



CITY OF YONKERS/YONKERS PUBLIC SCHOOLS

GENERAL ENGINEERING AGREEMENT No. 2019-00000808

This GENERAL AGREEMENT (the "General Agreement") is made and entered into this 30th day of May in 2019 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 **MENGLER MECHANICAL, INC.**, located at 1689 ROUTE 22, BREWSTER, NY 10509, hereinafter called 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 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:

Bid Title/Description

**IFB-6354: BOILER REPLACEMENT AND ASBESTOS ABATEMENT AT SCHOOL 9
CONTRACT 3 OF 4 – PLUMBING**

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 City of Yonkers, New York.

ARTICLE 2. COMPENSATION TO BE PAID TO CONTRACTOR:

The City 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 the current funds the sum of:

Written in Words: **THREE HUNDRED FIFTY THOUSAND DOLLARS**

Written in Figures: **\$350,000.00**

Payments shall be made in accordance with the payment provisions herein. In no event shall the City 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 City	
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 the Contract 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 City 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 work hours will be available to the contractor on the dates and times listed below, the contractor shall have bid accordingly:

SCHOOL YEAR DATES: September 6, 2018 through June 25, 2019

DAYS OF WEEK: Monday through Friday

HOURS OF THE DAY: 3:30 pm to 11:30 pm

SUMMER RECESS: June 26, 2019 through September 4, 2019

DAYS OF WEEK: Monday through Friday

HOURS OF THE DAY: 8:00 am to 4:00 pm

Note: Teachers return to their classrooms August 27, 2019. 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 with written permission 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 \$75/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

- C. 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 City, the City 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 City, as a partial consideration for the Contract, the amount 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 City 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 City would sustain in said event and such amount is agreed to be in the amount of damages which the City or its beneficiaries would sustain and said amount shall be retained by the City.
- 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 City, has abandoned the work, the Contractor must pay to the City 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 City's right to indemnification under Article 14, or the Contractor's obligation to otherwise indemnify the City, or to any other remedy provided for by Contract or by law.
- I. The City 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 City, the Contractor shall be liable to pay the difference upon demand by the City.
- 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 City. 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 City, including, but not limited to Acts of God or of public enemy, acts of the City, 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 City 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 City 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 City 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.

“BOARD OF CONTRACT and SUPPLY” shall have the meaning set forth in Article 9 below.

“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 City 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 City 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 City 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 City 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 City 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 City through the Board of Contract and Supply;
 - 5) To omit Contract work whenever it deems it in the interest of the City 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 CITY BOARD OF CONTRACT AND SUPPLY ("BOCS") AND THE BOARD OF EDUCATION ("BOARD")

The Board of Contract and Supply of the City of Yonkers shall have the powers set forth in the City Code and as set forth herein. The Board of Contract and Supply 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.

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:

- E. To approve the performance of change orders for extra work;
- F. To approve the use of all Subcontractors proposed by the Contractor;
- G. To hold the Contractor in default and/or to terminate the Contract; and,
- H. 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 City.
- 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 City pursuant to the Contract free from all liens, claims or encumbrances.
 - 2) All materials, equipment and articles which become the property of the City 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 City, 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 City.
 - 2) Where the City, 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 City. Where the City, 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 City'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 City will suffer damages due to such impairment of durability and curtailment of useful life. Since the City will suffer by reason of such loss of durability and useful life, it is further agreed that the City 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 City 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 City, the Contractor shall, if requested in writing by the City, replace said superintendent with another superintendent satisfactory to the City.

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 City.

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 City. 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 City.

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 City 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 City. 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 City 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 City's instructions, laws, rules, ordinances, or regulations, require that any work be inspected or tested, the Contractor shall give the City 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 City, 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 City 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 City, and the City 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 City may direct that any work not approved by the City shall, at no cost to the City, be immediately removed, reconstructed, made good, replaced or corrected by the Contractor to the satisfaction of the City. 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 City. Acceptance of material and workmanship by the City 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 City 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 City 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 City, that work shall, if directed by the City, be uncovered for examination. Any inspection by the City or by a testing laboratory on behalf of the City 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 City may order additional testing. The cost of said additional testing, any additional professional services required, and any other expenses incurred by the City 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 City 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 City of Yonkers and shall deliver the same to the City 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 City 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 City'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 City 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 City. The Contractor shall notify the City,

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 City 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 City, its officers, employees and agents, harmless from any and all claims and judgments for loss, damages or injuries and from costs and expenses include attorneys fees to which the City 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 City.
- 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 City.
- 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 City 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 and call the City's Action Center at (914) 377-4357, or
- 2) During non-business hours the emergency shall be reported by the Contractor to the City Action Center at (914) 377-4357 and to the Yonkers Police Department through 911; and shall also be reported to the Engineer at the earliest opportunity.

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 City 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 City 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 City does not guarantee the responsibility or continued efficiency of any contractor.
- D. The Contractor shall indemnify and hold the City harmless from any and all claims of judgments for damages and from costs and expenses to which the City 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 City 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 City 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 City for such damage.
- F. Should any other contractor having, or who shall hereafter have, a contract with the City 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 City 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 City harmless from all such claims.

- G. The City'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 City 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 City to take over, use, occupy or operate any part of the completed or partly completed work, the City 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 City after receipt of notice in writing that such work or part thereof will be used by the City on and after the date specified in such notice. Should such action be taken by the City, the Contractor's guarantee on that part of the work placed into use shall begin on the date such use by the City shall begin (and the Contractor shall be entitled to a return of so much of the retained percentages as have been withheld by the City, as security for the faithful performance of the work which the City 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 Board of Contract and Supply.
- 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 Board of Contract and Supply.
- 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 Board of Contract and Supply for approval at the next regularly scheduled meeting. The City will notify the Contractor as soon as possible after the Board of Contract and Supply 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 City'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 City 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 City, at the City'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 City 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 City of any Contractor submitting bids for any City 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 Board of Contract and Supply 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 City to such an assignment, transfer or conveyance, shall justify the City's revocation and annulment of this Contract. The City 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 City 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, the Contractor, upon filing his requisition for final payment, shall deposit with the City, a sum equal to one (1) percent of the Contract price (or such other amount fixed in Schedule "A" to this General Agreement in cash or certified check upon a State or National Bank and Trust Company or a check of such Bank and Trust Company signed by a duly authorized officer thereof and drawn to the order of the City.
- C. In lieu of the above the Contractor may make such security payment to the City by authorizing the City in writing to deduct the amount from the final payment which shall be deemed the deposit required above.
- D. 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 City determines the Contractor has faithfully performed all his obligations hereunder.
- E. Notice by the City 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.
- F. If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged work promptly after receiving such notice, the City 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.
- G. 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 City.
- H. 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 City through its Board of Contract and Supply. 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 City.
- 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 Board of Contract and Supply 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 City.
- 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 City shall recoup the amount by which the costs were inaccurately stated, plus any costs incurred by the City 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 City.

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 City, the price to be paid for extra work ordered by the City, 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 City 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 City, 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 City, 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 City 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 City, 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 City reserves the right and the Contractor agrees to renegotiate the unit price bid to a new unit price for such quantities. If the City and Contractor cannot agree to a new price then the City, 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 City shall give the City 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 City 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 City's direction to perform the work which the Contractor claims will be Extra Work.
 - 2) File with the City 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 City occurred.
 - 3) Proceed diligently, pending and subsequent to the determination of the City with respect to any said disputed matter, with the performance of the work in accordance with all instructions of the City.
- B. No claim for Extra Work shall be allowed unless the same was done pursuant to a written order of the City. 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 City, produce for examination at the Contractor's or Subcontractor's office, by the representatives of the City, 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 City to investigate claims made against the City 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 City shall be released from all claims arising under, relating to or by reason of this Contract, except for the sum certified by the City 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 City to recover any sum in excess of the sums certified by the City 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 City 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 City 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 City, 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 City to make such extracts there from or copies thereof as the City 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 City, 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 City 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 City 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 City, the Engineer, or any other officer, agent or employee of the City, 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 City 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 City 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 City 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 City 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 City, the Contractor shall submit a Request for Payment in a form acceptable to the Engineer and City Finance Commissioner. The City 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 City 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 City shall prescribe may be taken into consideration. Unless otherwise provided by the City 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 City; (b) the material will be covered under the City's builder's risk policy, if any, subject to all policy limits and restrictions; and, (c) the material may be inspected by the City 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 City 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 City becomes the sole property of the City.

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 City. 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 City, 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 City 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 City.

ARTICLE 30. FINAL PAYMENT

- A. As a condition precedent to receiving final 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 City, 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 City 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 final payment, 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 Contract and Supply, a voucher for final 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 final payment, and shall be made by the City within thirty (30) days after approval of the Board of Contract and Supply.

ARTICLE 31. ACCEPTANCE OF FINAL PAYMENTS

- A. The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release to the City 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 City or any of its officers, agents, or employees, excepting only a claim against the City 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 City, 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 City 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 City'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 City 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 City may withhold from the Contractor any part of any payment as may, in the judgment of the City, be necessary:
 - 1) to assure payment of just claims of any persons supplying labor or materials for the work;
 - 2) to protect the City from loss due to defective work not remedied; or
 - 3) to protect the City 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 City shall have the right to apply any amount so withheld, in such manner, as the City 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 City and any action or non-action hereunder by the City shall not give rise to any liability on the part of the City.

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 City shall inform the Contractor, in writing, that any employee is, in the City'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 City 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 City 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 City 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 City 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 City may disburse such amount so withheld by the City 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 City.
- C. **Prevailing Wage Enforcement:** The Contractor agrees to pay for the cost of any investigation conducted by or on behalf of the City 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 City 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 City 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 City 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 City may void this Contract in which event the City 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 City.

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 City 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 City 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 City 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 City, 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 City may declare any contractor who has repeatedly failed to comply with Section 220-e of the Labor Law non-responsible.

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

In addition to those instances specifically referred to in other Articles herein, the City 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 City; 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 City 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 City; 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 City 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 City 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 City 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 City 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 City 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 City.

ARTICLE 39. TERMINATION BY THE CITY

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

- A. The Contractor shall upon receipt of such notice, unless otherwise directed by the City:
 - 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 City's materials and property;
 - 3) cancel all cancelable orders for material, labor and/or equipment;
 - 4) assign to the City and deliver to the site or any other location designated by the City, 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 City under this Contract.
- B. On all lump sum contracts, the City 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 City 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 City arising out of the termination.
 - 2) The City 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 City, 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 City 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 City upon demand.

ARTICLE 43. PARTIAL DEFAULT

- A. In case the City 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 City 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 City 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 City 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 City'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. CITY'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 City in connection with the Contractor's work for the City all of the foregoing hereinafter referred to as "records" shall be open to inspection and subject to audit and/or reproduction by the City 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 City'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 City'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 City's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

- C. The City 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 City 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 City 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 City 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 City's audit shall be reimbursed to the City 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 City's findings to Contractor.

ARTICLE 46. BUSINESS ETHICS

- A. During the course of pursuing contracts with the City 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 City.
- B. Contractor shall permit interviews of employees, reviews and audits of accounting or other records by the City 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 City'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 City's best interests. These obligations shall apply to the activities of Contractor employees, agents, subcontractors, etc. in their dealings and relations with the City'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 City's representatives, employees or their relatives.
- D. Contractor agrees to notify the City 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 City 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 City, 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 City, 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 City of by an inspector general or other investigatory authority of a State or City 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 City, the State or other political subdivision or public authority or other public corporation thereof or any local development corporation within the City, or any public benefit corporation organized under the laws of the States, then:
 - (a) The City 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 City may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to paragraph E below without the City 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 City after such a hearing and a final determination by the City 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 City; 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 City'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 City.

C. The City shall consider and address in reaching its determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. The City 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 City 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 City or otherwise transacts business with the City.
- 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 City 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 City's Police Commissioner or the City'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 City 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 City, nor any person whose salary is payable, in whole or part, from the City 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 City. 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 City 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 City projects for a period of (30) to ninety (90) days.
- F. If the City 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 City projects for one (1) year. A Contractor that receives an unsatisfactory rating will be disqualified from bidding, contracting or subcontracting on City 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 Board of Contract and Supply or its designated representative.

ARTICLE 50. CLAIMS AND ACTIONS THEREON

- A. No claims against the City 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 Comptroller of the final payment 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 City's exercise of the right to declare the Contractor in default must be commenced within six (6) months after the date the City 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 City without additional compensation any and all assistance which the City 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 City 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 City 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 City 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 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 City.
- 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 City 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 City 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 City 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 City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and
 - 2) With respect to any action between the City 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 City 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 City in court located other than in the Westchester County, New York, upon request of the City, 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 City 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 "D", 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 "E", 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 Superintendent, or his authorized designee, on behalf of the City of Yonkers/YPS and the Contractor, have executed this agreement in duplicate for the purposes herein mentioned.

YONKERS PUBLIC SCHOOLS

MENGLER MECHANICAL, INC.

Name of Contractor

By: [Signature]
Name: Dr. Edwin Quezada **BG**
Title: Superintendent of Schools
Date: 5/22/19

By: [Signature]
Name: John F. Mallon
Title: President
Date: 5/7/19

By: [Signature]
Name: Rev. Steve Lopez **BB**
Title: President, Board of Education
Date: 8/30/19

APPROVED AS TO FORM

[Signature]
Yonkers Senior Associate Corporation Counsel

TO BE COMPLETED BY CITY OF YONKERS BUREAU OF PURCHASING

BOE RESOLUTION:	<u>#20.17 - April 24, 2019</u>
DATE OF B.O.C.S. APPROVAL:	<u>May 2, 2019</u>
INITIATING DEPARTMENT:	<u>School Facilities</u>
PURCHASING CONTACT- BUYER:	<u>A Schenck (914) 377-6037</u>

ACKNOWLEDGEMENT OF THE YONKERS PUBLIC SCHOOLS

State of New York
 County of Westchester
 City of Yonkers

ss:

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

 Notary Public or Commissioner of Deeds

ACKNOWLEDGEMENT WHERE THE CONTRACTOR IS A CORPORATION

STATE OF NEW YORK)
)
 COUNTY OF PUTNAM)

ss:

On the 7th day of May, in the year 20 19, before me personally came John F. Mallon, to me known, who, being by me duly sworn, did depose and say that he/she resides at 117 Ice Pond Rd., Brewster, NY 10509, that he/she is the President of Mengler Mechanical, 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



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

SUPPLEMENTARY CONDITIONS

U.1 CITY NOT RESPONSIBLE FOR ACCURACY OF SUBSURFACE RECORDS OR INFORMATION

The Contractor admits that he has carefully examined the location of the work, has made special inquiries at the offices of the companies or individuals owning, controlling or operating pipes, conduits, tunnels, tracks and other structures, and he has determined to his satisfaction the character, size, location and length of such pipes, conduits, tunnels, tracks and other structures, and the obligations, if any, of said companies or individuals to protect and remove the same; that he has inspected the public records of the various City Departments having cognizance and control of the City's water pipes, conduits and sewers, and he has made such further personal inspection and investigation as he deemed proper to determine the correctness of the information so obtained; and he clearly understands that the City does not insure the accuracy of such records, reports or information, and agrees that he will not make any claim against the City for damages or extra work caused or occasioned by his relying upon such records, reports or information furnished by any City Department or any companies, either as a whole or in part.

The existing elevations and existing locations shown on the Plans may vary from actual field conditions. The proposed sewers shall be constructed so as to meet existing sewers at outlet and inlet conditions and as directed by the Engineer.

House connections and existing catch basin connections may not be shown on the Contract Plans.

The elevations and locations of underground facilities have been plotted on the Plans by means of the most reliable information available, however, their accuracy is not guaranteed.

Prior to the start of construction the Contractor shall investigate all elevations and locations of all existing inlet and outlet sewers and manholes, water mains, utility facilities, etc. If the actual field locations and elevations vary from those shown on the Plans the Contractor must immediately notify the Engineer in writing.

All of the aforementioned investigations must be performed prior to the start of construction and the cost thereof shall be deemed included in the prices bid for all items of work.

The Contractor's attention is directed to the fact that from time to time revisions and additions are made in the Sewer Design Standards. A copy of the latest Sewer Design Standards may be obtained at the following location:

Department of Engineering
Yonkers City Hall – Room 313
40 South Broadway
Yonkers, NY 10701

All the work shown on the Contract Drawings shall be done in accordance with the latest Specifications and Sewer Design Standards.

U.2 NOTICE TO UTILITY COMPANIES, ETC., TO REMOVE STRUCTURES OCCUPYING PLACE OF SEWER OR APPURTENANCES

The Contractor shall, except as otherwise provided for in Section U.11, hereof, give notice in writing to all utility and other companies or individuals owning or controlling any pipes, conduits, tunnels, tracks or other structures which shall be found, upon excavating, to occupy the place of the sewer or sewers and appurtenances thereof to be laid or built as required herein so that said companies or individuals may remove their structures at their expense and he shall not cause any hindrance to or interference with such companies or individuals in removing their structures. However, if said utility, railroad, or other companies or individuals, within five (5) days after receipt of such notice shall fail to remove their structures, the Contractor shall, upon the written approval of the City Engineer, remove the same, it being expressly understood that the cost thereof shall not be a charge against the City, but shall be a matter for adjustment between the Contractor and the company or companies or individuals concerned.

U.3 NOTICE TO UTILITY COMPANIES, ETC., TO SUPPORT, PROTECT, TEMPORARILY REMOVE AND REPLACE STRUCTURES WITHIN LIMITS OF ORDERED EXCAVATION

The Contractor shall, except as otherwise provided for in Section U.11, hereof, give notice in writing to all utility and other companies or individuals owning or controlling any pipes, conduits, tunnels, tracks or other structures which shall be found within one (1) foot of

the limits of ordered excavation or otherwise be in interference so that said companies or individuals may protect, support, maintain or temporarily remove and replace their structures, and he shall not cause any hindrance to or interference with any such utility company or companies or individuals in protecting, supporting, maintaining or temporarily removing and replacing main and service pipes, conduits, tunnels, lampposts, lamps, tracks or other structures. The Contractor agrees that he will allow the said company or companies or individuals to take all such measures as are requisite for the purpose aforesaid.

The Contractor shall comply with the provisions of Subpart 53-3 of Rule 53 of the Industrial Code (New York State Department of Labor), latest edition. The City shall not be liable for any costs incurred by the Contractor as a result of the compliance, noncompliance, or improper compliance by the franchised operators of underground facilities, with Subpart 53-3 of Rule 53 of the Industrial Code.

The City shall not be liable for any costs incurred by the Contractor for the support, protection, temporary removal, replacement and maintenance of underground facilities owned by franchised operators of such facilities.

U.4 CONTRACTOR TO MAKE OR ENTERTAIN OFFER TO PROTECT, SUPPORT, TEMPORARILY REMOVE AND REPLACE, PIPES AND OTHER STRUCTURES OF PRIVATE COMPANIES OR INDIVIDUALS

The Contractor agrees, except as otherwise provided in Section U.11, hereof, to confer with and to make an offer to or entertain an offer from such private companies or individuals as own the said pipes, conduits, tunnels, tracks or other structures, and the Contractor further agrees to enter into an agreement with said utility or other companies or individuals by what terms and at what prices the support, protection, maintenance, temporary removal and replacement of the pipes, conduits, tunnels, tracks and other structures will be undertaken and accomplished and in the event of the failure to make such agreement with said companies or individuals he will not complain nor make any demand for additional compensation or pay for supporting, protecting, maintaining, temporarily removing and replacing the said pipes, conduits, tunnels, tracks or other structures.

It is expressly understood that the cost of supporting, protecting, maintaining, temporarily removing and replacing the said pipes, conduits, tunnels, tracks or other structures shall not be a charge against the City, but shall be a matter of adjustment between the Contractor and the company or companies or individuals concerned.

U.5 CONTRACTOR TO PROTECT GAS MAINS, CONDUITS, SUBWAYS, STEAM PIPES, ETC., OWNED BY PRIVATE COMPANIES ALONG AND OUTSIDE OF THE LINE OF ORDERED EXCAVATION

The Contractor agrees to sustain in their places and protect from injury all railroad tracks, gas mains, conduits, subways, steam pipes and pneumatic pipes and all service connections therefrom and all other property belonging to public service companies along the line of the work and outside of the line of ordered excavation from direct or indirect injury by blasting, caving, or otherwise, and he hereby assumes all expenses for direct or indirect damage which may be occasioned by injury to any of them, and he agrees to have a sufficient quantity of timber and other necessary materials and appliances on hand at all times and use the same as required for the sheeting and bracing of sides and ends of excavation and for sustaining and supporting any structures that may be undermined, weakened and endangered or threatened; and in case any damage or injury shall result to said structure through or by reason of any negligence, willfulness, carelessness or want of skill on the part of the Contractor, his agents or servants, the Contractor hereby agrees to pay such amount as shall be sufficient to cover the expenses and damages occasioned thereby, and that such amount shall be charged against him; and the City Engineer is hereby authorized to deduct and retain from any moneys which may be due, or which shall become due under this Contract, a sum sufficient in his judgment to cover the cost of making good any such damages, expenses or loss, and to apply said sum so deducted and retained to the requisite repairs or renewals, or to reimburse the parties damaged or injured.

U.6 CONTRACTOR APPROVES DRAWINGS AND SPECIFICATIONS AS INVOLVING NO DAMAGE TO CITY PROPERTY OR TO PRIVATE BUILDINGS

The Contractor expressly admits and covenants that the Drawings, Specifications and other provisions of this Contract, if the work be done without fault or negligence on the part of the Contractor, do not involve any danger to the fire alarm telegraph system of the City, water mains, hydrants, hydrant connections, duct lines owned, leased or operated by the City, lamps, lampposts, monuments, sewer and water service pipes, sidewalks, curbs, trees or any other city-owned properties or to the foundation walls or vault walls, stoops or other parts of abutting or adjacent private buildings. The Contractor will at his own expense make good any direct or indirect damage that shall be done in the course of construction to any such structures or property through or by reason of the prosecution of the work.

U.7 CONTRACTOR TO NOTIFY CITY DEPARTMENTS

At least forty eight (48) hours before breaking ground for the purpose of constructing the work on this Contract, the Contractor agrees to give notice hereof in writing to each and every City Department owning structures within the limits of the work and obtain their written permission before he disturbs any property or structure under the jurisdiction of these Departments.

U.8 COST OF REMOVAL OF CITY STRUCTURES

Existing trolley tracks, water pipes or appurtenances owned, controlled or operated by the City, or any part of the fire alarm telegraph system of the City, or any duct line or conduit owned, leased or operated by the City, occupying the place of the sewer or sewers and appurtenances to be laid or built as required herein, will be removed and relaid or rebuilt as required by the work of the Contract. The cost thereof shall be included in the prices bid for all the items for which there are Contract Prices unless otherwise specified.

U.9 CONTRACTOR AGREES TO PROTECT CITY STRUCTURES WITHIN THE LIMITS OF, ALONG, AND OUTSIDE THE LIMITS OF ORDERED EXCAVATION

The Contractor agrees to support and to properly protect from injury the City fire alarm telegraph system, all water mains and service water pipes, sewers and appurtenances and conduits or duct lines owned, controlled or operated by the City which may be affected in any manner by the work done under this Contract, except as herein before provided, and to protect all such water and service pipes from freezing. The cost thereof shall be included in the prices bid for all the items for which there are Contract Prices unless otherwise specified. Should it prove necessary to disturb existing traffic signals or street lighting equipment which is the property of the City of Yonkers, the Contractor shall provide temporary signals and street lighting. Upon completion of the work, traffic signals, lamps, lampposts, and accessory equipment shall be restored and temporary facilities shall be removed. Such work shall be accomplished in coordination with the Department of Engineering, Traffic Division and the appropriate utility companies. All costs for connections, disconnections, supply, erection, dismantlement, storage, and restoration of existing facilities shall be included in the prices bid for all Contract Items. Should the Contractor disturb, damage, or relocate any conduits, junction boxes, traffic and/or lampposts, lamps or traffic signals in the streets affected by this work, such damage or relocation shall be immediately repaired with the knowledge of and to the satisfaction of the City. The cost of such work shall be at the sole expense of the Contractor.

U.10 DAMAGED WATER SERVICE PIPES TO BE REPAIRED BY A LICENSED PLUMBER

All water service pipes damaged in the performance of the work under this Contract shall be repaired by a licensed plumber at the expense of the Contractor under the rules and regulations of the City of Yonkers. The Contractor shall obtain all no-fee permits for water service repair.

All water service pipe damaged during construction and requiring repair shall be replaced from the water main to the service box or farthest point of the damage as directed by the Engineer.

U.11 CONTRACTOR TO CARRY OUT AGREEMENT BETWEEN CITY AND RAILROAD COMPANY OR PROPERTY OWNER(S)

If, for the purpose of performing the work or any part thereof required by the Contract, the City has entered into an agreement with any railroad company, or the owner(s) of any property through or across which the work, or any part thereof, is to be constructed, the Contractor agrees to carry on such work or such part thereof, as directed, in accordance with the terms of such agreement, a copy of which is annexed and is hereby agreed upon as forming part of this Contract.

SCHEDULE "A" to the GENERAL AGREEMENT

Bid No.: IFB-6354

Contract No. 2019-808

**Description: BOILER REPLACEMENT AND ASBESTOS ABATEMENT AT SCHOOL 9
CONTRACTS 1 THRU 4**

<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	Performance/ Payment Security	<u>100</u> % of Contract Amount
Agreement Article 6	Time of Completion	Total Consecutive Calendar Days <u>365 – All contracts</u>
Agreement 24Article 6	Liquidated Damages	For Each Consecutive Calendar Day Over Completion Time <u>\$300</u>
Agreement Article 17	Subcontracts* General Construction HVAC Plumbing Electrical	Not to Exceed 85% of the Contract Total 60% of the Contract Total 25% of the Contract Total 25% of the Contract Total
*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.		
Agreement Article 19	Insurance	See below
Agreement Article 20	Maintenance Deposit	(a) 1% of Contract Amount (b) Other _____

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 (Only required for Contract 1-General Construction)
\$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 AND Yonkers Public Schools

Others: Eisenbach & Ruhnke Engineering, PC; Savin Engineers, PC;

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 City Engineer, Certificates of Insurance evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of form and substance acceptable to The City.

Acceptance and/or approval by the City, 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 City; shall be primary and non-contributing to any insurance or self insurance maintained by the City; shall be endorsed to provide written notice be given to the City, 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 City Engineer and shall name The City of Yonkers, 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 City. Such approval shall not be unreasonably withheld. The City reserves the right to withhold portion of payment until the deductible is satisfied.

Each insurance carrier must be rated 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 City 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 City updated replacement Certificates of Insurance and amendatory endorsements.

If at any time, a non-admitted carrier that has to be used becomes financially unsatisfactory to the City, immediate replacement will be required. Failure to do so may void the contract.

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. Two (2) certificates of such insurance shall be furnished to the Schools Facilities 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 protect the City, 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 City, 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 City (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 City/YPS and shall be of a form and by an insurance company acceptable to the City/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 City's Board of Contract and Supply. The coverage shall be written for 100% of the completed value, covering the City of Yonkers/Yonkers Public Schools 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 City/YPS (unless the City/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 City 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 City/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 City, 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 General Construction Contractor's (Contract I) Asbestos Abatement Sub-Contractor shall 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 City/YPS and offered by insurers and sureties acceptable to the City/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. 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.
4. If at any time any of the foregoing bonds and policies shall be or become unsatisfactory to the City/YPS, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the City/YPS, the Contractor shall upon notice to that effect from the City/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 City/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.

5. 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 City/YPS of Yonkers is named as additional insured.
6. The City/YPS reserves the right to increase or decrease the required insurance during the Contract.



AGENCY CUSTOMER ID: 382-323-4

LOC #:

ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY FEDERATED MUTUAL INSURANCE COMPANY		NAMED INSURED MENGLER MECHANICAL INC 1689 ROUTE 22 STE 12 BREWSTER, NY 10509-4049	
POLICY NUMBER SEE CERTIFICATE # 138.0		EFFECTIVE DATE: SEE CERTIFICATE # 138.0	
CARRIER SEE CERTIFICATE # 138.0	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

CONTRACT 2019-0000808

PROJECT: BOILER REPLACEMENT AND ASBESTOS ABATEMENT SCHOOL 9 53 FAIR VIEW STREET YONKERS, NY 10703

CONTRACT # 3 PLUMBING

YPS #10816

IFB-6354

ADDITIONAL INSURED INCLUDE: CITY OF YONKERS/YONKERS PUBLIC SCHOOLS, EISENBACH & RUHNKE ENGINEERING, P.C., SAVIN ENGINEERS, P.C. AND ENVIRONMENTAL PROJECT MANAGER.

THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED ON GENERAL LIABILITY SUBJECT TO THE CONDITIONS OF THE ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS (FORM B) ENDORSEMENT.

THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED SUBJECT TO THE CONDITIONS OF THE ADDITIONAL INSURED BY CONTRACT ENDORSEMENT FOR BUSINESS AUTO LIABILITY.

INSURANCE PROVIDED BY THE GENERAL LIABILITY COVERAGE IS PRIMARY AND NONCONTRIBUTORY OVER OTHER INSURANCE.

INSURANCE PROVIDED BY THE BUSINESS AUTO LIABILITY IS PRIMARY AND NONCONTRIBUTORY OVER OTHER INSURANCE.

GENERAL LIABILITY CONTAINS A WAIVER OF SUBROGATION IN FAVOR OF THE CERTIFICATE HOLDER SUBJECT TO THE CONDITIONS OF THE BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY ENDORSEMENT.

BUSINESS AUTO LIABILITY CONTAINS A WAIVER OF SUBROGATION IN FAVOR OF THE CERTIFICATE HOLDER SUBJECT TO THE CONDITIONS OF THE BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY ENDORSEMENT.

FOR REASONS OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS NOTICE WILL BE PROVIDED TO THE CERTIFICATE-HOLDER IN THE EVENT THAT THE ISSUING COMPANY CANCELS THE POLICY BEFORE THE EXPIRATION DATE OF THE POLICY.

GENERAL LIABILITY COVERAGE CONTAINS CG 25 03 DESIGNATED CONSTRUCTION GENERAL AGGREGATE LIMIT ENDORSEMENT APPLICABLE TO EACH CONSTRUCTION PROJECT AS REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED BY CONTRACT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. WHO IS AN INSURED for "bodily injury" and "property damage" liability is amended to include:

Any person or organization other than a joint venture, for which you have agreed by written contract to procure bodily injury or property damage "auto" liability insurance arising out of operation of a covered "auto" with your permission. However, this additional insurance does not apply to:

- (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

B. The coverage extended to any additional insured by this endorsement is limited to, and subject to all terms, conditions, and exclusions of the Coverage Part to which this endorsement is attached.

In addition, coverage shall not exceed the terms and conditions that are required by the terms of the written agreement to add any insured, or to procure insurance.

C. The limits of insurance applicable to such insurance shall be the lesser of the limits required by the agreement between the parties, or the limits provided by this policy.

D. Additional exclusions. The insurance afforded to any person or organization as an insured under this endorsement does not apply:

1. To "loss" which occurs prior to the date of your contract with such person or organization;
2. To "loss" arising out of the sole negligence of any person or organization that would not be an insured except for this endorsement.
3. To "loss" for any leased or rented "auto" when the lessor or his or her agent takes possession of the leased or rented "auto" or the policy period ends, whichever occurs first.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

In the event of any payment for a loss under this Business Auto Coverage Part arising out of your ongoing operations, we agree to waive our rights under the TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US condition against any person or organization, its subsidiaries, directors, agents or employees, for which you have agreed by written contract, prior to the occurrence of any loss, to waive such rights, except when the payment results from the sole negligence of that person or organization, its subsidiaries, directors, agents or employees.

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CA-F-128 (03-03)

Policy Number: 0758535

Transaction Effective Date:02-20-2019

FEDERATED INSURANCE COMPANIES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NON-CONTRIBUTORY CLAUSE ENDORSEMENT

This endorsement modifies insurance provided under the following:

**AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE PART**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

It is agreed that the insurance provided by any additional insured endorsement is primary when primary coverage is required in a written contract. We will not seek contribution from any insurer when insurance on a non-contributing basis is required in a written contract. For coverage to apply, the written contract must have been executed prior to the occurrence of "loss".

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CA-F-129 (10-13)

Policy Number: 0758535

Transaction Effective Date: 02-20-2019

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY -
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance Condition** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Designated Construction Project(s):</p> <p style="text-align: center;">Each construction project as required by written contract or written agreement.</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

- B.** For all sums which the Insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
- 1.** Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 - 2.** Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III - Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

CITY OF YONKERS
YONKERS PUBLIC SCHOOL
1 LARKIN CENTER
YONKERS NY 10701

- (If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an Insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Job or Project:

See IL-F-40-0055

Insured:

MENGLER MECHANICAL INC
1689 ROUTE 22 STE 12
BREWSTER NY 10509

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CG-F-64 (05-97)
(CG 20 10 11-85)

Policy Number: 0758535

Transaction Effective Date: 05-07-2019

EXTENSION ENDORSEMENT

Extension - CG-F-64 - CITY OF YONKERS

COVERAGE PROVIDED BY ENDORSEMENT APPLIES ONLY TO THE PLUMBING WORK COMPLETED BY THE NAMED INSURED ON BEHALF OF THE CERTHOLDER. ADDITIONAL INSUREDS ALSO INCLUDE: CITY OF YONKERS/YONKERS PUBLIC SCHOOLS, EISENBACH & RUHNKE ENGINEERING, P.C., SAVIN ENGINEERS, P.C. AND ENVIRONMENTAL PROJECT MANAGER.

FEDERATED INSURANCE COMPANIES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST
OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV - **Conditions**:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard", except when the payments result from the sole negligence of that person or organization. We waive this right only when you are required to do so by written contract or agreement with that person or organization, executed by you prior to the occurrence of any loss.

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CG-F-81 (04-13)

Policy Number: 0758535

Transaction Effective Date: 02-20-2019



New York State Insurance Fund

Workers' Compensation & Disability Benefits Specialists Since 1914

199 CHURCH STREET, NEW YORK, N.Y. 10007-1100

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

***** 134190068
KEEVILY, SPERO-WHITELAW INC.
500 MAMARONECK AVENUE
HARRISON NY 10528



SCAN TO VALIDATE
AND SUBSCRIBE

POLICYHOLDER MENGLER MECHANICAL, INC. PUTNAM BUSINESS PARK 1689 ROUTE 22 BREWSTER NY 10509

CERTIFICATE HOLDER CITY OF YONKERS/YONKERS PUBLIC SCHOOLS, ONE LARKIN CTR 3RD FL RE:CONTRACT #2019-00000808 YONKERS NY 10701

POLICY NUMBER G1306 717-8	CERTIFICATE NUMBER 912897	POLICY PERIOD 05/01/2019 TO 05/01/2020	DATE 5/6/2019
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THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 1306 717-8, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT [HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP](https://www.nysif.com/cert/certval.asp). THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.

THIS CERTIFICATE DOES NOT APPLY TO THOSE JOB SITES WHICH ARE COVERED BY OTHER INSURANCE AND ARE SPECIFICALLY EXCLUDED BY ENDORSEMENT.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR, INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 89058688



Workers' Compensation Board

**CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW**

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

<p>1a. Legal Name & Address of Insured (use street address only) Mengler Mechanical Inc</p> <p>1689 Route 22 Brewster, NY 10509 Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)</p>	<p>1b. Business Telephone Number of Insured (860) 350-8287 x</p> <p>1c. Federal Employer Identification Number of Insured or Social Security Number 13-4190068</p>
<p>2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) City of Yonkers/ Yonkers Public Schools</p> <p>RE: CONTRACT#2019-00000808 ONE LARKIN CENTER 3RD FLOOR 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" D546095</p> <p>3c. Policy effective period 1/1/2019 to 12/31/2019</p>

4. Policy provides the following benefits:

A. Both disability and paid family leave benefits.

B. Disability benefits only.


C. Paid family leave benefits only.

5. Policy covers:

A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.

B. Only the following class or classes of 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 and/or Paid Family Leave Benefits Insurance coverage as described above.

Date Signed 5/6/2019 By 
(Signature of insurance carrier's authorized representative or NYS licensed insurance agent of that insurance carrier)

Telephone Number 516-829-8100 Name and Title Richard White - Chief Executive Officer

IMPORTANT: If Boxes 4A and 5A are 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, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

**State of New York
Workers' Compensation Board**

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

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: Only insurance carriers licensed to write NYS disability and paid family leave 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 and/or paid family leave benefits under the New York State Disability and Paid Family Leave 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.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the Insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier

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 and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave 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 and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE 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 not withstanding 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 and after January first, two thousand and twenty-one, the payment of family leave 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 and after January first, two thousand eighteen, the payment of family leave 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 City's desire to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in City 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: Mengler Mechanical, Inc.
Address: 1689 Route 22, Brewster, NY 10509

Completed By (Print Name/Title): John F. Mallon, 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 City receives information that the Contractor is in violation of paragraph "A", the City shall review such information and give the Contractor opportunity to respond. If the City finds that such a violation has occurred, the City may declare the Contractor in default, and/or terminate this Contract. In the event of any such termination, the City may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the City the difference between the contract price for the uncompleted portion of this Contract and the cost to the City 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 City would have paid the Contractor plus any reasonable costs the City incurs in any new procurement and if this is a construction contract, the City 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 City hereunder shall be in addition to, and not in lieu of, any rights and remedies the City has pursuant to this Contract or by operation of law or in equity.

Agreed:

Mengler Mechanical, Inc.

(Legal Name of Person, Firm or Corporation)

By:

John Mall

(Signature of Authorized Representative)

President

(Title)

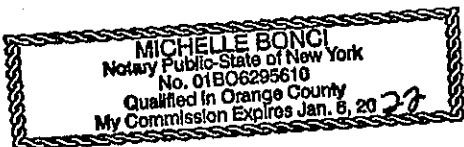
Dated:

2/15/19

SWORN to before me this 15th day
of February, 20 19

Michelle Bonci

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.

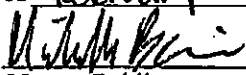
During the term of the Contract, should the City of Yonkers receive information that a Bidder/Contractor is in violation of the above-referenced certification, the City will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the City 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 City 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, John F. Mallon, being duly sworn, deposes and says that he/she is the President of the Mengler Mechanical, 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 15th day
of February, 20 19


Notary Public




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: Mengler Mechanical, Inc.
(print full legal name)

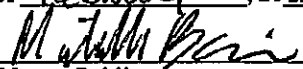
Date Signed: 2/15/19

Signature: 

Name of Person Signing Certificate: John F. Mallon
(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 15th day
of February, 2019


Notary Public



PERFORMANCE BOND

Bond No. 09240988

City of Yonkers
Bureau of Purchasing

Yonkers City Hall
Yonkers, New York 10701

BID NO.: IFB-6354

KNOW ALL MEN BY THESE PRESENTS;

That Mengler Mechanical, Inc., 1689 Route 22, Brewster, NY 10509

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

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

Fidelity and Deposit Company of Maryland

(Here insert the legal title of Surety)

1299 Zurich Way, 5th Floor Schaumburg, IL 60196

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Yonkers, City Hall, Yonkers, New York 10701, as obligee, (hereinafter called the "City"), in the amount of

Three hundred fifty thousand and 00/100 Dollars

(\$ 350,000.00), 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 City for the construction of Boiler Replacement and Asbestos Abatement - Contract No. 3 Plumbing located at School 9

_____ 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 City from all cost and damage which it may suffer by reason of failure so to do, and shall fully reimburse and repay the City for all outlay and expense which the City 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 City, 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 City and to complete such work within such time as the City 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.

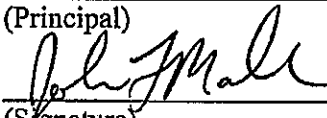
Any suit under this bond must be instituted before the expiration of two (2) years from the date on which Final Payment is made under the Contract.

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

Signed as of this 7th day of May 2019
IN THE PRESENCE OF:

Mengler Mechanical, Inc.

(Principal)



(Signature)

John F. Mallon, President

(Title)

Fidelity and Deposit Company of Maryland

(Surety)



Abigail E. Curtiss, Attorney-in-Fact

(Title)

(PERFORMANCE BOND – Bid # IFB-6354)

ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION

STATE OF New York)
CITY OF Brewster) ss:

On the 7th day of May in the year 2019, before me personally came John F. Mallon 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 117 Ice Pond Rd., Brewster, NY 10509, that he/she is the President of Mengler Mechanical, 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 # IFB-6354)

ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP

STATE OF _____)

CITY 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

ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL

STATE OF _____)

CITY 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 # **IFB-6354**)

ATTORNEY IN FACT ACKNOWLEDGEMENT

STATE OF _____)

CITY OF _____) ss:

On this _____ day of _____, 20____, before me personally came _____ the attorney in fact of _____ 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 _____ day of _____ 20 ____; that said powers of attorney is still in full force.

Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF Connecticut)

CITY Berlin) ss:

On this 7th day of May in the year 2019, before me personally came Abigail E. Curtiss to me known, who, being by me duly sworn, did depose and say that he/she resides at 94 Claudia Drive, Southington, CT 06489, that he/she is the Attorney-in-Fact of Fidelity and Deposit Company of Maryland, 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.

Rochelle Remillard
NOTARY PUBLIC OR COMMISSIONER OF DEEDS

(PERFORMANCE BOND – Bid # IFB-6354)

ROCHELLE REMILLARD
NOTARY PUBLIC
MY COMMISSION EXPIRES APR. 30, 2023

LABOR AND MATERIAL PAYMENT BOND

City of Yonkers
Bureau of Purchasing

Yonkers City Hall
Yonkers, New York 10701

BID NO.: IFB-6354

KNOW ALL MEN BY THESE PRESENTS;

That Mengler Mechanical, Inc., 1689 Route 22, Brewster, NY 10509

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

Fidelity and Deposit Company of Maryland

(Here insert the legal title of Surety)
1299 Zurich Way, 5th Floor Schaumburg, IL 60196

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Yonkers, Yonkers City Hall, Yonkers, Yew York 10701, as Obligee,(hereinafter called the City), in the amount of

Three hundred fifty thousand and 00/100 Dollars

(\$ 350,000.00)

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 May 6, 2019 entered into a contract with the City for the construction of _____

Boiler Replacement and Asbestos Abatement - Contract No. 3 Plumbing

Located at School 9 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 City 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 City 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 City, 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 City or Surety, at any place where an office is regularly maintained by said Principal, the City 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 7th day of May 2019

IN THE PRESENCE OF; Mengler Mechanical Inc.
(Principal)


(Signature)

John F. Mallon, President
(Title)

Fidelity and Deposit Company of Maryland
(Surety)


(Signature)
Abigail E. Curtiss, Attorney-in-Fact
(Title)

(LABOR & MATERIAL PAYMENT BOND – Bid # IFB-6354)

ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION

STATE OF New York)
CITY OF Brewster) ss:

On the 7th day of May in the year 2019, before me personally came John F. Mallon 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 117 Ice Pond Rd., Brewster, NY 10509, that he/she is the President of Mengler Mechanical, 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



(LABOR AND MATERIAL PAYMENT BOND – Bid # IFB-6354)

ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP

STATE OF _____)

CITY 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

ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL

STATE OF _____)

CITY 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 # IFB-6354)

ATTORNEY IN FACT ACKNOWLEDGEMENT

STATE OF _____)

CITY OF _____) ss:

On this _____ day of _____, 20____, before me personally came _____ the attorney in fact of _____ 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 _____ day of _____, 20____; that said powers of attorney is still in full force.

Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF Connecticut)

CITY Berlin) ss:

On this 7th day of May in the year 2019, before me personally came Abigail E. Curtiss to me known, who, being by me duly sworn, did depose and say that he/she resides at 94 Claudia Drive, Southington, CT 06489, that he/she is the Attorney-in-Fact of Fidelity and Deposit Company of Maryland, 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.

Rochelle Remillard
NOTARY PUBLIC OR COMMISSIONER
OF DEEDS

(LABOR AND MATERIAL PAYMENT BOND – Bid # IFB-6354)

ROCHELLE REMILLARD
NOTARY PUBLIC
MY COMMISSION EXPIRES APR. 30, 2023

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by Michael P. Bond, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Shannon KOPP, Edmondo ALBERICO, Peter LAU, Lindsay NORMAN, Robert A. SCHLITZ, Cynthia GARRISON, John O. FORLIVIO, Jamie L. GRANT, Abigail E. CURTISS, Samantha THOMPSON, Kimberly HILLMANN and Jacqueline DILLON, all of Norwalk, Connecticut, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 5th day of April, A.D. 2018.



**ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

Michael P. Bond

By: Michael P. Bond
Vice President

Dawn E. Brown

By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 5th day of April, A.D. 2018, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, Michael P. Bond, Vice President and Dawn E. Brown, Secretary of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2019

THE FIDELITY AND DEPOSIT COMPANY

OF MARYLAND

1299 Zurich Way Schaumburg, IL 60196

Statement of Financial Condition

As Of December 31, 2018

ASSETS

Bonds	\$ 245,255,635
Stocks	22,855,569
Cash and Short Term Investments.....	3,092,872
Reinsurance Recoverable	73,242,781
Federal Income Tax Recoverable.....	42,258
Other Accounts Receivable.....	4,801,363
TOTAL ADMITTED ASSETS	\$ 349,290,278

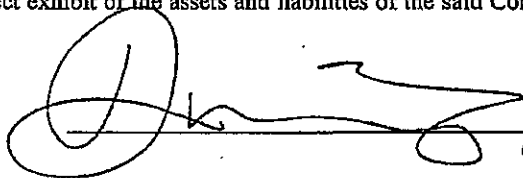
LIABILITIES, SURPLUS AND OTHER FUNDS

Reserve for Taxes and Expenses	\$ 106,785
Ceded Reinsurance Premiums Payable	46,727,605
Remittances and Items Unallocated	125,000
Payable to parents, subs and affiliates.....	28,621,373
Securities Lending Collateral Liability	0
TOTAL LIABILITIES.....	\$ 75,580,762
Capital Stock, Paid Up	\$ 5,000,000
Surplus	268,709,716
Surplus as regards Policyholders.....	273,709,716
TOTAL	\$ 349,290,478

Securities carried at \$162,739,508 in the above statement are deposited with various states as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of market quotations for all bonds and stocks owned, the Company's total admitted assets at December 31, 2018 would be \$349,736,423 and surplus as regards policyholders \$274,155,661.

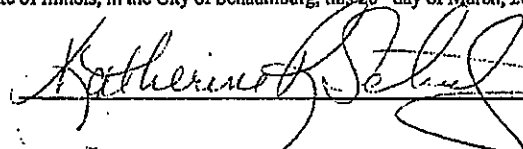
I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2018.



 Corporate Secretary

State of Illinois }
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 20th day of March, 2019.



 Notary Public



State of New York

DEPARTMENT OF FINANCIAL SERVICES

WHEREAS IT APPEARS THAT

Fidelity and Deposit Company of Maryland

Home Office Address Owings Mills, Maryland

Organized under the Laws of Maryland

has complied with the necessary requirements of or pursuant to law, it is hereby

licensed to do within this State the business of

fire, miscellaneous property, water damage, burglary and theft, glass, boiler and machinery, elevator, collision, personal injury liability, property damage liability, workers' compensation and employers' liability, fidelity and surety, credit, motor vehicle and aircraft physical damage and marine and inland marine (inland only) insurance, as specified in paragraph(s) 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19 and 20 of Section 1113(a) of the New York Insurance Law, and as authorized by Section 4102(c), reinsurance of every kind or description to the extent permitted by certified copy of its charter document on file in this Department until July 1, 2019.

In Witness Whereof, I have hereunto set
my hand and affixed the official seal of this
Department at the City of Albany, New York, this
1st day of July, 2018



Maria T. Vullo
Superintendent

By

Kathleen Granderath

Kathleen Granderath
Special Deputy Superintendent

BID SHEETS ATTACHMENT A

**BOILER SYSTEM REPLACEMENT AND ASBESTOS ABATEMENT
AT SCHOOL 9**

BID #: IFB - 6354

YPS PROJECT #10816

SED PROJECT #66-23-00-01-0-009-009

PLUMBING - CONTRACT 3

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: <u>Base Bid Price to Complete PLUMBING Work as Described in the Contract Documents.</u> <u>Two Hundred Seventy Seven Thousand Five</u> <u>Hundred Dollars and 00/100</u> Lump Sum	\$277,500	00	\$277,500	00
2	1	Necessary: Miscellaneous Additional Work for Owner Directed Work, if so Desired by the District. <u>Ten Thousand and -----00/100</u> Necessary	\$10,000	00	\$10,000	00
3	500	Unit Price P-1 Dispose of oil from fuel oil tank. Include in the base bid disposal of 500 gallons of heating fuel and any sludge in the bottom of the tank. The unit price will be used to adjust the value up or down based upon the actual quantity disposed. Price Per Gallon <u>Four Dollars and 00/100</u> Necessary	\$4	00	\$2,000	00
4	250	Unit Price P-2 Dispose of contaminated water around and under fuel tank. Include in the base bid disposal of 250 gallons of water. The unit price will be used to adjust the value up or down based upon the actual quantity disposed. Price Per Gallon <u>Four Dollars and 00/100</u> Necessary	\$4	00	\$1,000	00
5	30	Unit Price P-3 Dispose of contaminated soil around and under fuel tank. Include in the base bid disposal of 30 tons of soil. The unit price will be used to adjust the value up or down based upon the actual quantity disposed. Price Per Ton <u>Two Hundred Fifty Dollars and 00/100</u> Necessary	\$250	00	\$7,500	00

ITEM	APPROX. EST. QUANTITY (A)	ITEMS WITH UNIT-BID PRICES WRITTEN IN WORDS	UNIT-BID PRICES (B)		TOTAL AMT. BID (A) X (B)	
			DOLLARS	CENTS	DOLLARS	CENTS
6	6	Unit Price P-4 Provide a temporary above ground propane tank for 6 months, including all piping, electrical and fencing. The unit price will be used to adjust the value up or down based upon the actual quantity disposed. Price Per Month _____ <u>Two Thousand Dollars and 00/100</u> Necessary	\$2,000	00	\$12,000	00
7	10,000	Unit Price P-5 Provide propane to maintain operation of the boilers. The unit price will be used to adjust the value up or down based upon the actual quantity provided. Price Per Gallon <u>Four Dollars and 00/100</u> _____ _____ Necessary	\$4	00	\$40,000	00

PLUMBING - CONTRACT 3

TOTAL BID - ITEMS 1 thru 7, INCLUSIVE

Written in Words: Three Hundred Fifty Thousand Dollars _____ 00 Cents

Written in Figures: (\$350,000.00)

CONTRACTOR: Mengler Mechanical, Inc.

ADDRESS: 1689 Route 22, Brewster, NY 10509

PREPARED BY: *John F. Mallon*
John F. Mallon, President

TELEPHONE NO.: 845-279-7029

DATE: 3/13/19