cost to the YPS.
- E. Related Work
The Contractor shall examine the Contract for related work to ascertain the relationship of said work to the Work under the Contract.
- F. Surveys and Layout
Unless otherwise expressly provided in the Contract, the YPS shall furnish the Contractor all surveys of the property necessary for the work. The Contractor shall be responsible for the layout of the work.
- G. Errors, Ambiguities or Discrepancies
The Contractor shall examine the Contract thoroughly before commencing the work and promptly report any errors, ambiguities or discrepancies to the YPS. Failure of the Contractor to do so shall result in a waiver of any claim by the Contractor based on such errors, ambiguities or discrepancies.

ARTICLE 12. INSPECTION AND ACCEPTANCE

- A. Access to Work
The YPS shall at all times have access to the work and the Contractor shall maintain such access during the work on the project.
- B. Notice for Testing
If the Contract Documents, the YPS's instructions, laws, rules, ordinances, or regulations, require that any work be inspected or tested, the Contractor shall give the YPS timely notice of readiness of the work for inspection or testing and the date fixed for said inspections or testing.
- C. Reexamination of Work
Reexamination of any part of the work may be ordered by the YPS, and if so ordered the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract, the YPS shall pay the cost of reexamination and if such work is not found to be in accordance with the Contract, the Contractor shall pay or be back-charged for the cost of reexamination and replacement.
- D. Inspection of Work
 - 1) All work, all materials whether or not incorporated in the work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the YPS, and the YPS shall judge the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which such work, materials, processes of manufacture and methods of construction are used. The YPS may direct that any work not approved by the YPS shall, at no cost to the YPS, be immediately removed, reconstructed, made good, replaced or corrected by the Contractor to the satisfaction of the YPS. This corrective work shall include all work of any third party destroyed or damaged by such removal or replacement. Rejected material shall be removed immediately from the site at no extra cost to the YPS. Acceptance of material and workmanship by the YPS shall not relieve the Contractor from the Contractor's obligation to replace all work which is not in full compliance with the Contract. The Contractor is to provide any assistance necessary, such as the erection of ladders or platforms, for the Engineer to conduct inspections of the work.
 - 2) If after inspection the YPS determines that it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work, injured or not performed in accordance with the Contract, the compensation to be paid to the Contractor shall be reduced by an amount which, the YPS deems equitable.
- E. Testing
All materials and equipment used in the work shall be subject to inspection and testing in accordance with accepted standards to establish conformance with specifications and suitability for uses intended, unless otherwise specified in the Contract. If any work shall be covered or concealed without the approval or consent of the YPS, that work shall, if directed by the YPS, be uncovered for examination. Any inspection by the YPS or by a testing laboratory on behalf of the YPS does not relieve the Contractor of the responsibility to maintain quality control of materials, equipment and installation to conform to the requirements of the Contract. If any test results are below accepted standards, the YPS may order additional testing. The cost of said additional testing, any additional professional services required, and any other expenses incurred by the YPS as a result of such additional testing, shall be paid by the Contractor.

F. Acceptance

No previous inspection shall relieve the Contractor of the obligation to perform the work in accordance with the Contract. No payment, either partial or full, by the YPS to the Contractor shall excuse any failure by the Contractor to comply fully with the Contract. The Contractor shall remedy all defects, and shall incur the cost of any damage to other work resulting there from.

G. Manufacturer's Guarantee

The Contractor shall secure from the manufacturers of all equipment and materials required under the Contract such manufacturer's standard warranties and guarantees (or such other warranties and guarantees as the specifications may require) in the name of the YPS of Yonkers and shall deliver the same to the YPS Engineer.

ARTICLE 13. PROTECTION OF WORK AND OF PERSONS AND PROPERTY; INDEMNIFICATION

- A. During performance and up to the date of final acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished work against any damage, loss or injury; and, in the event of such damage, loss or injury he shall promptly replace or repair such work, whichever the YPS shall determine to be preferable. The obligation to deliver finished work in strict accordance with the Contract prior to final acceptance shall be absolute and shall not be affected by the YPS's approval of or failure to prohibit means and methods of construction used by the Contractor.
- B. During performance and up to the date of final acceptance, the Contractor must take all reasonable precautions to protect the persons and property of the YPS and of others from damage, loss or injury resulting from contractor's or subcontractor's performance under this Contract, except such property as the owners thereof may themselves be under legal duty to protect. The Contractor's obligation to protect shall include the duty to provide, place and adequately maintain at or about the site suitable and sufficient guards, lights, barricades and enclosures.
- C. Within three (3) days after notice to it of the happening of any such loss, damage or injury to work, persons or property, or accidents, the Contractor shall make a full and complete report thereof, in writing to the YPS. The Contractor shall notify the YPS, in writing, of any loss, damage or injury to work, persons or property, or any accidents on the site within twenty-four (24) hours of the occurrence.
- D. If the persons or property of the YPS or of others sustain loss, damage or injury resulting from the Contractor's, or its Subcontractor's performance of this Contract, or from its or their failure to comply with any of the provisions of this Contract or of law or out of its or their negligent acts or omissions, the Contractor shall defend and indemnify and hold the YPS, its officers, employees, elected and appointed officials and agents, harmless from any and all claims and judgments for loss, damages or injuries and from costs and expenses, which include attorneys fees to which the YPS may be subjected or which may suffer or incur by reason thereof.
- E. The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Contractor, or the YPS.
- F. The Contractor shall protect all adjoining property and shall repair or replace any property damaged or destroyed during the progress of the Work at no cost to the YPS.
- G. Construction Site Emergency

A construction site emergency is defined as an unforeseen condition or event requiring prompt action by the Contractor. Construction site emergencies include, but are not limited to, construction related accidents; uncontrolled release of asbestos, lead dust or other hazardous materials; natural disasters; automobile accidents; floods and fire

The Contractor must notify the YPS of a construction site emergency, within a half-hour of the occurrence of the event, in accordance with the following:

- 1) If the emergency occurs during regular business hours the Contractor must notify the Engineer, or
- 2) In the event the Engineer or his representative is not readily available, the Contractor shall call the City's Action Center at (914) 377-4357 and the Yonkers Police Department through 911.
- 3) The Contractor shall be required to appoint and provide 24 hour emergency call out numbers of its employees who are capable and in authority to direct actions deemed necessary to meet an off-hour on-site emergency.

ARTICLE 14. COORDINATION WITH OTHER CONTRACTORS

- A. During the process of the work, other contractors may be engaged in performing other work or may be awarded other Contracts for additional work on this project. In that event, the Contractor shall coordinate the work to be done hereunder with the work of such other contractors and the Contractor shall fully cooperate with such other contractors and carefully fit its own work to that provided under other contracts as may be directed by the Engineer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor.

- B. If the Engineer shall determine that the Contractor is failing to coordinate his work with the work of the other contractors as the Engineer directed, then the YPS shall have the right to withhold any payments otherwise due hereunder until the Contractor completely complies with the Engineer's directions.
- C. If the Contractor notifies the Engineer in writing that another contractor on this project is failing to coordinate his work with the work of this Contract as directed, the Engineer must promptly investigate the charge. If the Engineer finds it to be true, he must promptly issue such directions to the other contractor with respect thereto as the situation may require. The YPS shall not, however, be liable for any damages suffered by the Contractor by reason of the other contractor's failure to promptly comply with the directions so issued by the Engineer, or by reason of another contractor's default in performance, it being understood that the YPS does not guarantee the responsibility or continued efficiency of any contractor.
- D. The Contractor shall indemnify and hold the YPS harmless from any and all claims of judgments for damages and from costs and expenses to which the YPS may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with the Engineer's directions promptly; and the YPS shall have the right to exercise the powers reserved herein with respect to any claims which may be made for damages due to the Contractor's failure to comply with the Engineer's direction promptly.
- E. Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the YPS for the performance of work upon the site or of work which may be necessary to be performed for the proper execution of the work to be performed hereunder, or through any act or omission of a subcontractor of such Contract, the Contractor shall have no claim against the YPS for such damage.
- F. Should any other contractor having, or who shall hereafter have, a contract with the YPS for the performance of work upon the site sustain any damage through any act or omission of the Contractor hereunder or through any act or omission of any subcontractor of the Contractor, the Contractor agrees to reimburse such other contractor for all such damages and to defend at his own expense any suit based upon such claim and if any judgment or claims against the YPS shall be allowed, the Contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith and shall indemnify and hold the YPS harmless from all such claims.
- G. The YPS's right to indemnification hereunder shall in no way be diminished, waived or discharged, by its recourse to assessment of liquidated damages provided in this General Agreement, or by the exercise of any other remedy provided for by law.

ARTICLE 15. NO DAMAGE FOR DELAY

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the YPS or any of its representatives, and agrees that any such claim may be fully compensated for by an extension of time to complete performance of the work as provided herein.

ARTICLE 16. OCCUPATION OR USE PRIOR TO COMPLETION

If, before the final completion of all the work contemplated herein, it shall be deemed necessary by the YPS to take over, use, occupy or operate any part of the completed or partly completed work, the YPS shall have the right to do so and the Contractor will not in any way interfere with or object to the use, occupation or operation of such work by the YPS after receipt of notice in writing that such work or part thereof will be used by the YPS on and after the date specified in such notice. Should such action be taken by the YPS, the Contractor's guarantee on that part of the work placed into use shall begin on the date such use by the YPS shall begin (and the Contractor shall be entitled to a return of so much of the retained percentages as have been withheld by the YPS, as security for the faithful performance of the work which the YPS may take over, use, occupy or operate under this Article, except so much thereof as may be retained under Article 20 hereof). Immediately prior to such occupancy or use, inspection of the part to be occupied or used will be made by the Engineer, and the Contractor will be furnished in writing with a statement of the work, if any, still to be done on such part.

ARTICLE 17. SUBCONTRACTS

- A. The Contractor shall not make subcontracts totaling in amount more than the percentage specified in the Schedule "A" of this General Agreement of the total Contract price without special written permission from the YPS.
- B. Before making any subcontracts, the Contractor must submit a written statement to the Engineer giving the name and address of the proposed Subcontractor, the portion of the work and materials which he is to perform and furnish, the cost of the subcontract and any other information tending to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this Contract. All Subcontractors must be approved by the YPS.

- C. If an approved Subcontractor elects to subcontract any portion of his subcontract, the proposed sub-subcontract shall be submitted in the same manner as directed above. Wherever the word Subcontractor appears herein, it also means sub-subcontractor.
- D. The proposed Subcontract will be submitted to the YPS for approval at the next regularly scheduled meeting. The YPS will notify the Contractor as soon as possible after the YPS acts whether the proposed Subcontractor is approved. If the proposed Subcontractor is not approved, the Contractor may thereupon submit another proposed Subcontractor unless he decides to do the work himself.
- E. The YPS's approval of a Subcontractor shall not relieve the Contractor of any of his responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the YPS for the acts or defaults of his Subcontractor and of such Subcontractor's officers, agents and employees, each of who shall, for this purpose, be deemed the agent or employee of the Contractor to the extent of his Subcontract.
- F. No Subcontractor shall be permitted on the site unless he is approved, nor shall any Subcontractor be permitted to perform work at the site unless he has furnished satisfactory evidence of insurance covering Workmen's Compensation, Public Liability and Property Damages as required. Acceptable indication of such insurance is being a named insured on the Contractor's insurance.
- G. The Contractor shall promptly, upon request, file with the Engineer a confirmed copy of the Subcontract, with cost of Subcontract.
- H. Before entering into any Subcontract hereunder, the Contractor shall inform the Subcontractor fully and completely of all provisions and requirements of this Contract relating either directly or indirectly to the work to be performed and the materials to be furnished under such Subcontract, and every such Subcontract shall expressly stipulate that all labor performed and materials furnished thereunder shall strictly comply with the requirements of this Contract.
- I. The Contractor shall require all agreements with or between Subcontractors to be in writing. Every Subcontract shall provide expressly that such Subcontract (and all rights of any Subcontractor thereunder) is subject in all respects whatsoever to all requirements of this Contract and that all work under the Subcontract shall comply with all requirements of this Contract. Each Subcontract shall include a provision authorizing termination for necessity or convenience by the Contractor and a provision under which the Subcontractor agrees that the Subcontractor's obligations shall be assigned to the YPS, at the YPS's election, upon a termination of Contractor's rights to perform the Contract. Each Subcontract shall contain the same terms and conditions as to method of payment for work, and as to retained percentages, as are set forth in this Contract; and Contractor shall pay each Subcontractor in accordance with the terms of the applicable subcontract for work performed by Subcontractor.
- J. The Contractor's execution of any Subcontract shall be deemed a representation to the YPS that the Contractor (1) has informed the Subcontractor fully and completely of all requirements of this Contract relating directly or indirectly to the Subcontractor's Work and (2) has taken all steps necessary to ensure that each and every Subcontractor meets the minimum qualifications required by the YPS of any Contractor submitting bids for any YPS work.

ARTICLE 18. ASSIGNMENTS

The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract; or his right to execute it, or his right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the moneys due or to become due under this Contract, unless the previous written consent of the YPS shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments.

Failure to obtain the previous written consent of the YPS to such an assignment, transfer or conveyance, shall justify the YPS's revocation and annulment of this Contract. The YPS shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, his assignees or transferees, and all moneys previously earned and unpaid under the Contract shall be forfeited to the YPS except so much thereof as may be necessary to pay the Contractor's employees.

ARTICLE 19. INSURANCE

During performance and up to the date of final acceptance, the Contractor must effect and maintain insurance of the kind and at the limits set forth in Schedule "A" to this General Agreement.

ARTICLE 20. MAINTENANCE AND GUARANTY; REPLACEMENT OF DEFECTIVE WORK

- A. The Contractor must promptly repair, replace, restore or rebuild, as the Engineer may determine, any finished work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one year period subsequent to the date of final acceptance except where other periods of maintenance and guarantee are provided for.
- B. As security for the faithful performance of his obligation hereunder, YPS shall withhold 5% from payment pursuant to the final voucher. If the Contractor has faithfully performed all his obligations hereunder, the sum shall be repaid to the

Contractor without interest within thirty (30) days after the YPS determines the Contractor has faithfully performed all his obligations hereunder.

- C. Notice by the YPS to the Contractor to repair, replace rebuild or restore such defective or damaged work shall be timely if given not later than ten (10) days subsequent to the expiration of the one (1) year period or other periods provided for in Schedule "A" to this General Agreement.
- D. If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged work promptly after receiving such notice, the YPS shall have the right to have the work done by others in the same manner as provided for in Article 42 hereof and to deduct the cost thereof from the amount as deposited hereunder. The balance, if any, shall be returned to the Contractor without interest.
- E. Should the amount so deposited be insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency on demand by the YPS.
- F. The Engineer's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective work when performed by one(s) other than the Contractor shall be binding and conclusive as to the amount thereof upon the Contractor.

ARTICLE 21. CONTRACT CHANGES

- A. Changes may be made to this Contract only as duly authorized by the YPS. Contractors deviating from the requirements of an original contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original contract. Any work so ordered must be performed by the Contractor.
- B. Contract changes will be made only for work necessary to complete the work included in the scope of the Contract, and for non-material changes to the scope of the Contract. Contract changes may include any contract revision deemed necessary by the YPS.
- C. The Contractor shall be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the Contract is necessarily delayed by a change order, the Contractor may request, subject to YPS approval, an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways: (i) by agreement of a fixed price; (ii) by unit prices specified in the contract subject to the limitations herein; (iii) by time and material record; and/or (iv) in any other manner approved by the YPS.
- D. Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification by audit. If the audit reveals that the Contractor's costs for change order work were inaccurately stated during negotiations, the YPS shall recoup the amount by which the costs were inaccurately stated, plus any costs incurred by the YPS to conduct the audit, by proportionately reducing the price of the change order. This remedy is not exclusive and is in addition to all other rights and remedies of the YPS.

ARTICLE 22. METHODS OF PAYMENT FOR EXTRA WORK

- A. Extra work for which there are applicable Contract unit prices will be paid for at such unit prices subject to the limitations set forth herein. Where there are no applicable Contract unit prices, subject to audit by the YPS, the price to be paid for extra work ordered by the YPS, and performed by the Contractor with his own forces, shall be the reasonable cost of:
 - 1) Necessary materials (including transportation to the site); plus
 - 2) Necessary direct labor; plus
 - 3) All additional insurance required by reason of the performance of the extra work; plus
 - 4) Payments required to be made to labor organizations under existing labor agreements; plus
 - 5) Maintenance, operation, and rental of, or reasonable rental value of Contractor owned, necessary plant and equipment other than small tools (including gas, oil, coal, electric current, etc); plus
 - 6) Necessary installation and dismantling of such plant and equipment (including transportation to and from the site), if any items; plus
 - 7) Ten (10) percent of the total of Items 1 through 6 as compensation for all other items of cost or expense including administration, overhead, general superintendence, and small tools; plus
 - 8) Ten (10) percent of the total of Items 1 through 7 as compensation for profit, except that no percentage for overhead and profit will be allowed on payroll taxes or on the premium portion of overtime pay.
- B. Where there are no applicable unit prices for extra work ordered by the YPS and performed in whole or in part by other than the Contractor's own forces, the Contractor shall be paid, subject to audit by the YPS, only the actual and reasonable cost of such subcontracted work computed as outlined above, plus an additional allowance of five (5) percent to cover the Contractor's profit, superintendence, administration, insurance, and other overhead.

- C. Where a change is ordered, involving both extra work and omitted or reduced contract work, the contract price shall be adjusted, subject to audit by the YPS, in an amount based on the difference between the value of such extra work and of the work omitted or reduced. The cost of such extra work and of such omitted or reduced work shall be computed in accordance with Items 1 through 6 of this Article. If the cost of such work exceeds the cost of the work omitted or reduced, the contract price shall be increased by the difference, plus ten (10) percent thereof, as compensation for all other items of cost or expense including administration, overhead, superintendence, and small tools, plus an additional ten (10) percent of the total thereof as compensation for profit. If the cost of work omitted or reduced exceeds the cost of such extra work, then the contract price shall be reduced by such differences.
- D. Where the Contractor and the YPS can agree upon another method of payment for extra work, or for extra work ordered in connection with omitted or reduced work, such method, may, at the option of the YPS, be substituted for the cost plus a percentage method. However, if the work is performed by a Subcontractor, the Contractor shall not be entitled to receive more than an additional allowance of five (5) percent over and above the actual and reasonable cost of such Subcontractor's work.
- E. Unit Price Contracts
 - 1) In Unit Price Contracts if during the progress of work, the actual quantity of items required to complete the work of any unit item approaches the estimated quantity, and due to errors, site conditions, changes in design or any other reason, it appears that the actual quantity necessary to complete the work will exceed the estimated quantity by 25 percent, the Contractor shall immediately notify the Engineer of such anticipated overruns.
 - 2) Contractors are warned that the Engineer's estimate of quantities on the various items of work and materials is approximate only, given solely to be used as a uniform basis for the comparison of bids, and is not to be considered part of this Contract. The quantities actually required to complete the Contract work may be less or more than so estimated, and if so, no action for damages or for loss of profits shall accrue to the Contractor by reason thereof.
 - 3) The Contractor shall not be compensated for work performed in excess of one hundred twenty five (125) percent of the estimated quantities in the bid schedule without written authorization of the Engineer.
 - 4) The Contractor will be paid at the unit price bid for quantities up to one hundred and twenty five (125) percent of the estimated quantities listed in the bid schedule. If quantities on any item exceed one hundred and twenty five (125) percent of the estimate, the YPS reserves the right and the Contractor agrees to renegotiate the unit price bid to a new unit price for such quantities. If the YPS and Contractor cannot agree to a new price then the YPS, if it requires additional units of the item, shall order the Contractor and the Contractor agrees to perform the additional work on a time and material basis established herein. In no event will the cost exceed the bid price.
- F. The Contractor shall furnish satisfactory invoices, payrolls and vouchers covering all items of cost relating to the Extra Work and when requested by the YPS shall give the YPS access to accounts and records relating thereto.

ARTICLE 23. DISPUTES

Claims for Extra Work

- A. If the Contractor claims that (i) any work which the Contractor has been ordered to perform will be Extra Work, (ii) the Contractor for any reason cannot comply with the terms and provisions of the Contract, or (iii) any action or omission of the YPS is contrary to the terms and provisions of the Contract and will require the Contractor to perform Extra Work the Contractor shall:
 - 1) Promptly comply with the YPS's direction to perform the work which the Contractor claims will be Extra Work.
 - 2) File with the YPS a notice of the basis of the Contractor's claim and request for a determination thereof, within seven (7) working days:
 - a) after being ordered to perform the work claimed by the Contractor to be Extra Work; or
 - b) after commencing performance of the work, whichever date shall be earlier; or
 - c) after the said action or omission on the part of the YPS occurred.
 - 3) Proceed diligently, pending and subsequent to the determination of the YPS with respect to any said disputed matter, with the performance of the work in accordance with all instructions of the YPS.
- B. No claim for Extra Work shall be allowed unless the same was done pursuant to a written order of the YPS. The Contractor's failure to comply with any parts of this Article shall be deemed to be:
 - 1) a conclusive and binding determination on the part of the Contractor that said order, work, action or omission does not involve Extra Work and is not contrary to the terms and provisions of the Contract.
 - 2) a waiver by the Contractor of all claims for additional compensation or damages as a result of said order, work, action or omission.
- C. The value of claims for Extra Work, if allowed, shall be determined by the methods described in the Contract.

Compliance with the Contract

- D. In addition to the statements required under Article 24 hereof, or under this Article, the Contractor and his Subcontractor shall, upon notice from the YPS, produce for examination at the Contractor's or Subcontractor's office, by the representatives of the YPS, all his books of accounts, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books and canceled checks, showing all of his acts and transactions in connection with or relating to or arising by reason of this Contract, and submit himself and persons in his employment, for examination under oath by any person designated by the YPS to investigate claims made against the YPS under this Contract. At such examination a duly authorized representative of the contractor may be present.
- E. Unless such statements shall be made and filed within a timely manner and such records submitted for examination and the Contractor and his employees submit themselves for examinations as aforesaid, the YPS shall be released from all claims arising under, relating to or by reason of this Contract, except for the sum certified by the YPS to be due under the provisions of this Contract. It is further stipulated and agreed that no person has power to waive any of the foregoing provisions, and that in any action against the YPS to recover any sum in excess of the sums certified by the YPS to be due under or by reason of this Contract, the Contractor must allege in his complaint and prove, at the trial, compliance with the provisions of this section.
- F. In addition to the foregoing, after the commencement of any action by the Contractor arising under or by reason of this Contract, the YPS shall also have the right by its attorney, upon written notice from said attorney, to require the Contractor to produce for examination under oath by said attorney the above described books and documents of the Contractor and to submit himself and persons in his employ for examination under oath by said attorney.
- G. Unless the Contractor submits said records, himself and his employees for examination by the said attorney as aforesaid, the action of the Contractor shall be dismissed.

ARTICLE 24. PERFORMANCE OF EXTRA OR DISPUTED WORK

- A. While the Contractor or his Subcontractor is performing extra work ordered by the YPS under Article 21 hereof (unless payment therefore is to be made by a lump sum or at unit prices previously agreed upon) or is performing disputed work or complying with a determination or order under protest in accordance with Article 23 hereof, in each such case the Contractor shall furnish the Engineer daily with three (3) copies of written statements signed by the Contractor's representatives at the site showing:
 - 1) The name and home telephone number of each worker employed on such work or engaged in complying with such determination or order, the number of hours employed thereon, and the character of the work each is doing; and
 - 2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work or compliance with such determination or order, and from whom purchased or rented.
- B. A copy of such statement will be countersigned by the Engineer, noting thereon any items not agreed to or questioned, and be returned to the Contractor within two (2) days after submission. The Contractor and his Subcontractors, when required by the YPS, must also produce for inspection, at the office of the Contractor or Subcontractor, any and all of his books, vouchers, records, daily job diaries and reports, and canceled checks, showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such work or in complying with such determination or order, and the amounts expended therefore, and must permit the YPS to make such extracts there from or copies thereof as the YPS may desire.
- C. Failure to comply strictly with these requirements shall constitute a waiver of any claims for extra compensation or damages on account of the performance of such work or compliance with such determination or order.

ARTICLE 25. OMITTED WORK

If any Contract work in a lump sum Contract, or if any part of a lump sum item in a unit price Contract, is omitted by the YPS, the Contract price shall be reduced by an amount equal to the estimated cost of such omitted work, computed in accordance with Items 1 through 6 of subpart A of Article 22, unless the Contractor and YPS can agree upon another method of fixing the value of such omitted work. If any Contract work in a unit price Contract, whether the whole of a lump sum item or units of any other item, is so omitted, no payment will be made therefore.

ARTICLE 26. NO ESTOPPEL

Neither the YPS nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Contract by the YPS, the Engineer, or any other officer, agent or employee of the YPS, either before or after the final completion and acceptance of the work and payment therefore:

- A. From showing the true and correct classification, amount, quality or character of the work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the work or any part thereof does not in fact conform to the requirements of this Contract; and

- B. From demanding and recovering from the Contractor any overpayment made to him, or such damages as he may sustain by reason of his failure to perform each and every part of this Contract in strict accordance with its terms, or both.

ARTICLE 27. WAIVER, MODIFICATION AND APPROPRIATIONS

- A. Waiver: Waiver by the YPS of a breach of any provision of this Contract shall not be deemed to be a waiver of any subsequent breach and shall not be construed to be a modification of terms of the Contract unless and until the same shall be agreed to in writing by the YPS as required herein.
- B. Modification: This Contract may be modified by the parties in writing in a manner not materially affecting the substance hereof. It may not be altered or modified orally.
- C. Appropriations: This Contract shall be deemed executory only to the extent of the moneys appropriated and available for the purpose of the Contract, and no liability on account thereof shall be incurred by the Contractor beyond the amount of such moneys. It is understood that neither this Contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of the Contract.

ARTICLE 28. PARTIAL PAYMENTS

- A. The YPS may make a partial payment to the Contractor on the basis of an approved estimate of the work performed during each preceding business month. The YPS shall retain five percent (5%) of the amount of each estimate.
- B. As a condition precedent to payment, on a monthly basis in accordance with the agreement of the YPS, the Contractor shall submit a Request for Payment in a form acceptable to the Engineer and YPS Finance Commissioner. The YPS shall make all monthly partial payments based on the Engineer's review and approval of the Request for Payment form. Any partial payment made pursuant to the Request for Payment shall not be construed to signify acceptance of partially completed work or as a waiver of the right of the YPS to require the fulfillment of all the terms of the Contract.
- C. In preparing estimates for partial payment, material delivered to the site, and properly stored and secured at the site, material in short or critical supply or material specially fabricated and other material approved to be stored off-site under such conditions as the YPS shall prescribe may be taken into consideration. Unless otherwise provided by the YPS the conditions for payment of material stored off-site shall include but not be limited to the following: (a) the material shall be properly stored in a secured location approved by the YPS; (b) the material will be covered under the YPS's builder's risk policy, if any, subject to all policy limits and restrictions; and, (c) the material may be inspected by the YPS to assure compliance with project specifications. In order to seek payment pursuant to this Article, the Contractor must by, a date approved by the Engineer, submit a list to the YPS of the material in short or critical supply, material specially fabricated for the work at the site, or material which for any other reason must be stored off-site; such list must be accompanied by a detailed backup substantiating the Contractor's position that it is material in short or critical supply, or material specially fabricated for work at the site and/or must be stored off-site. All costs related to the storage of materials, or material in short or critical supply or material specifically fabricated for the work at the site are the sole responsibility of the Contractor. In addition to the above, the Contractor must demonstrate that the material stored either at the site or off-Site has been paid for in full by the Contractor, and upon partial payment by the YPS becomes the sole property of the YPS.

ARTICLE 29. CONTRACTOR'S PAYMENT TO SUBCONTRACTORS

- A. The Contractor shall make prompt payment to the Subcontractors within fifteen (15) calendar days of the receipt of any payment from the YPS. The Contractor shall pay to each such Subcontractor that portion of the proceeds of such payment representing the value of the work performed by such Subcontractor, based upon the actual value of the subcontract, which has been approved and paid for by the YPS, less an amount necessary to satisfy any claims, liens, or judgments against such Subcontractor which have not been suitably discharged and less any amount retained by the Contractor as provided herein. For such purpose, the subcontract may provide that the Contractor may retain not more than five percent (5%) of each payment to such Subcontractor or not more than ten percent (10%) of each such payment if prior to entering into the subcontract such Subcontractor is unable or unwilling to provide, at the request of the Contractor, a performance bond and a labor and material bond both in the amount of the subcontract. Contractor warrants and represents that it will execute such certificate or statements as the YPS may require to prove compliance with this provision.
- B. Nothing herein shall relieve the Contractor from its obligation to complete the work, nor shall anything herein create any relationship in contract or otherwise, implied or expressed, between any Subcontractor and the YPS.

ARTICLE 30. PAYMENT PURSUANT TO FINAL VOUCHER

- A. As a condition precedent to receiving payment for all work, the Contractor shall submit all required certificates and documents, together with a final requisition for the balance claimed to be due under the Contract, less any amount authorized to be retained for maintenance subsequent to final acceptance.

- B. Verified Statement of Claims: The Contractor must also submit with the final requisition a final verified statement of any and all alleged claims against the YPS, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 13 and 23 hereof) setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item. With reference to each such claim, the YPS shall have the same right to inspect, and to make extracts or copies of, the Contractor's books, vouchers, records, etc., as is referred to in Articles 23 and 24 hereof. Nothing contained in this Article is intended to or shall relieve the Contractor from the obligation of giving timely notice of claims pursuant to Articles 23 and 24 hereof. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor upon acceptance of the payment pursuant to the final voucher, pursuant to Article 31 hereof, will have waived any such claims.
- C. Preparation of Final Voucher: After receiving the notices required under Sections A and B herein, the Engineer will promptly make a final inspection. If, upon inspection, the Engineer determines that no further work is necessary, the Engineer will prepare and certify, subject to the approval of the Board of Education, a voucher for payment less any and all deductions authorized to be made under this Contract or by law. Payment pursuant to such final voucher, less any deductions authorized to be made under this Contract or by law, shall constitute final acceptance, and shall be made by the YPS within thirty (30) days after approval of the Board of Education.

ARTICLE 31. ACCEPTANCE OF FINAL PAYMENTS

- A. The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment which shall include the return of all retainages, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release to the YPS from any and all claims of, and liability to, the Contractor for anything heretofore done or furnished for or relating to or arising out of this Contract and the work done hereunder, and for any prior act, neglect or default on the part of the YPS or any of its officers, agents, or employees, excepting only a claim against the YPS for the amounts deducted or retained in accordance with the terms and provisions of this Contract or by law, and excepting a claim, not otherwise waived, which is contained in the verified statement filed with the Contractor's final requisition pursuant to Article 30 hereof.
- B. The Contractor is warned that the execution by him of a release, in connection with the acceptance of the final payment, containing language pertaining to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the YPS, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any officer, agent or employee of the YPS to the contrary notwithstanding.
- C. Should the Contractor refuse to accept the final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.
- D. The Contractor, prior to commencing an action for breach of Contract must serve a detailed and verified statement of claim upon the YPS's Corporation Counsel not later than forty (40) days after the acceptance of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

ARTICLE 32. LIENS

Upon receipt of a lien, the YPS shall send Notice to the Contractor stating that a sum which shall be one and one-half (1 ½) times the amount stated to be due in the notice of lien shall be deducted from payments due the Contractor. This sum shall be withheld until the lien is discharged.

ARTICLE 33. WITHHOLDING OF PAYMENTS

- A. The YPS may withhold from the Contractor any part of any payment as may, in the judgment of the YPS, be necessary:
 - 1) to assure payment of just claims of any persons supplying labor or materials for the work;
 - 2) to protect the YPS from loss due to defective work not remedied; or
 - 3) to protect the YPS from loss due to injury to persons or damage to the work or property of others caused by the act or neglect of the Contractor. The YPS shall have the right to apply any amount so withheld, in such manner, as the YPS may deem proper to satisfy claims or to secure protection. Such application of the money shall be deemed payments for the account of the Contractor.
- B. The provisions of this Article are solely for the benefit of the YPS and any action or non-action hereunder by the YPS shall not give rise to any liability on the part of the YPS.

ARTICLE 34. EMPLOYEES

- A. The Contractor and its subcontractors shall not employ on the Contract work:
 - 1) Anyone who is not competent, faithful and skilled in the work for which he or she shall be employed; and whenever the YPS shall inform the Contractor, in writing, that any employee is, in the YPS's opinion, incompetent, unfaithful, or disobedient, he shall be discharged from the work forthwith, and shall not again be employed upon it; or

- 2) Any labor, materials or means whose employment, or utilization during the course of this Contract, may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of work or similar troubles by workers employed by the Contractor his Subcontractors, or by any of the trades working in or about the buildings and premises where work is being performed under this Contract, or by other Contractors or their Subcontractors pursuant to other Contracts, or on any other buildings or premises owned or operated by the YPS of Yonkers, its agencies, departments, boards or authorities. Any violation by the Contractor of this requirement may be considered as proper and sufficient cause for declaring the Contractor to be in default; or
- 3) In accordance with Section 220 (3-e) of the Labor Law, the Contractor and his Subcontractors shall not employ on the work any apprentice unless he is registered individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above shall be paid the wage rate determined by the classification of work he actually performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the Contract work.

ARTICLE 35. AFFIRMATIVE ACTION POLICIES; EMPLOYER AND PROFESSIONAL RESPONSIBILITIES

- A. **Affirmative Action:** The Contractor shall comply with, and assist the YPS in implementing, all affirmative action policies set forth in the Contract as well as any such policies or regulations which may be issued or amended by the YPS from time to time, and all requirements under applicable Federal, State and Municipal statutes, and any applicable regulations thereunder, relating to equal employment opportunities for all individuals.
- B. **Employer Responsibilities:** The Contractor shall comply with the provisions of all applicable State and Municipal requirements and with all State and Federal laws applicable to the Contractor as an employer of labor or otherwise as well as any labor provisions set forth in this Contract.
- C. **Professional Status Requirements:** The Contractor shall comply, at its own expense, with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, Subcontractors and others employed to undertake and complete the work hereunder.

ARTICLE 36. LABOR LAW PROVISIONS

- A. The Contractor agrees, as required by Labor Law Sections 220 and 220-d, as amended, that:
 - 1) no laborer, worker or mechanic in the employ of the Contractor or any Subcontractor employed by the Contractor in the performance of this Contract shall be permitted or required to work more than eight (8) hours in any one (1)calendar day or more than five (5) days in any one week except in cases of extraordinary emergency, as defined in the Labor Law;
 - 2) the wages paid for a legal day's work to each laborer, worker or mechanic employed by the Contractor or any Subcontractor in the performance of this Contract shall not be less than the prevailing rate of wages as defined by law;
 - 3) each laborer, worker or mechanic employed by the Contractor or any Subcontractor in the performance of this Contract shall be provided the prevailing supplements as defined by law;
 - 4) the minimum hourly rate of wages to be paid and the minimum supplement to be provided to the laborers, workmen or mechanics employed in the performance of this Contract, either by the Contractor or any Subcontractor, shall not be less than that which shall be designated by the Commissioner of Labor of the State of New York; and
 - 5) the Contractor and any Subcontractor shall pay all employees engaged in the performance of this Contract in full, less legally required deductions, in accordance with Labor Law Section 220.3. All such payments shall be made in cash, except payment may be made by check to the extent permitted by law.
- B. The Contractor agrees that as required by Labor Law Section 220-e, in case of underpayment of wages or supplements to any worker engaged in the performance of this Contract by the Contractor or any Subcontractor, the YPS may withhold from the Contractor out of payments due any amount sufficient to pay such worker the differences between the wages and supplements required to be paid by the Labor Law and wages and supplements actually paid such worker for the total number of hours worked plus interest as provided in the Labor Law, and that the YPS may disburse such amount so withheld by the YPS for and on account of the Contractor to the employees to whom such amount is due. The Contractor further agrees that the amount to be withheld pursuant to this Paragraph B may be in addition to any other amounts permitted to be retained by the YPS.

- C. Prevailing Wage Enforcement: The Contractor agrees to pay for the cost of any investigation conducted by or on behalf of the YPS which discovers a failure to pay prevailing wages by the Contractor or its subcontractor(s). The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the YPS is hereby authorized to deduct from the Contractor's account an amount equal to the cost of such investigation.
- D. Daily Sign-Out Log Requirements:
- 1) Each day of the Contract Work, the Contractor and its subcontractors shall complete a Daily Sign-Out Log acceptable to the YPS for all their hourly employees performing work on the Project. In addition, the Contractor and its subcontractors shall insure that all employees listed on the daily log verify the information on the log applicable to them by signing next to their name.
 - 2) The Contractor and its subcontractors shall deliver the Daily Sign-Out Log originals to the Engineer or his representative at a frequency acceptable to that representative. However, the Contractor's and its subcontractors' log submissions must be current before the YPS will process the Contractor's Requests for Payments for any particular period.
- E. If during the performance of the work a harmful dust hazard is created for the elimination of which appliances or methods have been approved by the Industrial Board of Appeals of the State of New York, such appliances and methods shall be installed, maintained and effectively operated by the Contractor in compliance with Labor Law Section 222-a. If Labor Law Section 222-a is not complied with, the YPS may void this Contract in which event the YPS shall have the same rights and remedies as it would have in the case of termination under this Contract in addition to any other rights and remedies of the YPS.

ARTICLE 37. NON-DISCRIMINATION PROVISIONS

- A. The Contractor agrees, as required by Labor Law Section 220-e of the Labor Law, as amended, that by signing this Agreement, the Contractor agrees that it, or any person acting on its behalf:
- 1) will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff, termination, and all other terms and conditions of employment;
 - 2) will not discriminate in the selection of Subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, or sexual orientation; and
 - 3) will permit the YPS to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such requirements.
- B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any such requirements, such noncompliance shall constitute a material breach of this Contract. The Contractor further understands that, as provided in Section 220-e of the Labor Law, as amended, there may be deducted from the amount payable to it by the YPS under this Contract a penalty of fifty dollars (\$50.00) for each person for each calendar day during which said person was discriminated against or intimidated by reason of race, creed, color, disability, sex, or national origin in violation of the provisions of this contract. The YPS may impose any or all of the following sanctions:
- 1) disapproval of the Contractor;
 - 2) suspension or termination of this Contract;
 - 3) declaring the Contractor in default; or
 - 4) adoption and adherence to an employment program.
- C. The Contractor understands that, as provided in Section 220-e of the Labor Law, as amended, this Contract may be cancelled or terminated by the YPS, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms and conditions of this Contract with regard to discrimination on the basis of race, creed, color, disability, sex or national origin. The YPS may declare any contractor who has repeatedly failed to comply with Section 220-e of the Labor Law non-responsible.

ARTICLE 38. YPS'S RIGHT TO DECLARE CONTRACTOR IN DEFAULT

In addition to those instances specifically referred to in other Articles herein, the YPS shall have the right to declare the Contractor wholly or partially in default of the work and to terminate the Contract if:

- A. The Contractor becomes insolvent; or if
- B. The Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if
- C. A voluntary or involuntary petition in bankruptcy be filed by or against the Contractor; or if
- D. The Contractor fails as required by this Contract to commence work when notified to do so by the YPS; or if
- E. The Contractor shall abandon the work; or if
- F. The Contractor shall refuse to proceed with the work when and as directed by the Engineer; or if

- G. The Contractor shall without just cause reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the YPS to complete the work in accordance with the approved Progress Schedule, and shall fail or refuse sufficiently to increase such working force when ordered to do so by the YPS; or if
- H. The Contractor shall subject, assign, transfer, convey or otherwise dispose of this Contract other than as herein specified; or if
- I. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if
- J. The YPS shall be of the opinion that the Contractor is or has been unnecessarily, unreasonably or willfully delaying (i) the performance and completion of the work, or (ii) the award of necessary subcontracts, or (iii) the placing of necessary material and equipment orders; or if
- K. The YPS shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if
- L. The YPS shall be of the opinion that the Contractor is not or has not been executing the Contract in good faith and in accordance with its terms; or if
- M. The YPS shall be of the opinion that the work cannot be completed within the time herein provided therefore or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Engineer's opinion, attributable to conditions within the Contractor's control; or if
- N. The work is not completed within the time herein provided therefore or within the time to which the Contractor may be entitled to have such completion extended.
- O. Before the YPS shall exercise the right to declare the Contractor in default by reason of the conditions set forth in Items numbered A, D, E, F, J, K, L, M and N the Contractor shall have an opportunity to be heard, on two (2) days notice, at which hearing the Contractor may have a stenographer present; provided, however that a copy of such stenographic notes, if any, shall be furnished to the YPS.

ARTICLE 39. TERMINATION BY THE YPS

In addition to the right to terminate in the event of a default under Article 38, the YPS may, at any time, terminate this Contract for the convenience of the YPS by seven (7) days written notice to the Contractor and in such event:

- A. The Contractor shall upon receipt of such notice, unless otherwise directed by the YPS:
 - 1) stop work on the date specified in the notice;
 - 2) take such action as may be necessary for the protection and preservation of the YPS's materials and property;
 - 3) cancel all cancelable orders for material, labor and/or equipment;
 - 4) assign to the YPS and deliver to the site or any other location designated by the YPS, any non-cancelable orders for material, labor and /or equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract and not incorporated in the work;
 - 5) take no action which will increase the amount payable by the YPS under this Contract.
- B. On all lump sum contracts, the YPS will pay the Contractor:
 - 1) Its direct cost as hereinafter defined or the fair and reasonable value, whichever is less, for:
 - a) the portion of the work completed up to the time of termination; and
 - b) non-cancelable material and equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract but not incorporated in the work; and
 - 2) Five (5) percent of the direct cost as hereinafter defined; and
 - 3) In addition to the foregoing, the Contractor shall be paid five (5) percent of the difference between the Lump Sum Contract price and the total of all payments made prior to the notice of termination plus all payments allowed pursuant to Paragraph B Subsections 1 and 2 of this Article.
- C. On all unit price Contracts, the YPS will pay the Contractor:
 - 1) For all completed units, the unit price stated in the Contract; and
 - 2) For uncompleted units, payment will be made pursuant to the provisions of Paragraph B Subsections 1 and 2 of this Article.
- D. Direct costs as used in this Article shall mean:
 - 1) The actual purchase price of material and equipment plus necessary and reasonable delivery costs; and
 - 2) Actual cost of labor involved in construction and installation at the site; and
 - 3) Actual cost of necessary bonds and insurance purchased pursuant to the requirements of this Contract less any amounts that have been or should be refunded by the Contractor's sureties or insurance carriers.
 - 4) Direct costs shall not include overhead.
- E. In no event shall any payments under this Article exceed the Contract price for such items.
 - 1) All payments pursuant to this Article shall be in the nature of liquidated damages and shall be accepted by the Contractor in full satisfaction of all claims against the YPS arising out of the termination.

- 2) The YPS may deduct or set off against any sums due and payable pursuant to this Article, any claims it may have against the Contractor.

F. All payments pursuant to this Article are subject to audit.

ARTICLE 40. EXERCISE OF THE RIGHT TO DECLARE DEFAULT

The right to declare in default for any of the grounds specified or referred to in Article 38 hereof shall be exercised by sending the Contractor a notice setting forth the ground or grounds upon which such default is declared.

ARTICLE 41. QUITTING THE SITE

Under receipt of such notice in Article 40, the Contractor shall immediately discontinue all further operations under this Contract and shall immediately quit the site, leaving untouched all plant, materials, equipment, tools and supplies then on the site. The site must be made safe and secure from all hazards.

ARTICLE 42. COMPLETION OF THE WORK

- A. The YPS, after declaring the Contractor in default, may then have the work completed by such means and in such manner, by Contract with or without public letting, or otherwise, as he may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site, and also such Subcontractors, as he may deem advisable.
- B. After such completion, the YPS shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting and also the total amount of liquidated damages (at the rate provided for in the Schedule "A" to this General Agreement) from the date when the work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the work. Such certificate shall be binding and conclusive upon the Contractor, his Sureties, and any person claiming under the Contract, as to the amount thereof.
- C. The expense of such completion shall be charged against and deducted out of such moneys as would have been payable to the Contractor if he had completed the work; the balance of such moneys, if any, subject to the other provisions of this Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion exceed the total sum which would have been payable under this Contract if the same had been completed by the Contractor, any such excess shall be paid by the Contractor to the YPS upon demand.

ARTICLE 43. PARTIAL DEFAULT

- A. In case the YPS shall declare the Contractor in default as to a part of the work only, the Contractor shall discontinue such part, shall continue performing the remainder of the work in strict conformity with the terms of the Contract and shall in no way hinder or interfere with any other contractors or persons whom the YPS may engage to complete the work as to which the Contractor was declared in default.
- B. The provision of this Contract relating to declaring the Contractor in default as to the entire work shall be equally applicable to a declaration of partial default, except that the YPS shall be entitled to utilize for completion of the part of the work as to which the Contractor was declared in default only such plant, materials, equipment, tools and supplies as had been previously used by the Contractor on such part.

ARTICLE 44. PERFORMANCE OF UNCOMPLETED WORK

In completing the whole or any part of the work the YPS shall have the power to depart from or change or vary the terms and provisions of this Contract, provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance shall not affect the conclusiveness of the YPS's certificate of the cost of completion referred to in Article 42 hereof, nor shall it constitute a defense to an action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for his default

ARTICLE 45. YPS'S RIGHT TO AUDIT AND INSPECTION OF RECORDS

- A. The Contractor shall maintain and keep and shall require any subcontractor to maintain and keep, for a period of at least six (6) years after the date of final acceptance, all records and other data relating to the work.
- B. Contractor's records shall be subject to audit and such records shall include but not be limited to accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rates and dividends; and any other Contractor records which may have a bearing on matters of interest to

the YPS in connection with the Contractor's work for the YPS all of the foregoing hereinafter referred to as "records" shall be open to inspection and subject to audit and/or reproduction by the YPS or its authorized representative to the extent necessary to adequately permit evaluation and verification of:

- 1) Contractor compliance with Contract requirements;
- 2) compliance with the YPS's business ethics policies set forth herein; and
- 3) compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of his payees.

Other specific records subject to audit include all information, materials and data of every kind and character such as documents, subscriptions, recordings, computerized information, agreements, purchase order, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information that may in the YPS's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs (including overhead allocations), as they may apply to costs associated with this Contract. In those situations where Contractor's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), Contractor agrees to provide the YPS's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

- C. The YPS or its designee shall be entitled to audit all of the Contractor's records for a period of six years after final payment or longer if required by law.
- D. Contractor shall require all payees (including those entering into lump sum subcontracts and lump sum major material purchase orders), to comply with the provisions of this Article by insertion of the requirements hereof in a written contract agreement between Contractor and payee. Requirements to include flow-down audit provisions in contracts with payees will apply to subcontractors, sub-subcontractors, material suppliers, etc. When working under any type of contract including lump sum agreement, unit price agreements, time and material agreements, cost plus agreements, etc., Contractor will cooperate fully and will cause all payees to cooperate fully in furnishing or in making available to the YPS from time to time whenever requested in an expeditious manner any and all such information, materials and data required by this Article of the Contract.
- E. The YPS through its authorized representative(s) shall have access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- F. If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges (of any nature) by the Contractor to the YPS in excess of one-half of one percent (.5%) of the total Contract billings, in addition to repayment or credit for the overcharges, the reasonable actual cost of the YPS's audit shall be reimbursed to the YPS by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of YPS's findings to Contractor.

ARTICLE 46. BUSINESS ETHICS

- A. During the course of pursuing contracts with the YPS and while performing contract work in accordance with this agreement, Contractor agrees to maintain business ethics standards which are aimed at avoiding any real or apparent impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with the YPS.
- B. Contractor shall permit interviews of employees, reviews and audits of accounting or other records by the YPS representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor's employees, agents, representatives, vendors, Subcontractors and other third parties paid by Contractor in their relations with the YPS's current or former employees or employee relatives.
- C. Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with the YPS's best interests. These obligations shall apply to the activities of Contractor employees, agents, subcontractors, etc. in their dealings and relations with the YPS's current and former employees and their relatives. For example, Contractor employees, agents or subcontractors shall not make or provide to be made any gifts, entertainment, payments, loans, or other considerations to the YPS's representatives, employees or their relatives.
- D. Contractor agrees to notify the YPS within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this Article.

ARTICLE 47. INVESTIGATIONS

- A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the YPS or by an inspector general or other investigatory authority of a Federal, State of New York or governmental agency or conducted by a Federal, State or governmental Agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath.
- 1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the YPS, State, or any political subdivision or public authority of New York or other public corporation thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the YPS, or any public benefit corporation organized under the laws of the State; or,
 - 2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in any investigation, audit or inquiry by any agency empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the YPS or by an inspector general or other investigatory authority of a State or YPS governmental agency that is a part of interest in, and is seeking testimony concerning the award of or performance under, any transaction, agreement, lease, permit, Contract, or license entered into with the YPS, the State or other political subdivision or public authority or other public corporation thereof or any local development corporation within the YPS, or any public benefit corporation organized under the laws of the States, then:
 - (a) The YPS may convene a hearing, upon not less than five (5) days Notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.
 - (b) If any non-governmental party to such a hearing requests an adjournment, the Contractor agrees for itself and for those acting on its behalf that the YPS may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to paragraph E below without the YPS incurring any penalty or damages.
- B. The Contractor agrees for itself and for those acting on its behalf that the penalties which may be imposed by the YPS after such a hearing and a final determination by the YPS may include but shall not exceed:
- 1) The disqualification for a period not to exceed five (5) years from the date of such a determination of any person, or any entity of which such a person was a member at the time the testimony was sought, from obtaining any contract lease, permit or license with or from the YPS; and/or
 - 2) The cancellation or termination of any and all existing contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted thereunder, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the YPS's incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the YPS.
- C. The YPS shall consider and address in reaching its determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. The YPS may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:
- (1) The parties' good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;
 - (2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity;
 - (3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses; and
 - (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in any entity subject to penalties under paragraph D above, provided that the party or entity has given actual notice to the YPS upon the acquisition of the interest, or at the hearing called for in paragraph C (1) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- D. Definitions
- 1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
 - 2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

- 3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases or permit from or through the YPS or otherwise transacts business with the YPS.
 - 4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, owner, other principal or employee.
- E. The YPS in its sole discretion may terminate this Contract upon not less than three (3) days' notice in the event the Contractor fails to promptly report in writing to the YPS's Police Commissioner or the YPS's Inspector General any solicitation for money, goods, future employment or other benefit or thing of value by or on behalf of any employee of the YPS or any other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

ARTICLE 48. CONTRACTOR'S WARRANTIES

In consideration of, and to induce the award of this Contract to it, the Contractor represents and warrants:

- A. That it is financially solvent, and sufficiently experienced and competent to perform the work; and
- B. That the facts stated in its bid and the information provided by it in the Information for Bidders is true and correct in all respects; and
- C. That its principals have read and complied with all the requirements set forth in the Information for Bidders; and
- D. That neither it nor any directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the services herein provided; and
- E. That in the performance of this Contract, it shall employ no person having such interest or possible interest. No elected official or other officer or employee of the YPS, nor any person whose salary is payable, in whole or part, from the YPS treasury, shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership or association in which he is directly or indirectly interested nor shall any such person have any interest, direct or indirect, in this Contract or in the proceeds thereof; and
- F. That the Contractor is familiar with all Federal, State, or other laws, ordinances, orders, rules and regulations, which may in any way affect the work; and
- G. That the Contractor has carefully examined the Contract and the site of the work and that, from the Contractor's own investigations is satisfied as to the nature and location of the work, the character quality and quantity of surface and subsurface materials likely to be encountered, the character or equipment and other facilities needed for the performance of the work, the general and local conditions, and all other materials or items which may affect the work; and
- H. That the Contractor is an independent contractor and not an employee of the YPS. Unless the Contract specifically provides otherwise, the conduct and control of the work shall be entirely the Contractor's responsibility at all times.

ARTICLE 49. CONTRACTOR PERFORMANCE EVALUATION AND CRITERIA

- A. The Engineer will evaluate a Contractor's performance for compliance with contract requirements. A Contractor will be evaluated by the Engineer at least once during performance of the contract ("interim evaluation"). In addition, a Contractor will receive a final evaluation near the completion of the project. A Contractor's overall performance will be rated by the Engineer as either outstanding, very good, satisfactory, marginal or unsatisfactory.
- B. A Contractor's performance will be evaluated by the Engineer pursuant to the following criteria:
 - (1) Quality of work
 - (2) Management
 - (3) Scheduling
 - (4) Adherence to safety, industrial and hygiene requirements
- C. A marginal or unsatisfactory evaluation in any of the elements of the criteria set forth in paragraph B of this section may serve as a basis for a Contractor to receive an overall rating of marginal or unsatisfactory.
- D. A Contractor that receives an overall evaluation of either marginal or unsatisfactory will be given an opportunity to cure any deficiencies or irregularities in its performance.
- E. If a Contractor receives an overall interim evaluation of marginal, the Contractor may be suspended from bidding or subcontracting on future YPS projects for a period of thirty (30) to sixty (60) days. If a Contractor's interim evaluation is unsatisfactory, the Contractor may be suspended from bidding or subcontracting on future YPS projects for a period of (30) to ninety (90) days.

- F. If the YPS determines that a Contractor has failed to provide a cure for the deficiencies or irregularities that resulted in either a marginal or an unsatisfactory interim evaluation, or if the Contractor on a subsequent interim evaluation is rated less than satisfactory, the Contractor will be disqualified from bidding or subcontracting for the remaining term of the contract.
- G. A Contractor that receives an overall marginal, final evaluation will be disqualified from bidding or subcontracting on future YPS projects for one (1) year. A Contractor that receives an unsatisfactory rating will be disqualified from bidding, contracting or subcontracting on YPS projects for a period of up to five (5) years.
- H. If a Contractor is disqualified pursuant to a marginal or unsatisfactory evaluation, the Contractor may appeal the evaluation to the YPS or its designated representative.

ARTICLE 50. CLAIMS AND ACTIONS THEREON

- A. No claims against the YPS for damages for breach of Contract in compensation for extra work shall be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as have been herein provided.
- B. Nor shall any such action or proceeding be instituted or maintained on any such claims unless such action or proceeding be commenced within one (1) year after the date of the filing in the Office of the City of Yonkers Comptroller of the final voucher pursuant to Article 30; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Contract or of law, must be commenced within one (1) year after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and further except that an action or proceeding on a claim based upon the YPS's exercise of the right to declare the Contractor in default must be commenced within six (6) months after the date the YPS declared the Contractor in default.
- C. In the event any claim is made or any action brought in any way relating to the Contract herein, the Contractor shall diligently render to the YPS without additional compensation any and all assistance which the YPS may require of the Contractor.

ARTICLE 51. NO CLAIM AGAINST OFFICIALS, OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Contractor against any official, officer, agent, or employee of the YPS for, or on account of, anything done or omitted to be done in connection with this Contract.

ARTICLE 52. INVENTIONS, PATENTS AND COPYRIGHTS

- A. The Contractor shall be solely responsible for and shall indemnify the YPS against any claims and judgments for damages for any infringement of patents, or use of patented articles, tools, materials, equipment, appliances or processes in the performance or completion of the work, including all costs and expenses which the YPS shall or may incur or be obliged to pay by reason thereof.
- B. Any discovery or invention arising out of or developed in the course of performance of this Contract shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- C. No report, document or other data produced in whole or in part with Contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the Contract.
- D. If any copyrightable material is developed under, or in the course of performing this Contract, any Federal Agency providing federal financial participation for the Contract shall have a royalty fee, non exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purposes.
- E. In no event shall Subsections B, C, and D of this Article be deemed to apply to any report, document or other data, or any invention of the Contractor which existed prior to, or was developed or discovered independently from, its activities related to or funded by this Contract.

ARTICLE 53. SERVICE OF NOTICE

- A. The Contractor hereby designates the business address specified in his bid or the first address listed above as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place, or depositing it in a postpaid wrapper addressed thereto in any post office box regularly maintained by the United States Postal Service, shall be conclusively deemed sufficient service thereof upon the Contractor as of the date of such delivery or deposit.

- B. Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the YPS.
- C. Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor be a corporation, upon any office or director thereof, or any other methods as provided by law.

ARTICLE 54. UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT SEVERABILITY

If this Contract contains any unlawful provision not an essential part of the Contract and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Contract without affecting the binding force of the remainder.

ARTICLE 55. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

ARTICLE 56. ANTITRUST ASSIGNMENT

The Contractor hereby assigns, sells and transfers to the YPS of Yonkers all right, title and interest in and to any claims and causes of action arising under the antitrust laws of New York State or of the United States relating to the particular goods or services purchases or procured by the YPS under this Contract.

ARTICLE 57. FORUM PROVISION CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

- A. This Contract shall be deemed executed in the City of Yonkers, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.
- B. The parties agree that any and all claims asserted by or against the YPS arising under this Contract or related thereto shall be heard and determined either in the courts of the United States, located in White Plains, New York ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the County of Westchester. To effect this agreement and intent, the Contractor agrees:
 - 1) If the YPS initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the YPS in writing; and
 - 2) With respect to any action between the YPS and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside Westchester County.
 - 3) With respect to any action between the YPS and the Contractor in Federal Court located in White Plains, New York, the Contractor expressly waives and relinquishes any right it might otherwise have to move or transfer the action to a United States Court outside White Plains, New York.
 - 4) If the Contractor commences any action against the YPS in court located other than in the Westchester County, New York, upon request of the YPS, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in Westchester County, New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter re-institute the action in a court of competent jurisdiction in Westchester County, New York.
- C. If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE 58. TAX EXEMPTION

- A. The YPS is exempt from payment of state, local taxes, and sales and compensating use taxes of the State of New York and of cities and counties on all materials and supplies incorporated into completed Work. These taxes are not to be included in bids. This exception does not apply to tools, machinery, equipment or other property leased by or to the Contractor or to supplies and materials which, even though they are consumed, are not incorporated into the completed work, and the Contractor and subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating

use taxes, on said leased tools, machinery equipment or other property and upon all said unincorporated supplies and materials.

- B. The Contractor shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule or regulation.

ARTICLE 59. MERGER CLAUSE

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

ARTICLE 60. MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with **ARTICLE VI OF THE CODE OF THE CITY OF YONKERS** the bidder, by submission of this bid, certifies that if it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder: has business operations in Northern Ireland, such bidder, shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles. The bidder shall complete Schedule "C", an executed certificate of compliance with the MacBride Fair Employment Principles signed by the bidder or one of its officers as required.

ARTICLE 61. IRAN DIVESTMENT ACT COMPLIANCE

As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) (the "Prohibited Entities List"). By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, the Contractor shall complete Schedule "D", an executed certificate of compliance with the Iran Divestment Act signed by the bidder or one of its officers as required by the General Municipal Law Sec. 103g.

ARTICLE 62. SURVIVAL

The provisions in Articles 10, 13, 19, 20, 45, and 48 shall survive expiration, termination or other cancellation of this Agreement.

ARTICLE 63. ASBESTOS AND LEAD

- A. All asbestos abatement projects shall comply with all applicable Federal and State laws including but not limited to the New York State Department of Labor industrial code rule 56 (12 NYCRR 56), and the Federal Asbestos Hazard Emergency Response Act (AHERA), 40 CFR part 763 (Code of Federal Regulations, 1998 Edition, Superintendent of Public Documents, U.S. Government Printing Office, Washington, DC 20402; 1998; available at the Office of Facilities Planning, Education Building Annex, Room 1060, State Education Department, Albany, NY 12234
- B. Large and small asbestos abatement projects as defined by 12NYCRR56 shall not be performed while the building is occupied.
- 1) It is the interpretation of the New York State Education Department that the term "building", as referenced in this section, means a wing or major section of a building that can be completely isolated from the rest of the building with sealed non combustible construction. The isolated portion of the building must contain exits that do not pass through the occupied portion and ventilation systems must be physically separated and sealed at the isolation barrier.
 - 2) Exterior work such as roofing, flashing, siding, or soffit work may be performed on occupied buildings provided proper variances are in place as required, and complete isolation of ventilation systems and at windows is provided. Care must be taken to schedule work so that classes are not disrupted by noise or visual distraction.
- C. Contractor agrees not to use or permit the use of any asbestos containing material in or on any property belonging to the YPS. For purposes of this paragraph, asbestos-containing material is defined as any material containing asbestos, whether or not such material is friable or non-friable, and without regard to the purpose for which such material is used.
- D. Within seven (7) calendar days the Contractor and Sub-Contractors shall address to the YPS on company letter head, confirmation that all persons who will be surveying and performing construction activities in the school(s) will review the School's AHERA Books and asbestos specifications contained in the Contract Manual to determine where asbestos containing building materials are located in order to ensure their construction activities will not disturb asbestos containing

building materials. All persons employed under the Contractor and Sub-Contractors shall sign in at the Asbestos Short Term Worker sign in logs at the schools.

- E. Contractor also agrees that if any part of this agreement pertains to work on plumbing systems which are or may be used to provide drinking water, that any materials used, including pipes, solder, etc. shall be lead-free materials. In the event undocumented lead based paint is discovered during the work, the Contractor shall immediately notify the Engineer for instructions as to procedures to be taken.
- F. Contractor agrees to comply with the EPA's Lead-Based Paint Renovation, Repair and Painting Program Rule for Contractors and the U.S. Department of Housing and Urban Development (HUD) Lead Safe Housing Rule (24CFR Part 35).

ARTICLE 64. SOLID WASTE REMOVAL

- A. Contractors and their sub-contractors hauling solid waste from the Yonkers Public Schools property shall be removed by haulers who have been issued licenses by the Westchester County Solid Waste Commission.
 - 1) "Solid Waste" means all putrescible and non-putrescible materials or substances, except as described in Paragraph 4 of 6 NYCRR Part 360-1.2(a), and/or regulated under 6 NYCRR Part 364, that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection including, but not limited to, garbage, refuse, commercial waste, rubbish, ashes, incinerator residue and construction and demolition debris. "Solid Waste" shall not be understood to include Recyclables as defined in this chapter.
 - 2) "Construction and Demolition Debris" as defined by Chapter 826-a of the Laws of Westchester County, means uncontaminated Solid Waste resulting from the construction, remodeling, repair and demolition of structures and roads, and uncontaminated Solid Waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm-related cleanup. Such waste includes, but is not limited to, bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no hazardous liquids, metals, and trees or tree limbs that are incidental to any of the above.
 - 3) "Hauler" means any person excluding Municipalities, the County and any County district including, but not limited to, Refuse Disposal District No. 1 and all County sewer and water districts, who, for a fee or other consideration, collects, stores, processes, transfers, transports or disposes of Solid Waste, Recyclables or construction and demolition debris that is generated or originated within the County or brought within the boundaries of the County for disposal, storage, transfer or processing.

ARTICLE 65. USE OF BUILDING DURING WORK

- A. In the event that the Work corresponds with the use or occupancy of YPS facilities or buildings, Contractor agrees to carry on the work in such a manner as not to interfere with the free and comfortable use of the YPS facilities or buildings for school purposes.
- B. Construction areas which are under the control of a contractor and therefore not occupied by YPS staff or students shall be separated from occupied areas. Provisions shall be made to prevent the passage of dust and contaminants into occupied parts of the building. Periodic inspection and repairs of the containment barriers must be made to prevent exposure to dust or contaminants. Gypsum board must be used in exit ways or other areas that require fire rated separation. Heavy duty plastic sheeting may be used only for a vapor, fine dust or air infiltration barrier, and shall not be used to separate occupied spaces from construction areas.
- C. A specific stairwell and/or elevator should be assigned for construction worker use during work hours. In general, workers may not use corridors, stairs or elevators designated for students or school staff.
- D. Large amounts of debris must be removed by using enclosed chutes or a similar sealed system. There shall be no movement of debris through halls of occupied spaces of the building. No material shall be dropped or thrown outside the walls of the building.
- E. All occupied parts of the building affected by renovation activity shall be cleaned at the close of each workday. School buildings occupied during a construction project shall maintain required health, safety and educational capabilities at all times that classes are in session.
- F. "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 contractor shall be responsible for the control of chemical fumes, gases, and other contaminants produced by welding, gasoline or diesel engines, roofing, paving, painting, etc. to ensure they do not enter occupied portions of the building or air intakes."
- H. "The contractor shall be responsible to ensure that activities and materials which result in "off-gassing" of volatile organic compounds such as glues, paints, furniture, carpeting, wall covering, drapery, etc. are scheduled, cured or ventilated in accordance with manufacturers recommendations before a space can be occupied."
- I. Facilities Egress Doors and Gates shall always be locked unless a worker is in attendance to prevent unauthorized entry.
- J. Maintain exiting and ventilation during school construction projects.

ARTICLE 66 MAINTENANCE OF JOB SITE

- A. The Contractor shall, at all times, keep the premises free from excess waste material or rubbish caused by his employees or work and at the completion of the work, he shall remove all rubbish from and about the building and all his tools, scaffolding, and surplus materials and shall leave his work "Broom clean" or its equivalent, unless more exactly specified. In case of dispute, the YPS may remove such rubbish and charge such cost to the Contractor, as the Engineer shall deem to be just.
- B. Contractor, unless otherwise directed, shall close up all exterior openings in a suitable and effective manner, and maintain such enclosure until permanent work is in place, or until directed by the Engineer to remove the enclosures.
- C. The Contractor shall be responsible for damage of any kind, sort of description to the structure, trees, grass, shrubbery, sidewalks, roads, walks, steps, fences, walls, furniture, equipment, building contents, etc., occasioned by or through the activities of himself, his employees, his Subcontractors or their employees and he shall make good immediately upon notification by the Engineer without extra expense to YPS.

ARTICLE 67 DEMOLITION

- A. The Contractor shall do all demolition, protection, etc., in the existing building(s) that is required in order to execute the work shown on the drawings and hereinafter specified. Dust-tight enclosures shall be provided by the Contractor wherever demolition work is to be done. The Contractor shall make such temporary provisions for weather protection and protect the interior of the building(s) and contents from damage as may be necessary. The Contractor shall carefully take down all work shown to be removed in such manner as to cause the least possible amount of damage and protect all existing portions of the building(s) and contents in any manner necessary to preserve same from damage by the elements, from dust or by the work.

ARTICLE 68 GENERAL SAFETY AND SECURITY STANDARDS FOR CONSTRUCTION PROJECTS

- A. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.
- B. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the YPS and Engineer in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the YPS and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the YPS and Contractor, or in accordance with final determination by the Engineer.
- C. The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).
- D. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - 1) Employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub subcontractors.
 - 2) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
 - 3) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

- 4) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- E. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the YPS and Engineer.
- F. All construction materials shall be stored in a safe and secure manner.
- G. Fences around construction supplies or debris shall be maintained.
- H. During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.
During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry
- I. Manufacturer's material Safety Data Sheets (MSDS) shall be maintained at the site for all products used in the project. MSDS must be provided to anyone who requests them. MSDS indicate chemicals used in the product, product toxicity, typical side effects of exposure to the product and safe procedures for use of the product.
 - 1) The Contractor shall also maintain at the site for the YPS two (2) copies of the project's Manufacturer's Safety Data Sheets and Contractor's Health & Safety/Emergency Action Plan Manual. Each copy shall be bound in its own three (3) ring binder and be properly labeled. One copy shall be distributed to the School's Head Custodian and the other maintained at the Contractor's field office.
- J. Each and every employees of the contractor and sub-contractor must:
 - 1) Sign in and out of each building with the head custodian for each site visit.
 - 2) Sign the AHERA Asbestos Notification Acknowledgement.
 - 3) Be restricted to the zone of work and not permitted access to any areas of the building and grounds not specifically related to the work at hand.
 - 4) Wear and display prominently a photo identification badge at all times.
 - 5) Refrain from any and all fraternization or undue communication with students or teachers.
 - 6) Take direction only from the supervisor of Buildings and Grounds or his agent.
 - 7) Refrain from smoking anywhere on YPS grounds.
 - 8) Comply with OSHA regulations regarding personal protection gear, (e.g., head, eye and ear protection).

ARTICLE 69 PERFORMANCE, PAYMENT SECURITY

- A. **PERFORMANCE SECURITY.** The Contractor is required to submit performance security in the amount specified in Schedule "A" to the General Agreement. The performance security shall be delivered by the Contractor to the YPS within ten (10) business days after the receipt of a Notice of Award. If a Contractor fails to deliver the required performance security, the award shall be rescinded, its bid security shall be enforced and award of the Contract may be made to the next lowest responsible bidder or the Contract may be rebid.
- B. **PAYMENT SECURITY.** Payment security is required for all construction contracts in accordance with State law in the amount specified in Schedule "A" of the General Agreement. The payment security shall be delivered by the Contractor to the YPS within ten (10) business days after the receipt of a Notice of Award. If a Contractor fails to deliver the required payment security, the award shall be rescinded, its bid security shall be enforced and award of the Contract may be made to the next lowest responsible bidder or the Contract may be re-bid.
- C. **ACCEPTABLE SECURITY.** Acceptable security for bids, performance and payment shall be limited to:
 1. A bond in a form satisfactory to the YPS – **Note: AIA bond forms are NOT ACCEPTABLE.**
 2. A bank certified check or money order.
 3. Attorneys in fact who sign said bonds on behalf of a surety must affix to each bond a certified copy of their power of appointment, indicating the effective period.
 4. All bonds must be submitted on the exact form provided in the contract documents.

- D. **LIMITATIONS PERIOD.** To the extent a bond refers to a “final payment” in any provision referring to a time in which a cause of action may be brought, “final payment” shall be deemed to mean payment of all amounts due including the release of all retained amounts.

ARTICLE 70 COMPLIANCE

- A. Whenever applicable, the Contractor shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, including without limitation, as follows:
1. New York State Education Law; New York State Education Department (“NYSED”) requirements, including without limitation, with respect to criminal background checks, finger printing, compliance filings and regulations of the Commissioner of Education. Contractor is responsible for all NYSED compliance filings, if any;
 2. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99);
 3. School District policies, practices and procedures;
 4. All labor law requirements, including without limitation, prevailing wage, posting, training, pay-roll, filings.
 5. Title VI of the Civil Rights Act of 1964 as amended and Title VII of the Civil Rights Act of 1968 as amended; and
 6. Americans with Disabilities Act.
- B. In the event grant funding is provided hereunder, the Contractor acknowledges and agrees that it has reviewed the applicable grant agreement and any other relevant documents (together the “Grant”). Contractor agrees to, and will cause any subcontractors or other agents under its control to agree to, comply with all applicable Grant requirements, including without limitation all rules and regulations promulgated in furtherance thereof. The Contractor further agrees to supply such information and reports as the City or School District may request. Contractor will prepare any necessary waiver requests. Contractor will, upon request, provide access to the City or such other agency administering the Grant, to examine all relevant books, records, documents or electronic data of the Contractor necessary to review Contractor’s compliance.

Any term or condition required by the Grant to be set forth herein, to the extent it is not set forth is deemed incorporated herein by reference. Contractor hereby certifies that neither it, nor its subcontractor(s), are not debarred or suspended, or otherwise excluded from or ineligible to receive said Grant funding.

ARTICLE 71 - FACILITY REGULATIONS

- A. Construction and maintenance operations shall not produce noise in excess of 60dba 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.
- B. A plan detailing how exiting required by the applicable building code will be maintained. Existing exits from occupied portions of buildings must be continuously maintained or alternative exits provided
- C. Existing fire safety systems, such as fire alarms and exit and emergency lights, must be continuously maintained or provisions made to provide equivalent safety. In addition, the fire department must be notified of any non-operating systems.
- D. Provide and follow a plan detailing how adequate ventilation will be maintained during construction.

ARTICLE 72 - WEATHER CONDITIONS

- A. In the event of temporary suspension of work, or during inclement weather, or whenever so directed by the A/E, work and materials shall be protected against the elements by Contractor. All work or material found to be damaged by the elements shall be removed and replaced without cost to the YPS.
- B. No masonry or plasterwork shall be done in freezing or sub-freezing weather without written permission from the A/E, whose decision as to the temperature at which such work shall be done is final.

ARTICLE 73 - SECURITY

- A. The Contractor shall be solely responsible for damage, loss or liability at the job site due to theft or vandalism. Contractor, with requested permission, may employ a watchman or security guard, at no additional cost to the Board, for protection at night, and on weekends and holidays.

ARTICLE 74 - ALLOWANCES

- A. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the YPS may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.
- B. Unless otherwise provided in the Contract Documents:
 - 1. materials and equipment under an allowance shall be selected promptly by the YPS to avoid delay in the Work;
 - 2. allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - 3. Contractor's costs for overhead and profit for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
 - 4. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order.

ARTICLE 75 - DOCUMENTS AT THE SITE

- A. The Contractor shall maintain at the site for the YPS one record copy of the Drawings, Specifications, addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the A/E and shall be delivered to the A/E for submittal to the YPS upon completion of the Work.
- B. The Contractor shall also maintain at the site for the YPS two (2) copies of the project's Manufacturer's Safety Data Sheets and Contractor's Health & Safety/Emergency Action Plan Manual. Each copy shall be bound in its own three (3) ring binder and be properly labeled. One copy shall be distributed to the School's Head Custodian and the other maintained at the Contractor's field office.

ARTICLE 76 - SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- B. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- C. Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- D. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the A/E is subject to the limitations of Subparagraph "2 C".
- E. The Contractor shall review, approve and submit to the A/E and with copies to the CM, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the YPS or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

- F. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the A/E. Such Work shall be in accordance with approved submittals.
- G. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- H. The contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the A/E's approval of Shop Drawings, Product Data, samples or similar submittals unless the Contractor has specifically informed the A/E in writing of such deviation at the time of submittal and the A/E has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the A/E's approval thereof.
- I. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the A/E on previous submittals.
- J. Informational submittals upon which the A/E is not expected to take responsive action may be so identified in the Contract Documents.
- K. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the A/E shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

ARTICLE 77 - CONTRACTOR'S CONSTRUCTION SCHEDULES

- A. The Contractor, shall, within 15 calendar days of being awarded the Contract, prepare and submit for the YPS A/E's and CM's, information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- B. The schedule shall be in a bar graph format listing all discrete items of work including the submission and review of all shop drawings.
- C. The Contractor shall prepare and keep current for the A/E's and CM's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the A/E reasonable time to review submittals. The schedule of submittals is to be provided prior to the submission of the first Application and Certificate for Payment.
- D. The schedule shall be updated to reflect any and all changes in the progress of the work. Revised schedules are to be submitted with each monthly payment. The Contractor shall conform to the most recent schedules.

ARTICLE 78 - SUBSTANTIAL COMPLETION

- A. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the YPS can occupy or utilize the Work for its intended use.
- B. Contractor reiterates and confirms his express understanding that he waives all defenses in connection with any delay in receiving the site to commence work pursuant to Section "A," Paragraph 4 – "Time of Performance", Instructions to Bidders, and that his obligation is to fully comply with the Contract Time under all circumstances pursuant to Section "9 C", General Conditions, above. This waiver and obligation to complete is given as a material inducement for the Board to execute this Agreement.

- C. When the Contractor considers that the Work, or a portion thereof which the Board agrees to accept separately, is substantially complete, the A/E will make an inspection to determine whether the Work or designated portion thereof is substantially complete. The A/E or Inspector shall prepare and submit to the Contractor a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

ARTICLE 79 - PAYMENTS

- A. **Once an Application for Payment is approved by the A/E and CM, the YPS shall make payment to the Contractor not later than seventy (70) days after the Yonkers Public Schools receives the Application for Payment. The Contractor must bid and finance the project accordingly.**
- B. SCHEDULE OF VALUES: Within ten (10) days of notice of intent to award the Contractor shall submit to the A/E and CM a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the A/E and CM may require. This schedule, unless objected to by the A/E and CM, shall be used as a basis for reviewing the Contractor's Applications for Payment.
- C. Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents.
- D. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- E. Payment Applications are to be made in a format and on forms acceptable to the A/E and CM, this format and/or form is to be similar to or as per AIA Document G702/CMa-1992 version, Application and Certificate for Payment, Construction Manager – Advisor Edition.
- F. When making an application for payment the Contractor shall provide as part of the application for payment the following:
- G. Prerequisites to the initial application for payment that are to be submitted to the A/E and CM are as follows:
1. Certificate of liability insurance as stipulated for the project.
 2. Labor & Material payment bonds
 3. Performance bond
 4. Approved Schedule of Values
 5. Construction Schedule
 6. Submittal Schedule
 7. Emergency Phone Numbers and Contacts
 8. Health and Safety Manual
- H. When making Progress Payments the Contractor shall provide as part of the application for payment the following:
- a. Certified Payroll
 - b. Updated Insurance Accord
 - c. Partial Waiver of Liens for that portion of the work, materials, Sub-contractors and or Suppliers.
 - d. Updated Construction Schedule

All of the above documents shall be paper clipped, not stapled. Incomplete applications for payment will not be considered.

ARTICLE 80 – REQUEST FOR FINAL PAYMENTS

In the event the work is not completed by the schedule date, listed in the Notice to Proceed, and in addition to the other remedies provided in the Contract, **the A/E will not review progress payment requisitions submitted after the construction completion date**, and the YPS will not issue any progress payments after that date, until all work is completed.

Only one requisition for work performed, after the construction completion date, may be submitted, and it may be submitted only when all work is complete and a Punch List inspection is conducted; said requisition may be submitted when the work at 100% complete.

ARTICLE 81 - CLOSEOUT DOCUMENTS

The Contractor shall provide three (3) copies of Closeout Documents neatly collated in a hard bound three (3) ring binder and three (3) copies saved in PDF format to Flash Drives or CD. Close-out Documents shall include the following separated by tabs and correctly labeled:

1. Certificates of Substantial Completion produced by the Architect.
2. Contract, Change Orders and Change Order Log
3. Contractors Warrantees
4. Manufacturer's Warrantees
5. Waiver of Liens
6. Affidavit for Debt & Claims
7. Consent of Surety
8. Operations and Maintenance Manuals
9. Approved Shop Drawings Submittals with each specification section separated by tabs.
10. Approved Asbestos Abatement Closeout submittals
11. As-Built Built Drawings
 1. As-Built Drawings shall be provided in paper copy and electronic copy for each 3 ring binder. Electronic copies shall consist of a PDF and in AutoCAD 2008 software).
 2. As-Built Drawings developed by hand mark-ups/sketching of Plan Drawings will not be accepted. As-Built Drawings are to be 100% drawn in AutoCAD, accurate and to scale. The Contractor may request the AutoCAD drawings from the Architect/Engineer as a baseline, however, the Contractor is to confirm and correct all field dimensions and changes. This includes but is not limited to floor plans, elevation plans, details, riser diagrams and schedules. Drawing notes shall also require revisions to meet the changes noted on the floor plans, elevation plans, details, riser diagrams and schedules.

ARTICLE 82 - PERMITS AND REGULATIONS

- A. The Contractor shall obtain and pay for all permits and licenses, but not permanent easements, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work, as drawn and specified. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, he shall be liable for all damages to persons or property, direct or indirect, of any nature and shall bear all costs arising there from.

IN WITNESS WHEREOF: The Mayor, or his authorized designee, on behalf of the YPS and the Contractor, have executed this agreement in duplicate for the purposes herein mentioned.

YONKERS PUBLIC SCHOOLS

PETER J. LANDI, INC.

Name of Contractor

By: [Signature]
Name: Dr. Edwin Quezada *MB*
Title: Interim Superintendent of Schools
Date: 11/20/17

By: [Signature]
Name: Peter Landi
Title: Vice President
Date: 10/23/2017

By: [Signature]
Name: REV. STEVE LOPEZ
Title: President, Board of Education *MB*
Date: 11/22/17

APPROVED AS TO FORM

[Signature]
Yonkers Associate Corporation Counsel

DATE BOE APPROVAL: September 19, 2017

DATE BOCS APPROVAL: September 21, 2017

BUYER: Alex Schenck (914) 377-6037

ACKNOWLEDGEMENT OF THE YONKERS PUBLIC SCHOOLS

State of New York
County of Westchester
YPS of Yonkers

ss:

On this ____ day of _____, 20____, before me personally came _____, to me known, and known to me to be the President of the Board of Education of the Yonkers Public Schools; executed the foregoing instrument pursuant to a resolution of the Yonkers Board of Education; and he acknowledged to me that he executed the same for and on behalf of the Yonkers Board of Education for the purposes herein mentioned.

Notary Public or Commissioner of Deeds

ACKNOWLEDGEMENT WHERE THE CONTRACTOR IS A CORPORATION

STATE OF New York)
COUNTY OF Westchester)

ss:

LAURA JOHNSON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01JO6364673
Qualified in Westchester County
My Commission Expires 09/18/2021

On the 23 day of October, in the year 20 17, before me personally came Peter Landi, to me known, who, being by me duly sworn, did depose and say that he/she resides at Valhalla, NY, that he/she is the Vice President of Peter J. Landi, Inc, the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

(Handwritten signature)
Notary Public

ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP

STATE OF _____)
)
COUNTY OF _____)

ss:

On the _____ day of _____, in the year 20____, before me personally
came _____, to me known and known to me to be a member
of the firm _____; described in and who executed the same for and in
behalf of said firm for the uses and purposed mentioned therein.

Notary Public

ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL

STATE OF _____)
)
COUNTY OF _____)

ss:

the _____ day of _____, in the year 20____, before me personally same
_____, to me known and known to me to be the person described in and
who executed the foregoing instrument, and he/she duly acknowledged that he /she executed the same.

Notary Public

SCHEDULE "A" to the GENERAL AGREEMENT

Bid No.: **ITB-6173**

Contract No. **2018-235**

Description: **109 Oak St. Play Area Project -- Enrico Fermi School**

| <u>Reference</u> | <u>Item</u> | <u>Requirement</u> |
|---|---------------------------------------|--|
| Information for Bidders Section VIII | Bid Security | <u>5</u> % of Bid Amount |
| Information for Bidders Section: VIII/ Agreement Article 69 | Performance/ Payment Security | <u>100</u> % of Contract Amount |
| Agreement Article 6 | Time of Completion | Total Consecutive Calendar Days <u>277</u> |
| Agreement Article 6 | Liquidated Damages | For Each Consecutive Calendar Day Over Completion Time <u>\$200</u> |
| Agreement Article 17 | Subcontracts* General Construction | Not to Exceed 75% of the Contract Total |
| Agreement Article 19 | Insurance | See below |
| Agreement Article 20 | Maintenance Deposit | (a) 5% of Contract Amount (b) Other _____ |

*Any part of the work performed by supervisory personnel (persons above the level of foreman) or by the office personnel shall not be considered part of the work performed.

Where indicated by an (x), Insurance in the amounts specified below are required under this Contract.

| | | |
|-----|-----------------------|---------------------------|
| (x) | Worker's Compensation | Statutory |
| (x) | Employer's Liability | \$1,000,000 each Accident |

(x) Commercial General Liability – Combined Single Limit-Bodily Injury and Property Damage:

- \$1,000,000 per occurrence
- \$1,000,000 Products/Completed Operations Aggregate
- \$2,000,000 General Aggregate
- \$25,000 Maximum Deductible

(x) Automobile Liability – Combined Single Limit – Bodily Injury and Property Damage:

- \$1,000,000 per person each occurrence for Bodily Injury
- \$100,000 per occurrence Property Damage

The following coverage must be provided:

(x) Comprehensive (x) Owned (x) Hired (x) Non-Owned

(xi) Pollution Liability: Required Not Required

- \$5,000,000 per person each occurrence
- \$5,000,000 aggregate

In addition, if indicated by an (x), the following hazards must be covered:

Excess Insurance _____

Other _____

(x) Additional Named Insured:
CITY OF YONKERS, YONKERS PUBLIC SCHOOLS, and YONKERS BOARD OF EDUCATION

1. X Other

CONTRACTORS INSURANCE REQUIREMENTS – YONKERS

GENERAL PROVISIONS

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with the YPS Engineer, Certificates of Insurance evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of form and substance acceptable to the YPS.

Acceptance and/or approval by the YPS, its agents or employees, does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor, shall be maintained by the insurance carriers licensed and admitted to do business in New York State, and acceptable to the YPS; shall be primary and non-contributing to any insurance or self-insurance maintained by the YPS; shall be endorsed to provide written notice be given to the YPS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidence by return of receipt of United States Certified Mail and shall name the Contractor and identify the contract number, shall be sent to the YPS Engineer and shall name the YPS, its officers, agents and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on form number CG 20 10 11 85.)

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the YPS. Such approval shall not be unreasonably withheld. The YPS reserves the right to withhold portion of payment until the deductible is satisfied.

Each insurance carrier must be licensed in the State of New York and carry a Best's Financial rating of at least "A" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A" the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the YPS and rated at least "A" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply the YPS updated replacement Certificates of Insurance and mandatory endorsements.

If at any time any of the policies required herein shall be or become unsatisfactory to the YPS, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the YPS, the Contractor shall upon notice to that effect from the YPS, promptly obtain a new policy, submit the same to the Office of Corporation Counsel of the City of Yonkers for approval and submit a certificate thereof. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Contract, at the election of the YPS, may be declared suspended, discontinued or terminated. Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor concerning indemnification. All property losses shall be made payable to and adjusted with the YPS.

In the event that claims, for which the YPS may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Contract, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the YPS.

A. WORKER'S COMPENSATION INSURANCE

Workers' Compensation. Certificate form C-105.2 (9/07) or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Yonkers, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: www.wcb.state.ny.us (click on Employers/Businesses, then Business Permits/Licenses/Contracts to see instruction manual).

If the employer is self-insured for Worker's Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

B. EMPLOYER'S LIABILITY INSURANCE

Before performing any work on the Contract, the Contractor shall procure Employer's Liability Insurance affording compensation for all employees providing labor or services for whom worker's compensation coverage is not a statutory requirement, with a minimum limit of \$100,000.00. Two (2) certificates of such insurance shall be furnished to the Schools Facilities Management Executive Director.

C. COMMERCIAL GENERAL LIABILITY

Before commencing work at the site, the Contractor shall procure a commercial general liability insurance policy (issued by a New York admitted carrier) with a limit of not less than \$1,000,000 each occurrence. This insurance policy must be maintained during the life of the contract and shall name and protect the YPS and the City of Yonkers, the Contractor and its subcontractors performing work at the site from claims for property damage and/or bodily injury which may arise from operations under this Contract, whether such operations are performed by it or anyone directly or indirectly employed by it.

Two (2) certificates of insurance shall be furnished to the Engineer in a manner acceptable to the YPS, together with copies of all endorsements as required by this Contract. Such liability shall be written on the Insurance Service Office's (ISO) occurrence form CG 0001 or a substitute form providing equivalent coverages and shall cover liability arising from:

- (1) Premises – Operations
- (2) Independent Contractors and Subcontractors
- (3) Products and Completed Operations
- (4) Broad Form Property Damages
- (5) Personal and Advertising Injury

Additional coverages and limits may be required based upon the particular services contracted.

- (i) All contracts involving explosives, demolition and underground work shall provide the above coverage with elimination of the XCU exclusion.
- (ii) Products and Completed Operations coverage shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the owner of all Contractor's work.
- (iii) Products and Completed Operations coverage shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the owner for all Contractor's work.

D. Automobile Liability Insurance

Contractor shall procure and maintain automobile liability insurance policy (issued by a New York admitted carrier) with a limit a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

E. GENERAL LIABILITY AND AUTOMOBILE ENDORSEMENTS AND EXCLUSIONS

1. The following endorsements are required to be made on all policies:
 - (a) Notice shall be addressed to the Schools Facilities Management Executive Director, Yonkers Public Schools, One Larkin Plaza, Yonkers, New York, 10701.
 - (b) Notice of Cancellation of Policy. The policy shall not be cancelled, terminated, modified, or changed by the Company unless thirty (30) days prior written notice is sent to the Schools Facilities Management Executive Director.
 - (c) Insurers shall have no right of recovery or subrogation against the YPS (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so effected shall protect both parties and may be primary coverage for any and all losses covered by the above described insurance.
2. The policy shall contain no exclusions or endorsements, which are not acceptable to the YPS and shall be of a form and by an insurance company acceptable to the YPS.

F. CONSTRUCTION INSURANCE

1. For the construction, renovation or repair of bridges, viaducts or similar structures, the Contractor at his own cost and expense shall provide and maintain a "Bridge Builder's Risk Form, All Risk Insurance Contract," with flat premium endorsement, until the construction contract is accepted by the YPS's Board of Education. The coverage shall be written for 100% of the completed value, covering the YPS as the insured, with a deductible of not more than \$100, as recommended by the New York State Department of Insurance. The Contractor shall provide the original and duplicate policy to the YPS (unless the YPS shall accept, in lieu thereof, all contained endorsements including all applicable provisions and coverages).
2. Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents or employees, staging towers and forms, and property of the YPS held in their care, custody and/or control.
3. During the performance of the Construction Work, Restoration or Alteration, builder's risk completed value form covering the perils insured under the ISO special cases of loss form, including collapse, water damage, and transit and theft of building materials, with the deductible reasonable approved by the Senate, in non reporting form, covering the total value of work performed and equipment, supplies and materials at any off-site storage location used with respect to the Project.
4. If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with the limits of not less than \$1,000,000, providing coverage for bodily injury and property damage, including loss of use of damage property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the YPS arising from Contractors work.
 - a. If the coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time of work under this contract is completed.
 - b. If the Contract includes disposal of materials from the job site, the Contractor must furnish to the YPS, evidence of pollution legal liability insurance in the amount of \$1,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.
5. The Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.
 - a. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring or laboratory analyses.

- b. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract, and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
6. If autos are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

The Contractor shall require that any subcontractor hired, carry insurance with the same limits and provisions provided herein.

G. POLLUTION INSURANCE

1. The Contractor at his own cost and expense shall provide and maintain Contractors Pollution Liability coverage of \$5,000,000 per Occurrence and \$5,000,000 aggregate, such aggregate must be applicable on a Per Project Basis. A Contractors Pollution or Environmental Liability Umbrella/Excess policy may be utilized to satisfy these limits.
2. Contractors Pollution Liability coverage should be written on an Occurrence Basis. Occurrence Coverage must be maintained for the duration of the project and for a period of three years after the completion of the contract. If written on a Claims Made Basis the policy must have a Retroactive date which is prior to the date of the Contract and it must have a claims reporting period of no less than three years.
3. Project Owner and all other parties required by the Contract shall be included as Additional Insureds on the policy on a primary and non-contributory basis for on-going and completed operations.
4. Coverage shall provide pollution liability coverage of no less than \$1,000,000 for: Transportation Pollution Liability Coverage Non-Owned Disposal Sites Contractors Pollution coverage.

H. OTHER PROVISIONS

1. The Contractor is required to obtain and to maintain bonds and insurance outlined herein.
2. The bonds and insurance required for this contract must be on forms acceptable to the YPS and offered by insurers and sureties acceptable to the YPS. The insurance and bonds for all New York contractors must be issued by New York authorized carriers and must comply with all requirements of New York Law and Regulation, and in the case of bonds, be in the exact form as provided in the bid and contract documents.
3. A copy of all workers' compensation insurance certificates or policies must be furnished to the LANDLORD [this needs to be specific to each school project], the Archdioceses of New York , and Cardinal Timothy Dolan, and is subject to their approval.
4. The YPS, may at its discretion, and if approved by the City of Yonkers Law Department, accept letters of credit or custodial accounts in lieu of bonds and insurance requirements.
5. If at any time any of the foregoing bonds and policies shall be or become unsatisfactory to the YPS, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the YPS, the Contractor shall upon notice to that effect from the YPS, promptly obtain a new policy, and submit the same to the School Facilities Management Executive Director. Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, this contract, at the election of the YPS may be forthwith declared suspended, discontinued or terminated. Failure of the Contractor to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve the Contractor from any liability be construed to conflict with or otherwise limit the obligations of the Contractor concerning indemnification.
6. The Contractor shall be solely responsible for payment of all premiums for bonds and insurance contributing to satisfaction of the requirements herein, and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the YPS or City of Yonkers is named as additional insured.
7. The YPS reserves the right to increase or decrease the required insurance during the Contract.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/16/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | |
|---|--|
| PRODUCER Bruen Deldin Didio Associates 3 Starr Ridge Road Brewster, NY 10509 Jeffrey P. Deldin | CONTACT NAME: Jeffrey P. Deldin |
| | PHONE (A/C, No, Ext): 845-279-5151 FAX (A/C, No): 845-279-8482 E-MAIL ADDRESS: |
| INSURER(S) AFFORDING COVERAGE | |
| INSURER A : Cincinatti Insurance Company | |
| INSURER B : Amtrust Insurance of Kansas In | |
| INSURER C : | |
| INSURER D : | |
| INSURER E : | |
| INSURER F : | |

INSURED **Peter J. Landi Inc.**
13 Bradhurst Ave
Hawthorne, NY 10532

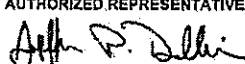
COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------|------------|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | | X | ENP0380468 | 04/01/2017 | 04/01/2018 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COM/PROP AGG \$ 3,000,000 |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS | | | EBA 0380640 | 04/01/2017 | 04/01/2018 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | | ENP 0380468 | 04/01/2017 | 04/01/2018 | EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | Y/N N/A | KWC1088112 | 04/01/2017 | 04/01/2018 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Contract 2018-235 109 Oak Street Playground at Enrico Fermi School. City of Yonkers, Yonkers Public Schools and Yonkers Board of Education are named as additional insureds with respects to general liability required by written contract. Waiver of Subrogation applies to additional insureds with signed contract. 30DNOC applies to certificate holder.

| | |
|--|--|
| CERTIFICATE HOLDER CITYY03 Yonkers Public Schools One Larkin Center Yonkers, NY 10701 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  |
|--|--|

**STATE OF NEW YORK
WORKER'S COMPENSATION BOARD
CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE**

| | |
|--|---|
| <p>1a. Legal Name and address of Insured (Use street address only) Peter J Landi Inc 13 Bradhurst Road Hawthorne, NY 10532</p> <p><i>Work Location of Insured (Only required if coverage is specifically limited to certain location in New York State, i.e. a Wrap-Up Policy)</i></p> | <p>1b. Business Telephone Number of Insured 914-909-5210</p> <p>1c. NYS Unemployment Insurance Employer Registration Number of Insured 8574241</p> <p>1d. Federal Employer Identification Number of Insured or Social Security Number 132577229</p> |
| <p>2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) City of Yonkers One Larkin Center Yonkers, NY 10701</p> | <p>3a. Name of Insurance Carrier AmTrust Insurance Company of Kansas, Inc.</p> <p>3b. Policy Number of entity listed in box "1a": KWC1088112</p> <p>3c. Policy effective period: 4/1/2017 to 4/1/2018</p> <p>3d. The Proprietor, Partners or Executive Officers are:</p> <p><input checked="" type="checkbox"/> included (Only check box if all partners/officers included)</p> <p><input type="checkbox"/> all excluded or certain partners/officers excluded</p> |

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. (To use this form, New York (NY) must be listed under Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy). The Insurance Carrier or its licensed agent will send this Certification of Insurance to the entity listed above as the certificate holder in box "2".

| |
|---|
| <p>Will the carrier notify the certificate holder within 10 days of a policy being cancelled for non-payment of premium or within 30 days if cancelled for any other reason or if the insured is otherwise eliminated from the coverage indicated on this certificate prior to the end of the policy effective period?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> |
|---|

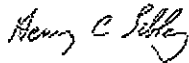
This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved By: Henry C. Sibley
(Print name of authorized representative or licensed agent of insurance carrier)

Approved By:  10/20/2017
(Signature) (Date)

Title: Underwriting Manager

Telephone Number of authorized representative or licensed agent of insurance carrier: CarrierPhone

Please Note: Only insurance carriers and their licensed agents are authorized to issue the C-105.2 form. Insurance brokers are NOT authorized to issue it.

Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.
2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.



Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE UNDER THE NYS DISABILITY BENEFITS LAW

PART 1. To be completed by Disability Benefits Carrier or Licensed Insurance Agent of that Carrier

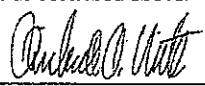
| | |
|--|---|
| <p>1a. Legal Name and Address of Insured (Use street address only) PETER J. LANDI, INC.</p> <p>13 BRADHURST AVENUE HAWTHORNE, NY 10532</p> | <p>1b. Business Telephone Number of Insured 914-961-4444</p> <p>1c. NYS Unemployment Insurance Employer Registration Number of Insured</p> <p>1d. Federal Employer Identification Number of Insured or Social Security Number 132577229</p> |
| <p>2. Name and Address of the Entity requesting Proof of Coverage (Entity being listed as the Certificate Holder) CITY OF YONKERS</p> <p>ONE LARKIN CENTER YONKERS, NY 10701</p> | <p>3a. Name of Insurance Carrier ShelterPoint Life Insurance Company</p> <p>3b. Policy Number of Entity listed in box "1a": DBL424266</p> <p>3c. Policy effective period: 01/01/2017 to 12/31/2018</p> |

4. Policy covers:

a. All of the employer's employees eligible under the New York Disability Benefits Law

b. Only the following class or classes of the employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability Benefits insurance coverage as described above.

Date Signed 10/20/2017 By 
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number 516-829-8100 Title Chief Executive Officer

IMPORTANT: If box "4a" is checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.
 If box "4b" is checked, this certificate is NOT COMPLETE for the purposes of Section 220, Subd. 8 of the Disability Benefits Law. It must be mailed for completion to the Worker's Compensation Board, DB Plans Acceptance Unit, 328 State Street, Schenectady, NY 12305.

PART 2. To be completed by NYS Worker's Compensation Board (Only if box "4b" of Part 1 has been checked)

**State of New York
 Worker's Compensation Board**

According to information maintained by the NYS Worker's Compensation Board, the above-named employer has complied with the NYS Disability Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of NYS Worker's Compensation Board Employee)

Telephone Number _____ Title _____

Please Note: Only insurance carriers licensed to write NYS Disability Benefits insurance policies and NYS Licensed Insurance Agents of those insurance carriers are authorized to issue Form DB-120.1. Insurance brokers are NOT authorized to issue this form.

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in box "3" on this form is certifying that it is insuring the business referenced in box "1a" for disability benefits under the New York State Disability Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in box "2".

Will the carrier notify the certificate holder within 10 days of a policy being cancelled for non-payment of premium or within 30 days if cancelled for any other reason or if the insured is otherwise eliminated from the coverage indicated on this certificate prior to the end of the policy effective period? YES NO

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability Benefits Law.

DISABILITY BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article.

SCHEDULE "B"
**Questionnaire Regarding Business Enterprises Owned
and Controlled by Persons of Color or Women**

As part of the YPS's desire to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in YPS contracts, and in furtherance of Article VIII of Chapter 13 of the City Code, completion of this form is required.

The term persons of color means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands.

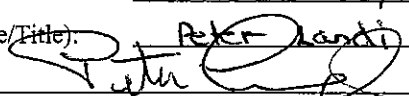
An enterprise owned and controlled by persons of color or women means a business enterprise including a sole proprietorship, limited liability partnership, partnership, limited liability corporation or corporation that is (a) at least 51% owned by one or more persons of color or women; (b) an enterprise in which such ownership by persons of color or women is real, substantial and continuing; (c) an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and (d) an enterprise authorized to do business in this state which is independently owned and operated.

In addition, a business enterprise owned and controlled by persons of color or women shall be deemed to include any business enterprise certified as an MBE or WBE pursuant to article 15-a of the New York State Executive Law and implementing regulations, 9 NYCRR subtitle N Part 540 et seq., or as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

1. Are you a business enterprise which is owned and controlled by persons of color or women in accordance with the standards listed above?
 No
 Yes (as a business owned and controlled by persons of color)
 Yes (as a business owned and controlled by women)
2. Are you certified with the State of New York as a minority business enterprise ("MBE") or a women business enterprise ("WBE")?
 No
 Yes (as a MBE)
 Yes (as a WBE)

If yes, official documentation of such certification must be attached hereto.

3. If you are a business owned and controlled by persons of color, please specify the minority classifications which apply: _____
4. If you are certified with the State of New York as an MBE, please specify the minority classifications which apply: _____
5. Are you certified with the Federal Government as a small disadvantaged business concern?
 Yes
 No

6. Name of Firm/Business Enterprise: Peter J. Landi Inc.
Address: 13 Bradhurst Ave
Hawthorne, NY 10532
Completed By (Print Name/Title): Peter Landi - Vice President
Signature: 

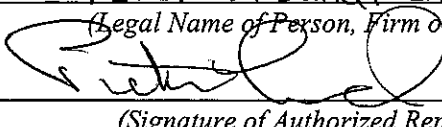
SCHEDULE "C"

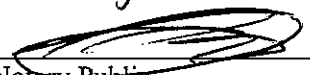
CERTIFICATION REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND

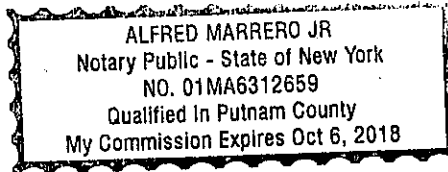
- A. The Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.
- B. For purposes of this Certification, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:
- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 - (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
 - (3) ban provocative religious or political emblems from the workplace;
 - (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
 - (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
 - (6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
 - (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
 - (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
 - (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.
- C. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont.
- D. The Contractor agrees that the warranties and representation in paragraph "A" are material conditions of this Contract. If the YPS receives information that the Contractor is in violation of paragraph "A", the YPS shall review such information and give the Contractor opportunity to respond. If the YPS finds that such a violation has occurred, the YPS may declare the Contractor in default, and/or terminate this Contract. In the event of any such termination, the YPS may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the YPS the difference between the contract price for the uncompleted portion of this Contract and the cost to the YPS of completing performance of this Contract either by itself or by engaging another contractor. If this is a contract other than a construction contract, the Contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the YPS would have paid the Contractor plus any reasonable costs the YPS incurs in any new procurement and if this is a construction contract, the YPS shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Contract. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented

by counsel. The rights and remedies of the YPS hereunder shall be in addition to, and not in lieu of, any rights and remedies the YPS has pursuant to this Contract or by operation of law or in equity.

Agreed:

Peter J. Landi Inc.
(Legal Name of Person, Firm or Corporation)
By: 
(Signature of Authorized Representative)
Vice President
(Title)
Dated: 8/2/17

SWORN to before me this 2nd day
of August, 2017

Notary Public



SCHEDULE "D"
CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) (the "Prohibited Entities List"). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date at which time it will be posted on the OGS website.

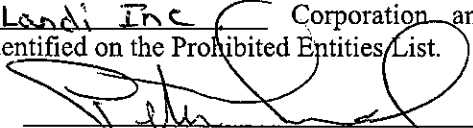
By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to SFL § 165-a(3)(b).


Additionally, Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the YPS receive information that a Bidder/Contractor is in violation of the above-referenced certification, the YPS will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the YPS shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The YPS reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a contract and subsequently appears on the Prohibited Entities List.

I, Peter Landi, being duly sworn, deposes and says that he/she is the Vice President of the Peter J. Landi Inc Corporation and that neither the Bidder/Contractor nor any proposed subcontractor is identified on the Prohibited Entities List.


SIGNED

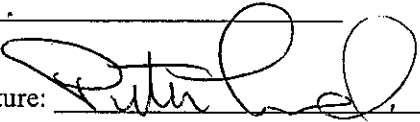
SWORN to before me this 2nd day
of August, 2017

Notary Public

ALFRED MARRERO JR
Notary Public - State of New York
NO. 01MA6312659
Qualified in Putnam County
My Commission Expires Oct 6, 2018

SCHEDULE "E"
NON-COLLUSIVE BIDDING CERTIFICATION


1. By submission of this bid, the undersigned bidder and each person signing on behalf of such 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 the undersigned's knowledge and belief:
 - (a) 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;
 - (b) 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
 - (c) 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.
2. The undersigned acknowledges and agrees that a bid shall not be considered for award nor shall any award be made where any of the 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 therefor. Where one or more of the above has/have not been complied with, the bid shall not be considered for award nor shall any award be made unless the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.
3. The undersigned also acknowledges and agrees that the fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph 1 above.
4. The undersigned further acknowledges and agrees that any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a bidder which is a corporation or a limited liability company 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 paragraph 1 of this certificate, 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 therein of the certificate as to non-collusion as the act and deed of the corporation or limited liability company.

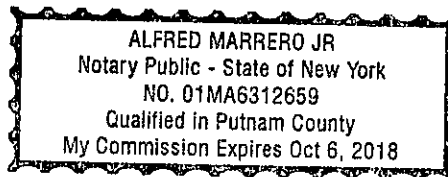
Name of Bidder: Peter J. Landi Inc.
(print full legal name)

Date Signed: 8/2/17 Signature: 

Name of Person Signing Certificate: Peter Landi
(print full legal name of signer)

Bidder is (check one): an individual, a limited liability partnership, a limited liability company,
 other entity (specify): Corporation

SWORN to before me this 2nd day
of August 2017

Notary Public



ATTACHMENT "A"
 BID SHEETS

ENRICO FERMI SCHOOL
109 OAK STREET PLAY AREA PROJECT

BID SCHEDULE #: ITB-6173

ISSUED FOR BID: JULY 28, 2017

YPS PROJECT #10809

GENERAL CONSTRUCTION CONTRACT

| ITEM | APPROX. EST. QUANTITY (A) | ITEMS WITH UNIT BID PRICES WRITTEN IN WORDS | UNIT BID PRICES | | TOTAL AMT. BID | |
|------|---------------------------|---|-----------------|-------|----------------|-------|
| | | | DOLLARS | CENTS | DOLLARS | CENTS |
| | | | (B) | | (A) X (B) | |
| 1 | 1 | Lump Sum: Base Bid Price to Complete General Construction Work as Described in the Contract Documents. <u>Two hundred twenty five thousand</u> Lump Sum | 225,000 | 00 | 225,000 | 00 |
| 2 | 6 | Unit Price Bid #1: Unit Price bid per 40 cubic yard (CY) dumpster for removal of existing earth which will include but not be limited to soil, fill, construction debris, non-hazardous waste, rock and vegetation and be removed and disposed of in accordance with Federal and State Regulations. <u>Four thousand</u> _____ Per 40 CY Yard | 4000 | | 24,000 | 00 |
| 3 | 4 | Unit Price Bid #2: Unit Price bid per 40 cubic yard (CY) to furnish and grade certified clean backfill. <u>Three thousand five hundred</u> _____ Per 40 CY Yard | 3500 | 00 | 14,000 | 00 |
| 4 | 1 | Necessary: Miscellaneous Additional Work for Owner Directed Work, if so Desired by the District. <u>Twenty Five Thousand and -----00/100</u> _____ Necessary | \$25,000 | .00 | \$25,000 | .00 |

TOTAL BASE BID - ITEMS 1, 2, 3 & 4, INCLUSIVE

Written in Words: Two hundred eighty eight thousand Dollars _____ Cents

Written in Figures: (\$ 288,000.00)

ALTERNATES

| ITEM | APPROX. EST. QUANTITY (A) | ITEMS WITH UNIT BID PRICES WRITTEN IN WORDS | UNIT BID PRICES | | TOTAL AMT. BID | |
|------|---------------------------|--|-----------------|-------|----------------|-------|
| | | | DOLLARS | CENTS | DOLLARS | CENTS |
| | | | (B) | | (A) X (B) | |
| 1 | 1 | Alternate 1: The General Construction contractor shall state the amount to be ADDED to the base bid to asphalt pave the play area and line strip the 4' wide walkway in lieu of grading with 2" of top soil and hydro seeding as shown on drawing S6 Alternate #1 Work Scope Notes. <u>Twenty Five thousand</u> _____ Lump Sum | 25,000 | 00 | 25,000 | 00 |
| 2 | 1 | Alternate 2: The General Construction contractor shall state the amount to be ADDED to the base bid to prepare include all electrical and pre-cast concrete light pole base as shown on the drawings S1, S2, S3, S4 and S5 and Contract Manual Specifications Section Division 26. <u>Twenty thousand</u> _____ Lump Sum | 20,000 | 00 | 20,000 | 00 |

CONTRACTOR: Peter J. Landi Inc.

ADDRESS: 13 Bradhurst Ave.
Hawthorne, NY 10532

PREPARED BY: Peter Landi

TELEPHONE NO.: 914-909-5210

DATE: 8/15/17

PERFORMANCE BOND

Bond No. 106766907

Yonkers Public Schools
Yonkers Board of Education

One Larkin Center
Yonkers, New York 10701

BID NO.: ITB-6173

KNOW ALL MEN BY THESE PRESENTS;

That Peter J. Landi, Inc., 13 Bradhurst Avenue, Hawthorne, NY 10532

(Here insert the name and address or legal title of the contractor)

as Principal, (hereinafter called "Principal"), and _____

Travelers Casualty and Surety Company of America, One Tower Square, Hartford, CT 06183

(Here insert the legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto the Yonkers Public Schools and Yonkers Board of Education of Yonkers, One Larkin Plaza, , Yonkers, N.Y., 10701, together as obligee, (hereinafter called the "YPS"), in the amount of

Three Hundred Thirty-Three Thousand & 00/100s Dollars

(\$ ***333,000.00***), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, PRINCIPAL has entered into a contract with the YPS for the construction of 109 Oak Street Playground at Enrico Fermi School - Contract No. 2018-235 located at Yonkers, NY in accordance with drawings and specifications which are made a part hereof and which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his/her or its representatives or assigns, shall well and faithfully perform the said contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, and shall fully defend, indemnify, and save harmless the YPS from all cost and damage which it may suffer by reason of failure so to do, and shall fully reimburse and repay the YPS for all outlay and expense which the YPS may incur in making good any such default, then this obligation shall be void, otherwise the same to remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees, if requested to do so by the YPS, to fully perform and complete the work to be performed under the contract, pursuant to the terms, conditions, and covenants thereof, if for any cause, the Principal fails or neglects to successfully perform and complete such

work. The Surety further agrees to commence such work of completion within twenty (20) days after written notice thereof from the YPS and to complete such work within such time as the YPS may fix.

The Surety, for value received, for itself and its successors and assigns hereby stipulates and agrees that the obligation of said Surety and its bond shall in no way be impaired or affected by any extension of time, modification, omission, addition, or change in or to the said contract or the work to be performed thereunder or by any payment thereunder before the time required therein, or by any waiver of any provisions, thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or by any moneys due or to become due thereunder; and said Surety does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontract and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees subcontractors, and other transferee's shall have the same effect as to said Surety as though done or omitted to be done by or in relation to said Principal.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which Final Payment is made under the Contract.

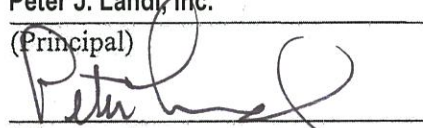
No right of action shall accrue on this bond to or for the use of any person or corporation other than the YPS named herein or the heirs, executors, administrators or successors of the YPS.

Signed as of this 19th day of October 2017

IN THE PRESENCE OF:

Peter J. Landi, Inc.

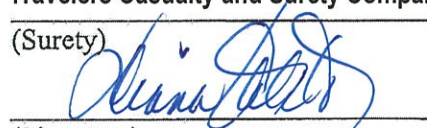
(Principal)


(Signature)

Vice President
(Title)

Travelers Casualty and Surety Company of America

(Surety)


(Signature)

Diana Toledo, Attorney-in-Fact

(Title)

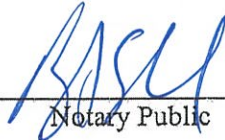
(PERFORMANCE BOND – Bid # ITB-6173)

ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION

STATE OF New York)

YPS OF County of Putnam) ss:

On the 19th day of October in the year 2017, before me personally came Peter A. Landi to me known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn, did depose and say that he/she resides at Valhalla, NY, that he/she is the Vice-President of Peter J. Landi, Inc., the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.



Notary Public

(PERFORMANCE BOND – Bid # ITB-6173)

RAEGAN A. GUGLIELMO
Notary Public, State of New York
No. 01GU62707380
Qualified in Putnam County
Term Expires June 15, 2021

ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP

STATE OF _____)

YPS OF _____) ss:

On the ___ day of _____ in the year 20___, before me personally came _____, to me known and known (or proved to me on the basis of satisfactory evidence), to me to be a member of firm _____; described in and who executed the foregoing instrument; and he/she duly acknowledged to me that he/she executed the foregoing instrument; and that he/she duly acknowledged to me that he/she executed the same for and in behalf of said firm for the uses and purpose mentioned therein.

Notary Public

(PERFORMANCE BOND – Bid # ITB-6173)

ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL

STATE OF _____)

YPS OF _____) ss:

On the _____ day of _____ in the year 20___, before me personally came _____, to me known (or proved to me on the basis of satisfactory evidence) and known to me to be the person described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

Notary Public

(PERFORMANCE BOND – Bid # ITB-6173)

ATTORNEY IN FACT ACKNOWLEDGEMENT

STATE OF New York)

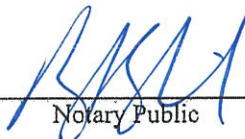
YPS OF County of Putnam) ss:

On this 19th day of October 2017, before me personally came

Diana Toledo the attorney in fact of

Travelers Casualty and Surety Company of America the Company named in the foregoing contract, to me

known to be the individual described in and who, as such attorney, executed the foregoing contract, and acknowledged that he/she executed the same as the Act and deed of the said party or parties; therein described as Consultant, and for the purpose therein mentioned, by virtue of a power of attorney duly executed and acknowledged by the said party or parties, bearing date the 19th day of October 2017; that said powers of attorney is still in full force.



Notary Public

(PERFORMANCE BOND – Bid # ITB-6173)

RAEGAN A. GUGLIELMO
Notary Public, State of New York
No. 01GU62707380
Qualified in Putnam County
Term Expires June 15, 2021

ACKNOWLEDGEMENT OF SURETY

STATE OF New York)

YPS County of Putnam) ss:

On this 19th day of October in the year 2017, before me personally came

Diana Toledo to me known, who, being by me duly sworn, did depose and

say that he/she resides at Brewster, NY, that he/she is the

Attorney-in-Fact of Travelers Casualty and Surety Company of America

the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.



NOTARY PUBLIC OR COMMISSIONER OF DEEDS

RAEGAN A. GUGLIELMO
Notary Public, State of New York
No. 01GU62707380
Qualified in Putnam County
Term Expires June 15, 2021

(PERFORMANCE BOND – Bid # ITB-6173)

Revised 2.06.2017

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LABOR AND MATERIAL PAYMENT BOND

Bond No. 106766907

Yonkers Public Schools
Yonkers Board of Education

One Larkin Center
Yonkers, New York 10701

BID NO.: ITB-6173

KNOW ALL MEN BY THESE PRESENTS;

That Peter J. Landi, Inc., 13 Bradhurst Avenue, Hawthorne, NY 10532

(Here insert the name and address of legal title of the Contractor)
as Principal, (hereinafter called "Principal"), and _____

Travelers Casualty and Surety Company of America, One Tower Square, Hartford, CT 06183

(Here insert the legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto the Yonkers Public Schools and Yonkers Board of Education of Yonkers, One Larkin Plaza, , Yonkers, N.Y., 10701, collectively as Obligee, (hereinafter called the YPS), in the amount of

*****Three Hundred Thirty-Three Thousand & 00/100s*****

Dollars

(\$ *****333,000.00*****)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assign, jointly and severally, firmly by these presents.

WHEREAS, PRINCIPAL has by written agreement dated September 25, 2017 entered into a contract with the YPS for the construction of 109 Oak Street Playground at Enrico Fermi School

Contract No. 2018-235

Located at Yonkers, NY in accordance with drawings and specifications which are made a part hereof and which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligations shall be void; otherwise such obligation shall remain in full force and effect, subject, however to the following conditions:

1. A claimant is defined as one having a direct Contract with the Principal or with a Subcontractor of the Principal for labor material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the YPS that every claimant as herein defined, ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the

use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The YPS shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

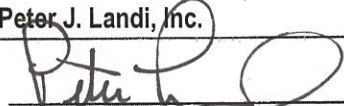
- (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two (2) of the following: 1) the Principal, 2) the YPS, 3) the Surety named above, within one hundred-twenty (120) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be serviced by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, the YPS or Surety, at any place where an office is regularly maintained by said Principal, the YPS or Surety for the transaction of business, or serviced in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.
- (b) After the expiration of two (2) years following the date on which Principal ceased work of said Contract, however, if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to the equal to the minimum period of limitation permitted by such law.
- (c) Other than in State court competent jurisdiction in and for the country or other political subdivision of the State in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanic's liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed as of this 19th day of October 2017

IN THE PRESENCE OF;
(Principal)

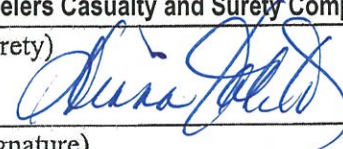
Peter J. Landi, Inc.


(Signature)

Vice President
(Title)

Travelers Casualty and Surety Company of America

(Surety)


(Signature)

Diana Toledo, Attorney-in-Fact

(Title)

(LABOR & MATERIAL PAYMENT BOND – Bid # ITB-6173)

ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION

STATE OF New York)

YPS OF County of Putnam) ss:

On the 19th day of October in the year 2017, before me personally came Peter A. Landi to me known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn, did depose and say that he/she resides at Valhalla, NY, that he/she is the Vice-President of Peter J. Landi, Inc., the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.



Notary Public

RAEGAN A. GUGLIELMO
Notary Public, State of New York
No. 01GU62707380
Qualified in Putnam County
Term Expires June 15, 2021

(LABOR AND MATERIAL PAYMENT BOND – Bid # ITB-6173)

ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP

STATE OF _____)

YPS OF _____) ss:

On the ___ day of _____ in the year 20____, before me personally came _____, to me known and known (or proved to me on the basis of satisfactory evidence), to me to be a member of firm _____; described in and who executed the foregoing instrument; and he/she duly acknowledged to me that he/she executed the foregoing instrument; and that he/she duly acknowledged to me that he/she executed the same for and in behalf of said firm for the uses and purpose mentioned therein.

Notary Public

(LABOR AND MATERIAL PAYMENT BOND – Bid # ITB-6173)

ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL

STATE OF _____)

YPS OF _____) ss:

On the _____ day of _____ in the year 20____, before me personally came _____, to me known (or proved to me on the basis of satisfactory evidence) and known to me to be the person described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

Notary Public

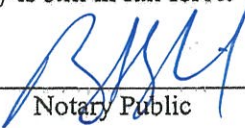
(LABOR AND MATERIAL PAYMENT BOND – Bid # ITB-6173)

ATTORNEY IN FACT ACKNOWLEDGEMENT

STATE OF New York)

YPS OF County of Putnam) ss:

On this 19th day of October 2017, before me personally came Diana Toledo the attorney in fact of Travelers Casualty and Surety Company of America the Company named in the foregoing contract, to me known to be the individual described in and who, as such attorney, executed the foregoing contract, and acknowledged that he/she executed the same as the Act and deed of the said party or parties; therein described as Consultant, and for the purpose therein mentioned, by virtue of a power of attorney duly executed and acknowledged by the said party or parties, bearing date the 19th day of October 2017; that said powers of attorney is still in full force.



Notary Public

(LABOR AND MATERIAL PAYMENT BOND – Bid # ITB-6173)

RAEGAN A. GUGLIELMO
Notary Public, State of New York
No. 01GU62707380
Qualified in Putnam County
Term Expires June 15, 2021

ACKNOWLEDGEMENT OF SURETY

STATE OF New York)

YPS County of Putnam) ss:

On this 19th day of October in the year 2017, before me personally came Diana Toledo to me known, who, being by me duly sworn, did depose and say that he/she resides at Brewster, NY, that he/she is the Attorney-in-Fact of Travelers Casualty and Surety Company of America, the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.



NOTARY PUBLIC OR COMMISSIONER
OF DEEDS

RAEGAN A. GUGLIELMO
Notary Public, State of New York
No. 01GU62707380
Qualified in Putnam County
Term Expires June 15, 2021

(LABOR AND MATERIAL PAYMENT BOND – Bid # ITB-)



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 230113

Certificate No. 007025701

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Jeffrey P. Deldin, Christopher Greene, Raegan Guglielmo, and Diana Toledo

of the City of Brewster, State of New York, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 26th day of October, 2016.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 26th day of October, 2016 before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2021.



[Signature]
Marie C. Tetreault, Notary Public

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

HARTFORD, CONNECTICUT 06183

FINANCIAL STATEMENT AS OF JUNE 30, 2017

CAPITAL STOCK \$ 6,480,000

| ASSETS | | LIABILITIES & SURPLUS | |
|--|-------------------------|---|-------------------------|
| BONDS | \$ 3,525,421,265 | UNEARNED PREMIUMS | \$ 904,997,776 |
| STOCKS | 328,472,775 | LOSSES | 781,901,755 |
| PREMIUM BALANCES | 261,412,151 | LOSS ADJUSTMENT EXPENSES | 189,941,104 |
| CASH AND INVESTED CASH | 172,294,866 | COMMISSIONS | 28,428,109 |
| INVESTMENT INCOME DUE AND ACCRUED | 40,123,817 | TAXES, LICENSES AND FEES | 11,095,043 |
| OTHER INVESTED ASSETS | 2,868,211 | OTHER EXPENSES | 29,695,841 |
| NET DEFERRED TAX ASSET | 69,749,977 | CURRENT FEDERAL AND FOREIGN INCOME TAXES | 18,745,524 |
| REINSURANCE RECOVERABLE | 20,582,865 | REMITTANCES AND ITEMS NOT ALLOCATED | 5,026,404 |
| SECURITIES LENDING REINVESTED COLLATERAL ASSETS | 4,867,728 | AMOUNTS WITHHELD / RETAINED BY COMPANY FOR OTHERS | 72,807,335 |
| RECEIVABLES FROM PARENT, SUBSIDIARIES AND AFFILIATES | 12,527,876 | RETROACTIVE REINSURANCE RESERVE ASSUMED | 935,619 |
| ASSUMED REINSURANCE RECEIVABLE AND PAYABLE | 626,835 | POLICYHOLDER DIVIDENDS | 9,613,121 |
| OTHER ASSETS TRI-PARTY/TAX CREDIT BONDS | 5,048,300 | PROVISION FOR REINSURANCE | 3,555,060 |
| OTHER ASSETS | 232,866 | ADVANCE PREMIUM | 1,031,908 |
| | | PAYABLE FOR SECURITIES LENDING | 4,867,728 |
| | | PAYABLE FOR SECURITIES | 36,208,262 |
| | | OTHER LIABILITIES TRI-PARTY/TAX CREDIT BONDS | 573,123 |
| | | CEDED REINSURANCE NET PREMIUMS PAYABLE | 46,718,870 |
| | | OTHER ACCRUED EXPENSES AND LIABILITIES | 747,244 |
| | | TOTAL LIABILITIES | \$ 2,146,889,826 |
| | | | |
| | | CAPITAL STOCK | \$ 6,480,000 |
| | | PAID IN SURPLUS | 433,803,760 |
| | | OTHER SURPLUS | 1,857,058,086 |
| | | TOTAL SURPLUS TO POLICYHOLDERS | \$ 2,297,339,826 |
| | | | |
| TOTAL ASSETS | \$ 4,444,229,652 | TOTAL LIABILITIES & SURPLUS | \$ 4,444,229,652 |

STATE OF CONNECTICUT)
 COUNTY OF HARTFORD) SS.
 CITY OF HARTFORD)

MICHAEL J. DOODY, BEING DULY SWORN, SAYS THAT HE IS SECOND VICE PRESIDENT, OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF SAID COMPANY AS OF THE 30TH DAY OF JUNE, 2017.

Michael J. Doody
 SECOND VICE PRESIDENT

Susan M. Weissleder
 NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS
 17TH DAY OF AUGUST, 2017

SUSAN M. WEISSLEDER
 Notary Public
 My Commission Expires November 30, 2017

