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**PARTIAL ASSIGNMENT OF GENERAL CONTRACTING  
SERVICES AGREEMENT**

THIS PARTIAL ASSIGNMENT OF GENERAL CONTRACTING SERVICES AGREEMENT ("Partial Assignment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between the Board of Education of the City of Chicago (the "Board") and the Public Building Commission of the City of Chicago (the "PBC").

**Recitals:**

- A. The Board entered into that certain General Contracting Services Agreement with F. H. Paschen, S. N. Nielsen, Inc. ("Paschen/Nielsen") effective January 1, 2000 (the "Contract");
- B. Under the terms of the Contract, and pursuant to a bid solicitation process, the Board awarded a contract (including Alternative 8) to Paschen/Nielsen for the construction of the new Simeon Career Academy (the "Simeon Project");
- C. Pursuant to resolution adopted by the Board on October 24, 2001 (Resolution No. 01-1024-RS5), the Board requested that the PBC undertake the administration of the Contract for the construction of the Simeon Project on the Board's behalf and authorized the transfer of the Simeon Project to the PBC; and
- D. On December 11, 2001, the PBC adopted a resolution which authorized the PBC to undertake the administration of the Contract for the construction of the Simeon Project and accept the transfer of the Simeon Project from the Board.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The Board hereby assigns to the PBC all of its right, title and interest in and to the Contract in so much as it applies to the Simeon Project and agrees that it will extend the expiration date of said Contract so that it will expire no earlier than the completion of the Simeon Project; provided, however, that the Board shall retain responsibility for the insurance requirements of the Contract under its Owner Controlled Insurance Program ("OCIP"). Furthermore, the Board shall indemnify and hold harmless the PBC, its commissioners, officers, agents, employees and representatives, from any and all loss or damage resulting from the performance of this Partial Assignment as it relates to the OCIP and agrees to name the PBC as an additional insured under the OCIP.
2. The Board hereby assigns to the PBC all of its right, title and interest in and to the bid solicitation submitted from Paschen/Nielsen for the Simeon Project. All bid, contract and construction documents, including drawings, specifications and the like that the Board has in its possession have been or will be delivered to the PBC.
3. The PBC hereby accepts the foregoing assignments.

4. Notwithstanding any provision in this Partial Assignment to the contrary, the Board agrees that it will provide such assistance and information to the PBC as may be requested with respect to the administration of the Contract including, without limitation, M/WBE participation, liquidated damages, equal opportunity, workforce employment (PLA), and City of Chicago residency program.

5. Pursuant to Section 42.1 of the Contract, the payment procedures for the Simeon Project shall be in accordance with the PBC's procedures entitled Payment Applications (GC-30), Certificates for Payment (GC-31), Payments Withheld (GC-32), and Section 01025-Payment, Modification and Completion Procedures. Attached to this Partial Assignment and incorporated herein by reference is a copy of GC-30, GC-31, GC-32 and Section 01025.

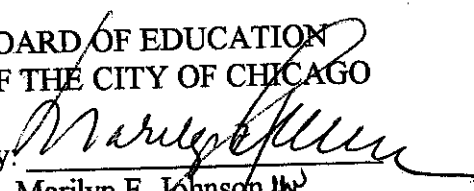
6. The PBC shall obtain from Paschen/Nielsen a payment and performance bond in the full amount of the contract for the Simeon Project in which the PBC will be named as obligee. The PBC shall keep the Board apprised of any disputes with Paschen/Nielsen or its surety.

7. The Board and the PBC hereby acknowledge that the PBC's administration of the Simeon Project shall be subject to the terms and conditions of that certain Master Intergovernmental Agreement between the parties dated February 24, 1999.

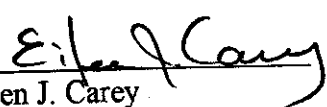
8. Except as specifically assigned herein for the Simeon Project, the Contract shall remain in full force and effect between the Board and Paschen/Nielsen.

IN WITNESS WHEREOF, the parties have signed this Partial Assignment on the date and year first entered above.

BOARD OF EDUCATION  
OF THE CITY OF CHICAGO

By:   
Marilyn F. Johnson  
General Counsel

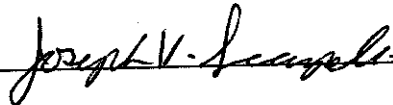
PUBLIC BUILDING COMMISSION  
OF THE CITY OF CHICAGO

By:   
Eileen J. Carey  
Executive Director

Board Report No.: 01-1024-RS5

This Partial Assignment is acknowledged and agreed to by F. H. Paschen, S. N. Nielsen, Inc. this 17<sup>TH</sup> day of JANUARY, 2002.

F. H. Paschen, S. N. Nielsen, Inc.

By: 

## GC-30 PAYMENT APPLICATIONS

- a. At least fifteen (15) days prior to the first application for payment, and no later than thirty (30) days after the Notice to Proceed, the Contractor shall submit to the Architect and Commission Representative a Schedule of Values showing values of the Work to be performed by it and its Subcontractors containing such supporting details or other evidence as to its correctness as the Architect and Commission Representative may require. ~~The Schedule of Values~~ shall list the value for each construction activity broken down by materials and labor to be included in the progress schedule required by Division 1, Section 01025, of the Specifications. When approved by the Architect and Commission Representative, the Schedule of Values shall be used as a basis for certificates of payment unless it is found to be in error.
- b. The Work consists of multiple locations and therefore separate and independent Payment Applications shall be submitted for each location. Retainage, Preliminary Acceptance and Final Acceptance shall be evaluated separately for each separate phase or location.
- c. The Commission Representative will assign to the Contractor an invoice target date at the preconstruction meeting referenced in Division 1, Section 01010, of the Specifications. Not later than ten (10) days prior to the invoice target date, the Contractor shall submit a pencil copy of the application for payment for Work completed through the end of the prior month and the monthly progress report required by Division 1, Section 01200 to the Architect and Commission Representative. Not later than five (5) days prior to the invoice target date, the pencil copy shall be reviewed at the payment review meeting with the Architect and Commission Representative for approval of value of the Work completed. Calculation of the value of Work completed shall be made by summarizing the individual values of Work completed as such completion is reported by the monthly progress report as approved by the Architect. Submission of the monthly progress report five (5) days prior to the payment review meeting shall be a condition precedent to the approval of the payment application. The pencil copy of the Payment Application shall not project completion of work beyond the date of the review meeting of such with the Architect and Commission Representative.
- d. On or about the invoice target date of each month, the Contractor shall submit to the Architect and Commission Representative an application for partial payment including a notarized affidavit stating that all monetary obligations to all Subcontractors for the periods covered by all prior applications for payment, if any, have been completely fulfilled and discharged supported by receipts or receipted vouchers, and lien waivers, evidencing payments for such materials, services, labor and payments to Subcontractors, together with a waiver of lien covering the amount for which the current payment is being requested and such other evidence of the Contractor's right to payment as the Architect or Commission Representative may direct. The application for partial payment shall conform to approvals made by the Architect and Commission Representative at the payment review meeting.
- e. Payments for on-site stored material shall be made only if the Commission Representative and Commission specifically approve at their sole discretion such payments. If payments are to be made on account of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site, such payments

## PUBLIC BUILDING COMMISSION OF CHICAGO

shall be conditioned upon submission by the Contractor of bills of sale, waivers of lien, and such other documents and compliance with such other procedures as the Commission requires to establish its title to such materials or equipment or otherwise protect its interest, including applicable insurance and transportation to the Site. Any payments required for off-site stored materials which may be required to expedite the project schedule and procurement of materials shall be the sole responsibility of the Contractor.

- f. Prior to final payment and Final Acceptance, the Contractor shall file the following papers with the Architect:
  1. Manufacturers' operating instructions for all equipment.
  2. Record "as built drawings" required by Section 01720 of the Technical Specifications.
  3. A notarized affidavit stating that all monetary obligations to suppliers of material, services, labor and all Subcontractors have been completely fulfilled and discharged.
  4. Lien waivers required by Section GC-33, Liens.
  5. Final releases from Contractor, Subcontractors and material suppliers.

### GC-31 CERTIFICATES FOR PAYMENTS

- a. If the Contractor has complied with the requirements of Section GC-30, the Architect shall issue to the Contractor a certificate for such amount as the Architect determines to be properly due as agreed upon during the payment review meeting (including materials which are suitably stored but not incorporated in the Work at no more than fifty (50%) percent of their actual value), during the preceding payment period. The amount of each partial payment shall be the total sum of completed Work less prior partial payments, retainage and payments withheld in accordance with the provisions of Section GC-32.
- b. Retainage of ten (10%) percent of the total amount earned shall be withheld from partial payments to the Contractor. When the value of the completed Work exceeds fifty (50%) percent of the Adjusted Contract Price, the Contractor may request a reduction of retainage. Should the Commission, at its sole discretion, approve such request, retainage may be reduced to an amount equal to not less than five (5%) percent of the Adjusted Contract Price. The remaining retainage will be released upon Final Acceptance of the Work.
- c. No certificate issued nor payment to the Contractor, nor partial or entire use of the Work or occupancy of the Site by the Commission or the User shall be an acceptance of any Work or materials not in accordance with the Contract Documents.
- d. The Architect's certificates for payment are for the benefit of the Commission and shall not be relied upon by any other party (including any surety or Subcontractor of the Contractor) in any action against the Commission, the Architect or anyone acting on behalf of either of them.

**GC-32 PAYMENTS WITHHELD**

- a. The Architect or Commission Representative may recommend that the Commission withhold or nullify the whole or a part of any application for payment or any certificate for payment to such extent as may be necessary to protect the Commission from loss because of:
  1. Defective Work not remedied.
  2. Claims filed or reasonable evidence indicating probable filing of claims.
  3. Failure of the Contractor to properly pay Subcontractors or for material, services, or labor.
  4. A reasonable doubt that the Contract can be completed for the balance then unpaid.
  5. Damage to the Work or property of the Commission, the User or another contractor.
  6. Erroneous estimates by the Contractor of the value of the Work performed.
  7. Unauthorized deviations by the Contractor from the Contract Documents.
  8. Liquidated damages.
- a. When the above ground or grounds are removed, payments shall be made for amounts so withheld.

**SECTION 01025 - PAYMENT, MODIFICATION, AND COMPLETION PROCEDURES**

**PART 1 GENERAL**

**1.01 SUMMARY**

- a. Section includes:
  - 1. Schedule of Values.
  - 2. Payment procedures.
  - 3. Modification procedures.
  - 4. Completion procedures.

**1.02 CONTRACT CONDITIONS**

- a. The Conditions of the Contract including the definitions set forth in GC-1 and additional requirements and procedures described in GC-30, GC-31, GC-32 and GC-33 are incorporated herein by reference.
- b. Payment for material and/or equipment stored on or off Site is intended to facilitate the procurement of long lead job specific items of significant value. No payments will be made for material or equipment stored on or off Site unless specifically approved in advance in writing by the Commission. All Payment Applications for stored material or equipment must include documents transferring title for the full value of the material or equipment to the Commission, proof of insurance, and invoices for the material or equipment. The material or equipment must be stored in a secure location and specifically identified as property of the Public Building Commission of Chicago.
- c. Payments may be withheld if the Contractor fails to make dated submittals within the time periods specified.

**1.03 DEFINITIONS**

- a. The definitions set forth in the Conditions of the Contract are incorporated herein by reference.

**PART 2 PRODUCTS (NOT USED)**

**PART 3 EXECUTION**

**3.01 SCHEDULE OF VALUES**

- a. Prepare and submit a Schedule of Values prior to the first Payment Application.
  - 1. Submit in size not larger than 8 1/2" by 11".
  - 2. Submit four (4) copies.
  - 3. Identify with:
    - (a) Project name.
    - (b) Contract number.
    - (c) Architect's name.
    - (d) Commission's name.
    - (e) Contractor's name and address.

- (f) Submittal date.
- b. Schedule of Values: Break costs down into line items which will be comparable with line items in Contractor payment applications.
1. Coordinate line items in the Schedule of Values with portions of the Contract Documents which identify units or subdivisions of Work; provide cross-referencing if necessary to clarify.
  2. Divide major subcontracts into individual cost items.
  3. Where applications for payment are likely to include products purchased or fabricated but not yet installed, provide individual line items for material cost, installation cost, and other applicable phases of completion.
  4. Show the following as separate line items:
    - (a) Material testing.
    - (b) Operations and maintenance data.
    - (c) Project Record Documents.
    - (d) Bond and insurance premiums.
    - (e) Permit costs.
    - (f) Overhead and profit.
  5. Include the following information for each line item:
    - (a) Item name.
    - (b) Applicable specification section.
    - (c) Dollar value, rounded to the nearest whole dollar (with the total equal to the Base Contract Price).
    - (d) Proportion of the Base Contract Price represented by this item, to the nearest one-hundredth percent (with the total adjusted to 100 percent).
  6. Provide the following supporting data for each line item:
    - (a) Subcontractor's name.
    - (b) Manufacturer or fabricator's name.
- c. Submit Schedule of Values within thirty (30) days after the Notice to Proceed date and not less than 15 days prior to submittal of the first application for payment.
- d. The Architect and Commission Representative shall review the Schedule of Values. Should the Commission Representative notify the Contractor that the Schedule of Values is not satisfactory the Contractor shall revise and resubmit the Schedule of Values until it is approved.

- e. Submit a revised Schedule of Values when modifications change the Base Contract Price or change individual line items.
  1. Show the changes due to each modification on a separate sheet and incorporate the changes into the overall schedule of values.
  2. Show the following information for each line item:
    - (a) All information required for original submittal.
    - (b) Identification of modifications which have affected its value.
  3. Submit prior to next Payment Application.

### 3.02 PAYMENT APPLICATION PROCESS

- a. Prepare the Payment Application using standard forms provided in the Contract Documents.
- b. Payment Review meetings:

Scheduling of meetings to review the application for payment is the responsibility of the Commission Representative in conjunction with the Architect and Contractor. It will be necessary to schedule the meetings so that the approved Payment Application is delivered on the due date. All requests must be received no later than 9:00 a.m. on the due date so that the requests can be reviewed and processed in a timely manner.

- c. Payment Application Format:

The documents are to be presented in the following order:

- |                      |  |
|----------------------|--|
| 1. Exhibit S         | Certificate of Architect-Engineer                  |
| 2. Exhibit N         | Payment Application Form                           |
| 3. Exhibit N         | Payment Application Form Change Order              |
| 4. Exhibit N         | Payment Application Form Material Stored           |
| 5. Exhibit N         | Summary of Estimate Sheets                         |
| 6. Exhibit A         | Contractor's Sworn Statement (Partial Payment)     |
| 7. Exhibit B         | Contractor's Waiver of Lien for Partial Payment    |
| 8. Exhibit R         | Status Report of MBE/WBE Subcontract Payments      |
| 9. Exhibit D         | Subcontractor's Waiver of Lien for Partial Payment |
| 10. Commercial Forms | Subcontractor's Second Tier Waivers                |
| 11. Exhibit C        | Subcontractor's Sworn Statement (Partial Payment)  |
| 12. Exhibit P        | Contractor's Recapitulation Form                   |

All copies of applications for payment sent to the Commission must have original signatures and seals. If a Subcontractor is applying for final payment, substitute "Sworn Statement and Affidavit for Final Payment" and "Subcontractor's Final Release and Waiver of Lien" in numbers 8 and 10 above. Blank copies of the payment application documents are provided within the Contract Documents. The Contractor may reproduce these forms as needed.

The Contractor must report the value of contracts with any Subcontractor, consultant, or material supplier which are greater than one thousand (\$1,000.00) Dollars as a separate line item on the sworn statement. Subcontractors, consultants, or material suppliers with a contract greater than fifty thousand (\$50,000.00) Dollars must submit sworn statements and waivers on the Commission's payment application



## PUBLIC BUILDING COMMISSION OF CHICAGO

document forms and/or commercial forms as back-up for that line item on the Contractor's sworn statement.

### d. Payment Application Process:

1. Prepare a pencil copy draft of the payment application.
2. At the payment review meeting, the Architect, Commission Representative, and Contractor shall conduct a detailed review of the payment applications. Any errors, inaccuracies, or omissions shall be noted. The Contractor shall have available such supporting documentation as the Architect or Commission Representative deems necessary to support the application for payment.
3. The Contractor shall make all required corrections and revisions and prepare ten (10) complete copies of the payment application. The Contractor shall submit all ten (10) copies to the Commission Representative.

### e. General Comments:

1. Contract amounts are to include only those Change Orders that have been approved by the Board of Commissioners as of the close of the current payment period. Payment Applications will be returned for revision if unapproved Change Orders are billed.
2. All Change Orders must be allocated to the affected line items on the sworn statement. Payment Applications will be returned for revision if the total Change Order is added as a new line item on the sworn statement.
3. All amounts reported on the MBE/WBE documents must agree with the corresponding line items on the sworn statement. Submit MBE/WBE participation summary with each application for payment which identifies participation as a percentage of subcontracts.

## 3.03 WAIVERS OF LIEN

- a. The Contractor must present a fully executed Waiver of Lien for the net amount of the current application for payment with the application for payment. One (1) fully executed set of Subcontractor waivers covering payments made subsequent to the prior application for payment must accompany the current application for payment. In all cases, waivers must bear original signatures and seals and are to be presented in the order of appearance on the related sworn statement.
- b. Prior to the final application for payment, the Contractor shall submit a "Subcontractor's Final Release and Waiver of Lien" from every entity who may be legally entitled to file a mechanic's, materialman's, or other lien.
- c. Waivers of Lien shall be submitted using forms provided in the Contract Documents.

## 3.04 FIRST PAYMENT PROCEDURE

- a. The first payment application will not be reviewed until the following submittals have been received and approved:
  1. Certificates of insurance.
  2. Performance and payment bonds.
  3. Schedule of Values.

4. List of Subcontractors.
5. Contractor's construction schedule.
6. Submittal schedule.
7. Quality control activities schedule.
8. Unit price schedule.
9. Names of the Contractor's principal staff assigned to the Project.
10. Names of the Contractor's representatives authorized to sign invoices and waivers.
11. Copies of building permit and other authorizations from governing authorities.
12. First progress report.
13. Minutes of the preconstruction meeting.
14. All submittals specified to occur prior to the first application for payment.

**3.05 MODIFICATION PROCEDURES**

- a. Designate a single individual authorized to receive Change Orders and who will be responsible for informing others of changes to the Work.
- b. Changes in cost resulting from modifications shall include only those costs specified elsewhere in the Contract Documents.
- c. The Contractor shall provide sufficient information for evaluation of proposed changes within fourteen (14) days following written change request. The Contractor shall immediately advise the Commission and Architect in writing if any requested Bulletin can not be priced and submitted to the Architect within fourteen (14) days of receipt. The Architect or Commission Representative will determine if additional time is warranted, and will so notify the Contractor of their determination. In no case shall the Contractor be allowed more than (21) days for pricing of a Bulletin. The Contractor shall not be entitled to a time extension should its proposal not be received by the Architect prior to the required time. Such information shall include:
  1. The amount of change in the Base Contract Price, if any.
  2. The amount of change in the Contract time, if any, with explanation.
  3. Cost breakdown, using Schedule of Values line items, separated into material and labor costs, additions and deletions, and with overhead and profit handled in the same manner as specified for the Schedule of Values.
  4. The period of time within which the proposed changes in Base Contract Price or time will be held. At a minimum, the pricing shall be held until the next Commission meeting. Should said proposal be received by the Architect or Commission Representative beyond the cut-off date established by them for the upcoming Commission meeting, then the Contractor shall maintain its proposed price and schedule impact until the next Commission meeting.
  5. A statement describing the effect the change may have on the work of other prime contractors.
  6. Quantities and unit costs of products, labor, and equipment.
  7. Taxes, insurance, and bonds.
  8. Overhead and profit.
- d. Provide the following information with every claim for additional costs:

1. Origin and date of claim.
  2. Separate accounting of overhead costs.
- e. The Contractor may propose changes.
1. Do not use change order form.
  2. Provide the information required for Change Proposal Requests.
  3. Describe reasons for change.
  4. Document proposed substitutions as specified elsewhere.

3.06

**PRELIMINARY ACCEPTANCE PROCEDURES**

- a. Request for inspection and Payment Application may coincide.
- b. At the request of the Contractor, the Architect will perform one inspection for Preliminary Acceptance for each phase or location of the Project.
1. If the Architect is unable to issue the certificate of Preliminary Acceptance because the Work is not considered to be substantially complete, the Contractor shall pay all subsequent inspection costs, including compensation for the Architect's services and expenses.
  2. When issuance of several certificates of Preliminary Acceptance for portions of the Work is authorized by the Commission, the above provisions apply separately to each separate portion.
- c. Do not submit request for inspection for Preliminary Acceptance until the following activities have been completed:
1. Delivery of maintenance materials and tools.
  2. Demonstration of all equipment and systems, including but not limited to, submission of test and balance reports, manufacturer's start-up reports, or other documents required by the Contract Documents.
  3. Instruction of the Commission's and/or User's personnel.
  4. Removal of temporary facilities.
  5. Changeover to permanent locking systems.
  6. Final cleaning.
  7. The Commission has been informed in writing of necessary procedures for changing over insurance coverages.
  8. The Commission has been informed in writing of procedures for changing over operation, maintenance, security, etc.
  9. The Commission has received occupancy and operating permits from authorities having jurisdiction.
  10. All other activities specified to occur prior to Preliminary Acceptance have been completed.
- d. Submit the following with the payment application following Preliminary Acceptance:
1. Contractor's affidavit of release of liens.
  2. Meter readings of all utilities services for which the Contractor has been paying.
  3. Final list of incomplete Work.
  4. Other data required by the Contract Documents.

3.07 FINAL ACCEPTANCE PROCEDURES

- a. Do not submit request for inspection for Final Acceptance until the following submittals have been made:
  1. List of incomplete Work.
  2. Start-up reports.
  3. Final testing, adjusting, and balancing reports.
  4. Demonstration reports.
  5. Instruction reports.
  6. Warranties.
  7. Maintenance agreements.
  8. Operation and maintenance data.
  9. Final progress photographs.
  10. Project Record Documents.
  11. All other submittals specified to occur prior to Preliminary Acceptance.
- b. At the request of the Contractor, the Architect will perform one inspection for Final Acceptance for each phase or location of the Project.
  1. Submit the following with request for inspection:
    - (a) Previous inspection lists indicating completion of all Punch List Work.
    - (b) If any Punch List Work cannot be completed, obtain prior approval of such from the Commission Representative.
  2. If the Architect is unable to issue the certificate for Final Acceptance because the Work is not complete, the Contractor shall pay all subsequent inspection costs, including compensation for the Architect's services and expenses.
- c. Do not submit request for final inspection until the following activities have been completed:
  1. Completion of all Punch List Work, except those items agreed upon by the Commission
  2. All activities specified to occur between Preliminary Acceptance and Final Acceptance have been completed.
- d. Do not submit request for final inspection until the following submittals have been completed:
  1. All other outstanding specified submittals and items stated in "a" above.
- e. Submit the following with the final payment application:
  1. Certified copy of the Punch List Work, stating that each has been completed or otherwise resolved for acceptance.
  2. Updated final statement, accounting for final changes to the Base Contract Price.
  3. Consent of surety to final payment.
  4. Final liquidated damages statement.
  5. Meter readings of all utilities services which the Contractor paid after Preliminary Acceptance.

PUBLIC BUILDING COMMISSION OF CHICAGO

6. Certification that financial obligations to governing authorities and public utilities have been fulfilled.
7. Description of unsettled claims.
8. Certificates of insurance for all coverages specified to commence at Final Acceptance.
9. Other data required by the Contract Documents.

END OF SECTION 01025

**EXHIBIT A**

**PROJECT NOTIFICATION  
(TO BE SUBMITTED FOR EACH PROJECT)**

TO: Executive Director  
Public Building Commission  
RM 200 Richard J. Daley Center  
Chicago, Illinois 60602

The Public Building Commission of Chicago is hereby requested to undertake the following described Project on behalf of the Board of Education of the City of Chicago pursuant to the terms and conditions of that certain Master Intergovernmental Agreement by and between the Board of Education of the City of Chicago and the Public Building Commission of Chicago dated as of September 27, 2000.

**Name of Project:** New Simeon High School  
**Type of Project:** School Construction  
**Location:** 8235 S. Vincennes  
**Description:** Construction of new school facility  
**Preliminary Budget :** Board of Education Contribution Not-to-Exceed \$38,470,867  
**Land Acquisition Requirement:** Yes \_\_\_ No \_\_\_  
**Funding Source:** FY02 Chicago Board of Education Bond Issuance  
**Other Specific Requirements:**

This Project Notification authorizes the expenditure of not-to-exceed \$38,470,867 from the FY02 bond issuance for the sole purpose of completing design and construction of the new Simeon High School

Please see attached for budget detail.

**Board of Education City of Chicago**

By:   
Chief Operating Officer

**Approved:**

  
Chief Fiscal Officer

## DISCLOSURE OF RETAINED PARTIES

**A. Definitions and Disclosure Requirements**

1. As used herein, "Contractor" means a person or entity who has any contract or lease with the Public Building Commission of Chicago ("Commission").
2. Commission contracts and/or qualification submittals must be accompanied by a disclosure statement providing certain information about attorneys, lobbyists, consultants, subcontractors, and other persons whom the Contractor has retained or expects to retain with respect to the contract or lease. In particular, the Contractor must disclose the name of each such person, his or her business address, the name of the relationship, and the amount of fees paid or estimated to be paid. The Contractor is not required to disclose employees who are paid solely through the Contractor's regular payroll.
3. "Lobbyists" means any person (a) who for compensation or on behalf of any person other than himself undertake to influence any legislative or administrative action, or (b) any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

**B. Certification**

Contractor hereby certifies as follows:

1. This Disclosure relates to the following transaction: Simeon Career Academy  
 Description of goods or services to be provided under Contract: General Construction

2. Name of Contractor: F.H. Paschen, S.N. Nielsen, Inc.

3. EACH AND EVERY attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages if necessary. NOTE: You must include information about certified MBE/WBEs you have retained or anticipate retaining, even if you have already provided that information elsewhere in the contract documents.

**Retained Parties:**

Name	Business Address	Relationship (Attorney, Lobbyist, Subcontractor, etc.)	Fees (indicate whether paid or estimated)
See attached list			

Check Here If No Such Persons Have been Retained or Are Anticipated To Be Retained: \_\_\_\_\_

**DISCLOSURE OF RETAINED PARTIES (Continued)**

3. EACH AND EVERY attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages as necessary. NOTE: You must include information about certified MBE/WBE's you have retained or anticipate retaining, even if you have already provided that information elsewhere in the contract documents.

NAME:	Material Service Co.
ADDRESS:	47 <sup>th</sup> & Plainfield McCook, Quarry, Ill.
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	R.I. Busse
ADDRESS:	P.O. Box 1227 Elk Grove, Illinois
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Tri-State Industries, Inc
ADDRESS:	3001 E. Lincoln Highway Chicago, Illinois
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	J.T. Einoder, Inc.
ADDRESS:	3001 E. Lincoln Highway Chicago, Illinois
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Cozzi Iron & Steel
ADDRESS:	Blue Island & Island
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Tri-State
ADDRESS:	11625 West 151 Street Orland Park, IL 60462
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Mallard Lake & Fill
ADDRESS:	26 W. 580 Schick Rd. Bloomington, IL 60103
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated



**DISCLOSURE OF RETAINED PARTIES (Continued)**

3. EACH AND EVERY attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages as necessary. NOTE: You must include information about certified MBE/WBE's you have retained or anticipate retaining, even if you have already provided that information elsewhere in the contract documents.

NAME:	Waste Management
ADDRESS:	138 <sup>th</sup> Bishop Ford Expressway Calumet City, IL 60409
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Congress Development
ADDRESS:	11700 31 <sup>st</sup> Street Westchester, IL 60153
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Myer Material
ADDRESS:	10501 N. Route 31 Algonquin, IL 60102
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Sexton
ADDRESS:	1815 S. Wolf Road Hillside, IL 60162-2195
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Laraway RFD
ADDRESS:	21101 W. Laraway Road Elwood, IL. 60421
RELATIONSHIP:	Potential Dump Site
FEES:	\$ 5,000.00 Estimated
NAME:	Chas. F. Bruckner & Son, Inc.
ADDRESS:	503 W. 26 <sup>th</sup> Street Chicago, IL 60616
RELATIONSHIP:	Subcontractor
FEES:	Undetermined
NAME:	Maria's Construction
ADDRESS:	3173 N. Elston Chicago, IL 60618
RELATIONSHIP:	Subcontractor
FEES:	Undetermined

**DISCLOSURE OF RETAINED PARTIES (Continued)**

3. EACH AND EVERY attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages as necessary. NOTE: You must include information about certified MBE/WBE's you have retained or anticipate retaining, even if you have already provided that information elsewhere in the contract documents.

NAME:	James H. Anderson Company
ADDRESS:	2030 Janice Avenue Melrose Park, IL 60160
RELATIONSHIP:	Subcontractor
FEES:	Undetermined
NAME:	MG Electric Service Company
ADDRESS:	1450 E. Algonquin Road Arlington Heights, IL 60005
RELATIONSHIP:	Subcontractor
FEES:	Undetermined
NAME:	T&D Wrecking
ADDRESS:	109 Fairfield Way, Suite 202 Bloomington, IL 60108
RELATIONSHIP:	Subcontractor
FEES:	Undetermined
NAME:	Bridgeport Steel Sales
ADDRESS:	2730 Hillock Avenue Chicago, IL 60608
RELATIONSHIP:	Subcontractor
FEES:	Undetermined
NAME:	RES Environmental Services
ADDRESS:	2814 N. California Avenue Chicago, IL 60618
RELATIONSHIP:	Subcontractor
FEES:	Undetermined
NAME:	Chakra, Inc.
ADDRESS:	1125 Garfield Avenue Oak Park, IL 60304
RELATIONSHIP:	Subcontractor
FEES:	Undetermined
NAME:	Chicago Architectural Windows
ADDRESS:	1360 N. Sedgwick Avenue Chicago, IL 60610
RELATIONSHIP:	Subcontractor
FEES:	Undetermined
NAME:	
ADDRESS:	
RELATIONSHIP:	
FEES:	

**DISCLOSURE OF RETAINED PARTIES (Continued)**

3. EACH AND EVERY attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages as necessary. NOTE: You must include information about certified MBE/WBE's you have retained or anticipate retaining, even if you have already provided that information elsewhere in the contract documents.


## DISCLOSURE OF RETAINED PARTIES

4. The Contractor understands and agrees as follows:
- The information provided herein is a material inducement to the Commission execution of the contract or other action with respect to which this Disclosure of Retained Parties form is being executed, and the Commission may rely on the information provided herein. Furthermore, if the Commission determines that any information provided herein is false, incomplete, or inaccurate, the Commission may terminate the contract or other transaction, terminate the Contractor's participation in the contract or other transactions with the Commission.
  - If the Contractor is uncertain whether a disclosure is required, the Contractor must either ask the Commission's Representative or his or her manager whether disclosure is required or make the disclosure.
  - This Disclosure of Retained Parties form, some or all of the information provided herein, and any attachments may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. The Contractor waives and releases any possible rights or claims it may have against the Commission in connection with the public release of information contained in the completed Disclosure of Retained Parties form and any attachments.

Under penalty of perjury, I certify that I am authorized to execute this Disclosure of Retained Parties on behalf of the Contractor and that the information disclosed herein is true and complete.

Jack Spiro Dibie  
Signature

December 14, 2001

Date

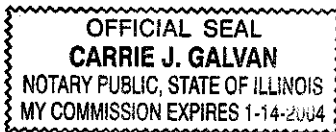
Jack Spiro Dibie  
Name ( Type or Print)

President  
Title

Subscribed and sworn to before me

this 14th day of Dec. 2001

Carrie J. Galvan  
Notary Public





CHICAGO PUBLIC SCHOOLS

Department of Operations  
125 South Clark Street, 16th floor • Chicago, Illinois 60603 • Telephone 773/553-2900 • FAX 773/553-2901

November 28, 2001

Mr. Jack Spiro Dible  
F.H. Paschen/S.N. Nielsen  
8725 W. Higgins, Suite 200  
Chicago, Illinois 60631

**CAPITAL IMPROVEMENT PROGRAM  
NOTICE OF PROJECT ASSIGNMENT**

School: New Simeon Career Academy  
Address: 8147 South Vincennes Avenue  
Region: 5  
Work: New School  
Contract Amount: \$35,350,000.00 (Including Alt. 8)  
Contract No.: To Be Issued By the PBC

Dear Mr. Dible:

The Board of Education of the City of Chicago intends to transfer the New Simeon Career Academy to the Public Building Commission (PBC) for the construction phase of this school. The construction of this project will be performed in accordance with the bid documents distributed by the Board or the Board's representative and in accordance with your bid proposal submitted on November 13, 2001 in the amount of \$35,350,000. This project assignment is subject to all of the terms and conditions of your General Contracting Services Agreement with the Board dated as of January 1, 2001.

In connection with this project transfer, you will be required to execute or consent to any and all transfer or assignment documents required to effectuate the transfer of this project to the PBC. It is the Board's understanding that the PBC will be issuing a unique contract number to F.H. Paschen/S.N. Nielsen for purposes of tracking and invoicing. This project assignment will be submitted to the Board for ratification at the next regularly scheduled Board Meeting.

This assignment is contingent upon your company providing, within seven (7) working days, the performance and payment bond more fully described below, the OCIP 1 and OCIP 2 insurance forms and the certificates of insurance for coverages not provided under the OCIP. In the event these documents are not provided within such 7 working day period, the Board shall have the right to rescind this assignment and either (i) assign this project to the next lowest bidder, or (ii) re-bid this project.

The PBC's Director of Procurement, listed below, will assign a representative to this project upon issuance of this Notice of Project Assignment. The representative will contact you to schedule a pre-construction conference where construction procedures, job conditions, the work schedule, and any restrictions, limitations or special conditions affecting the performance of the work will be discussed.

Your company will be required to post a fully executed performance and payment bond in the amount of the contract award (see attached form). The performance and payment bond must be issued by a responsible surety company, acceptable to the Board and licensed to do business in the State of Illinois, and shall be written in the name of the Public Building Commission of the City of Chicago, on behalf of the Board of Education of the City of Chicago as bond holder. The performance & payment bond shall be executed on the attached form or may be executed on form A.I.A. 312. Form A.I.A. 311 is not acceptable. The fully executed performance & payment bond along with a copy of your insurance certificate(s) evidencing the insurance coverage called for in your General Contracting Services Agreement and the completed pre-construction statement of subcontractors and suppliers and work force protection report (see attached forms) must be delivered to Ms. Rosalinda Castillo, Department of Operations, within seven (7) working days of the date of this transmittal. Failure to execute and return the required documents within the specified time period may result in cancellation of this Notice of Project Assignment.

In addition to the above, all required M/WBE forms must be completed and returned to Ms. Stephanie Suttles no later than 3:00 p.m., Tuesday, December 4, 2001, after which any necessary M/WBE Waiver Committee review will take place. Ms. Suttles can be reached at 773/553-2980 with any questions regarding M/WBE program compliance. Failure to comply with all M/WBE requirements may result in revocation of this Notice of Project Assignment.

The OCIP 1 and OCIP 2 insurance forms and the certificates of insurance coverages not provided under the OCIP must be fully executed and submitted to Ms. Valerie Lucas, of AON facsimile number 312/381-0290 within 7 working days of the date of this transmittal. If you need assistance in filling out the OCIP 1 or OCIP 2, please contact Ms. Lucas at 312/381-4497.

Inquires concerning this project should be directed to Ms. Lourdes Nur of the Public Building Commission at 312/744-9292.

Sincerely,



Timothy Martin  
Chief Operating Officer

cc: A. Rocha  
L. Woodman  
K. Burke  
D. Johnson  
S. Suttles  
R. Heitner (CSA)  
J. Salley (Bovis)  
V. Lucas, AON  
E. Ryan, Risk Mgmt.  
C. Gustafson (OWP&P)  
M. Koval, PMA  
L. Nur, Public Building Commission

**ALTERNATE WORK**

The undersigned hereby proposes to perform the Alternate Work Items described below and in the Contract Documents for the below-stated additions or deductions to the lump sum Base Bid. It is further agreed that the Alternate Work shall be performed in accordance with all applicable provisions of the Contract Documents and that the prices stated for such Alternate Work include the cost of all applicable bonds, taxes overhead, profit and any adjustments in the work of other trades as may be necessary to perform the Alternate Work. It is understood between the Board and the Contractor that the Board may elect to accept any or all of the Alternate Work items at the time of Contract Award. Work shall only be authorized upon written direction by the Board or through its duly authorized representatives.

Refer to Section 01100 – Summary of Work for Alternates. Insert the Alternate Number and associated cost in the blanks provided below. All alternates must be bid or indicated as "No Bid".

ADD Alternate No. 1	Provide sunshades at classroom windows at the west elevation, not including the two (2) stair towers and Main Entry, as drawn and as specified in Specification, Section 10705 – Exterior Sun Control Devices.	\$ 165,000 -
ADD Alternate No. 2	Provide outdoor carpentry canopy assembly as indicated on the Drawing details, and as specified in various sections.	\$ 65,000 -
ADD Alternate No. 3	Provide stage equipment and riggings, as drawn and as specified in Specification, Section 11062 – Rigging, Curtains and Tracks. Fire-curtain is not included in the Alternate. Include wiring from the junction – box or disconnect switch to the equipment.	\$ 360,000 -
ADD Alternate No. 4	Provide an acoustical orchestra shell as drawn and specified in Specification, Section 11062 – Rigging, Curtains and Tracks.	\$ 185,000 -
ADD Alternate No. 5	Provide all work specified in Specification, Section 11420 – Vocational Equipment. Include wiring from the junction – box or disconnect switch to the equipment.	\$ 640,000 -
ADD Alternate No. 6	Provide work for loose theatrical lighting as specified in Specification, Section 16580 – Theatrical Stage Lighting System. Include wiring from the junction – box or disconnect switch to the equipment.	\$ 61,000 -
ADD Alternate No. 7	Provide a cast stone trim in lieu of a limestone trim of exterior masonry, including parapet copings, as drawn and specified in Specification, Section 04270 – Cast Stone.	\$ < 60,000 >
ADD Alternate No. 8	Provide synthetic limestone trim in lieu of limestone trim for the exterior masonry, except parapet copings, as specified in Specification, Section 04200 – Unit Masonry.  1. Parapet copings shall remain as genuine limestone for the base bid, if Alternate Number Eight (8) is accepted. 2. Parapet copings shall be cast stone, if Alternate number Seven (7) is accepted.	\$ < 80,000 >
ADD Alternate No. 9	Cost for material, labor, wiring and equipment related to Specification, Section 17300 – Auditorium Sound and Video Projection System. Include wiring from the junction – box or disconnect switch to the equipment.	185,000 -

Chicago Public Schools  
Capital Improvement Program

COST BREAKDOWN/ALLOWANCES

<u>WORK</u>	<u>SUBCONTRACTORS</u>	<u>COST</u>
Selective Demolition	_____	\$ <u>1,200,000</u> -
Demolition of a Shop Building	_____	\$ <u>IN ABOVE</u>
Demolition of a three (3) Story Building	_____	\$ <u>IN ABOVE</u>
Site Work (Including Retaining Walls & Walks)	_____	\$ <u>IN CAST IN PLACE</u>
Excavation/Backfill	_____	\$ <u>400,000</u> -
Unsuitable Soils	_____	\$ <u>92<sup>50</sup>/cy</u>
(Removal/Backfill)	Unit Price for 1 to 500 cys	
Site Utilities (Sewer/Water)	_____	\$ <u>900,000</u> -
Site Lighting	_____	\$ <u>IN ELECTRICAL</u>
Concrete Paving	_____	\$ <u>IN CAST IN PLACE</u>
Asphalt Paving	_____	\$ <u>175,000</u> -
Landscaping	_____	\$ <u>200,000</u> -
Cast in Place Concrete	_____	\$ <u>2,300,000</u> -
Pre-Cast Concrete (GFRC)	_____	\$ <u>500,000</u> -
Masonry	_____	\$ <u>6,500,000</u> -
Structural Steel	_____	\$ <u>BY OWNER</u>
Misc. Metal	_____	\$ <u>2,000,000</u> -
Ornamental Iron	_____	\$ <u>IN ABOVE</u>
Carpentry	_____	\$ <u>75,000</u> -
Millwork	_____	\$ <u>350,000</u> -
Damp proofing/ Waterproofing	_____	\$ <u>25,000</u> -
Insulation	_____	\$ <u>IN ABOVE</u>
Firestopping/Fireproofing	_____	\$ <u>50,000</u> -
Roofing	_____	\$ <u>550,000</u> -
Sealants	_____	\$ <u>100,000</u> -



**Chicago Public Schools  
Capital Improvement Program**

**COST BREAKDOWN/ALLOWANCES (continued)**

Glass and Glazing	_____	\$ <u>1,600,000</u>
Doors, Frames and Hardware	_____	\$ <u>400,000</u>
Aluminum Storefront	_____	\$ <u>w/door &amp; glazing</u>
Aluminum Windows	_____	\$ <u>w/door &amp; glazing</u>
Window Guards (if applicable)	_____	\$ <u>300,000</u>
Exterior Louvers	_____	\$ <u>15,000</u>
Gypsum Drywall	_____	\$ <u>400,000</u>
Terrazzo	_____	\$ <u>700,000</u>
Ceramic Tile Flooring/Base	_____	\$ <u>N/A</u>
Specialty Flooring/Base	_____	\$ <u>50,000</u>
Carpet/VCT/Base	_____	\$ <u>150,000</u>
Acoustical Treatment/ Ceilings	_____	\$ <u>250,000</u>
Painting	_____	\$ <u>200,000</u>
Misc. Specialties (Chalkboards, windows shades, flagpoles, etc.)	_____	\$ <u>200,000</u>
Toilet Partitions & Toilet Accessories	_____	\$ <u>15,000</u>
Signage	_____	\$ <u>10,000</u>
Kitchen Equipment	_____	\$ <u>275,000</u>
Auditorium Equipment	_____	\$ <u>70,000</u>
Elevators/Wheel Chair Lifts	_____	\$ <u>100,000</u>
Plumbing	_____	\$ <u>1,750,000</u>
Fire Protection	_____	\$ <u>425,000</u>
HVAC	_____	\$ <u>3,640,000</u>

**Chicago Public Schools  
Capital Improvement Program**

**COST BREAKDOWN/ALLOWANCES (continued)**

Electrical	_____	\$ <u>4,300,000</u>
Other	_____	\$ <u>1,773,000</u>
Other	_____	\$ _____
Other	_____	\$ _____
Bond		\$ <u>150,000</u>
General Conditions		\$ <u>1,500,000</u>
Overhead and Profit		\$ <u>1,250,000</u>
	<b>Sub-Total</b>	\$ <u>34,848,000</u>

**Allowance Number One (1)** – Unit price of \$650.00 per a thousand for purchase and delivery of the standard single brick masonry units as specified in Specification, Section 04200 – Unit Masonry  
 \$ 212,000

**Allowance Number Two (2)** – General Contractor is to provide the concentrator switches as identified in Specification, Section 16740 – Voice and Data Systems  
 \$ 250,000.00

**Allowance Number Three (3)** -Include to provide miscellaneous iron support framing at the Library & Main Entry curtain-wall elevations: \$40,000.00. Reference Section 05500 paragraph 2.9 and Section 08920 paragraph 2.3.  
 \$ 40,000.00

**Total Base Bid**      \$ 35,340,000

**ACKNOWLEDGEMENTS:**

The undersigned agrees that the Bidder has carefully examined the Contract Documents, Addenda (if any) and has inspected the site of the proposed work; has become familiar with the conditions affecting the Contract.

The undersigned agrees that the Bidder must complete the canvassing formula, submit the completed canvassing formula with this bid and show the Award Criteria Figure and that if not so made, its Bid may be rejected as irregular. Note: the canvassing formula applies to all bids in excess of \$100,000 only

The bidder has included with this bid all required MWBE forms called for in Section 00750 - Special Conditions for the MWBE Economic Participation of the General Contractors Services Agreement.

- a. Form 100gc
- b. Form 101gc
- c. Form 192gc
- d. Form 135

**Simeon Career Academy  
ADDENDUM NO. 1**

00300-5

**Bid Forms  
November 02, 2001**

**Chicago Public Schools  
Capital Improvement Program**

- e. Contractor's Non-Collusion Affidavit
- f. OCIP Insurance Bidding Instructions

**Simeon Career Academy  
ADDENDUM NO. 1**

**00300-6**

**Bid Forms  
November 02, 2001**

**Chicago Public Schools  
Capital Improvement Program**

The Bidder has not added any conditions or qualifying statements to this Bid, as such additions may cause the Bid to be declared informal and as not being responsive to the Invitation for Bids.

By submitting this Bid the Undersigned agrees that, if this Bid is accepted within sixty (60) days after bid opening, the Bidder will be liable to the Owner for damages the Owner may suffer by failure of the Undersigned to enter into a Contract and deliver the necessary bonds together with required insurance's and other documents within seven days after notice of Contract award.

Bidding Company Name: F.H. Paschen, S.N. Nielsen, Inc.  
Authorized Signature: *Joseph V. Scarpelli*  
Title: Joseph V. Scarpelli, Executive Vice President  
Date: November 13, 2001  
Corporate Seal

BOARD OF EDUCATION OF THE CITY OF CHICAGO  
CAPITAL IMPROVEMENT PROGRAM

State of: Illinois

County of: Cook

CONTRACTORS NON-COLLUSION AFFIDAVIT

The undersigned, being duly sworn, says on oath that the company named below and its officers and employees have not entered into an agreement with any other Bidder or Prospective Bidder or with any other person, firm or corporation relating to the price named in the Bid or Proposal with which this affidavit is submitted, or any other Proposal or into any agreement or arrangement under which any person, firm or corporation is to refrain from bidding, nor any agreement or arrangement for any act or omission in restraint of free competition among Bidders, and has not disclosed to any person, firm or corporation the terms of its Bid or Proposal or the price named in it.

FOR A SOLE PROPRIETOR  
PROPRIETORSHIP

If the company is a sole proprietorship,  
the sole proprietor must sign this affidavit;  
if the company is a partnership or joint venture,  
the affidavit must be signed by a partner.

Company Name: F.H. Paschen S.N. Nielsen, Inc.

By (Signature): *Joseph V. Scarpelli*

Printed Name: Joseph V. Scarpelli

Title: Executive Vice President

Business Address: 8725 W. Higgins, Suite 200

Chicago, IL 60631

Business Phone: ( 773 ) 444-3474

FOR A CORPORATION

The president of the corporation must sign  
this affidavit. If signed by any person other  
than the president of the corporation, a certified  
copy of the resolution or by-law authorizing  
such person to sign must accompany this affidavit.

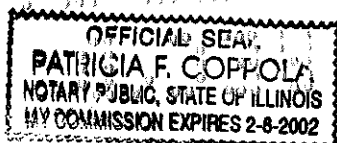
SUBSCRIBED AND SWORN

to before me this 13th day of November, 2001.

*Patricia F. Coppola*  
NOTARY PUBLIC

My commission expires: February 8, 2002

THIS AFFIDAVIT MUST BE SUBMITTED BY THE CONTRACTOR WITH EACH BID.



# CHICAGO PUBLIC SCHOOLS

## BASIS OF CONTRACT AWARD

### "AWARD CRITERIA" DETERMINATION

In accordance with Chapter 26 of the Municipal Code of Chicago, and in order to promote equity of opportunity for minority and female personnel under this work order, the Chicago Public Schools has established the following canvassing formula for the purpose of evaluating bids exceeding \$100,000 and awarding the work order.

Each general contractor is invited to propose the minority and female employee utilization goals for the work order, and percentages of journeyworker, apprentice and laborer hours to be expended in the course of the work order. Lines 2, 4, and 6 in the formula shall not be greater than 50% in each category, for the purpose of canvassing only. The 50% limit shall not deter or restrict the fuller utilization of minority employees for the work order, but shall serve as a limiting figure for use in the formula. Similarly, Lines 8, 10 and 12 shall not be greater than 10% in each category, for the purpose of canvassing only.

Actual amounts of minority and female work will be measured from the total hours of construction workers employed under the work order within each of the categories of journeyworkers, apprentices and laborers by the general contractor and all worksite subcontractors. The measurement of total work hours includes hours worked to perform the services agreed to in the work order, including all change orders, alternates and any other modification to the work order.

### CANVASSING FORMULA

Line 1.	Base Bid, in figures	<u>35,300,000</u>
Line 2.	% of the total journeyworkers hours that the general contractor proposes to be worked by minority journeyworkers during the term of the work order (Maximum figure .50)	<u>.50</u>
Line 3.	Multiply Line 2 by Line 1 by 0.04	<u>707,000</u>
Line 4.	% of the total apprentice hours that the general contractor proposes to be worked by minority apprentices during the term of the work order. (Maximum figure .50)	<u>.50</u>
Line 5.	Multiply Line 4 by Line 1 by 0.03	<u>530,250</u>
Line 6.	% of the total laborer hours that the general contractor proposes to be worked by minority laborers during the term of the work order (Maximum figure .50)	<u>.50</u>
Line 7.	Multiply Line 6 by Line 1 by 0.01	<u>176,750</u>
Line 8.	% of the total journeyworker hours that the general contractor proposes to be worked by female journeyworkers during the term of the work order. (Maximum figure .10)	<u>.10</u>

Line 9.	Multiply Line 8 by Line 1 by 0.04	<u>141,400</u>
Line 10.	% of the total apprentice hours that the general contractor proposes to be worked by female apprentices during the term of the work order (Maximum figure .10)	<u>.10</u>
Line 11.	Multiply Line 10 by Line 1 by 0.03	<u>106,050</u>
Line 12.	% of the total laborer hour that the general contractor proposes to be worked by female laborers during the term of the work order (Maximum figure .10)	<u>.10</u>
Line 13.	Multiply Line 12 by Line 1 by 0.01	<u>35,350</u>
Line 14.	Summation of Lines 3,5,7,9,11 and 13	<u>1,696,800</u>
Line 15.	Subtract Line 14 from Line 1	<u>33,653,200</u> (AWARD CRITERIA FIGURE)

The bidder shall complete the Canvassing Formula and transfer the final Award Criteria Figure (Line 15) to the space provided on the bid proposal document. A work order in the amount of the total base bid will be awarded to the responsive and responsible bidder with the lowest award criteria figure. The Board reserves the right to revise all arithmetic calculations for correctness.

The general contractor is obliged during the term of this work order (including all change orders, modifications and alternates) to fulfill every numerical commitment made under the canvassing formula categories. Therefore, every limiting condition or circumstance which may effect referral, hiring or deployment of construction trade employees must be taken into account by the bidder before the commitment is proposed. Limits imposed by the policies or circumstances of labor organizations or other referral resources, for example, should be anticipated by the bidder, since relief from the contractor's obligations as established under the Canvassing Formula is not available due to such circumstances found to exist during the execution of this work order. Individual workers who are both minority and female will have their hours counted toward both the minority and female goal. Also, if journeyworkers will not be employed under this work order, or apprentices, or laborers, then the proposal made in the appropriate Lines (Lines 2 & 8 or Lines 4 & 6, or Lines 6 & 12) should be entered as "0%", since when no journeyworker (or apprentice or laborer) hours are reported during the execution of the work order, this will be computed by the Board as 0% minority/female hours achieved in that category. If commitments are made in the apprentice category, Lines 4 and 10, the total apprentice hours to be employed on the project should be anticipated to be a substantial number of hours: since it is the intention of the Board that where a commitment for a percentage of minority or female apprentices has been made, the percentage may be counted as fulfilled only as long as there were provided at least 40 hours of minority or female apprentices. For this reason, where a minority or female percentage commitment for apprentices has been made, if in the final audit of the performance of the work order there are less than 40 minority or female apprentice hours counted, then the number of minority or female apprentice hours will be counted by the Board as "0" for the purpose of measuring the achievement towards the apprentice canvassing formula goal.

F.H. Paschen, S.N. Nielsen, Inc.  
General Contractor

Neal F. Simeon Career Academy  
Project/Work Order Name

**Chicago Public Schools**  
**Form 100-GC Bidder/Proposer Information\Direct Participation Summary**  
**Summary of Dollar/Percent Allocations**  
**(Include Prime Bidder/Proposer and all M/WBEs)**

Each Vendor must submit, as part of its bid or proposal, a detailed compliance demonstration showing the manner in which the Bidder/Proposer will comply with M/WBE requirements. The compliance demonstration is an element of Bidder/Proposer responsibility. The general contractor must demonstrate how all applicable goals and sub-goals will be addressed in this work order. Proposed M/WBEs must be identified. Only the City of Chicago's MBE/WBE certification is acceptable.

Project/Commodity Name: New High School - Neal F. Simeon Career Academy

Bid/Work order Number: 2002-1150-NSC Total Contract Value: \$ 35,350,000

The Goals Applicable to this contract: 50% MBE (32% Black, 12% Hispanic, 2% Asian) + 10% WBE

<b>Proposed Percentages</b>				
Total MBE %	<u>0</u>	(Black <u>0</u> Hispanic <u>0</u> Asian <u>0</u> )	WBE	<u>0</u>

General Contractor: F.H. Paschen, S.N. Nielsen, Inc. Region: 5

Description of Commodities/Services to be provided by the Bidder/Proposer on this work order:

New High School Construction

**Summary of Dollar/Percent Allocations**

MBE/WBE firms may participate as Prime Bidders/Proposers, Joint Venture Partners, Subcontractors and/or Supplier of commodities and/or services directly related to the performance of this contract. (Notice: Indirect Participation is not allowed on General Contracting Services Agreements)

**Verification Information**

I, Joseph V. Scarpelli, do declare and affirm that, to the best of my knowledge, information and belief, the facts and representations set forth in this compliance demonstration are true and correct and no material facts have been omitted.

Joseph V. Scarpelli  
Signature

Executive Vice President 11/13/01  
Title/Date

On this 13th day of November, 2001, the above-signed officers

Joseph V. Scarpelli

(name of affiant)

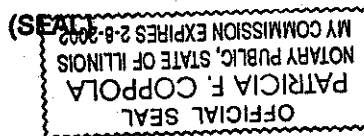
personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Patricia F. Coppola

Signature of Notary Public

My Commission Expires: February 8, 2002





**General Contractor, Subcontractors\Suppliers\Consultants - Form 100-GC  
Affidavit of MBE/WBE Implementation Plan**

Direct Participation of MBE/WBE Firms

Name of M/WBE Firm:		Race/Gender:	
Address:			
City/State/Zip:			
Telephone Number:	Fax:	Certification exp. date:	
Contact Person			
Dollar Amount: \$	%	Form 101 Attached? Yes or <b>No</b>	(circle one)
Description of Commodity/Service to be provided			

Name of M/WBE Firm:		Race/Gender:	
Address:			
City/State/Zip:			
Telephone Number:	Fax:	Certification exp. date:	
Contact Person			
Dollar Amount: \$	%	Form 101 Attached? Yes or <b>No</b>	(circle one)
Description of Commodity/Service to be provided			

Name of M/WBE Firm:		Race/Gender:	
Address:			
City/State/Zip:			
Telephone Number:	Fax:	Certification exp. date:	
Contact Person			
Dollar Amount: \$	%	Form 101 Attached? Yes or <b>No</b>	(circle one)
Description of Commodity/Service to be provided			

Name of M/WBE Firm:		Race/Gender:	
Address:			
City/State/Zip:			
Telephone Number:	Fax:	Certification exp. date:	
Contact Person			
Dollar Amount: \$	%	Form 101 Attached? Yes or <b>No</b>	(circle one)
Description of Commodity/Service to be provided			

<b>Total Non-MBE/WBE</b>	\$35,350,000	100	%
<b>Total MBE</b>	\$ 0	0	%
<b>Total WBE</b>	\$ 0	0	%

<b>Black</b>	\$ 0	0	%
<b>Hispanic</b>	\$ 0	0	%
<b>Asian</b>	\$ 0	0	%

**General Contractor, Subcontractors\Suppliers\Consultants - Form 100-GC  
Affidavit of MBE/WBE Implementation Plan**

Direct Participation of MBE/WBE Firms

Page 2 of 2

Name of M/WBE Firm:		Race/Gender:	
Address:			
City/State/Zip:			
Telephone Number:	Fax:	Certification exp. date:	
Contact Person			
Dollar Amount: \$	%	Form 101 Attached? Yes or <b>No</b>	(circle one)
Description of Commodity/Service to be provided			

Name of M/WBE Firm:		Race/Gender:	
Address:			
City/State/Zip:			
Telephone Number:	Fax:	Certification exp. date:	
Contact Person			
Dollar Amount: \$	%	Form 101 Attached? Yes or <b>No</b>	(circle one)
Description of Commodity/Service to be provided			

Name of M/WBE Firm:		Race/Gender:	
Address:			
City/State/Zip:			
Telephone Number:	Fax:	Certification exp. date:	
Contact Person			
Dollar Amount: \$	%	Form 101 Attached? Yes or <b>No</b>	(circle one)
Description of Commodity/Service to be provided			

Name of M/WBE Firm:		Race/Gender:	
Address:			
City/State/Zip:			
Telephone Number:	Fax:	Certification exp. date:	
Contact Person			
Dollar Amount: \$	%	Form 101 Attached? Yes or <b>No</b>	(circle one)
Description of Commodity/Service to be provided			

**Total Non-MBE/WBE**  
**Total MBE**  
**Total WBE**

\$ \_\_\_\_\_ %  
\$ \_\_\_\_\_ %  
\$ \_\_\_\_\_ %

**Black**  
**Hispanic**  
**Asian**

\$ \_\_\_\_\_ %  
\$ \_\_\_\_\_ %  
\$ \_\_\_\_\_ %

Form 105 Request for Waiver

Bidder/Proposer states that the following efforts were made to achieve M/WBE compliance prior to submission of this request for waiver (please check Yes or No):

Contacted relevant M/WBE's listed in the City of Chicago Directory of Certified DBE's, MBE's and WBE's and N/WBE linkage agencies?

Yes X No \_\_\_\_\_

Advertised in M/WBE oriented and general circulation media that business opportunities were available with the bidder/proposer on this contract?

Yes X No \_\_\_\_\_

Describe in detail the reasons why the goals applicable to this contract are impossible or economically unreasonable to meet the substantial good faith efforts made to achieve full compliance with the M/WBE goals, including firms contacted and the results of those contacts. (See page 2 - Instructions to bidders for further information regarding waivers.)

Due to nature of this project we are unable to meet all of the contracting goals and sub goals. We regret that we are not able to meet all of the goals for this project, but we will continue to strive to meet and exceed these goals on future projects.

Signature: Joseph V. Scarpelli Company: F.H. Paschen, S.N. Nielsen, Inc.  
Title: Joseph V. Scarpelli, Executive V.P. Date: November 13, 2001

**Identify All Uncommitted Scopes of Work:**

- Division 2 - Sitework:**     02100 Remediation     02200 Site Preparation     02300 Earthwork     02400 Tunneling/Boring/Jacking  
 02450 Foundation & Load Bearing Elements     02500 Utility Services     02600 Drainage/Containment  
 02700 Bases/Ballast/pavement/Appurtenances     02800 Site Improvements/Amenities     02900 Planting  
 02950 Site Restoration and Rehabilitation

- Division 3 - Concrete:**     03100 Concrete Forms and Accessories     03200 Reinforcement     03300 Cast-In-Place Concrete  
 03400 Precast     03500 Cementitious Decks/Underlayment     03600 Grouts     03700 Mass Concretes  
 03900 Concrete Restoration/Cleaning

- Division 4 - Masonry:**     04200 Masonry Units     04400 Stone     04500 Refractories     04600 Corr.-Resistant Masonry  
 04700 simulated Masonry     04800 Masonry Assemb.     04900 Masonry Restoration/Cleaning     Tuckpointing

- Division 5 - Metals:**     05100 Struct. Framing     05200 Metal Joist     05300 Metal Deck     05400 Cold-Formed Framing  
 05500 Fabrications     05600 Hydraulic Fab.     05650 Railroad Track and Accessories     05700 Ornamental Metal  
 05800 Expansion control     05900 Metal Restoration and Cleaning

- Division 6 - Wood and Plastic:**     06100 Rough Carpentry     06200 Finish Carpentry  
 06400 Arch. Woodwork     06500 Structural Plastics     06600 Plastic Fab.  
 06900 Wood/Plastic Restoration & Cleaning

- Division 7 - Thermal and Moisture Protection:**     07100 Damp/Waterproofing     07200 Thermal Protection  
 07300 Shingles/Roof Tiles/Roof Coverings     07400 Roofing/Siding panels     07500 Membrane Roofing  
 07600 Flashing and Sheet Metal     07700 Roof Specialties and Accessories     07800 Fire/Smoke Protection  
 07900 Joint Sealers

- Division 8 - Doors and Windows:**     08100 Metal Doors/Frames     08200 Wood and Plastic Doors  
 08300 Special Doors     08400 Entrances & Storefronts     08500 Windows  
 08600 Skylights     08700 Hardware     08800 Glazing     08900 Glazed Curtain Walls

- Division 9 - Finishes:**     09100 Metal Support Assemblies     09200 Plaster/Gypsum Board  
 09300 Tile     09400 Terrazzo     09500 Ceilings     09600 Floorings     09700 Wall Finishes  
 09800 Acoustical Treatment     09900 Paints and Coatings

- Division 10 - Specialties:**     TOILET PARTNER    \_\_\_\_\_    \_\_\_\_\_

- Division 11 - Equipment:**    \_\_\_\_\_    \_\_\_\_\_    \_\_\_\_\_

- Division 12 - Furnishing:**    \_\_\_\_\_    \_\_\_\_\_    \_\_\_\_\_

- Division 13 - Special Construction:**    \_\_\_\_\_    \_\_\_\_\_    \_\_\_\_\_

- Division 14 - Conveying Systems:**     14200 Elevators     14300 Escalators     14400 Lifts  
 14600 Hoists and Cranes     14800 Scaffolding     14900 Transportation

- Division 15 - Mechanical:**     15100 Building Services Piping     15200 Process Piping  
 15300 Fire Protection Piping     15400 Plumbing Fixtures and Equipment     15500 Heat Generation Equip.  
 15600 Refrigeration Equipment     15700 HVAC Equip.     15800 Air Distribution  
 15900 HVAC Instrumentation and Controls     15950 Testing, Adjusting, and Balancing

- Division 16 - Electrical:**     16100 Wiring     16200 Electrical Power  
 16300 Transmission and Distribution     16400 Low Voltage Distribution     16500 Lighting  
 16700 Communications     16800 Sound and Video

# Willis

Document A310

## Bid Bond

**KNOW ALL MEN BY THESE PRESENTS, that we**

F.H. Paschen, S.N. Nielsen, Inc.

(Here insert full name and address or legal title of Contractor)

8725 W. Higgins, Ste. 200, Chicago, IL 60631

as Principal, hereinafter called the Principal, and

St. Paul Fire and Marine Insurance Company

(Here insert full name and address or legal title of Surety)

300 South Wacker Drive, Chicago, IL 60606

a corporation duly organized under the laws of the State of Minnesota

as Surety, hereinafter called the Surety, are held and firmly bound unto

The Board of Education of the City of Chicago

(Here insert full name and address or legal title of Owner)

Chicago Public Schools Central Offices

125 S. Clark Street, 10th Fl, Chicago, IL 60603

as Obligee, hereinafter called the Obligee, in the sum of

Five Percent of Amount Bid

Dollars (\$ 5% of A.B. ),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

(Here insert full name, address and description of project)

New Neal F. Simeon Career Academy

8147 S. Vincennes, Chicago, IL

New school construction - PROJECT #2002-1150-NSC

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 1 day of November 2001

*Patricia J. Coppola*  
(Witness)

F.H. Paschen, S.N. Nielsen, Inc.

(Principal) (Seal)

*Joseph V. Scarpelli*  
Joseph V. Scarpelli (Title) Exec. Vice President

St. Paul Fire and Marine Insurance Company

(Surety) (Seal)

(Witness)

*John K. Johnson*  
(Title)

John K. Johnson, Attorney in Fact

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 22251

Certificate No. 767481

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

Adrienne C. Stevenson, Patricia M. Stein, Marcia A. Ritter and John K. Johnson

Chicago Illinois

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 30th day of October, 2000

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.



Handwritten signature of John F. Phinney and Thomas E. Huibregtse.
JOHN F. PHINNEY, Vice President
THOMAS E. HUIBREGTSE, Assistant Secretary

State of Maryland
City of Baltimore

On this 30th day of October, 2000, before me, the undersigned officer, personally appeared John F. Phinney and Thomas E. Huibregtse, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 13th day of July, 2002.



Handwritten signature of Rebecca Easley-Onokala.
REBECCA EASLEY-ONOKALA, Notary Public

STATE OF ILLINOIS  
COUNTY OF COOK

On this 13<sup>th</sup> day of November 2001 before me personally came

John K. Johnson to me known, who

being by so duly sworn, did depose and say: that he/she is

Attorney-in-Fact of St. Paul Fire and Marine Insurance Company

the Corporation described in and which executed the foregoing instrument; that he/she knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority granted to him/her in accordance with the By-Laws of the said Corporation, and that he/she signed his/her name thereto by like authority.



Cecilia A. Rasko  
NOTARY PUBLIC

My Commission Expires  
January 3, 2003

**GENERAL CONTRACTING SERVICES AGREEMENT**

This General Contracting Services Agreement (the "Agreement") is effective as of this 1<sup>st</sup> day of January, 2000, and is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate, having its principal offices at 125 South Clark Street, Chicago, IL 60603 (the "Board") and F.H. Paschen, S.N. Nielsen, Inc., an Illinois corporation, having its principal offices at 701 Lee Street, Suite 550, Des Plaines, IL 60016 (the "General Contractor").

**RECITALS:**

- A. The Board is involved in a comprehensive, multi-year capital improvement program (the "CIP") to upgrade and expand the Chicago Public School facilities;
- B. On or about October 5, 1999, the Board issued a Request for Qualifications for general contracting services (the "RFQ"), inviting responses from qualified companies to perform such services for the CIP;
- C. General Contractor responded to the RFQ, and was deemed qualified by the Board based upon General Contractor's response and submittals;
- D. The Board desires to engage General Contractor under the terms and conditions of this Agreement pursuant to General Contractor's response to the RFQ; and
- E. General Contractor represents that it has the requisite knowledge, experience and skill necessary to perform the services hereunder and desires to perform such services.

**NOW THEREFORE**, in consideration of the foregoing, and the mutual promises and covenant set forth herein, the parties agree as follows:

**SECTION 1. EXTENT OF AGREEMENT**

- 1.1 Incorporation of Recitals. The Recitals set forth above are incorporated into this Agreement.
- 1.2 Entire Agreement. This Agreement, including all amendments to it, and all exhibits attached to it, and all documents referenced herein and incorporated herein, constitutes the entire agreement of the parties with respect to the matters contained herein. This Agreement is intended to govern the relations between the Board and General Contractor in connection with any and all Projects awarded to General Contractor pursuant to a bid solicitation. Any prior agreements, understandings, or representations, either written or oral relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect. The parties, however, acknowledge that General Contractor may have or may have had one or more agreements or contracts ("Prior Agreements") with the Board for specific Projects that are either executory as of the date this Agreement is signed, or under which, if the work addressed in them



has been completed, General Contractor may have continuing obligations, such as but not limited to warranties, record retention obligations, or indemnification obligations. It is not the intention of the parties to subsume or supersede those Prior Agreements in this Agreement, and the parties' respective obligations under them remain in force. But, it is the parties' intention, if they have previously entered into that certain General Contracting Services Agreement dated as of December 1, 1995, and that certain Amended and Restated General Contracting Services Agreement dated as of February 26, 1997, that this Agreement supersedes and replaces these agreements for all future Board Projects awarded to General Contractor.

- 1.3 Essence of the Agreement. It is critical to the success of the CIP that General Contractor stand ready to participate in and bid on the Board's Projects. With respect to General Contractor's performance of its obligations under this Agreement and under any specific Projects on which the Board gives General Contractor a Notice of Award, TIME IS OF THE ESSENCE.

## SECTION 2. DEFINITIONS

As used in this Agreement, these terms have these meanings:

- 2.1 "Architect of Record" or "Architect" means any person or firm employed by the Board for the purpose of designing and observing the Work for a Project.
- 2.2 "Attorney" means the general counsel of the Board.
- 2.3 "Award Criteria Figure" means, in connection with bidding, the amount entered or to be entered on Line 15 of the Board's Canvassing Formula (See Exhibit B regarding special conditions for MBE/WBE Economic Participation) corrected for any arithmetic errors.
- 2.4 "Base Contract Price" means the amount of compensation, based upon General Contractor's Bid Price (as adjusted pursuant to 720 ILCS 5/33 E-12, if applicable) for a Project to be paid for the Work to be performed by General Contractor as adjusted in accordance with authorized Change Orders from time to time.
- 2.5 "Bid Documents" means the Board's solicitation for bids issued in connection with a Project, including the Specifications for the Work and any addenda.
- 2.6 "Bid Price" means the price General Contractor has bid to perform the Work for a Project, as accepted by the Board, subjected to the provisions of 720 ILCS 5/33 E-12.
- 2.7 "Capital Improvement Program" ("CIP") is a comprehensive, multi-year capital improvement program adopted by the Board January 24, 1996, as amended from time to time, to upgrade and expand the Chicago Public Schools facilities. The CIP involves the participation of a number of Board employees, consultants, and contractors, including a Program Manager, Construction Managers, Managing Architects, Architects, engineering specialists, and environmental consultants.
- 2.8 "Capital Planning" means a department within the Board's Operations Department that is

- charged with, among other things, implementation of the CIP.
- 2.9 "Change Order" means a written order issued by the board to General Contractor directing changes in the Work and/or the time for completion of a Project.
- 2.10 "City" means the City of Chicago.
- 2.11 "Construction Manager" means a firm engaged by the Board to provide professional construction management services and manage and facilitate the scheduling and completion of the Work in accordance with the Contract Documents for each Project, within the cost and schedule requirements established by the Board.
- 2.12 "Contract Documents" mean all of the following component parts for a Project, including exhibits attached to them and incorporated in them by reference, and all amendments, modifications and revisions made from time to time in accordance with their provisions:
- 2.12.1 This Agreement;
  - 2.12.2 Bid Documents, including the Construction Operations Phasing Plan and Schedule, if any;
  - 2.12.3 Instructions to Bidders;
  - 2.12.4 Notice of Award;
  - 2.12.5 Notice to Proceed;
  - 2.12.6 Specifications;
  - 2.12.7 Change Orders (if any); and
  - 2.12.8 Performance and Payment Bond.
- 2.13 "Day" means calendar day unless otherwise specified.
- 2.14 "Drawings" are those enumerated in the Schedule of Drawings of the Specifications, and additional drawings and sketches, if any, that may be incorporated into the Contract Documents as Work progresses.
- 2.15 "Environmental Consultant" means a consultant engaged by the Board to provide environmental assessments of schools in the CIP and to coordinate the identification and remediation of environmental conditions.
- 2.16 "Final Acceptance" means the date on which Architect and the Board have determined that all of the requirements of the Contract Documents for a Project have been completed.
- 2.17 "Managing Architect" means an architect engaged by the Board to assist the Board and its Architects of Record.

- 2.18 **"Notice of Award"** refers to the written notice issued by the Board's Chief Purchasing Officer and directed to General Contractor for the award of a Project, and it determines the Base Contract Price for the Project.
- 2.19 **"Notice to Proceed"** refers to the written notice issued by the Board's Chief Purchasing Officer and directed to General Contractor for a specific Project, and it establishes the date from which the time for performance begins to run.
- 2.20 **"PBC"** means the Public Building Commission of Chicago, a municipal corporation and body politic and corporate under Illinois law, and record owner of certain property included in the CIP.
- 2.21 **"Preliminary Acceptance"** means the date on which Architect and the Board have determined that the Work required under the Contract Documents has been essentially completed for a Project (except for Punch List Work), such that the Users may occupy and fully use the Work, or, if the nature of the Work requires that a Certificate of Occupancy be issued, it means the date of the City's Certificate of Occupancy.
- 2.22 **"Program Manager"** means a consultant engaged by the Board to develop system-wide criteria and a program for value engineering, scope oversight, scheduling, and reporting in the CIP.
- 2.23 **"Project"** means the specific construction Project which is awarded to General Contractor by way of a Notice of Award.
- 2.24 **"Project Schedule"** means the schedule established for commencement and completion of the Work for a Project and for achieving milestones during the Work.
- 2.25 **"Punch List" or "Punch List Work"** means minor adjustments, repairs or deficiencies in the Work of a Project as determined by the Architect and the Board.
- 2.26 **"Record Documents"** are all documents required under the terms of this Agreement to be provided to the Board by General Contractor, including, but not limited to, shop drawings, mylar as-built drawings, parts manuals, operation and maintenance manuals, contractors' field drawings, project manuals, specifications, and any other submittal items for a specific Project.
- 2.27 **"Schedule of Values"** means the detailed list of the estimated value of each construction activity included in the Base Contract Price (including insurance credits and other credit items required to be listed) that is submitted by General Contractor for a Project and approved by the Board.
- 2.28 **"Site"** means the location shown on the Drawings within which the Work for a Project is performed under the Contract Documents.

- 2.29 "Subcontractor" means any partnership, firm, corporation or entity other than an employee of General Contractor, who contracts with General Contractor to furnish labor, or labor and materials, at a Site. This term also includes subcontractors of any tier, suppliers, fabricators or manufacturers, whether or not in privity with General Contractor. Nothing in this Agreement or the Contract Documents is considered to impose upon the Board, Program Manager, Architect, Construction Manager, or any other Board consultant, any obligation, liability, or duty to a Subcontractor, or to create any contractual relation between the Board, Program Manager, Architect or Construction Manager and any Subcontractor, or to prejudice remedies granted by applicable laws.
- 2.30 "User" means the principal, students, their parents, teachers, support staff, volunteers, licensees, and local school council members of a particular school, on whose behalf the Board has undertaken to cause the Work to be performed on a Project.
- 2.31 "Work" means the construction and services required by the Contract Documents for a Project, whether completed or partially completed, and includes all other labor, materials, equipment and supplies, plant, tools, scaffolding, transportation, superintendence, insurance, taxes and all other services, facilities and expenses necessary for General Contractor to fulfill General Contractor's obligations. The Work may constitute the whole or a part of a Project.

### SECTION 3. TERM

- 3.1 Initial Term; Extensions. This Agreement begins as of January 1, 2000, and will continue through December 31, 2001 ("Term"), unless extended or terminated as provided herein. The Board may elect to extend this Agreement for one successive one-year period under the same terms and conditions as provided in this Agreement. General Contractor, however, has the privilege of rejecting such extension by notifying the Board's Chief Purchasing Officer at least 90 days before the Agreement is scheduled to expire, in writing, of its unwillingness to agree to an extension of this Agreement on the same terms and conditions. However, if General Contractor is performing Work for a Project which is not completed by the end of the Term or any extension thereof, the terms and conditions of this Agreement shall continue and will remain in effect until such time as Final Acceptance of such Project.

### SECTION 4. PARTICIPATION IN THE CIP

- 4.1 Role of General Contractor in the CIP: Contracts For Work.
- a. General Contractor will be invited to bid on various projects in the CIP, and, in order to obtain an acceptable number of responsive and responsible bids, the Board reserves the right in its discretion to solicit bids from its general contractors either within assigned regions, citywide, or in some other manner to meet its needs.

- b. The Board will cause Bid Documents to be issued to General Contractor for various Projects. All awards for Projects will be made in accordance with the Board rules and any applicable guidelines then in effect. If General Contractor is awarded the Work for a particular Project, General Contractor will receive a Notice of Award, a sample of which is attached hereto as Exhibit A.
- c. The Board may, for sound business reasons, restrict General Contractor to bidding on Projects of limited size, type, location, or complexity. These reasons include, by way of example and not by way of limitation, the failure by General Contractor on any Projects awarded to it by the Board, to (i) meet Project Schedules; (ii) employ competent employees or Subcontractors to perform the Work; (iii) pay employees, Subcontractors or material suppliers promptly; and (iv) otherwise demonstrate its ability to meet the demands of the Projects in accordance with contractual requirements.
- The Board's right to so restrict General Contractor is in addition to all other rights the Board may have under this Agreement and its rules, at law or in equity, regarding General Contractor's performance. Also, following any restriction imposed pursuant to this Section, the Board, at its sole discretion, may later elect to extend the size, scope, type, or location, or all of them, of Projects on which General Contractor is permitted to bid.
- d. The Board may exercise its rights under the provisions of this Section by notifying General Contractor in writing of the restrictions and the reasons for them and the change will be effective immediately. The decision to restrict General Contractor's participation is solely for the benefit and security of the Board. The decision neither waives the Board's right to declare General Contractor in default under this Agreement or in connection with any Project nor the Board's right to all available remedies at law or in equity, or under this Agreement.
- e. General Contractor's relationship to the Board shall be that of an independent contractor, and neither General Contractor nor any of General Contractor's agents, employees or Subcontractors are entitled to receive Board employee benefits. The Board is not responsible for, and will incur no liability for, any state or federal withholding or other taxes or for FICA and state unemployment insurance for General Contractor, its agents, employees or Subcontractors, and the payment of any such taxes incurred or owed by General Contractor is the sole responsibility of General Contractor. General Contractor must not represent itself as an employee of the Board. General Contractor must provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code.

4.2 Role of the Board in the CIP. The Board shall determine the overall policy and procedures for implementing the CIP. Acting through its designated officials, employees, consultants, and other

representatives, the Board will exercise final authority with regard to all CIP-related activities and decisions. The Board, through its Chief Operating Officer, will designate from time to time the parties with authority to direct General Contractor with respect to the Work to be performed for a Project.

## **SECTION 5. COMPENSATION**

- 5.1. Compensation Only for Work Awarded. General Contractor is not entitled, nor is the Board obligated to pay General Contractor any amount solely by entering into this Agreement. This Agreement is intended to govern the relations between the Board and General Contractor in connection with any and all Projects awarded to General Contractor. If General Contractor is awarded a Project, General Contractor's compensation shall be the Base Contract Price for the specific Project as referenced in the Notice of Award.
- 5.2. Method of Payment. Payment for Work satisfactorily performed on a Project pursuant to a Notice of Award shall be processed by the Board in accordance with the provisions of Section 42 herein, and the Board's specific procedures in place at the time General Contractor submits its invoices.

## **SECTION 6. PERFORMANCE AND PAYMENT BOND**

- 6.1. Before receiving a Notice to Proceed, General Contractor shall furnish the Board's Chief Purchasing Officer with a Performance and Payment Bond in the full amount of the Base Contract Price, referencing the Contract Documents, and complying with the requirements of Illinois law regarding bonds on public works. The bond shall be in a form and issued by a surety acceptable to the Board, and licensed as a surety by the State of Illinois. The bond is security for the faithful performance of the Contract Documents and the payment of all persons supplying labor, materials, equipment, and services of any nature to General Contractor in connection with the Work. The bond shall be furnished together with the current power of attorney for the person or persons signing on behalf of the surety, which power of attorney shall be sealed and certified with "first hand signature" by an officer of the surety. A facsimile signature shall not be accepted by the Board. In addition, the acknowledgment of the principal on the bond shall be notarized with his or her official title identified.

## **SECTION 7. DUTIES AND RESPONSIBILITIES OF GENERAL CONTRACTOR**

- 7.1. Engagement. General Contractor promises to participate in bidding under the CIP and to provide all Work awarded to it in accordance with the terms and conditions of the Contract Documents, including this Agreement.
- 7.2. Additional Components of the Services. General Contractor shall comply with the following policies, initiatives, and requirements of the Board:

- a. **Mentor/Protégé Program ("MPP").** During the Term of this Agreement, through the Projects awarded to General Contractor, General Contractor shall "mentor" the MBE/WBE firms identified by the Board's Director of Special Programs. General Contractor shall submit a proposed MPP plan to the Director of Special Programs upon request and shall cooperate in all respects with respect to its review, approval and implementation. The mentoring process is intended to elevate the present level of capability of the protégé firms so that they acquire new skills and enhance their competence in the field of general contracting.
- b. **Student Career Initiatives ("SCI").** General Contractor shall cooperate in a Board Student School-to-Work Program or create a Student Career Initiative that will offer school-to-work opportunities to Chicago Public Schools high school juniors and seniors. General Contractor's program can include, but is not limited to, offering part-time employment and/or training programs geared towards the construction industry. Such training programs would afford students the opportunity to seek full-time employment with General Contractor or other general contractors in the construction industry upon graduation from high school. General Contractor's program shall be reported to the attention of the Director of Special Programs.
- c. **MBE/WBE Plan.** General Contractor acknowledges its familiarity with the requirements of the Board's "Special Conditions for Affirmative Action Requirements, a copy of which is attached hereto as Exhibit B. General Contractor shall adhere to the minimum goals of 50% participation for MBE (with subgoals of 32% Black, 12% Hispanic, and 2% Asian) and 10% participation for WBE participation and other applicable MBE/WBE requirements established for Projects awarded under this Agreement.
- d. **Project Labor Agreement.** The Board has entered into a Project Labor Agreement with various trades regarding Projects under the CIP, copy of which is attached hereto as Exhibit C, together with a list of signatory unions. General Contractor acknowledges familiarity with the requirements of the Board's Project Labor Agreement, its applicability to any Work General Contractor may be awarded under this Agreement, and shall comply in all respects.

## SECTION 8. STANDARDS OF PERFORMANCE

- 8.1. **General.** General Contractor shall perform, or cause to be performed, all of its duties under this Agreement and all Contract Documents with that degree of skill, care and diligence normally shown by a general contractor performing services of a scope, purpose and magnitude comparable with the nature of the services to be provided herein. Where the duty or Work to be performed requires the exercise of professional skill or judgment, General Contractor shall cause it to be performed by professionals competent to do so and licensed by the State of Illinois in the

applicable discipline, if such licensure is required by law. General Contractor is responsible for compliance of the Work with the Contract Documents and the technical accuracy of all submittals furnished under this Agreement and the Contract Documents.

In signing this Agreement, General Contractor accepts the relationship of trust and confidence established between it and the Board and covenants with the Board to furnish its best skill, expertise, and knowledge, and to cooperate with the officials, employees, and agents of the Board in furthering the interests of the Board. General Contractor shall furnish efficient administration, supervision, and superintendence of all Work that it is required to perform and to use every effort to complete the Work in an expeditious and economical manner consistent with the interests of the Board.

- 8.2. In Performing Work. Unless otherwise specified in the Contract Documents, all materials for a Project shall be new and the best of their respective kinds, of standard weights and dimensions. All workmanship shall be of a high grade throughout and of a quality in keeping with the material and design. In all cases where material and quality are not distinctly specified, specimens or samples shall be submitted to Architect for approval. General Contractor shall use every effort to assure timely and satisfactory performance of the Work and shall perform all Work under this Agreement and all Contract Documents to the reasonable satisfaction of the Board's Chief Operating Officer.
- 8.3. Submittals. Whenever General Contractor is required under this Agreement or under the Contract Documents for a particular Projects to prepare reports, documents, shop drawings, or other submittals, General Contractor shall prepare them in form and content satisfactory to the Board and submit them in a timely manner. General Contractor acknowledges that all such submittals are subject to Board review and approval and that General Contractor shall revise and resubmit them until they comply.

## SECTION 9. GENERAL CONTRACTOR'S REPRESENTATIONS

- 9.1. Representations. General Contractor represents that the information furnished and referenced below and the statements below are true and correct as of the effective date of this Agreement and will continue to be true and correct during the Term and any extensions of this Agreement:
- a. Disclosures. General Contractor has truthfully completed a Contractor's Disclosure Form and has delivered same to the Board, and this form is incorporated herein and made a part of this Agreement as if fully set forth herein. General Contractor shall promptly notify the Board of any change in ownership or control disclosed in such form, and any such change is subject to Board approval, which the Board will not unreasonably withhold.
  - b. Prohibited Acts. Within the three years prior to the effective date of this Agreement,



- c. General Contractor or any of its joint venturers if a joint venture, or any of its or their officials, agents or employees (i) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity in that person's official capacity; and (ii) have not been convicted of agreeing or colluding among contractors or prospective contractors in restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code.
- d. **Prohibited Economic Interests.** No officer, agent or employee of the Board is or shall be employed by General Contractor or has or shall have a financial interest, directly or indirectly, in this Agreement, except as may be permitted in writing under the Board's Code of Ethics (95-0927-RU3) adopted September 27, 1995, as may be amended from time, which Code of Ethics is incorporated herein and made a part of this Agreement as if fully set forth herein.
- e. **Defaults under Other Agreements.** General Contractor, each of its joint venture members if a joint venture, and each of its Subcontractors, if any, are not in default or have not been deemed by the Chief Purchasing Officer to be in default under any other agreement with the Board during the five-year period immediately preceding the effective date of this Agreement.
- f. **Kickbacks.** General Contractor, or any of its members if a joint venture, or any Subcontractor to the best of General Contractor's knowledge, has not accepted and shall not accept from or on behalf of any Subcontractor to General Contractor or any intermediate tier Subcontractor, any payment, gratuity or offer of employment in relation to this Agreement or as an inducement for award of a Project in connection with this Agreement. General Contractor is and shall remain in compliance with all applicable anti-kickback laws and regulations.
- g. **Authority.** General Contractor has taken all action necessary for the approval and execution of this Agreement, and is duly authorized to execute this Agreement which constitutes the valid, binding obligations of General Contractor.
- 9.2. **Discrimination.** In performing under the Contract Documents, General Contractor shall not discriminate against any worker, employee or applicant for employment or any member of the public for unlawful reasons, such as race, creed, gender, color, national origin or disability, and it shall not commit unfair labor practices. Attention is particularly drawn to the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*; and Public Works Employment Discrimination Act 775 ILCS 10/0.01 through 10/20, inclusive; and the Board's residency requirements for contracts awarded by the Board. General Contractor shall furnish the reports and information as requested by the Board and the Illinois Department of Human Relations.

- 9.3. **Wages and Salaries.** Salaries of employees of General Contractor performing work under the Contract Documents shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only the payroll deductions that are mandatory or permitted by the applicable laws or regulations. Attention is called to Illinois Compiled Statutes relating to Wages and Hours, including without limitation 820 ILCS 130/0.01 through 130/12 (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). General Contractor shall comply with all applicable Anti-Kickback laws and regulations, including the Anti-Kickback Act of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. Sec. 874; 40 U.S.C. Sec. 276c) and the Illinois Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.*

The Board requires that the general prevailing rate of wages and other applicable benefits, if any, in the locality for each craft or type of worker or mechanic needed to execute this Agreement or perform any such work awarded pursuant to this Agreement, as ascertained by the Illinois Department of Labor, shall be paid to such workers by their employer.

If, in the performance of this Agreement or the Contract Documents, there is any direct or indirect kickback, such as, but not limited to, underpayment of wages or salaries by General Contractor, the Board has the right to withhold from General Contractor out of payments due to it an amount sufficient to pay the employees underpaid the difference between the salaries required to be paid under the Contract Documents and the salaries actually paid the employees for the total number of hours worked. The amounts withheld shall be disbursed by the Board for and on account of General Contractor to the respective employees to whom they are due. General Contractor and all its Subcontractors shall comply with the provisions of all applicable Board policies.

- 9.4. **Compliance; Monitoring.** Regardless of any provisions elsewhere in this Agreement to the contrary, General Contractor shall disclose at least 50% of its proposed MBE/WBE economic participation in the Work at the time of bid. General Contractor shall comply with its MBE/WBE commitments set forth in its bid and cooperate with the Board's compliance officers. General Contractor shall fulfill all of its reporting obligations in a timely manner.
- 9.5. **Background Checks.** Under the provisions of the Illinois School Code, 105 ILCS 5/10-21.9, General Contractor shall conduct a criminal background investigation of all employees on each Project or the Work who may have direct, daily contact with the pupils in any school. General Contractor shall not assign to the Work at any school any employee convicted of the offenses listed in the Illinois School Code or those for whom a criminal background investigation has not been initiated. Upon receipt of the record of conviction, General Contractor shall immediately remove any person so assigned from the Work at the school. In addition, General Contractor shall require all persons assigned to the Work at any school to show evidence that they are free from communicable disease, including tuberculosis. Acceptable evidence is described in the Illinois School Code, 105 ILCS 5/24-5. From time to time, the Board may require General Contractor

to demonstrate its compliance with the provisions of this Section. Also, General Contractor shall comply with the requirements of the Illinois Drug-Free Workplace Act, 30 ILCS 580/3.

## SECTION 10. WARRANTY

- 10.1. General Contractor warrants to the Board and Architect that (i) all materials and equipment furnished under the Contract Documents shall be of good quality and new unless otherwise required or permitted by the Contract Documents, (ii) the Work shall be free from defects not inherent in the quality required or permitted, and (iii) the Work shall conform with the requirements of the Contract Documents. The Board and Architect are entitled to consider Work not conforming to these requirements, including substitutions not properly approved and authorized, defective. General Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by General Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Architect, General Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 10.2. General Contractor warrants all of the Work for a Project and each and every part of it, including, by way of illustration and not in limitation, all workmanship, materials, equipment, supplies, services and facilities that are furnished, produced, fabricated, installed, constructed or built pursuant to the Contract Documents for the respective periods of time called for by the respective requirements of the Contract Documents, and, if no period is specified, then for a period of one year, against defects that, in the opinion of Architect, result from the use of defective or inferior materials, equipment, supplies, services, facilities or workmanship or from Work not in compliance with or not performed in accordance with the Drawings or Specifications. General Contractor shall provide this warranty to the Board in writing. The warranty period shall run from and after the date of Final Acceptance of all Work required by the Contract Documents, unless the Contract Documents specify a different date for the warranty period to begin running. No part of the Work shall be held to be accepted until Final Acceptance of all of the Work. General Contractor shall, as part of this warranty, (i) repair, remove and replace as directed by the Board, and at no cost to the Board all the Work, materials, equipment, supplies, services and facilities that prove defective during the applicable warranty period or that fail to conform to the Contract Documents, and (ii) repair, remove and replace, or pay for as directed by the Board and at no cost to the Board, all damaged portions of the Project and the contents and equipment of it, resulting from or that are incidental to the defects or failure to conform to the Drawings or Specifications. General Contractor shall begin all repairs, removals, and replacements within 10 business days after the Board gives written notice and shall furnish workers and materials sufficient in the opinion of the Board to ensure their prompt completion. The written notice from the Board shall have attached to it the opinion of Architect stating that the defective Work was not performed in accordance with the Contract Documents. Should General Contractor fail to proceed in accordance with these requirements, the Board without further notice to General Contractor may furnish all labor and material necessary for repairs, or removals and replacements, and General Contractor shall pay the Board all costs

incurred as a result of General Contractor's failure to do so. Notification by the Board of nonconforming or defective Work tolls the running of General Contractor's warranty with respect to the nonconforming or defective Work and of other Work affected by the nonconforming or defective Work. The warranty period for the corrected Work begins anew from the date the replaced or restored Work is accepted by the Board and runs for the full length of time as required under the Contract Documents for the portion of the Work corrected and for that Work affected by it.

## **SECTION 11. MANUFACTURERS' WARRANTIES**

- 11.1. At the final Project close-out meeting, General Contractor shall furnish the Board two (2) complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work (collectively referred to as "manufacturers' warranties"), completed in favor of the Board as of and at the time of Final Acceptance of the Work. These manufacturers' warranties are in addition to and not in lieu of any other of General Contractor's warranties stated herein, and the Board is entitled to look to General Contractor for remedy in all cases where General Contractor's warranty applies regardless of whether a manufacturer's warranty also applies. Construction Manager shall acknowledge receipt of the sets of manufacturers warranties on the set itself, and General Contractor shall cause six (6) copies of an acknowledged set to be made and furnish them to Construction Manager for distribution as the Board directs.

## **SECTION 12. INSURANCE**

Insurance requirements are set forth in Exhibit D attached hereto and incorporated herein.

## **SECTION 13. GENERAL SAFETY GUIDELINES**

- 13.1. General Contractor shall adhere to any and all safety requirements set by the Board and the Board's insurance representatives.
- 13.2. General Contractor, both directly and indirectly through its Subcontractors, shall continuously protect the Work and the Board's property from damage, injury or loss arising in connection with operations under the Contract Documents. General Contractor shall make good any such damage, injury or loss, except that which may be directly due to causes beyond General Contractor's control, fault or negligence and that would not reasonably be expected to occur in connection with or during performance of the Work. General Contractor is responsible for Site security, watchmen, etc. Dogs are not allowed.
- 13.3. General Contractor, both directly and indirectly through its Subcontractors, shall take all necessary precautions to ensure the safety of the public and workers on the Site, and to prevent accidents or

injury to any persons on, about, or adjacent to the Site where the Work is being performed.

- 13.4. General Contractor shall comply with all laws, ordinances, codes, rules and regulations relative to safety and the prevention of accidents, the Manual of Accident Prevention in Construction of the Associated General Contractors of America and the applicable provisions of the American Standard Safety Code for Building Construction, unless prevention of accidents is regulated by a more stringent local code or ordinance.
- 13.5. General Contractor shall erect and properly maintain at all times, as required by laws and regulations and the conditions and progress of the Work, proper safeguards for the protection of workers and the public and post signs warning against the dangers created by openings, stairways, falling materials, open excavations and all other hazardous conditions.
- 13.6. In an emergency affecting the safety of life, the Work or adjoining property, General Contractor, without special instructions or authorization from Architect or Board, is permitted to act, at its discretion, to prevent the threatened loss or injury.
- 13.7. General Contractor shall protect private and public property adjacent to the Work, including all streets, sidewalks, light poles, hydrants and concealed or exposed utilities of every description affected by or adjacent to the Work. If the items are damaged by General Contractor or its Subcontractors, General Contractor shall make all necessary repairs to or replacements of them at no cost to the Board.
- 13.8. If, in the opinion of the Board, General Contractor's Work endangers adjoining property, upon written notice, the Work shall be stopped and the method of operation changed in a manner acceptable to the Board.
- 13.9. General Contractor shall remove all snow and ice as may be required for the proper protection and/or prosecution of the Work. General Contractor shall at all times provide and maintain adequate protection against weather (including, but not limited to rain, winds, storms, snow, sleet, frost or heat) so as to preserve all Work, materials, equipment, apparatus and fixtures free from injury or damage.
- 13.10. Adequate precautions shall be taken against fire throughout all General Contractor's and Subcontractors' operations. Flammable material shall be kept at an absolute minimum, and, if any, shall be properly handled and stored. Except as otherwise provided in the Contract Documents, General Contractor shall not permit fires to be built or open salamanders to be used in any part of the Work.
- 13.11. General Contractor shall provide and maintain adequate protection for all properties adjacent to the Site. When required by law or for the safety of the Work, General Contractor shall shore up,

brace, underpin and protect as necessary, adjacent pavements, foundations and other portions of existing structures that are in any way affected by the operations under the Contract Documents. General Contractor, before beginning any part of the Work, shall give any notices required to be given to any adjoining landowner or other parties.

- 13.12. General Contractor shall cooperate with any other contractor that may be performing work on the Site in connection with the compliance with regulations of OSHA and all other federal, state, and municipal laws, rules and regulations relating to job site safety and practice including, as may be relevant, appealing decisions, correcting work within abatement periods, appealing or requesting extensions on abatement periods when work has been done by other contractors and furnishing the supporting information or material as may be necessary to fully protect the rights of the Board, its representatives, and other contractors on pending or prospective violation orders.
- 13.13. Unless otherwise noted, all existing fixtures, furniture, equipment, shall be carefully removed by General Contractor to a nearby area, protected from damage of any kind, before Work begins in that area. General Contractor shall return the items to the originally designated place at the finish of the Work. For electronic or utility hook-ups, the Board shall be notified in advance, and allowed sufficient time to disconnect items before removal. Hook-ups shall to be reconnected by the Board after replacement of furniture and equipment by General Contractor.
- 13.14 General Contractor shall comply with the Construction Operations Phasing Plan and Schedule when performing the Work.

#### **SECTION 14. ENVIRONMENTAL COMPONENTS OF THE WORK.**

- 14.1. If the Contract Documents require General Contractor to manage or perform any environmental Work, or if in the course of the Work an environmental hazard is encountered requiring action, General Contractor shall cooperate and coordinate its Work in all respects with that of the Board's environmental consultants, perform its Work according to safe and approved protocols and procedures, and utilize only fully qualified and licensed abaters and remediators, and sequence and perform Work to minimize environmental contamination of the Site. Whenever General Contractor's Work involves an existing Board facility, General Contractor shall consult with the Board, including its consultants and the building engineer, if any, to determine whether previous abatement, remediation, stabilization, or containment work has been performed at the facility. If so, General Contractor shall perform its Work under the Contract Documents so as not to undo or disturb the prior work. General Contractor shall be responsible for all costs the Board incurs for General Contractor's failure to comply with such protocols and procedures, or for its failure to consult and protect the integrity of the prior work; such costs may include without limitation any costs associated with cleaning any area contaminated by General Contractor's (or its Subcontractors') failure to comply with these requirements.

- 14.2. If General Contractor encounters on the Site material reasonably believed to be hazardous that has not been identified in the Contract Documents or rendered harmless, General Contractor shall immediately stop work in the area affected and report the condition to the Board and Construction Manager in writing and comply with a Board-approved plan for identifying and handling the material. If no plan is in place, General Contractor shall await and follow directions of the Program Manager or Construction Manager that have been approved by the Board's environmental consultants. The Work in the affected area shall be resumed in the absence of hazardous materials, or when it has been rendered harmless, by written notification from the appropriate environmental representative of the Board to General Contractor. If reasonable precautions shall be inadequate to prevent foreseeable bodily injury or death to persons resulting from material or substance encountered on the Site by General Contractor, General Contractor shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the Board and Architect in writing. The Board, General Contractor and Architect shall then proceed in the same manner described in the Section immediately above. The Board, through one or more environmental consultants, shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the materials or substance reported by General Contractor and, if the material or substance is found to be present, to verify that it has been rendered harmless.

## SECTION 15. CONTRACTOR'S LIABILITY

- 15.1. Assumption of Liability. General Contractor assumes all liability for its own negligence and the negligence of its own employees and agents. General Contractor shall require its Subcontractors to assume all liability for their own negligence and the negligence of their own employees and agents.
- 15.2. Indemnification. General Contractor or its Subcontractors, or both, as the case may be, shall compensate the Board and any other local governmental body with an interest in any Work or Project, and their respective members, trustees, commissioners, employees, or agents, including the Program Manager, Architect and Construction Manager(s) (collectively, the "Board Indemnitees") for any claim, loss, or liability the Board Indemnitees incur on account of any negligence, recklessness, or wilful misconduct of General Contractor or its employees, any Subcontractor or the Subcontractor's employees, in the performance of any Work in connection with this Agreement. Any limit on such liability that would otherwise be available by virtue of the Worker's Compensation Act or any other law or judicial decision is expressly waived as to the Board Indemnitees. Nothing in this Section, however, is intended to be, and shall not be, construed as an agreement to indemnify or hold harmless the Board Indemnitees on account of their own negligence. General Contractor acknowledges that any performance bond or insurance provided under this Agreement in no way limits General Contractor's responsibility to compensate the Board Indemnitees as provided in this Section.

General Contractor is not liable under this Section for the errors or omissions of Architect, its agents or employees arising out of Architect's (or its agents' or employees') preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications or giving or failing to give directions or instructions, but only if the giving or failing to give directions or instructions is the primary cause of the injury or damage.

General Contractor, where separate contractors or their Subcontractors are employed on the Site, shall not hold the Board responsible for loss or damage or injury caused by any fault or negligence of the other contractor or Subcontractor and General Contractor shall look to the contractors or Subcontractors for recovery from them for any such damage or injury.

If any separate contractor or its subcontractor suffers loss or damage through any acts or omissions on the part of General Contractor, or any of its Subcontractors, General Contractor shall reimburse the other contractor or its subcontractor by agreement or arbitration, if they shall so settle. If the separate contractor or its subcontractor asserts any claim against the Board on account of any damage or loss alleged to have been so sustained, the Board shall notify General Contractor, and General Contractor shall defend and hold the Board harmless against those claims as provided herein.

- 15.3. Limitation of Liability. In no event, whether as a result of termination for default, termination for convenience, suspension of the Work, breach of contract, negligence, or otherwise, shall the Board be liable for damages for loss of profits, loss of use, loss of revenue, loss of bonding capacity, or any other special, indirect or consequential damages of any kind. The Board's total liability for any loss, claim, or damage arising out of the Contract Documents or the performance or breach of it is limited to the value of the Work performed or the Base Contract Price, whichever is less.
- 15.4 Non-Liability of Individuals. No Board member, employee, agent, officer, or official shall be personally liable to General Contractor or others claiming under or through General Contractor in connection with this Agreement or any Contract Documents. General Contractor, its members if a joint venture, or any of its Subcontractor shall not personally charge any Board member, employee, agent, official, or officer with any liability or expense in connection with this Agreement or any Contract Documents because of the Board's execution or attempted execution of it, or because of any breach of it.

## **SECTION 16. CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

- 16.1. The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work for a Project. General Contractor shall provide any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, as if shown or mentioned in both.



- 16.2 General Contractor shall coordinate the various parts of the Work so that no part is left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and General Contractor, as to where the work of one begins and ends with relation to the work of the other.
- 16.3 Generally, the Specifications describe work that cannot be readily indicated on the Drawings and indicate types, qualities and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of work in the Specifications that can be adequately shown on the Drawings nor to show on the Drawings all items of work described or required by the Specifications even if they are of such nature that they could have been shown on them. General Contractor shall provide all materials or labor for Work that is shown on the Drawings or is reasonably inferable from them as being necessary to produce a finished Project whether or not the Work is expressly covered in the Specifications.
- 16.4 Except as otherwise noted in the Drawings or Specifications, General Contractor shall furnish materials that are shown on the Drawings and that are not specifically described in the Specifications or Drawings, suitable for the intended use, compatible with adjacent materials, and subject to review for conformity with the intent of the Contract Documents. Installation techniques not specified in the Contract Documents shall be in accordance with manufacturer's currently published instructions and industry standards.
- 16.5 The Board may elect to pre-purchase certain major materials, such as structural steel, windows, kitchen equipment, and the like, for use on a Project, and if so, the Contract Documents shall describe the procedures established for requisitioning them through the Board.
- 16.6 Where requirements of the Contract Documents differ from what is required under applicable laws, ordinances, rules, regulations, orders, building codes or the requirements of authorities having jurisdiction over a Project, General Contractor shall provide that which the most stringent of them, and, except for material discrepancies caused by Architect's errors and omissions, General Contractor shall provide, within the Base Contract Price, that which is required. General Contractor shall, whenever there is a discrepancy or apparent discrepancy, seek clarification and approval in advance from Architect, and especially where a material discrepancy of this nature would result in a claim for extras.
- 16.7 By submitting a bid for a Project, General Contractor represents and warrants that General Contractor has visited the Site, is familiar with local conditions under which the Work is to be performed and has correlated personal observations with requirements of the Contract Documents.

## **SECTION 17. RIGHT OF ENTRY**

- 17.1 General Contractor and its Subcontractors and their respective officers, employees, and agents

performing the Work are permitted to enter the Site in connection with the performance of the Work, subject to the terms and conditions contained in the Contract Documents and those rules established by the Board. General Contractor shall provide advance notice of its intended entry to the principal whenever Work is to be performed at an existing school Site, and also to the Board regardless of the type of Site. Consent to enter a Site given by the principal or the Board does not create, and shall not be construed to imply the creation of, any additional responsibilities on the part of the Board.

- 17.2 General Contractor shall use, and shall cause its Subcontractors and their respective officers, employees, and agents to use, the highest degree of care when entering Sites in connection with the Work. General Contractor and its Subcontractors and their respective officers, employees and agents shall comply with all instructions and requirements for the use of the Site, and any leases or licenses for the use of the Site, whether the Site is owned or leased by the Board or licensed or leased from the Board.
- 17.3 All claims, suits, judgments, costs, or expenses, including attorney's fees, arising from or in connection with any such entries shall be treated in accordance with the terms and conditions of the Contract Documents.

#### **SECTION 18. EXPLANATION OF SPECIFICATIONS**

- 18.1 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings is for convenience and does not dictate or determine the trade or craft involved. The separations do not operate to make Architect an arbiter for the division of responsibility between General Contractor and Subcontractors or between Subcontractors, and the separations do not relieve General Contractor from the responsibility of satisfactorily completing the entire Work, regardless of the trade divisions.
- 18.2 The Specifications are of abbreviated or "streamlined" type and may include incomplete sentences. Omissions of words or phrases such as "the Contractor shall (or must)", "in conformity therewith", "shall (or must) be", "as noted on the Drawings", "according to the plans", "a", "an", "the", and "all" are intentional. Omitted words and phrases shall be supplied by inference in the same manner as they are when a "Note" occurs on Drawings. Words "shall (or must) be" or "shall (or must)" are to be supplied by inference where a colon (:) is used within sentences or phrases.
- 18.3 Where "as shown", "as indicated", "as detailed" or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed", "as required", "as permitted", "as authorized", "as approved", "as accepted", "as selected", or words of similar import are used in the Specifications, the direction, requirement, permission, authorization, approval, acceptance or selection by Architect is intended unless otherwise stated.

18.4 "Provide" means "provide complete in place" or "furnish and install."

## **SECTION 19. STANDARD SPECIFICATIONS**

19.1 Any reference in the Contract Documents to standard specifications of any society, institute, association or governmental authority (these standard specifications not forming a part of any statute or ordinance, nor otherwise being specified as to edition or date), is a reference to the standard specifications of the organization that are in effect on the 180th day before the date of the first advertisement for bids of a Project. If the specifications are revised before completion of any part of the Work on the Project to which the revision would pertain, General Contractor may, if approved by the Board, perform the Work in accordance with the revised specifications.

## **SECTION 20. OWNERSHIP OF DRAWINGS, SPECIFICATIONS AND MODELS**

20.1 All copies (in whatever form, including, without limitation, electronic) of Drawings and Specifications furnished by Architect are the property of the Board. The copies are not to be used on any other Work or Project whatsoever and, with the exception of General Contractor's signed set, are to be returned to the Board on request at the completion of the Work. All models are the property of the Board.

## **SECTION 21. THE ARCHITECT, THE BOARD, AND BOARD CONSULTANTS**

21.1 Architect represents the Board during the construction period of a Project and shall observe and inspect the Work periodically. Architect has the authority to act on behalf of the Board only to the extent expressly provided in the Contract Documents or otherwise in writing, which shall be shown to General Contractor upon request. Architect has the authority to reject the Work whenever the rejection may be reasonably necessary to ensure the proper execution of the Contract Documents. Architect is the initial interpreter of the Contract Documents with respect to matters within Architect's professional expertise, such as, but not limited to, the design and Specifications and General Contractor's compliance with them. In the event of a dispute, Architect shall render written interpretations regarding the items to be included within the Work to the Board.

21.2 Architect shall within a reasonable time, make recommendations on all claims of General Contractor and make decisions on all other matters relating to the execution and progress of the Work and the interpretation of the Contract Documents. The Board shall not entertain any claim of General Contractor that has not first been reviewed.

21.3 Architect, the Construction Manager and Program Manager are not liable for General Contractor's performance of the Work or for any defects, deficiencies or effects resulting from any of them, or those of any Subcontractor, manufacturer, supplier, fabricator, or any other third party (including anyone working or acting on behalf of any of them).

- 21.4 The services of Architect, Construction Manager and Program Manager are performed solely for the benefit of the Board. General Contractor, its Subcontractors, suppliers, fabricators, manufacturers or other third parties are not entitled to have any claim against them or the Board as a result of the performance or nonperformance of their respective services. General Contractor shall bring this provision to the attention of its Subcontractors, suppliers and other parties with whom it contracts and have them do the same with those with whom they contract.
- 21.5 Architect, Construction Manager and Program Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions in connection with the Work, since these are solely General Contractor's responsibility. Architect shall not be responsible for General Contractor's failure to carry out the Work in accordance with the Contract Documents. Architect shall not have control over or charge of and shall not be responsible for acts or omissions of General Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 21.6 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Board, Architect, and General Contractor shall communicate through the Construction Manager and the Program Manager. Communications by and with Subcontractors and material suppliers shall be through General Contractor.

## **SECTION 22. APPROVALS**

- 22.1 In various places the Contract Documents require General Contractor to obtain approvals from or to submit drawings, notices, claims, or other documents to various persons. In general, it is the intent of the Contract Documents that the Architect, as the person professionally responsible for the design and Specifications, and the Board, as owner or in the owner's stead (where another governmental body owns Site), have the power of approval and disapproval, while the Program Manager and the Construction Manager make recommendations and suggestions to the Board. With respect to submittals, the designation of various persons to receive them does not relieve General Contractor or its Subcontractors of any statutory notice requirements, but rather it is intended to speed up recommendations and approvals (or disapprovals) where the actions of several persons is called for.

## **SECTION 23. SUBMITTALS AND SUBSTITUTIONS**

- 23.1 General Contractor shall review, approve and submit to Architect shop drawings, product data, samples and similar submittals required by the Contract Documents with reasonable promptness and in the sequence that shall cause no delay in the Work or in the activities of the Board or of separate contractors. Submittals made by General Contractor that are not required by the Contract Documents may be returned without action.

- 23.2 General Contractor shall not perform any 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 Architect. The Work shall be in accordance with approved submittals.
- 23.3 By approving and submitting shop drawings, product data, samples and similar submittals, General Contractor represents that General Contractor has determined and verified materials, field measurements, and field construction criteria related to them, or shall do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Contract Documents.
- 23.4 General Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Architect's approval of shop drawings, product data, samples or similar submittals unless General Contractor has specifically informed Architect in writing of the deviation at the time of submittal and Architect has given written approval to the specific deviation. General Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by Architect's approval of them.
- 23.5 General Contractor shall identify and submit all proposed substitutions to Architect for approval at General Contractor's initial submittal as required in the Specifications. No substitutions are permitted, and General Contractor shall not make any substitutions, at any time after that, unless one or more specified products or processes becomes unavailable through no fault of General Contractor. General Contractor shall furnish such drawings, specifications, samples, performance data and other information as required to assist Architect in determining whether the proposed substitute product or process is acceptable. The burden of proof is on General Contractor both with respect to acceptability of the proposed substitute product or process and with respect to General Contractor's lack of fault. When the submittal is due to specified product unavailability through no fault of General Contractor, all proposed substitutes shall be submitted to Architect in ample time to permit proper consideration by Architect. No consideration shall be given to incomplete or belated submittals. Failure of General Contractor to plan ahead to obtain a product at a competitive price is not a basis for substitution.

#### **SECTION 24. NAMED MANUFACTURERS; SPECIFIED PROCESSES**

- 24.1 Whenever in the Contract Documents the term " substitute," in any of its forms, is used in connection with products or processes other than those specified, it is intended to refer to the products or processes offered in the post-award period. The term "alternate" in connection with products or processes other than those specified is intended to refer to products or processes bid as alternates to the named products or processes.
- 24.2 Whenever any manufacturer's or distributor's brand of product (or trade name or catalog reference) is specified for an item of Work, the words "or equal" are understood to apply, and

equal alternates and equal substitutions shall be considered unless otherwise expressly stated.

- 24.3 If General Contractor proposes to offer an equal alternate to the named product or process, General Contractor shall do so at the time of bid, clearly identifying the product or process alternate offered, furnishing detailed specifications of the product, supporting data, and samples, and identifying any deviations from the specification. General Contractor shall furnish with the bid submittal, or at the request of the Board, such drawings, specifications, samples, performance data and other information and as many as required to assist Architect in determining whether the proposed alternate product or process is acceptable. The alternate so offered is subject to Architect's review and approval to determine its compliance with the specifications, including all performance requirements stated or implied in the specification. If General Contractor's bid lacks any of the foregoing information, General Contractor shall furnish the named product or process. **NO ALTERNATE SHALL BE CONSIDERED FOR ACCEPTANCE IF NOT BID.**
- 24.4 Whenever a particular process is specified and also requires a guarantee of the results, and if General Contractor judges that the process might not produce the required result, General Contractor shall include in its bid an alternate process that General Contractor will guarantee, or submit for approval a substitute process that General Contractor will guarantee.
- 24.5 All proposals for substitute products or processes shall be made in writing to Architect. Requests for approval of products or processes other than those specified shall be accompanied by proof, satisfactory to the Board and Architect that (i) they are equal in quality, availability, and serviceability to the specified products, (ii) their use shall not entail changes in details and construction of related Work, (iii) they are acceptable in consideration of the required design and artistic effect and function, and (iv) there is a cost advantage to the Board. General Contractor shall furnish with the submittal, such drawings, specifications, samples, performance data and other information and as many as required to assist Architect in determining whether the proposed substitute product or process is acceptable.

## **SECTION 25. ARCHITECT'S ADDITIONAL INSTRUCTIONS**

- 25.1 Architect shall furnish with reasonable promptness additional instructions by means of drawings or otherwise, necessary for the proper execution of the Work. All such instructions shall be consistent with the Contract Documents, or approved modifications of or true developments from them, and reasonably inferable from them. General Contractor shall cause the Work to be executed in conformity with the Contract Documents and the additional instructions and General Contractor shall do no work without proper drawings or instructions. In giving additional instructions, Architect has authority to make minor changes in the Work consistent with the intent of the Contract Documents and involving no extra cost (but not those granting additional time).

- 25.2 Wherever typical parts or sections of the Work are completely detailed on the Drawings and other parts of sections that are essentially of the same construction are shown in outline only, the complete details apply to the Work that is shown in outline.
- 25.3 General Contractor shall not determine dimensions of Work by scale or rule, but rather shall follow figured dimensions at all times. If figured dimensions are lacking and cannot be calculated from other dimensions on Drawings, Architect shall supply them on General Contractor's request.

## SECTION 26. CONSTRUCTION SCHEDULES

- 26.1. Time Is of the Essence in Prosecuting and Completing the Work. General Contractor, within 15 working days after being awarded a Project pursuant to a Notice of Award, shall prepare and submit to the Board, General Contractor's construction schedule for the Work, prepared in form and substance acceptable to or as specifically prescribed by the Board. The construction schedule shall not exceed time limits for the Work in the project schedule under the Contract Documents. The construction schedule shall accommodate all Board and User activities that are identified in the Contract Documents and shall be updated by General Contractor and submitted to the Construction Manager at least monthly or more frequently as directed by Architect or the Construction Manager. The construction schedule 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. General Contractor shall submit the construction schedule to the Construction Manager in duplicate, and, if requested by the Construction Manager, also on floppy disk in format acceptable to the Construction Manager. General Contractor shall submit a revised construction schedule when General Contractor's planned sequence is changed or when Project changes are made that affect the construction schedule or when directed by the Construction Manager. All construction schedules are subject to review and approval by the Board.
- 26.2 Board's Right to Do Work. If General Contractor neglects to prosecute the Work properly or fails to perform in accordance with the Contract Documents, the Board, after at least 3 business days' written notice to General Contractor, may without prejudice to any other remedy, make good the deficiencies and deduct the cost of doing so from the payment then or later due General Contractor. If the cost of all Work undertaken by the Board pursuant to this Section exceeds the unpaid balance of the Base Contract Price, General Contractor (and the surety or sureties on the performance bond given by General Contractor) shall be liable for payment to the Board of the amount of the excess.
- 26.3 Board's Right to Stop Work. If General Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the Board, by written order signed personally or by an agent specifically so empowered by the Board in writing, may order General Contractor to stop the Work, or any portion of it, until the cause for the order has been eliminated; however, the right

of the Board to stop the Work does not give rise to a duty on the part of the Board to exercise this right for the benefit of General Contractor or any other person or entity.

- 26.4 Contract Documents and Submittals for the Work. General Contractor shall keep one complete set of all Contract Documents, including Drawings, Specifications and one complete set of submittals at the Site in good order, available to the Board, Architect, Program Manager, and the Construction Manager. General Contractor shall keep the Drawings, Specifications and submittals up to date by replacing obsolete sheets with revised sheets as they are issued. General Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Board and shall at once report to Architect any errors, inconsistencies or omissions discovered. General Contractor shall not be liable to the Board or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless General Contractor recognized, or should have recognized, the error, inconsistency or omission and knowingly failed to report it to Architect. If General Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without notice to Architect, General Contractor assumes appropriate responsibility for the performance and shall bear an appropriate amount of the attributable costs for correction. General Contractor shall take field measurements and verify field conditions and shall carefully compare the field measurements and conditions and other information known to General Contractor with the Contract Documents before commencing activities. General Contractor shall report errors, inconsistencies or omissions discovered to Architect at once.

## **SECTION 27. SUPERVISION OF THE WORK**

- 27.1 General Contractor shall, immediately upon issuance of the Notice to Proceed with any portion of the Work, (i) furnish a competent staff, sufficient in number, as necessary for the proper administration, coordination, and supervision of the Work within the project schedule as established in the Contract Documents, (ii) organize the procurement of all materials and equipment so that they shall be available at the time they are needed for the Work, and (iii) keep a force of skilled workers on the Site sufficient in number to complete the Work in accordance with all requirements of the Contract Documents and to the satisfaction of Architect.
- 27.2. Before beginning the Work, General Contractor shall select a project manager who shall have full responsibility for the prosecution of the Work with full authority to act in all matters as necessary for the proper coordination, direction, commitment of resources and technical administration of the Work. General Contractor's project manager shall attend meetings at the places and times as the Board, Construction Manager, Program Manager or Architect decides in order to render reports on the progress of the Work.
- 27.3. General Contractor shall keep on the Project throughout its duration a competent superintendent and any necessary assistants, all of whom shall be satisfactory to the Board. The superintendent



shall be present at the Site when General Contractor's personnel and/or Subcontractors are present. The superintendent shall not be replaced without the consent of the Board, unless the superintendent proves to be unsatisfactory to the Board (in which case the superintendent shall be replaced on the Project) or becomes unavailable due to reasons beyond the control of General Contractor. In order to replace the superintendent, General Contractor shall give the Board written notice and submit for approval the qualifications of the proposed replacement superintendent at least 15 days before the intended change. The superintendent represents General Contractor in the absence of General Contractor's principals and all directions given to the superintendent are as binding as if given to General Contractor. All directions shall be confirmed in writing to General Contractor.

- 27.4. General Contractor shall efficiently supervise the Work using its best skill and attention.
- 27.5. General Contractor is solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. General Contractor shall verify the figures shown on the Drawings before laying out the Work and shall be held responsible for any errors or inaccuracies resulting from the failure to do so.

## **SECTION 28. HOURS OF WORK**

- 28.1. General Contractor shall furnish sufficient forces and work those shifts that may be required to ensure completion of the Work under the conditions and within the time stated in the Contract Documents. If the nature of the Work requires that parts of it be performed outside of regular working hours, the cost of the Work is considered to be included in the Base Contract Price. If the Project falls behind schedule, General Contractor shall be required to perform the Work by extra shifts or on an overtime basis as may be necessary to complete the Work on time and the cost of that shall be considered to be included in the Base Contract Price.
- 28.2. General Contractor shall not be entitled to additional compensation for extra shifts or overtime work for any reason whatsoever, except as otherwise expressly stated in writing by the Board; and then only to the extent of the direct cost of the premium portion of the time involved and without any charge for mark up, insurance or taxes, except as might otherwise be required by law.
- 28.3. The Site may be occupied during construction. General Contractor shall cooperate fully with the Board, and the User during construction operations to minimize conflicts, interference and to facilitate occupant usage and operations.
- 28.4. During occupied hours, General Contractor shall limit construction operations to methods and procedures that shall not adversely and unduly affect the environment of occupied spaces, including but not limited to creating noise, dust, odors, air pollution, ambient discomfort, or poor lighting.

## **SECTION 29. EMPLOYEES**

- 29.1. Any employee of General Contractor or a Subcontractor whose work is unsatisfactory or who is considered by the Board, Program Manager, Architect or Construction Manager to be unskilled or otherwise objectionable, shall be dismissed from the Work upon written notice to General Contractor.

## **SECTION 30. BUILDING MATERIALS AND EQUIPMENT**

- 30.1. Unless otherwise specified, all materials and equipment shall be new, and of the quality required to satisfy the standards of the Contract Documents. General Contractor shall, if required, furnish satisfactory evidence as to kind and quality of all materials and equipment. General Contractor shall cause all labor to be performed by workers skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents shall result.
- 30.2. Any work, materials or equipment that do not conform to these requirements or the standards set forth in the Contract Documents may be disapproved and rejected by the Architect, in which case General Contractor shall remove and replace them before final payment.
- 30.3. General Contractor shall keep proper inventories, provide adequate protection against the weather and maintain security measures against theft and vandalism with respect to all stored materials, fixtures and equipment for items stored on-site and not yet incorporated into the Work.
- 30.4. The Site shall not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for the Project.
- 30.5. General Contractor shall review any specified construction or installation procedures (including those recommended by any product manufacturer). General Contractor shall advise Architect, in writing 7 days before beginning the Work, on items affected: (i) if any specified procedure deviates from good construction practice; (ii) if following any specified procedure shall affect any warranties; or, (iii) of any objections that General Contractor may have to any specified procedure.

## **SECTION 31. SALVAGE RIGHTS**

- 31.1. The Board reserves all salvage rights in existing art works, structures, materials, and artifacts of intrinsic, artistic, or historical value. Whenever General Contractor is required to remove or demolish such things before beginning renovation or other construction, General Contractor shall request the Board's approval in advance and obtain specific direction on handling salvageable items.

## SECTION 32. TAXES

- 32.1. General Contractor shall pay all applicable federal, state and local taxes on all materials, labor or services furnished, and all taxes arising out of the operations under the Contract Documents. The taxes include, by way of illustration and not in limitation, Retailers' Occupation, Old Age Benefit, Unemployment, customs, duties, all deductions for income taxes now in force or later enacted before Final Acceptance. General Contractor assumes all liability for the payment of any unemployment benefits payable under any federal or state law to individuals employed by it during the progress of the Work covered by the Contract Documents. This requirement excludes taxes and assessments on real property comprising the Site and Illinois, County and Municipal Retailers' Occupation and Service Occupation Taxes and Illinois Use, Sales and Service Use Taxes on building materials and fixtures to be incorporated into the Work but does include the taxes on building materials and equipment consumed or used in performing the construction, but not incorporated in it.
- 32.2. The Chicago Board of Education is exempt from federal Excise Taxes by virtue of Exemption Certificate No. 36-600584 and it is exempt from State of Illinois Sales Taxes by virtue of Exemption No. E9997-7109. Illinois Retailers' Occupation Tax, Use Tax, and Municipal Retailers' Occupation Taxes do not apply to materials or services purchased by the Board by statute. The price or prices quoted in bids and proposals shall include all taxes, direct or indirect, that do apply and shall comply with all relevant federal laws and regulations.

## SECTION 33. ROYALTIES AND PATENTS

- 33.1. The Base Contract Price shall include all fees for any patent invention, article or arrangement or other appurtenances that may be used upon or in any manner connected with the construction, erection or maintenance of the Work, or any part of it embraced in the Contract Documents. General Contractor and its Subcontractor(s) shall hold harmless the Board, Program Manager, Construction Manager, Architect, and their respective board members, officers, agents, and employees, against all demands for such fees or claims for infringements of patent rights that may be made.
- 33.2. The approval of any method of construction, invention, appliance, process, article, device or material of any kind by Architect or the Board is only an approval of its adequacy for the Work, and is not an approval of its use by General Contractor in violation of any patent or other rights of any third person.

## SECTION 34. TRADE REGULATIONS

- 34.1. Wherever any provision of any section of the Specifications conflicts with any agreements or regulations of any kind at any time in force among members of any trade associations, unions or

councils that regulate or distinguish what work is or is not included in the Work of any particular trade, General Contractor shall make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the Board and without recourse to the Board, Architect or Construction Manager. If the progress of the Work is affected by any delay in furnishing or installing any items of material or equipment required under the Contract Documents because of a conflict involving any such agreement or regulation, Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Board.

## **SECTION 35. PERMITS, LAWS AND REGULATIONS**

- 35.1. In a timely manner so as not to delay the progress of the Work, General Contractor shall obtain and pay for all permits, licenses and certificates of inspection necessary for the prosecution and completion of the Work. Should any fees for permits, licenses and certificates of inspection be waived by the appropriate governmental agencies, then General Contractor shall give full credit for them to the Board, and the Board may deduct the amount or amounts waived from payments due General Contractor. The credit shall be in the amount stated by the governmental agency waiving the fee.
- 35.2. General Contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If General Contractor observes that the Drawings and Specifications are at variance with them, General Contractor shall, in writing, promptly notify Architect, and any necessary changes shall be made in the Work. General Contractor shall bear all costs arising from any Work performed that is contrary to those laws, ordinances, codes, rules and regulations.
- 35.3. General Contractor shall comply with the current regulations of the National Board of Fire Underwriters where applicable to the Project, and all other codes named in the Specifications for the various divisions of the Work.

## **SECTION 36. DELAYS AND EXTENSION OF TIME**

- 36.1. If any delay on the part of General Contractor results in any claim against the Board, Architect, Program Manager, Construction Manager, or the agents or employees of any of them (for purposes of this Section, individually and collectively, the "Board Indemnitees") by another contractor arising out of the delay, General Contractor shall defend and hold the Board Indemnitees harmless against any and all such claims. The Board may without prejudice to its right to any other remedy deduct the amount of any recovery against Board Indemnitees from any monies due or that may become due General Contractor.
- 36.2. If General Contractor or its Subcontractors are delayed at any time in the progress of the Work, General Contractor's (and its Subcontractors') sole remedy shall be an extension of the time for

completing the Work for that reasonable period of time that Architect and the Board, may decide, but only if the delay is caused by: (i) any act or omission whatsoever (including without limitation suspensions of the Work for any reason and delays pending a decision) of the Board, Architect, Program Manager, Construction Manager, or the agents or employees of any of them, (ii) any other contractor employed by the Board, (iii) changes ordered in the Work, (iv) strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties, or any other causes beyond General Contractor's control that would not reasonably be expected to occur in connection with or during performance of the Work (except for weather delays caused by typical Chicago weather extremes that General Contractor should have anticipated in General Contractor's schedule for the Work), or (v) delay in obtaining required permits where the delay was not caused in whole or in part by General Contractor.

- 36.3. No claim for an extension of time shall be considered unless General Contractor makes it in writing, specifying the reason for the delay, and submits it to Construction Manager within 7 days after the delay begins. In case of a continuing cause of delay, only one claim is necessary.
- 36.4. General Contractor and its Subcontractors are not entitled to any damages or compensation, or to be reimbursed, by the Board for any losses on account of any delay or delays resulting from any cause whatsoever.

### **SECTION 37. CLAIMS AND DISPUTES**

- 37.1. General Contractor shall present all disputes arising under this Agreement or the Contract Documents, whether involving law or fact (or both) or extra Work, and all claims for alleged breach of contract within 10 days after the dispute or the breach begins, by notice in writing to the Board's Chief Purchasing Officer, with copies to Program Manager and Construction Manager. For purposes of this Section, both disputes and claims, liquidated or otherwise, shall be referred to as "claims." All papers pertaining to claims shall be filed in quadruplicate with the Chief Purchasing Officer, with one additional copy each to Program Manager and Construction Manager.
- 37.2. The notice shall detail the amount (if any) of the claim (if the Work that is the subject of the claim has been completed) and shall in any event state the facts surrounding the claim in sufficient detail to identify it, together with its character and scope. In the meantime, and regardless of the outcome and resolution of the claim, during the pendency of the dispute General Contractor shall proceed with the Work as directed and maintain the construction schedule. The Chief Purchasing Officer or designee shall render a determination in writing and any factual findings that are part of the written determination are binding on both the Board and General Contractor.
- 37.3. Any claim not presented within the time limit specified in this Section shall be considered to have been waived.

37.4. If the amount of a claim is not known at the time notice of it is required to be given under this Section, General Contractor shall, within 10 days after the Work is completed, submit in detail its claim and proof of claim.

37.5. No action for the recovery of any claim is sustainable in any court of law or equity unless General Contractor begins it within either (i) 12 months following the date the Board formally denies the claim, or (ii) 90 days after Preliminary Acceptance of the Work, whichever is the earlier.

### SECTION 38. SUBCONTRACTS

38.1. General Contractor shall before a Notice to Proceed is awarded, notify the Board in writing of the names of Subcontractors proposed for the principal parts of the Work and those other parts of the Work with a written statement concerning the experience, ability, and responsibility of each proposed Subcontractor and the scope of the subcontract. General Contractor shall not later substitute another Subcontractor without the prior approval of the Board. General Contractor is liable to the Board for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by Subcontractor, as General Contractor is for the acts and omissions of persons directly employed by it. Each Subcontractor shall report to Architect and Construction Manager before beginning the Work and when resuming Work after an absence from Project.

### SECTION 39. RELATIONS OF GENERAL CONTRACTOR AND SUBCONTRACTORS

39.1. Nothing in this Section creates any obligation on the part of the Board to pay or to see to the payment of any sums to any Subcontractor.

39.2. Subcontractor (i) is bound to General Contractor by the terms of the Contract Documents and assumes toward General Contractor all the obligations and responsibilities that General Contractor, by the Contract Documents, assumes toward the Board; (ii) shall submit to General Contractor applications for payment in such reasonable time as to enable General Contractor to apply for payment as specified in the Contract Documents; (iii) shall make any claims for extras and for extensions of time to General Contractor in the manner provided herein for like claims by General Contractor upon the Board, except that the time limit for making claims for extra cost is 7 days.

39.3. General Contractor: (i) is bound to Subcontractor by all the obligations that the Board assumes to General Contractor under the Contract Documents and by all the provisions of the Contract Documents affording remedies and redress to General Contractor from the Board; (ii) shall pay Subcontractor, upon the issuance of certificates specified in Contract Documents, the amount allowed and paid to General Contractor on account of Subcontractor's Work to the extent of Subcontractor's interest in it; (iii) acknowledges that no claim for services rendered or materials furnished by General Contractor to Subcontractor is valid unless written notice of it is given by General Contractor to Subcontractor during the first 10 days of the calendar month following that

in which the claim originated; and (iv) shall give Subcontractor an opportunity to be present and to submit evidence in any decision involving its rights.

#### **SECTION 40. RELATIONS WITH OTHER CONTRACTORS**

- 40.1. The Board reserves the right to let other contracts in connection with the Work, including, but not limited to, contracts for performing environmental remediation and abatement. General Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their work and shall properly connect and coordinate its work with theirs. If any part of General Contractor's Work depends for proper execution or result upon the work of any other contractor, General Contractor shall inspect and measure the work of the other contractor and promptly report to Architect any defects or discrepancies in such work. General Contractor's failure to inspect and make the report constitutes an acceptance of the other contractor's work as fit and proper for the proper execution of the Work, except as to latent defects.
- 40.2 General Contractor shall work in harmony with and assist any other contractor that may be engaged by the Board to perform work at the Site whenever necessary or as so directed by the Board. In no case is General Contractor permitted to exclude from the Site any other contractor in the execution or installation of its work. In the event of a conflict in scheduling the respective portions of General Contractor's Work and that of any other contractor, General Contractor shall immediately refer the matter to the Board's Construction Manager for resolution. The resolution, and any accommodation required of General Contractor in connection with it, are not grounds for a delay claim under the Contract Documents. Wherever work being done by any such contractors or subcontractors is contiguous to Work covered by the Contract Documents, the respective rights of the parties shall be established by Architect to secure the completion of the various portions of the Work in general harmony.

#### **SECTION 41. CHANGES IN THE WORK**

- 41.1. The Board may make changes, alternatives, additions and/or deductions in the Work without invalidating the Contract Documents and without releasing or relieving General Contractor from any guarantee given pursuant to the Contract Documents and without affecting the validity of General Contractor's (or any manufacturer's) warranty or Performance and Payment Bond (and without relieving or releasing the surety or sureties of the bond). All such Work shall be executed under the conditions of the original Contract Documents.
- 41.2. All change orders require approval or ratification by the Board of Education of the City of Chicago in accordance with Board rules. No change orders shall be authorized that exceed, individually or cumulatively, 10% of the Base Contract Price.

41.3. Except in an emergency endangering life or property, General Contractor shall make no change without receipt of a Change Order, approved on its face by the Board; and no claim for an adjustment of the Base Contract Price or time of performance shall be valid unless so ordered in writing.

41.4. General Contractor, when ordered in writing by Construction Manager with approval by the Board, shall proceed promptly in accordance with the Change Order. The adjustment of the Base Contract Price on account of a Change Order shall be determined by one of the following methods:

- a. Method 1 - Unit Price and/or Lump Sum Adjustment. If after receipt of General Contractor's proposal for a change in the Work, the parties can agree on an equitable lump sum adjustment of the Base Contract Price, a Change Order shall be issued establishing the adjustment. Where the change in the Work involves items for which agreed-upon unit prices have been established and where the net aggregate quantity of the items is in excess of the requirements in the Contract Documents, payment for the items shall be at the established unit prices.

When the net aggregate quantity is less than the requirements in the Contract Documents, a Change Order shall be issued for a credit equal to the sum of (i) the product derived by multiplying the established unit price times the net decrease in units, and (ii) an amount equal to 10% of the product. Where the "agreed-upon unit price" is a unit price bid on estimated quantities, then the Board may, at its option, demand a readjustment of the "agreed-upon unit price" in any case where the requirements for the particular unit price item exceeds 125% of the estimated quantity bid.

Where the change in the Work involves items for which agreed-upon unit prices have not been established, General Contractor's proposal shall be based upon the estimated fair cost of General Contractor's labor, material, equipment, insurance, premium on bond, and applicable taxes.

In submitting the proposal, General Contractor shall use its ability and buying power to obtain the best possible prices from suppliers of material and equipment and from Subcontractors consistent with its general responsibility for the performance and completion of the Work. To this end, General Contractor, when submitting such a proposal, is considered to have represented by the submittal that it has used the lowest prices obtained or obtainable from suppliers of material and equipment and from Subcontractors and that nothing has been added to the prices unless indicated in the proposal or billing.

Should General Contractor at any time, without disclosing the fact, add any amount to a bill or proposal of any supplier of material or equipment or to a bill or proposal of any



Subcontractor, and should the Board act on the same or make payment on any Work covered by a proposal or billing, then, and in that event, the Board has the right to recover from General Contractor any such amounts as may have been so added and not disclosed. The recovery may be made by deducting the undisclosed additions from any payments due General Contractor, or by any and all other means available to the Board.

General Contractor's proposal of cost for items of Work not covered by agreed-upon unit prices for additional Work ordered may include a charge for overhead and profit, together, of 12%, to the extent that General Contractor performs the items of Work with General Contractor's own forces. For deleted Work, the price shall be net cost; office and field overhead, insurance and bond premiums, for example, are not considered or allowed to be included in "net cost." Where the items of Work involved in the change are performed by a Subcontractor, their cost shall be similarly established, to which cost, as approved by Construction Manager, the Subcontractor may add a charge for overhead and profit, together, of 15%. To this total only 6% may be added to cover both overhead and profit for General Contractor. If more than one level of Subcontractor is involved, the Subcontractor performing the Work may add to cost a charge for overhead and profit, together, of 15%, and each other Subcontractor involved and General Contractor may add only 6% to cover both overhead and profit. For deductive changes the cost are net, regardless of General Contractor or Subcontractor performing the Work.

The overhead and profit charges referred to above constitute full reimbursement for all costs of supervision, engineering, field and main office expense, small tools, bond, non-OCIP insurance and incidental job burdens.

- b. Method 2 - Cost-Plus Fee Adjustment. Where the change in the Work involves items in whole or in part for which a unit price determination cannot be made under Method 1, and where the parties are unable to determine and agree upon an equitable lump sum adjustment of the Base Contract Price for the items, a proceed order shall be issued, and General Contractor shall proceed with the Work in question on a cost-plus fee basis. Cost means General Contractor's actual cost of labor, material, equipment, insurance, premium on bond, and applicable taxes, as approved by the Board. General Contractor may add overhead and profit as defined under Method 1 above.

Upon completion of the change and determination of its cost-plus fee price, a Change Order shall be issued establishing the adjustment of the Base Contract Price.

- 41.5. General Contractor's agreement to a Change Order constitutes a waiver and release by General Contractor and its Subcontractors and suppliers for any claim for delay, cumulative impact, cost of extended general conditions, and any other indirect cost associated with the changes.

## SECTION 42. PAYMENT PROCEDURES

- 42.1. The Board has established those certain payment procedures and instructions for submitting requests for payment ("Payment Procedures") which shall be distributed to General Contractor at such time as General Contractor is awarded a Project. The Payment Procedures are strictly procedural in nature and not substantive, and they may be modified from time to time, with reasonable notice to General Contractor, at the convenience of the Board. The Board reserves the right to designate an outside firm to act as a payment manager, in which case procedures for payment shall be established by such payment manager.
- 42.2. With respect to rehabilitation and renovation Projects, no payments are authorized or shall be made for stored material. Payments shall be made only for material incorporated into the Work. With respect to new construction, payments for stored material shall be made only if the Board specifically approves them, at its sole discretion. If the Board authorizes payment to be made on account of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site, or at some other location agreed upon in writing, General Contractor is entitled to the payments only if General Contractor submits appropriate bills of sale, waivers of lien, and other documents (such as, but not limited to completed UCC filings) the Board may require to establish its title to them and otherwise protect its interests, and complies with such other procedures as the Board requires, including those related to insurance and transportation to the Site, inspection and inventory of the materials or equipment.
- 42.3. If General Contractor has complied with the requirements, Architect shall issue General Contractor a certificate for the amount as Architect determines to be properly due as agreed upon during the payment review meeting (including materials that are suitably stored but not incorporated in the Work at no more than 80% of their actual value), during the preceding payment period. The amount of each partial payment is the total sum of completed Work less prior partial payments, retainage and payments withheld.
- 42.4. Retainage of 10% of the total amount earned shall be withheld from partial payments to General Contractor. The retainage shall be released upon Final Acceptance of the Work.
- 42.5. No certificate issued nor payment to General Contractor, nor partial or entire use of the Work or occupancy of the Site by the Board or the User is an acceptance of any Work or materials not in accordance with the Contract Documents.
- 42.6. Architect's certificates for payment are for the benefit of the Board and shall not be relied upon by any other party (including any surety or Subcontractor of General Contractor) in any action against the Board, Architect or anyone acting on behalf of either of them.

- 42.7. Architect, Program Manager and Construction Manager may recommend that the Board withhold or nullify the whole or a part of any application for payment or any certificate for payment to the extent as may be necessary to protect the Board from loss because of: (i) defective Work not remedied; (ii) claims filed or reasonable evidence indicating probable filing of claims; (iii) failure of General Contractor to properly pay Subcontractors or for material, services, or labor; (iv) a reasonable doubt that the Contract Documents can be completed for the balance then unpaid; (v) damage to the Work or property of the Board, the User or another contractor; (vi) erroneous estimates by General Contractor of the value of the Work performed; (vii) delinquent reports not remedied, including, but not limited to, monthly MBE/WBE utilization reports and certified payroll; (viii) unauthorized deviations by General Contractor from the Contract Documents; and (ix) liquidated damages. When the foregoing ground or grounds are removed, payments shall be made for amounts so withheld.

### SECTION 43. LIENS

- 43.1. Whenever the Board receives notice in writing of a lien or claim of money due to any Subcontractor, worker, or employee of General Contractor for work performed or for materials or equipment furnished and used in or about the Work, the Board shall advise General Contractor in writing and General Contractor shall have 10 business days in which to discharge, or (if permitted by law) bond over the lien or claim, or, if General Contractor contests the claim, to notify the Board in writing to that effect, along with a statement of the reasons for contesting it. In any event, the Board shall comply with the requirements of the law with respect to withholding General Contractor's funds pursuant to lien notices and reserves all of its rights in connection with such claims of lien.
- 43.2. If the Board is made a party to any action in connection with a claim or claim of lien, including claims for extras, General Contractor shall, upon tender by the Board, defend and hold the Board harmless against the claim, and any costs, damages, and expenses, including, without limitation, attorneys' fees and court costs, in connection with it.
- 43.3. If General Contractor fails to timely discharge, bond over (if permitted by law), or notify the Board that it contests the claim of lien, the Board reserves the right at its option to direct that the amount of the claim be paid directly to the claimant and deducted from the amount due to General Contractor under the Contract Documents, without liability for wrongful withholding from or for nonpayment to General Contractor. This provision is solely for the benefit of the Board, and does not require the Board to determine or adjust any claims or disputes between General Contractor and its Subcontractors, workers, or employees, or to withhold any money for their protection, unless the Board elects to do so. This provision does not confer any rights for the benefit of Subcontractors, workers or employees, nor does it enlarge or alter the application or effect of existing lien laws.

## SECTION 44. ACCEPTANCE OF THE WORK

- 44.1. Preliminary Acceptance. Preliminary Acceptance of the Work shall be made after preliminary inspection by Architect when, in the opinion of Architect and Construction Manager, the requirements of the Contract Documents have been essentially completed, including a Certificate of Occupancy, except for Punch List Work (including any cleaning or trash or debris disposal required under the Contract Documents).
- 44.2. The Punch List. Time is of the essence in closing out the Work of each Project. General Contractor shall begin Punch List Work immediately after receipt of the Punch List. Failure of General Contractor or its Subcontractors to begin the Punch List Work within 3 business days after receipt of the Punch List shall be considered a failure to prosecute the Work of the Contract Documents. General Contractor shall continuously prosecute Punch List Work once begun and complete it within 30 days from the receipt of the Punch List from Architect.
- 44.3. Final Acceptance. General Contractor shall notify the Board, Architect and Construction Manager that the Work is ready for final inspection on a definite date by which time all requirements of the Contract Documents shall have been completed. The notice shall be given at least 5 days before the date stated for final inspection. If the Board, Architect and Construction Manager determine that the status of the Work is as represented, they shall make the arrangements necessary to have final inspection begun on the date stated in the notice, or as nearly after it as is practicable. If all requirements of the Contract Documents have been completed at the time of final inspection by the Board and Architect, the Work shall be finally accepted and final certificate shall be issued by Architect. Upon Final Acceptance, the Board may take over the Project for occupancy and use.
- 44.4. Non-Conforming Work. No action of the Board, Program Manager, Architect, or Construction Manager, or their respective board members, officers, employees, or agents shall be considered as accepting Work done or material furnished in the performance of the Contract Documents that are not in accordance with those specified and required by the Contract Documents. The payment of the final certificate in no way affects the rights of the Board against General Contractor (and the surety or sureties on the Performance and Payment Bond given by General Contractor) to enforce the complete performance of the Contract Documents or to sue for the recovery of damages for failure to do so, nor does it affect the terms of General Contractor's guarantee in connection with the Contract Documents.

## SECTION 45. INSPECTION OF WORK

- 45.1. The Board, Architect, Program Manager, and Construction Manager are entitled at all times to have access to the Work wherever it is in process. General Contractor shall provide proper and safe facilities for access and inspection.

- 45.2. If the Specifications, Architect's instructions, laws, ordinances or any public authority require any Work to be specifically tested or approved, General Contractor shall give Architect, Program Manager, and Construction Manager not less than 3 business days written notice of the Work's readiness for inspection. If the inspection is made by an authority other than Architect, General Contractor shall inform Architect, Program Manager, and Construction Manager of the date fixed for the inspection. Required certificates of inspection shall be secured by General Contractor. Inspections by Architect shall be promptly made, and where practicable, at the source of supply. When the tests and inspections indicate noncompliance of the Work with requirements of the Contract Documents, and Architect's services are required for additional reviews or inspections of the Work, the Base Contract Price may be decreased by a Change Order in the amount of Architect's invoice approved by the Board as compensation for Architect's additional services.
- 45.3. Any Work covered up without approval or consent of Architect shall be uncovered for examination, if required by Architect, and shall be replaced and/or re-covered all at General Contractor's expense. Examination of Work previously covered up with the approval or consent of Architect may be ordered by Architect to be uncovered, and if so ordered, the Work shall be uncovered by General Contractor. If the Work is found to be in accordance with the Contract Documents, the Board shall reimburse General Contractor for the uncovering and re-covering. The reimbursement shall be for actual costs incurred plus the percentages allowed by the Contract Documents. If the Work is found to be not in accordance with the Contract Documents, General Contractor shall pay all costs of uncovering, replacement and re-covering.
- 45.4. General Contractor shall place its field engineering force at Architect's disposal for field checking during any inspection period. When layouts of the Work are to be made, General Contractor shall notify Architect in sufficient time so that Architect may be present.
- 45.5. Neither the presence nor the absence of Architect at the Site relieves General Contractor from responsibility for compliance with the provisions of the Contract Documents, nor from responsibility for the removal and replacement of Work not in accordance with them.
- 45.6. Architect is not authorized to make any changes or modifications in the Contract Documents, to direct additional work not required by them, nor to waive the performance by General Contractor of any requirements of the Contract Documents except as provided herein.

#### **SECTION 46. USE OF COMPLETED PORTIONS OF THE WORK**

- 46.1. After Preliminary Acceptance of the Work in any space or spaces in a Project, the Board has the right to use and occupy the space or spaces in advance of completion and Final Acceptance, but the Board's occupancy and use of the spaces shall not unduly interfere with General Contractor's operations nor delay completion of the Work. Occupancy and use of any space or spaces in the building by the Board or User shall not constitute Preliminary Acceptance in the absence of written

notification of Preliminary Acceptance of the affected portion of the work from Architect.

- 46.2. If the Board desires to exercise the right of partial occupancy before completion and Final Acceptance as provided above, with respect to new construction, General Contractor shall cooperate with the Board in making available for the Board's use the services such as heating, ventilating, cooling, water, lighting and telephone for the space or spaces to be occupied. If the equipment required to furnish the services is not entirely completed at the time the Board desires to occupy the space or spaces, General Contractor shall make every reasonable effort to complete them as soon as possible to the extent that the necessary equipment can be put into operation and use. With respect to rehabilitation of existing facilities, the Board shall cooperate with General Contractor in making available for General Contractor's use reasonable amounts of water, lighting, heating, and electrical necessary for General Contractor to perform its Work.
- 46.3. During the partial occupancy before Final Acceptance, arrangements shall be made between the Board and General Contractor regarding the operation and cost of the necessary heating, ventilating, cooling, water, lighting and telephone services. The Board shall assume responsibility for the operation of the equipment and utilities required to provide the above services, in part or in total, and General Contractor shall make arrangements acceptable to the Board as to the warranties affecting all Work associated with the areas so occupied.
- 46.4. The Board's occupancy or use of the space or spaces in a Project does not constitute the Board's acceptance of any Work, materials or equipment that are not in accordance with the requirements of the Contract Documents, nor relieve General Contractor from its obligations or responsibilities under the Contract Documents.
- 46.5. In any case, when the Board takes over space for occupancy or use, the Board shall give General Contractor notice in writing of taking over the space or spaces involved.

## SECTION 47. TRASH AND DEBRIS

- 47.1. General Contractor shall conduct and complete the Work in a neat, clean, and workmanlike manner. General Contractor shall at its own expense, furnish dumpsters for regular and frequent collection of construction debris, trash, and other refuse that accumulates at the Site and cause its frequent removal and lawful disposal. General Contractor shall police the work site and adjacent areas regularly and frequently, removing and disposing of construction debris, trash, and refuse promptly. Where the Site is unoccupied throughout the entire construction period, at the completion of the Work, General Contractor shall cause the Site to be cleaned of all construction debris, trash, and refuse and left in broom-clean condition, all equipment and furnishings to be left clean and free of construction-related dirt, grime, splatters, and dust and the whole left in ready-to-use condition for the Users.

- 47.2. Where the Site is occupied, or partially occupied, during any part of General Contractor's Work, or where a portion of the Work, on completion, is given over to the Users, General Contractor shall at its own expense, at least daily, but as often as necessary to avoid creating hazards to Users or attracting vermin, remove and lawfully dispose of its debris, trash, and other refuse, sweep all User-occupied areas free of construction materials and dirt or dust, and wipe down all equipment and furnishings in the area where the Work is or was taking place so that they are left in a neat, clean and workmanlike condition for the Users. At the completion of the Work, General Contractor shall again leave the Site in a neat, clean and workmanlike condition.

#### **SECTION 48. CORRECTION OF WORK BEFORE FINAL PAYMENT**

- 48.1. General Contractor shall promptly remove from the Site all materials and equipment, whether incorporated in the Work or not, rejected by Architect or Construction Manager as failing to conform to the Contract Documents. General Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Board and shall bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement.
- 48.2. If General Contractor does not remove the rejected Work, materials and equipment within a reasonable time, determined by written notice of Construction Manager, the Board, may, at the expense of General Contractor, remove and dispose of as the Board sees fit. If General Contractor does not pay the cost and expenses of the removal within 10 days after that, the Board may deduct all such costs and expenses from any monies due General Contractor.
- 48.3. If the Work deviates from the requirements of the Contract Documents, General Contractor shall be liable for all resulting damages. General Contractor waives any claim (as a defense or a claim to reduce General Contractor's liability) that performing the Work without deviation from what is required by the Contract Documents would also have caused or resulted in damages. This provision does not limit the other rights of the Board or Architect or other obligations of General Contractor.
- 48.4. When Architect's additional services are required because of defective Work, neglect, failure, deficiencies, or default by General Contractor, Architect's compensation for the services may be payable by General Contractor based on Architect's invoice sent to the Board. Deficiencies are defined to include, but not limited to, more than 2 reviews of the same submittal of shop drawings and associated data due to incomplete, uncoordinated or otherwise defective submissions. The invoice, when approved by the Board, along with other costs, damages, and liabilities incurred by the Board and Architect, at the option of the Board, may be the basis for decreasing the Base Contract Price by a Change Order to compensate the Board for Architect's additional services.

## **SECTION 49. CORRECTION OF WORK AFTER FINAL PAYMENT**

- 49.1. The final certificate, final payment, or any provision in the Contract Documents does not relieve General Contractor of responsibility for faulty materials, equipment or workmanship. Unless otherwise specified, General Contractor shall remedy any defects due to faulty materials, equipment or workmanship and pay for any damage to other Work resulting from it that appear within the guarantee period. The Board shall give written notice of the defects with reasonable promptness after they are discovered. All questions arising under this Article are decided by Architect.

## **SECTION 50. LIQUIDATED DAMAGES; OFFSETS**

- 50.1. All liquidated damages that accrue under the Contract Documents, including those that may apply for late completion of Work, for failing to meet the MBE/WBE bid goals, and for failing to meet Chicago Residency requirements of the Contract Documents, shall be deducted before final payment is made for the Work.
- 50.2. All chargebacks to General Contractor, refunds from General Contractor, and other offsets against any amounts due General Contractor permitted or required under the Contract Documents may be taken at any time from amounts due to General Contractor under the Contract Documents once the Board has determined the amount of the chargeback, refund, or offset to be made.

## **SECTION 51. ASSIGNMENT**

- 51.1. General Contractor shall not assign this Agreement or the Contract Documents or sublet it in whole or in part without the written consent of the Board, nor shall General Contractor assign any moneys due or to become due to it under the Contract Documents without the previous consent of the Board.
- 51.2. Any assignment of monies due under the Contract Documents made without the consent of the Board is void, and the assignee in that case acquires no rights against the Board.

## **SECTION 52. GENERAL CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

- 52.1. If the Work is stopped under an order of any court or other public authority for a period of 180 days through no act or fault of General Contractor or of anyone employed by General Contractor, then General Contractor may, upon 7 days written notice to the Board, stop Work on the Project and terminate the specific Project Contract Documents.



## SECTION 53. DEFAULT AND TERMINATION

53.1. Events of Default. It is a default under this Agreement and the Contract Documents if General Contractor:

- a. becomes insolvent or bankrupt; or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency;
- b. fails to begin the Work on a Project at the time specified;
- c. fails to perform in accordance with the Contract Documents, if not cured within any applicable cure period;
- d. fails to perform the Work on a Project with sufficient workers, equipment or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract Documents;
- e. persistently or repeatedly refuses or fails to supply an adequate number of skilled workers or supply of proper materials;
- f. discontinues prosecution of Work on any Project;
- g. fails to remove materials, or repair, or replace Work on a Project that was rejected as defective or unsuitable, if not cured within any applicable time period;
- h. fails to make prompt payment to Subcontractors or for material or labor on any Project;
- i. fails to prosecute the Work on a Project in a manner acceptable to the Board, if not cured within any applicable cure period;
- j. persistently disregards laws, ordinances or instructions of the Board, Program Manager, Architect or Construction Manager;
- k. fails to complete Punch List items or close-out documents; or
- l. is otherwise guilty of a material breach of any provision of this Agreement or the Contract Documents.

53.2. Remedies. In the event of a default by General Contractor, the Board may, without prejudice to any other right or remedy and after giving General Contractor (and the surety or sureties on the Performance Bond given by General Contractor) 7 days written notice, terminate this Agreement and the Contract Documents for a specific Project or all Projects, or terminate only the Contract Documents for a specific Project. The Board shall then have the right to take possession of all

Sites and of all materials, tools and appliances on them, have assigned to the Board. if it so desires. General Contractor's subcontracts and material orders for any Project, deem General Contractor non-responsible for future contracts to be awarded by the Board, and finish the Work on a Project by whatever method the Board considers expedient. General Contractor shall not be entitled to receive any further payment. If the expense of finishing the Work on any Project, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the Base Contract Price, General Contractor (and the surety or sureties on the performance bond) are liable for and shall pay the amount of the excess to the Board. Construction Manager shall be responsible for certifying the expense incurred by the Board as provided in this Section and the damage incurred through General Contractor's default.

53.3. Termination For Convenience. The Board reserves the right, for its convenience, to terminate the Work of General Contractor on any Project or to terminate this Agreement by written notice stating the effective date of the termination. In that case, General Contractor and its Subcontractors shall (except for services necessary for the orderly termination of the Work):

- a. stop all Work on any Project so terminated ;
- b. place no further order or subcontracts for materials, services, equipment or supplies on such Project;
- c. assign to the Board (in the manner and to the extent directed) all of the rights of the subcontracts relating to the Work on such Project;
- d. take any action necessary to protect property of the Board and property in General Contractor's possession in which the Board has, or may acquire, an interest; and,
- e. take any other action toward termination of the Work on such Project that the Board may direct. After that, the Board shall pay General Contractor, subject to the limitations set forth herein, the proportion of the Base Contract Price of a Project that the Work actually performed (including materials delivered to the Site) at the date of termination bears to the entire Work to be performed. No payments shall be made for Work not actually performed, and no payment shall be made or due for lost profits for portions of the Work not actually performed.

53.4. Suspending the Work. The Board reserves the right to suspend the Work on a Project wholly or in part by written stop order for the period as is necessary for the protection of the Board's interest. The stop order remains in effect until released in writing. The Board does not assume any liability for damages or loss of anticipated profits resulting from the stoppage of Work, but it may grant General Contractor an extension of time commensurate with the period of actual delay in completion of Work, if the stop order was not necessitated by the acts, failure to act or negligence

of General Contractor. General Contractor shall take all means and precautions as may be required to properly protect the finished and partially finished Work during the period or periods of the stop order.

## SECTION 54. NOTICES

54.1. All notices required to be given under this Agreement shall be either hand-delivered, by courier, or sent by United States mail, postage prepaid, or sent by facsimile (with evidence thereof), to the addresses and facsimile numbers as follows:

If to the Board:            Board of Education of the City of Chicago  
                                  125 South Clark Street  
                                  16th Floor  
                                  Chicago, Illinois 60603  
                                  Attn: Timothy Martin, Chief Operating Officer  
                                  Fax: (773) 553-2901

Copy to:                    Marilyn F. Johnson, General Counsel  
                                  Fax: (773) 553-1701

If to General Contractor:    F.H. Paschen, S.N. Nielsen, Inc.  
                                  701 Lee Street, Suite 550  
                                  Des Plaines, IL 60016  
                                  Attn: Joseph V. Scarpelli  
                                  Fax: (847) 699-6189

54.2. Notices are considered to be given on the date of delivery, if delivered by hand or courier or facsimile, and on the second business day after mailing, if given by mail. The Board or General Contractor may, from time to time, change the address(es) and facsimile number to which notices are to be given by notifying the other party in writing.

## SECTION 55. MISCELLANEOUS PROVISIONS

55.1. Debarment Policy. General Contractor acknowledges that in performing Work for the Board, General Contractor shall not utilize any firms that have been debarred from doing business with the Board under the Board's Debarment Policy and Procedures, 96-0522-PO2. If General Contractor has engaged any firm to work on a Board Project that is later debarred, General Contractor shall

Contractor has engaged any firm to work on a Board Project that is later debarred, General Contractor shall sever its relationship with that firm with respect to Board work.

- 55.2. Recycling/Blue Bag Program/Energy Conservation. General Contractor shall give preference to the use of recycled products in the performance of any Work in accordance with applicable Environmental Protection Agency guidelines as promulgated in 40 CFR Parts 247-254. General Contractor shall to the extent feasible, cooperate with the City of Chicago Blue Bag program and shall comply with any applicable requirements of City ordinances. In addition, General Contractor shall comply with any applicable mandatory standards and policies relating to energy efficiency under the State of Illinois Energy Conservation Plan issued in compliance with the energy Policy and Conservation Act, 42 U.S.C. Section 6321 *et seq.*
- 55.3. Governing Law. Illinois law governs this Agreement and the Contract Documents, its interpretation, and the Work performed pursuant to the Contract Documents. General Contractor submits itself irrevocably to the jurisdiction of the courts located in Cook County, Illinois, and if General Contractor chooses to bring any action against the Board, it shall do so only in those courts.
- 55.4. Inspector General. Under the provisions of 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct certain investigations. General Contractor shall give the Inspector General access to all information and personnel necessary to conduct its investigations.
- 55.5. Conflicts of Interest. This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members during the one year period following expiration or other termination of their terms of office.
- 55.6. Indebtedness. General Contractor shall comply with the Board's Indebtedness Policy No. 95-0726-EX3, adopted July 26, 1995, and as may be amended from time to time. The Board reserves the right to set off against any compensation or other amount that is due under this Agreement or any Notice of Award in connection with this Agreement an amount equal to the sum of (i) any amounts General Contractor may owe to the Board, the State of Illinois Student Assistance commission, the City of Chicago, or the County of Cook for which the period granted for payment has expired, and (ii) the amount of fines and penalties for each parking ticket, notice of parking violation, or parking violation complaint on which no payment has been made or appearance filed in the Circuit court of Cook County within the time specified on the complaint. The Board may decline to set off the amount owed as provided above if the Chief Purchasing Officer determines that General Contractor: (i) has entered into an agreement with the Board or other entity for the payment of all amounts owed and is in compliance with the agreement; (ii) is contesting liability for

or the amount owing in a pending administrative or judicial proceeding; or (iii) has filed a petition in bankruptcy and the amounts owed are dischargeable in bankruptcy.

- 55.7. Non-Appropriation. Expenditures not appropriated in the current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in later fiscal year budgets. If sufficient funds are not appropriated in any fiscal year for performance under this Agreement or any Contract Documents, the Board shall notify General Contractor and this Agreement and any Contract Documents shall terminate on the last day of the fiscal period for which funds were appropriated or when appropriated funds are exhausted, whichever occurs first. In no event is the Board be liable to General Contractor for any amount in excess of the current appropriated amount.
- 55.8. Audit, Inspection, and Retention of Documents. General Contractor and its Subcontractors shall furnish the Board with such information as the Board requests regarding the progress, execution, and costs of Work. General Contractor and its Subcontractors shall maintain records on a Project-by-Project basis, showing payroll details, actual time spent on each Project, utilization of Subcontractors, costs incurred and Work performed, for 5 years after General Contractor receives its final payment in connection with the Project. General Contractor and its Subcontractors shall permit authorized representatives of the Board to inspect, copy, and audit all data and records for the Work. All agreements with Subcontractors of General Contractor shall provide for a similar right of audit, copying, and inspection by the Board's authorized representatives. No provision in this Agreement granting the Board a right of access to records and documents is intended to impair, limit, or affect any right of access to such records and documents that the Board would have had in the absence of such provisions.
- 55.9. Favored Nation. With respect to any services or Work that is not bid, or any portion of bid Work that is not bid, such as but not limited to negotiated Change Orders, General Contractor shall furnish the Work to the Board at the lowest price that General Contractor charges to other similarly situated parties for comparable work. If General Contractor overcharges, in addition to all other remedies, the Board is entitled to a refund in the amount of the overcharge, plus interest at the rate of 1% per month on the amount of the overcharge from the date the overcharge was paid by the Board until the date refund is made. The Board has the right to offset any overcharge against any amounts due to General Contractor under this or any other contract between General Contractor and the Board, and at the Board's sole option the right to declare General Contractor in default under this Agreement.
- 55.10. Confidentiality. General Contractor shall abide by the confidentiality provisions below and shall cause its subcontractors to undertake the same obligations of confidentiality. These provisions regarding confidentiality shall survive expiration or other termination of this Agreement.

- a. **Confidential Information.** All reports, plans, specifications, information, or data prepared or assembled by General Contractor and its subcontractors under this Agreement are confidential. In addition, the Board may disclose certain confidential information to General Contractor or General Contractor may have access to certain confidential information that is not generally known to others, such as trade secrets, or is required to be kept confidential by law, such as confidential student information.
- b. **Non-Disclosure.** General Contractor shall not make any confidential records or information available, nor use or disclose any such confidential information, to any third party without the prior written approval of the Board or except as directed by the Board. General Contractor shall not issue publicity news releases or grant press interviews, or, except as may be required by law during or after the performance of this Agreement, disseminate any information regarding this Agreement or the Work General Contractor performs on Board Projects without the prior written consent of the Board.
- c. **Subpoenas.** If General Contractor is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any records, data, or other documents that may be in General Contractor's possession by reason of this Agreement, General Contractor shall immediately give notice to the Board and its Attorney with the understanding that the Board shall have the opportunity to contest the process by any means available to it before the records or documents are submitted to a court or other third party. General Contractor, however, shall not be obligated to withhold the delivery beyond the time that may be ordered by the court or administrative agency, unless the *subpoena* or request is quashed or the time to produce is otherwise extended.

55.11. **Joint and Several Liability.** If General Contractor, including its successors or assigns, if any, is comprised of more than one person or a combination of legal entities, then every obligation or undertaking that General Contractor is required to fulfill or perform is the joint and several obligation or undertaking of each such person or legal entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**BOARD OF EDUCATION OF THE  
CITY OF CHICAGO**

**F. H. PASCHEN, S.N. NIELSEN, INC.**

By: T. Butt  
Tariq Butt, M.D., Member

By: Joseph V. Scarpelli  
Name: JOSEPH V. SCARPELLI  
Title: Vice President

Attest By: Sharon Revello  
Sharon Revello, Secretary

Attest By: T. Pearson  
Name: Timothy J. Pearson  
Title: Secretary

Board Report No. 99-1215-PR8

Approved as to legal form: RMK  
Marilyn F. Johnson  
Marilyn F. Johnson, General Counsel

**EXHIBIT A**  
**NOTICE OF AWARD**

Date \_\_\_\_\_

Company Representative  
Company Name  
Address  
City, State Zip Code

School: \_\_\_\_\_  
Address: \_\_\_\_\_  
Region: \_\_\_\_\_  
Work: \_\_\_\_\_  
Amount: \_\_\_\_\_  
Contract No.: \_\_\_\_\_

Salutation:

The Board of Education of the City of Chicago is hereby awarding your company a contract for the above referenced project in accordance with your proposal submitted (Date), based upon bid documents distributed by the Board or the Board's representative. This contract award is subject to all of the terms and conditions of your General Contracting Services Agreement with the Board dated as of January 1, 2000. This contract award will be submitted to the Board for ratification at the next regularly scheduled Board Meeting.

This award is contingent upon your company providing, within seven (7) working days, the performance and payment bond more fully described below, the OCIP 1 and OCIP 2 insurance forms and the certificates of insurance for coverages not provided under the OCIP. In the event these documents are not provided within such 7 working day period, the Board shall have the right to rescind this award and either (i) award this project to the next lowest bidder, or (ii) re-bid this project.

In addition to the above, all required M/WBE forms must be completed and returned to the Board no later than (Date) after which any necessary M/WBE Waiver Committee review will take place. Failure to comply with all M/WBE requirements may result in revocation of this Notice of Award.

The Board's Construction Manager, listed below, will assign a representative to this job upon issuance of this Notice of Award. The representative will contact you to schedule a pre-construction conference where construction procedures, job conditions, the work schedule, and any restrictions, limitations or special conditions affecting the performance of the work will be discussed. Work shall not begin until you receive a "NOTICE TO PROCEED", and a pre-construction meeting has been held.

Your company will be required to post a fully executed performance & payment bond in the amount of the contract award. The performance & payment bond must be issued by a responsible surety company, acceptable to the Board and licensed to do business in the State of Illinois, and shall list the Board of Education of the City of Chicago as bond holder. The performance & payment bond shall be executed on the form provided by the Board or may be executed on form A.I.A. 312. Form A.I.A. 311 is not acceptable. The fully executed performance & payment bond, the completed pre-construction statement of subcontractors and suppliers and work force projection report, must be delivered to the Board within seven (7) working days of the date of this transmittal.

The OCIP 1 and OCIP 2 insurance forms and the certificates of insurance for coverages not provided under the OCI must be fully executed and submitted to Ms. Diane Slush, of AON (Facsimile number: (312) 701-4143/4144) within 7 working days of the date of this transmittal. If you need assistance in filling out the OCIP 1 or OCIP 2, please contact Ms. Slush at 312/701-4137.

Inquiries concerning this project should be directed to the Construction Manager listed below.

Sincerely,

Timothy Martin  
Chief Operating Officer

cc: Construction Manager  
D. Slush (AON)

Sincerely,

Natalye Paquin  
Chief Purchasing Officer



EXHIBIT B

SPECIAL CONDITIONS FOR AFFIRMATIVE ACTION REQUIREMENTS

## II. DEFINITIONS

- A. **Bureau:** means the Bureau of Affirmative Action of the Board.
- B. **Certification (Class I) or Certified:** "Certification (Class I)" means certification by the City of Chicago. Any firm that is formally certified and in good standing with the City of Chicago Purchases or Purchasing Department as an MBE and/or WBE, or has verifiable "application pending" status with the City, has Class I certification status under these Special Conditions, for as long as it maintains its City certification. It is the responsibility of the bidder/proposer to demonstrate such status.
- C. **Certified MBE:** A business that is owned and controlled by a Minority person or persons, maintains a current letter of certification by the City of Chicago, Department of Purchases as a minority owned business and has its principal place of business within the six-county Chicago SMSA.
- D. **Certified WBE:** A business that is owned and controlled by a woman or women, maintains a current letter of certification by the City of Chicago, Department of Purchases as a women-owned business and that has its principal place of business within the six-county SMSA.
- E. **Chicago SMSA:** The six-county Chicago Standard Metropolitan Statistical Area, consisting of Cook, Lake, McHenry, DuPage, Kane and Will Counties.
- F. **Commercially Independent Function:** The execution by a firm of a distinct element of work by actual performance, management and supervision with its own workforce.
- G. **General Contractor:** A firm which enters into a general contracting services Agreement with the Board to provide goods or to perform services, including through the receipt of a work order.
- H. **Joint Venture:** An association between two or more independent firms formed, consistent with Illinois law, to perform one or more specific contracts.
- I. **Manufacturer:** For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the General Contractor.
- J. **Minority:** A member of any of the following racial / ethnic groups:
1. African Americans or Blacks - persons having origins in any of the Black racial groups of Africa.
  2. Hispanics - persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race.
  3. Asians - persons having origins in any of the original peoples of East Asia, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- K. **Regular Dealer:** A Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the work order are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a Regular

Dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A Regular Dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as Manufacturers or Regular Dealers within the meaning of this section.

- L. **Subcontractor or Supplier:** A firm which enters into a contract with a general contractor to provide goods or perform services pursuant to a Agreement between the general contractor and the Board.

### III. DETERMINING MBE AND WBE PARTICIPATION

MBE and WBE participation is counted toward the MBE and/or WBE goals set in the Agreement as follows:

- A. The fees and the value of self-performed work by MBE/WBE general contractors.
- B. The total dollar value of the work order awarded to a certified MBE or a certified WBE may be counted toward the MBE or WBE goal, except as indicated below.
- C. A general contractor may count toward its MBE or WBE goal only expenditures to firms that perform a commercially independent function, as defined in these Special Conditions, in the Work under the Contract. The Bureau shall determine whether a firm is performing a commercially independent function based upon industry practices and other relevant factors.
- D. A general contractor may count toward its MBE or WBE goal 100% of its expenditures for materials and supplies required under the Contract and obtained from a MBE or WBE Regular Dealer, and 100% of such expenditures to a MBE or WBE Manufacturer.
- E. A general contractor may count toward its MBE or WBE goal the following expenditures to MBE or WBE firms that are not-Manufacturers or Regular Dealers:
  - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Bureau to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the Manufacturer of or a Regular Dealer in the materials and supplies, provided that the fee is determined by the Bureau to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of a Contract, provided that the fee or commission is determined by the Bureau to be reasonable and not excessive as compared with fees customarily allowed for similar services.

F. Joint Ventures. A general contractor may count toward its MBE or WBE goal the portion of the total dollar value of a subcontract with a joint venture eligible under the standards of this Special Condition equal to the percentage of the ownership and control and participation of the MBE or WBE venturer.

The general contractor may submit joint venture agreements developed by subcontractors as an instrument to provide participation by certified MBEs and WBEs in subcontract work. A joint venture seeking to be credited for MBE or WBE participation may be formed among MBE and/or WBE firms or between a MBE and/or WBE firm and a non-MBE/WBE firm.

A joint venture is eligible if, and only if, all of the following requirements are satisfied:

1. Where the bidder's M/WBE proposal includes the participation on any MBE and/or WBE as a joint venturer, on any sub-tier, the bidder/proposer must submit, together with its bid, GC - Joint Ventures Form 102, the MBE's and/or WBE's letters of certification by the City of Chicago and a copy of the joint venture agreement proposed by all joint venture parties.
2. Form 102 - GC, Joint Ventures must clearly evidence that the MBE and/or WBE venturer will be responsible for a clearly defined portion of the work to be performed, and that the MBE and/or WBE firm's responsibilities are proportionate with its ownership percentage. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to:
  - (a) the contributions of capital and equipment;
  - (b) work items to be performed by the MBE's and/or WBE's own forces;
  - (c) work items to be performed under supervision of the MBE and/or WBE venturer; and
  - (d) the commitment of management, supervisory and operative personnel employed by the MBE and/or WBE to be dedicated to the performance of the work order.
3. Form 102 - GC, Joint Ventures must, in addition, clearly evidence the commitment of the MBE and/or WBE venturer to actually perform (with its own forces and equipment) work equal to at least 50% of the value of its ownership of the joint venture.

#### IV. DEMONSTRATION OF COMPLIANCE

##### A. Bidding, Work Orders, Change Orders

The following bid policy is intended to both (A) acknowledge those general contractors who are reporting M/WBE compliance at a level of 50% or more with their M/WBE goals, including the subgoals and (B) strengthen the bid submission requirements of those general contractors reporting 49% or less compliance with their M/WBE goals, including the subgoals.

Each bidder/proposer must submit with its bid or proposal detailed Compliance Demonstration information showing the manner in which the MBE and WBE requirements will be achieved in performing the Contract, on the following forms:

- **Form 100 - GC Bidder/Proposer Information (pages 1 and 2)** A properly completed and signed Form 100 which identifies the general contractor's commitment to utilize MBE (African American, Hispanic, Asian) and WBE firms in the performance of the contract. The percentage of utilization required to be identified at the time of bid (i.e., Category A or B) is determined on a monthly basis by the Bureau;
- The second page of Form 100 is to be properly completed and submitted with the bid submission. The second page of Form 100 is to identify the M/WBE firms to be utilized in the performance of the contract, the ethnicity or gender of the firm identified, the scope of work to be performed and the dollar value of the subcontract or supply agreement; absence of a properly completed and signed Form 100 may be cause to reject the bid as non-responsive.
- **Form 101 - GC Affidavit of Subcontractor/Supplier** This form is to be completed by the firms identified on the second page of Form 100 confirming the information submitted on the second page of Form 100 and should be submitted with the bid. A two working day grace period is provided to the lowest, most responsive, responsible general contractor in submitting properly completed Form 101s, if required;
- **Form 102 - GC Joint Ventures (if applicable)** A properly completed Form 102 must be submitted with the bid if a joint venture arrangement is being considered to perform as a subcontractor. If the joint venture is between a non-MBE and an MBE or WBE, then an executed joint venture agreement must also be included in the bid submission;
- **Letter of Certification -** A current letter of certification by the City of Chicago for all M/WBEs submitted in the bid document or a courtesy letter from the City of Chicago for M/WBE firms pending City of Chicago certification. The specialty area listed on the letter of certification is to correspond with the services listed on Forms 100 and 101 GC. Please note: The general contractor is accepting a risk of losing M/WBE credit for those firms in pending status who do not successfully complete the certification process; and
- **Form 105 - Request for Waiver (if applicable)** This form is to be completed when the general contractor has exhausted all good faith efforts in identifying M/WBEs sufficient to meet the contract goals. Form 105 is to be utilized when a partial or full waiver is being requested from the specific contract being bid. If the apparent lowest, most responsive, responsible bidder submits a Form 105 with the bid documents the bidder will be required to go through a waiver process.

The general contractor must complete Form 100 GC including, but not limited to, the Proposed Participation section in responding to the M/WBE goals (including the subgoals) specified in the Agreement as part of the required bid submission documents. Failure to

submit properly completed forms with the bid or proposal may result in rejection of the bid or proposal based upon the determination that the bid or proposal is non-responsive.

Based upon the General Contractor's performance (which is measured cumulatively on a monthly basis) under its Agreement on contracts awarded in connection with the Agreement, the Bureau will determine and communicate to the general contractor by the twentieth (20<sup>th</sup>) day of each month the Bid Category which applies to the General Contractor. The Bid Category will determine the required level of M/WBE participation (including subgoals) to be provided in each bid in order for the bid to be considered responsive. The determination made will be in effect from the first day of the following month through the last day of said month. The Compliance Demonstration Forms must demonstrate how all applicable goals and sub-goals will be fulfilled. Proposed MBEs and WBEs must be identified by ethnicity or gender.

The general contractor must advise the Board of any changes in the methods to be used for M/WBE for participation. The Board may request additional information concerning compliance demonstration with the Special Conditions separately.

The M/WBE participation goals are also applicable to change orders or work order modifications within the scope of work being provided by the M/WBE firm. The M/WBE firm should be utilized for such change order or work order modification to the same extent as the original work order and the amount attributable to the M/WBE must be adjusted accordingly.

#### B. Reporting

The general contractors are to submit a Monthly Utilization Report (MUR) to the Bureau. The Bureau collects an MUR on every active contract from the General Contractor and generates a Cumulative M/WBE Utilization Report. The Cumulative M/WBE Utilization Report is the reporting tool utilized in measuring each general contractors' compliance status with their M/WBE goals, including subgoals throughout the life of their participation in the CIP. The MUR tracks actual M/WBE participation through paid to date information supplied by the general contractor. Each general contractor is subjected to a desk audit on a quarterly basis to ensure the accuracy of the MUR.

#### Bid Category A. General Contractors achieving 50% or more of their M/WBE goals

The Bureau will measure each general contractor's historical compliance with the M/WBE goals (including subgoals) under the Agreement and in all Contracts and change orders awarded in connection with it and will report the results on a monthly basis to the general contractor. Those general contractors whose historical utilization of M/WBE firms is, cumulatively, at 25% or more MBE (16% African American, 6% Hispanic, 1% Asian) and 5% or more WBE will be required in future bid submissions to identify at least half of their anticipated M/WBE participation on the work that is the subject of the bid at the time of bid. The general contractor is encouraged to identify more than half, but is required to identify no less than half with each bid. General contractors in this category must furnish all required forms (100, 101, 102 - if a proposed subcontractor is a joint venture, and letters of certification with each bid, but specifically:

- Form 100, both pages properly completed and signed, must show a commitment to utilize at least 25% MBE (16% African American, 6% Hispanic, 1% Asian) and 5% WBE firms, all specifically identified, in the performance of the Contract.
- Form 105, is to be completed and submitted only when the general contractor has exhausted all good faith efforts in identifying M/WBEs to fulfill the goals set forth above for Form 100. Form 105 is to be used when the general contractor seeks a partial or full waiver in connection with the particular bid. If the apparent lowest most responsive and

responsible bidder submits a Form 105 with its bid, the bidder will be required to go through a waiver process with Bureau representatives.

**Bid Category B. General Contractors not achieving 50% or more of their M/WBE goals**

The Bureau will measure each general contractor's historical compliance with the M/WBE goals (including subgoals) under the Agreement and in all Contracts and change orders awarded in connection with it and will report the results on a monthly basis to the general contractor. Those general contractors whose historical utilization of M/WBE firms is, cumulatively, at less than 25% MBE (16% African American, 6% Hispanic, 1% Asian) and less than 5% WBE will be required in future bid submissions to identify ALL of their anticipated M/WBE participation on the work that is the subject of the bid at the time of bid. In an effort to cure the deficiency, the general contractor is encouraged to exceed the goals with each bid. General contractors in this category must furnish all required forms (100, 101, 102 - if a proposed subcontractor is a joint venture, and letters of certification with each bid, but specifically:

- Form 100, both pages properly completed and signed, must show a commitment to utilize at least 50% MBE (32% African American, 12% Hispanic, 2% Asian) and 10% WBE firms, all specifically identified, in the performance of the Contract.
- Form 105, is to be completed and submitted only when the general contractor has exhausted all good faith efforts in identifying M/WBEs to fulfill the goals set forth above for Form 100. Form 105 is to be used when the general contractor seeks a partial or full waiver in connection with the particular bid. If the apparent lowest most responsive and responsible bidder submits a Form 105 with its bid, the bidder will be required to go through a waiver process with Bureau representatives.

The bids of those general contractors who fail to properly complete and submit the required forms at the time of bid showing their commitment to utilize M/WBE firms at the specific levels may be rejected as non-responsive.

**V. METHODS OF ACHIEVING M/WBE GOALS; LIMITS**

**A. M/WBE goals may be achieved by the following methods.:**

1. Being a certified MBE and or WBE general contractor and performing services with the firms own forces;
2. Subcontracting with joint ventures that include certified MBE and/or WBE firms;
3. Subcontracting with certified MBE and/or WBE firms;
4. Purchasing supplies and/or services directly related to the performance of the work from certified MBE and/or WBE firms; or
5. Participating in a Board-approved Mentor-Protégé Agreement with a certified M/WBE firm.

**B. Mentor-Protégé Program.**

The general contractor is eligible to receive up to 5% credit towards its M/WBE goals for providing technical assistance for business development to an approved protégé under procedures established by the Department of Procurement and Contracts. All potential mentor-protégé M/WBE credit is subject to the prior

written approval of the Department of Procurement and Contracts and the Bureau. Details outlining the Mentor-Protégé Program are provided in Part B of these Special Conditions.

C. Limitation to Commercially-typical Business Relationship

MBE and WBE compliance credit is not given for any portion of the dollar value of contract performance that is passed through to non-M/WBE firms in the form of (a) sub-contracts, or (b) equipment leasing or other acquisition of goods or services for performance of the contract in a manner that is not typical of industry practice with respect to such contracts.

D. Firms Must Perform Commercially Independent Function

To be eligible for participation credit, an M/WBE firm must be an independent business providing a Commercially Independent Function. This means that the M/WBE firm must execute a distinct element of work by actual performance, management and supervision with its own workforce.

## VI. SUBSTITUTIONS

The general contractor must not substitute different MBE or WBE participants without the prior written approval of the Director of the Bureau, along with reasons justifying the substitution. Examples of reasons that may be acceptable include the following:

- a previously committed MBE or WBE has rescinded that commitment;
- a committed MBE or WBE was found by the General Contractor and confirmed by the Architect of Record or the Program Manager to be unable to produce acceptable work;
- a committed MBE or WBE discovered later not to be bona fide;
- an MBE or WBE previously committed at a given price later demanded an unreasonable escalation of price.

Stated reasons that would not be acceptable include:

- a replacement firm has been recruited to perform the same work under terms more advantageous to the bidder/proposer;
- issues about performance by the committed WBE or MBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily);
- an MBE or WBE has requested reasonable price escalation that may be justified due to unforeseen circumstances.

The general contractor must include in any request for substitution the name, address and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed contract. The Director of the Bureau may approve or reject any request in its entirety or impose conditions upon any approval.



## VII. NOTICE OF NON-COMPLIANCE

A. The Bureau will provide periodic notification to the general contractor advising of any deficiencies in complying with the Special Conditions. If after a review that shows deficiencies the Bureau determines that the general contractor is not demonstrating or has not demonstrated substantial Good Faith Efforts to meet the goals, the general contractor shall be subject to sanctions as described in Section X.

Good Faith Efforts. Good Faith Efforts include, as a minimum, but are not limited to, the following:

1. Identification of Select Portions of Work. A statement of efforts to identify any select portions of work identified in the bid solicitation for subcontracting to certified M/WBE firms.
2. Advertisement. Provide evidence of advertisement to in M/WBEs no less than ten (10) days before bids or proposals are due.
3. Timely Notice. Timely notice of the need for MBE or WBE subcontractors to any assist agency representatives of the M/WBE business community identified by the Bureau from time to time and contacting the firms referred by the assist agency and/or agencies. [Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required for any bid submitted to be deemed responsible on the date of bid opening.] If deemed appropriate, the Bureau of Affirmative Action may contact the assist agency for verification of notification.
4. Evidence of Contact. Evidence of solicitation of price quotes from at least 3 certified M/WBE firms in specific specialty area to perform any direct work identified or related to the work order, as follows:
  1. M/WBE Listings. A listing of all M/WBE firms contacted which includes the following:
    - c) Names, address and telephone numbers of M/WBE firms solicited;
    - d) Date and time of contact;
    - e) Method of contact (written, telephone, transmittal of facsimile documents, etc.)
  1. Mailings. Mailings which substantiate outreach to M/WBE firms that include:
    - a) Project identification and location
    - b) Classification of work items for which quotations were sought;
    - c) Date, item and location for acceptance of subcontractor bids;
    - d) Affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve M/WBE goals, not imposing any limiting conditions which were not mandatory for all subcontractors, or denying the benefits ordinarily conferred on M/WBE subcontractors for the type of work that was solicited.
  1. Utilization of Resources for M/WBE Matchmaking Services. Provide evidence from M/WBE trade associations, consultants and/or community-based organizations which provide matchmaking services demonstrating attempts made to locate certified M/WBE firms for potential subcontracting opportunities, results of the attempts and reasons for not utilizing said firms.

i. Direct Negotiations: Description of direct negotiations with MBE and/or WBE firms, which should include:

- a) Detailed statements summarizing direct negotiations with appropriate MWBE firms for specific portions of the work and the reasons why negotiations were unsuccessful;
- b) Detailed explanation of why the general contractor considers any MBE and/or WBE firm contacted to be unqualified.

B. Basis for Rejection. Detailed statement of the reasons MWBE firms were rejected for work if the general contractor asserts that the MBE/WBE quote(s) were unreasonable. A price quoted by an MBE or WBE firm will be presumed unreasonable if it exceeds by more than ten percent (10%) or \$100,000, whichever is less, as determined by the Bureau, to represent the average price for the goods or services to be provided. Additional documentation includes, but is not limited to:

- a) A listing of potential subcontractors contacted for a quotation on the work item;
- b) Prices quoted for the subcontract in question by all such potential subcontractors for the work item;
- c) The general contractor's own estimate for the cost of the work; and;
- d) An average of the bona fide prices quoted for the subcontract.

### VIII. WAIVERS

The general contractor must submit a Form 105 - Request for Waiver as part of the bid document in order to have a request for a reduction or waiver of the MWBE goals or sub-goals considered. If the apparent lowest, most responsive and responsible bidder submits a Form 105, the Board will provide a cure period of 5 working days to general contractor. During the cure period, bidder is to contact at least one of the Board's Affirmative Action Consultants ("Consultant") for matchmaking services. The Consultant will assist the general contractor in identifying MWBE firms to consider for subcontracting or supply opportunities with the intent to secure the level of MWBE compliance (including the subgoals) as determined monthly by the Bureau. After the 5 day cure period has lapsed and the general contractor continues to require a waiver, the Board's Waiver Review Committee will meet to review the waiver request. The Board's Waiver Review Committee is a panel of representatives of the Bureau, Law Department and Office of the Chief Financial Officer. The request must include documentation supporting "Good Faith Efforts"-along with an affidavit from the Consultant that states the steps taken to identify MWBE firms and the reason the attempts were not successful in fulfilling the deficiency in question.

The Waiver Review Committee may grant or deny waiver requests on a contract by contract basis based on a clear demonstration of good faith effort. The granting of a waiver on a bid should not be misinterpreted as a waiver from the MWBE goals (including subgoals) on a cumulative basis. The general contractor will continue to be held responsible for complying the MWBE goals (including subgoals) on an aggregated and cumulative basis over the lifetime of the this Agreement.

### IX. REMEDIES

After a periodic review showing deficiencies and rejection or exhaustion of numerous waiver request(s), the Bureau may make a determination of non-compliance and obtain remedies for material breach of the Agreement if it determines that:

1. the general contractor has failed to comply with the M/WBE provisions of its Agreement or its Compliance Agreement;
2. the general contractor has not demonstrated at a minimum the good faith efforts outlined in Paragraph VII of Part A;
3. the general contractor is uncooperative in providing information regarding its M/WBE participation efforts; or,
4. the general contractor provides false or misleading information concerning compliance.

After a determination of non-compliance and failure to cure, one or more of the following remedies may be imposed by the Board:

1. Liquidated damage assessments at the rate of 5 cents per dollar for each dollar that the general contractor is deficient in meeting its commitments and may be withheld on a semi-annual or other periodic basis as determined by the Bureau, until corrective action is taken.
2. Suspension or termination of the Contract, in whole or in part. The general contractor is liable to the Board for any consequential damages incurred as a result of suspension or termination, including damages arising either from delay or from increased prices in securing performance of the work by other contractors.
3. Deduction from the general contractor's payments any funds the general contractor has wrongfully failed to pay to an M/WBE under an approved Compliance Agreement, which funds may be either held in escrow or paid directly to the M/WBE by the Board. The Board may at its option also deduct from the general contractor's payments the cost that unwarranted delay of payment has imposed upon an M/WBE subcontractor.
4. Declaration that the general contractor is ineligible to do business with the Board for a period of up to three years.

Remedies are imposed by the Bureau upon the notification of the Bureau to the Departments of Procurement and Contracts, the Department of Operations and Accounts Payable to withhold funds until further notice. The imposition of any sanctions may be appealed by the general contractor to the Chief Purchasing Officer pursuant to the Dispute Resolution provisions set forth in Section 13 of the Contract. The Chief Purchasing Officer will determine whether the process followed by the Bureau is in accordance with the M/WBE Special Conditions and its findings and determination are properly documented and supported by substantial evidence.

#### X. RECORD KEEPING AND REPORTING REQUIREMENTS

The general contractor must maintain records of all relevant data with respect to the utilization of MBEs and WBEs, including without limitation payroll records, tax returns and records, invoices and canceled checks, signed waivers of lien, sworn statements and books of account for a period of at least three years after the Board's final acceptance of the work on the contract. The general contractor must grant full access to these records any duly authorized representative of the Board upon 48 hours advance notice.

The general contractor must submit on the 5<sup>th</sup> day of each month a Monthly Utilization Report ("MUR") for each Contract that details actual dollars paid to all firms (regardless of ethnicity and

gender) during the two month period prior to the date of submittal to the Bureau of Affirmative Action, i.e. on the fifth day of March, the general contractor is to submit the MUR which details all expenditures made to firms during the month of January. The bidder/proposer will submit reports on all expenditures made within the period reported on, including the name of each firm involved in the contract; identification of each firm's ethnicity and gender; a description of the work performed and/or product or service supplied by each firm; the total amount paid to all firms retained (to include all second and third tier subcontractors and suppliers); and any other information as requested by the Bureau of Affirmative Action in determining the bidder/proposer's compliance with MBE and WBE requirements.

Furthermore, the general contractor is to provide properly completed weekly certified payrolls and Monthly Equal Employment Opportunity (EEO) and City Residency Summary Report on each contract to the Bureau of Affirmative Action on the fifth day of each month for the previous month throughout the term of the contract, i.e., on the fifth (5th) of March, the general contractor is to submit the Monthly EEO and City Residency Summary Report with all applicable certified payrolls for the month of February.

The bidder/proposer agrees to maintain records of all relevant data with respect to any credit granted pursuant to the M/WBE Special Conditions. The bidder/proposer agrees to retain these records for a period of at least three years after the Board's final acceptance of the work on this Agreement. Full access to these records shall be granted upon 48 hours notice to the Board or any duly authorized representative thereof. The bidder/proposer agrees to submit reports to the Bureau of Affirmative Action on a monthly basis throughout the term of the Agreement containing relevant information required by the Board relating to the credits given by the Board to the bidder/proposer.

The Bureau shall have the right to request and obtain from the bidder/proposer any and all additional data as the Bureau may determine to be reasonably related or necessary to verify the representations made in the monthly progress reports.

The Bureau may periodically conduct unannounced on-site inspections on all CPS construction sites and conduct desk audits at the general contractor's office.

## XI. MISCELLANEOUS

### Technical Assistance

The general contractor shall endeavor, within available resources, to provide technical assistance to MBEs and WBEs to facilitate participation in Board-related contracts. Technical Assistance includes the following:

- assisting M/WBEs in obtaining certification;
- assisting M/WBEs in obtaining bonding and insurance;
- assisting M/WBEs in submitting bids by offering seminars and training on such topics as bid preparation, general contractor procedures, finance and project management;
- providing review and critique of unsuccessful bids submitted by M/WBEs to identify
- assisting successful M/WBE bidders in fulfilling their contracts, through guidance on meeting administrative requirements.

## PART B: CAPACITY BUILDING MENTOR/PROTÉGÉ PROGRAM GUIDELINES

### About the Mentor/Protégé Program

The Chicago Public Schools and the Board of Education of the City of Chicago (the "Board") have created this Capacity Building Mentor/Protégé Program in an effort both to facilitate its contractors and vendors in meeting our stated M/WBE goals and to assist City of Chicago certified M/WBE companies to becoming and/or remaining self-sufficient, competitive and profitable business enterprises.

Under this Program, the Contractor/Vendor will be eligible to receive up to five percent credit towards their contract's M/WBE participation requirements. These guidelines outline methods for Mentors to provide technical assistance to M/WBE Protégé firms for business development activities. All potential M/WBE compliance credit requested through the Mentor/Protégé Program will be calculated according to these guidelines and is subject to written approval by the Board's Department of Procurement and Contracts.

Mentor/Protégé compliance credit shall not be given for any portion of the dollar value of contract performance which is passed through to M/WBE firms in any form which is not typical of industry practice with respect to such contracts. The M/WBE Protégé must provide a commercially useful function under the Contractor/Vendor's contract and not act merely as a middle-person, passive conduit or broker of services.

To be eligible for M/WBE participation credit through the Mentor/Protégé Program, an M/WBE Protégé firm must be an independent business providing a Commercially Independent Function. This means that the M/WBE Protégé firm must actually perform a distinct element of work and must provide management and supervision of that work with its own workforce. Exclusive agreements between Mentor and Protégé are prohibited and violate federal anti-trust laws. The Protégé is free to participate in other subcontracting opportunities outside the parameters of the Mentor/Protégé Program.

## MENTOR/PROTÉGÉ PROGRAM PROCEDURES AND GUIDELINES

### I. Introduction

The Mentor/Protégé Program (MPP) provides a mechanism to assist the Contractor/Vendor in fulfilling its required M/WBE goals by providing technical assistance and guidance to Minority and Women Business Enterprises.

The Mentor will develop and describe in narrative form a MPP for one of the City of Chicago certified MBE and/ or WBE firms which have been identified and qualified as a Protégé through this Program. The goal of the MPP is to elevate the existing level of the Protégé and to assist the Protégé in acquiring new skills and competencies in its field of expertise. The Mentor should provide instruction and guidance to its designated Protégé.

The Mentor must be a contractor or consultant to Chicago Public Schools or the Board of Education of the City of Chicago. The Mentor must demonstrate a significant level of performance and capability to provide for meaningful instruction and sharing of resources with its Protégé. The Protégé must be certified by the City of Chicago as an MBE and/or WBE firm. The Protégé M/WBE firm may be either a joint venture consultant or a sub-consultant or subcontractor.

The benefits of this Program are:

- A. Mentor may benefit by receiving a maximum of 5% M/WBE compliance credit, at a rate of \$60.00 per hour, towards its MBE and/ or WBE contract goals.

- B. Protégé may benefit by the development of skills and expertise which will permit Protégé to become a viable, competitive and profitable business enterprise.

## II. GENERAL MENTOR/PROTÉGÉ REQUIREMENTS

- A. A written Mentor/ Protégé agreement must be prepared with input from both parties. The agreement must include a Development Plan which targets specific goals to be achieved. Each goal outlined must be measurable and have established benchmarks or time lines so that the progress of the Development Plan can be reviewed and monitored. The Chicago Public Schools (CPS) Department of Procurement and Contracts/Bureau of Affirmative Action staff will be available to assist the parties in preparing the Development Plan;
- B. Protégé must be an independent organization, and Mentor and Protégé must remain separate and independent business entities;
- C. The Protégé must be certified as an MBE and/or WBE by the City of Chicago;
- D. CPS staff will conduct periodic on-site compliance reviews to monitor and report the Protégé's progress. A schedule will be established with the parties to monitor performance and compliance with the Development Plan. The Mentor/ Protégé agreement must contain a clause which provides that the agreement may be terminated prior to project completion only with the written consent of CPS. Such consent will be given only after review by CPS and upon its determination that:
1. Protégé no longer meets the eligibility standards for certification as an M/WBE;
  2. Either party has failed or is unable to meet its obligation under the agreement;
  3. Protégé is not progressing or is not likely to progress in accordance with the agreement;
  4. Protégé has reached a satisfactory level of self-sufficiency to compete and no longer requires the assistance provided in the agreement.
- E. Mentor and Protégé must submit quarterly reports commencing 30 days following the date of CPS approval of the Development Plan. CPS will review these reports and recommend actions necessary to foster the building of a positive business relationship between the parties;
- F. Protégé firm must provide a commercially useful function under the Contractor's or Vendor's Contract and not act merely as a middle person, passive conduit or broker;
- G. Protégé should have an established track record in a particular field of endeavor;
- H. Mentor and Protégé must comply with all applicable collective bargaining agreements, prevailing wage laws and the terms and conditions of the Contract;
- I. The Mentor/ Protégé Agreement need not be limited to a single project and can include, by amendment, expansion into other areas. Examples of these situations are:
1. Mentor is awarded several contracts with the same customer for various site locations and Protégé involvement may be required.
  2. During the course of a project both Mentor and Protégé agree that certain

objectives have been achieved and new objectives are established by both parties.

### III. TECHNICAL ASSISTANCE

Mentor may provide the following to Protégé:

- A. Training in technical aspects of operating the business, such as business planning, loan packaging, financial counseling, bonding, insurance and equipment utilization;
- B. Guidance on project management including plan interpretation, specifications, bidding, estimating, pricing and cost accounting;
- C. Guidance in familiarizing Protégé with applicable laws, regulations and rules;
- D. Assistance in the preparation of contract documents;
- E. Guidance regarding the Protégé's procedures for budgeting, cash flow, bookkeeping and accounting, and general money management, and in Protégé's accounting for daily actual cost of labor, production and overhead;
- F. Guidance and assistance in areas of project management, field supervision, on-the-job-training, safety and labor relations;
- G. Assistance in preparation of change orders, claim filing, resolution of disputes, scheduling and other aspects of performance.

### IV. EQUIPMENT AND PERSONNEL

- A. The Mentor may, in limited instances, provide property, equipment, supplies or services to the Protégé. This activity should be reported to CPS in the Development Plan, but the actual transaction, whether by sale or donation to Protégé from Mentor, must be covered in a separate agreement between Mentor and Protégé and CPS accepts no liability or responsibility in such transactions. If resources of the Mentor are utilized by the Protégé, the resources must also be identified and governed by a separate agreement. Extensive use of the Mentor's resources by the Protégé will be closely monitored.
- B. The Mentor may provide job-specific equipment needed by the Protégé.
- C. Protégé may lease equipment or property from third parties and/ or from the Mentor; Mentor may offer guidance on the question of lease versus purchase and assist Protégé with the negotiation of fair lease agreements.
- D. Mentor may assist Protégé in establishing lines of credit so that Protégé may obtain necessary equipment and supplies. (Please note: Mentor is not expected to assume any financial responsibility for Protege).
- E. Development of and adherence to equipment maintenance schedules and procedures should be encouraged and monitored by Mentor.

### V. PROCEDURES FOR APPROVAL OF MENTOR/ PROTÉGÉ AGREEMENTS

- I. Mentor and Protégé must submit a completed Chicago Public Schools Mentor/ Protégé Agreement (see attached) to the Chicago Public Schools Department of Procurement and

Contracts/Bureau of Affirmative Action, 1819 W. Pershing Road, 6W(n), Chicago, Illinois 60609, Attention: Director of Affirmative Action/Construction Division. An initial assessment will be conducted with notification of approval being sent to the Mentor/ Protégé as listed on the Mentor/Protege Agreement.

2. Additional information may be requested, and approval of the agreement will be deferred until the information is received.
3. Once approved, the Mentor and Protégé will be advised of the conditions under which eligibility is maintained and the agreement expiration date.
4. If not approved, the Mentor and Protégé will be advised by the CPS staff of the reasons why the agreement is not acceptable. The Mentor and Protégé may then promptly correct the deficiencies and another review will be conducted.

## VI. ADMINISTRATION OF MENTOR/ PROTÉGÉ AGREEMENTS

1. Mentor will provide CPS with a report summarizing the kinds of services and/or skills provided to Protégé including hours and areas of involvement, such as managerial, technical or financial assistance. Protégé will provide CPS with a report summarizing the kinds of services received from Mentor, including all agreements, leases, loan instruments, contractual agreements, equipment rental schedules and bills of sale.
2. The reports should be submitted on a monthly basis, and reviewed by CPS staff. Mentor and Protégé will be notified of any insufficiencies and major accomplishments and progress will be recognized.
3. Additional information may be requested if the report is not acceptable. If the additional information or documentation is unacceptable, Mentor and Protégé will be advised of the specific violations of the agreement. Corrective action will be directed with a deadline for such remedies to be completed.

## VII. REPORTS AND RECORD KEEPING

Reporting forms which provide the format to be used by Mentor and Protégé are attached. Time sheets must be maintained by Mentor and Protégé and included in the monthly reports.

Credit for the Mentor Protégé program will be given at rate of \$60.00 per hour towards the MBE and/or WBE goal to a maximum of 5% of the total contract amount awarded to the prime Contractor/Vendor. Time sheets and reports must be maintained by the Mentor with a sign-off by Protégé to be submitted to the Director of Affirmative Action/Construction Division. Mentor/ Protégé MBE and/or WBE credit is subject to verification of documentation.

Note: The Capacity Building Mentor Protégé Program is a guideline for the development of your Mentor/ Protégé agreement. The guidelines themselves do not constitute a binding agreement between the Mentor and the Protégé.



**PART C: WORKFORCE EMPLOYMENT SECTION--MINORITY AND FEMALE EMPLOYMENT;**

**I. EQUAL EMPLOYMENT OPPORTUNITY GOALS FOR CONTRACTS OF LESS THAN \$100,000**

For any construction, operations or maintenance project having an estimated contract value of less than \$100,000, the general contractor will adhere to the equal employment opportunity (EEO) goals established by the U.S. Dept. of Labor- Office of Federal Contract Compliance Programs ("OFCCP") for construction tradeworkers in the Chicagoland area which is provided through Executive Order 11246. The EEO goals are measured through the following percentages of construction aggregated work hours in each of the categories;

- a. At least 19.6 percent by minorities, as defined herein; and
- b. At least 6.9 percent by women.

In order to assist in the achievement of these goals, the general contractor is eligible to receive up to five percent (5%) of its minority and female laborer goals through participation in the Student Career Initiative (SCI). Details of the Student Career Initiative procedures can be found in Part E of the Special Conditions. The general contractor shall identify a role model to be assigned to supervise and work with the students participating in SAP.

**II. EQUAL EMPLOYMENT OPPORTUNITY GOALS FOR WORK ORDERS OF \$100,000 OR MORE**

The Chief Purchasing Officer shall employ the canvassing formula described in this section in the bidding for and in the awarding of all work orders involving construction, operations or maintenance projects having an estimated contract value of \$100,000 or more.

**Canvassing Formula**

In accordance with Chapter 2-92 of the Municipal Code of Chicago, and in order to promote equality of opportunity for minority and female tradepersons in construction, operations and maintenance contracts, the Board has established the following canvassing formula for the purpose of evaluating proposals and awarding work orders.

Each bidder/proposer is invited to propose the minority and female employee utilization goals for construction, operation and maintenance project, as percentages of the journeyworker, apprentice and laborer hours to be expended for the contract. Lines 2,4, and 6 of the formula shall not be greater than 50 percent in each category, for the purpose of canvassing only. The 50 percent limit shall not deter or restrict the fuller utilization of minority and female employees for the contract, but shall serve as a limiting figure only for use in the formula. Similarly, lines 8, 10, and 12 shall not be greater than 10 percent in each category, for the purpose of canvassing only. Actual amounts of minority and female work will be measured for the total hours of construction workers employed on the contract within each of the categories of journeyworker, apprentice and laborer by the general contractor and all of the worksite subcontractors.

Line 1	Base bid, in figures	
Line 2	Percentage of the total journeyworker hours that the general contractor proposes to be worked by minority journeyworkers during construction of the project. Maximum figure .50.	
Line 3	Multiply line 2 by line 1 by 0.04	
Line 4	Percentage of the total apprentice hours that the general contractor proposes to be worked by minority apprentices during construction of the project. Maximum figure .50	
Line 5	Multiply line 4 by line 1 by 0.03	
Line 6	Percentage of the total laborer hours that the general contractor proposes to be worked by minority laborers during construction of the project. Maximum figure .50.	
Line 7	Multiply line 6 by line 1 by .01.	
Line 8	Percentage of the total journeyworker hours that the general contractor proposes to be worked by female journeyworkers during construction of the project. Maximum figure .10.	
Line 9	Multiply line 8 by line 1 by .04	
Line 10	Percentage of the total apprentice hours that the general contractor proposes to be worked by female apprentices during construction of the project. Maximum figure .10.	
Line 11	Multiply line 10 by line 1 by 0.03.	
Line 12	Percentage of the total laborer hours that the general contractor proposes to be worked by female laborers during construction of the project. Maximum figure .10.	
Line 13	Multiply line 12 by line 1 by 0.01	
Line 14	Summation of lines 3, 5, 7, 9, 11, and 13.	
Line 15	Subtract line 14 from line 1 = award criteria figure.	

The bidder/ proposer shall complete the canvassing formula and transfer the final award criteria figure, line 15, to the space provided on the itemized bid/proposal sheet. A work order in the amount of the total base bid will be awarded to the prequalified bidder/proposer with the lowest award criteria figure.

The Board reserves the right to revise all arithmetic calculations for correctness. The general contractor is obligated during the construction of the project to fulfill every numerical commitment made under the canvassing formula categories. Therefore, every limiting condition or circumstance which may affect referral, hiring, or deployment of construction trades employees must be taken into account by the bidder/proposer before the commitment is proposed. Limits imposed by the policies or circumstances of labor organizations or other referral resources, for example, should be anticipated by the bidder/proposer, since relief from the general contractor's obligations as established under the canvassing formula is not available due to such circumstances found to exist during construction. Also, if journeyworkers or apprentices, or laborers, will not be employed in the project, then the proposal made in the appropriate lines, lines 2 and 8 or lines 4 and 10 or 6 and 12, should be entered as 0 percent. Since no journeyworker or apprentice or laborer hours are reported after construction, this will be computed by the Board as "0" percent minority/female hours achieved. Where a commitment for a percentage of minority or female apprentices has been made, the percentage may be counted as fulfilled only as long as there were provided at least 40 hours of minority or female employment as apprentices. For this reason, where a minority or female percentage commitment for apprentices has been made, if in

the final audit of the performance of the contract there are less than 40 minority or female apprentice hours counted, then the number of minority or female apprentice hours will be counted by the Board as "0" for the purpose of measuring the achievement towards the apprentice canvassing formula goal.

#### Liquidated damages

The general contractor is obligated to meet the total commitment made in each category, subject to liquidated damages as described below for noncompliance. The general contractor hereby consents and agrees that, in the event of failure to comply with each of the minimum commitments submitted with the proposal on lines 2,4,6,8,10, and 12 of the canvassing formula, covering journeyworkers, apprentices, and laborers, respectively, the following shall apply to determine a monetary sum to be withheld from the contractor prior to release of the final payment or periodic basis as determined by the Bureau.

#### Formula

For each one percent (1%) deficiency of minority journeyworkers or female journeyworkers not utilized toward the goal (line 2 and line 8), four cents for each hundred dollars of the base bid, calculated as follows:

$$\frac{\text{Line 1} \times .04}{100}$$

For each one percent (1%) deficiency of minority apprentices or female apprentices not utilized toward the goal (line 4 and line 10), three cents per each hundred dollars on the base bid, calculated as follows:

$$\frac{\text{Line 1} \times .03}{100}$$

For each one percent (1%) deficiency of minority laborers or female not utilized toward the goal (line 6 and line 12), one cent per each hundred dollars of the base bid, calculated as follows:

$$\frac{\text{Line 1} \times .01}{100}$$

The monetary damages stipulated herein may be adjusted by the Board's Bureau of Affirmative Action to represent a larger fraction of the base bid price if the Bureau after review of the general contractor's compliance with this section determines that said damages are insufficient to secure general contractor's compliance herewith.

#### Reporting

Upon receipt of a "Notice to Award" the general contractor has two working days to submit a completed Workforce Projection ("Projection") to the Bureau. The Projection is to serve as an employment plan to ensure compliance with the EEO and City Residency Programs. It is intended to report all construction-related employment opportunities by trade for all contractors (regardless of tier) and is to reflect the workforce during the "peak" construction period of the contract. A "Notice To Proceed" will not be issued until receipt of the Workforce Projection.

In addition, the general contractor is to submit to the Bureau by the fifth (5<sup>th</sup>) day of each month a properly completed Monthly EEO and City Residency Summary Report for each contract along with the properly completed weekly certified payroll reports. The weekly certified payrolls are to include, but not limited to, each employee's social security numbers, addresses and zip codes, trade classification and skill level, race and gender of employees clearly named or coded. The general contractor is responsible for submitting original copies, or legible copies or via diskette of the general contractor's and subcontractors' weekly certified payrolls (utilizing Saturdays as the week ending date) organized by contract for every construction worksite. Failure to report fully all required workforce information will subject the general contractor to liquidated damages in the total amount listed in line 14 of the canvassing formula.

In the weekly payroll reports, the following ethnic categories should be used to indicate minority personnel for purposes of the canvassing formula:

- Black: - Persons having origins in any of the Black racial groups of Africa.
- Hispanic - Persons of Mexican, Puerto Rican, Cuban, Central American, or other Spanish culture or origin; regardless of race.
- Native American - Persons who are American Indians, Eskimos, or Native Hawaiians.
- Asian Pacific - Persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Northern Marianas
- Asian Indian: - Persons whose origins are from India, Pakistan, or Bangladesh.

Included in the canvassing formula as "Journeyworkers" are the construction site journeyworkers from the major trades. Other "Helpers," watchmen, custodial workers, clerical workers, and salaried superintendents are not creditable in the formula. Hourly wage "Foremen" and "General Foremen" otherwise known as working foremen will be counted as journeyworkers for purposes of the canvassing formula.

Included in the canvassing formula as "Apprentices" are only bona fide apprentices currently in a training program certified by the U.S. Department of Labor - Bureau of Apprenticeship and Training, and for the hours employed at the construction site. Other categories of trainees, otherwise known as Student Career Initiative participants, are only creditable in the less than \$100,000 work orders and not as part of the canvassing formula. Student Career Initiative participants will be reported weekly on the "Student Career Initiative Certified Payroll" and will be submitted to the Bureau of Affirmative Action on the fifth (5<sup>th</sup>) day of each month. Individual workers who are both minority and female will have their hours counted toward both minority and female goal.

#### Other Regulations

The adherence to the canvassing formula does not abrogate other responsibilities of the general contractor to comply with equal employment opportunity requirements under federal or state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the Contract.

**PART D: WORKFORCE EMPLOYMENT SECTION -- CITY OF CHICAGO RESIDENCY PROGRAM**

**I. POLICY**

The general contractor and all subcontractors that perform work on site at a Board construction project shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago specified in Section 2-92-330 of the Municipal Code of Chicago (at least fifty percent of the total worker hours shall be performed by actual residents of the City of Chicago). In addition to complying with this percentage, the general contractor and all subcontractors shall make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled positions.

**II. METHODOLOGY**

The methods general contractors and subcontractors should use to meet these requirements include, but are not limited to:

- A. Union Hiring Halls;
- B. All methods set forth in the aforementioned section entitled, "Good Faith Efforts"; and
- C. Assistance from the Bureau and/or the assist agencies identified by the Bureau from time to time.

The Board, in coordination with the assist agencies and the IDES shall attempt to refer for employment qualified persons to the general contractor and/or subcontractors within three (3) business days of their request.

The general contractor and/or subcontractors should notify the Bureau of Affirmative Action whenever their employment needs increase and they are unable to identify new hires.

**III. COMPLIANCE AND REPORTING**

The percentage of City of Chicago resident utilization shall be expressed in terms of person-hours of employment as a proportion of the total person-hours reported or the weekly certified payrolls. The person-hours for local employees should be substantially uniform throughout the length of the Contract for each of the trades.

Full access to the general contractor's and subcontractors' employment records shall be granted to the representatives of the Bureau of Affirmative Action. The general contractor and subcontractors shall maintain all relevant personnel data and records for a period of at least three years after the final acceptance of the work.

At the direction of the Board, affidavits and other supporting documentation will be required of the general contractor to verify or clarify an employee's actual address or change of actual address when doubt or lack of clarity has arisen.

**IV. WAIVER REQUEST**

The general contractor may submit a request for reduction or waiver of the fifty percent (50%) City residency goal to the attention of the Bureau of Affirmative Action for consideration by the City Residency Appeals Committee. The City Residency Appeals Committee shall consist of representatives of the Bureau of Affirmative Action, Dept. of Operations and the Dept. of Procurement and Contracts. The request must include all documentation supporting "Good Faith Efforts" as described in Part C of the Special Conditions.

If the general contractor and its subcontractors demonstrate that the goals for local employment have been met, or have provided documentation to show that the above "Good Faith Efforts" have been satisfied and they have worked with the Bureau of Affirmative Action for assistance on hiring needs, the general contractor shall be deemed in compliance with its obligation under the terms of these Special Conditions and no sanctions, or proceedings leading toward sanctions, shall be instituted.

#### V. NON-COMPLIANCE

The City Residency Appeals Committee shall determine on a semi-annual or other periodic basis as determined by the Bureau whether a general contractor has complied with the City residency requirements. The general contractor has the burden of proving compliance with the requirements.

In the event of non-compliance on the part of the general contractor the formal notification procedure to be followed shall be as follows:

- A. The Bureau of Affirmative Action shall cause to be delivered a "Written Notice of Non-Compliance" to the general contractor. This notice shall specify the matters which constitute non-compliance, the specific action required to correct non-compliance, and the time period during which such correction shall occur. In no event shall this be more than ten (10) working days after receipt of the notice by the general contractor.
- B. The general contractor shall submit written evidence of compliance to the City Residency Appeals Committee.
- C. In the event the City Residency Appeals Committee agrees that compliance has occurred, the Bureau of Affirmative Action shall cause to be delivered promptly to the general contractor a "Written Notice of Correction of Non-Compliance" specifying the original non-compliance which has been corrected.
- D. In the event that the City Residency Appeals Committee does not agree that compliance has occurred, the Bureau of Affirmative Action shall promptly notify the general contractor by a "Written Notice of Failure to Correct Non-Compliance" of specific facts constituting the continuing non-compliance.
- E. In the event the general contractor contends that it is in compliance, and the City Residency Appeals Committee does not concur, then the general contractor shall have the right to request a hearing before the Chief Purchasing Officer, or her designee, who shall make the final determination as provided in the Dispute Resolution section of the Agreement. The request for a hearing before the Chief Purchasing Officer must be made within a period of ten (10) working days after receipt of the "Written Notice of Failure to Correct Non Compliance." The general contractor must exhaust this administrative remedy prior to commencing further legal action.
- F. In the event no such request is made, the determination of failure to correct non-compliance by the City Residency Appeals Committee shall be final.
- G. If final determination of non-compliance is made, the general contractor shall pay the amount of any such penalty commencing with the first day of non-compliance and continuing until the earlier of: (i) compliance is established to the satisfaction of the Purchasing Agent; (ii) the work of the non-complying general contractor under such Agreement is completed; or (iii) such Agreement is terminated.

EXHIBIT C

PROJECT LABOR AGREEMENT

~~[This agreement is currently being re-negotiated]~~

EXTENSION AGREEMENT

The Chicago School Reform Board of Trustees and the Building Trades Council of Cook County hereby agree that their Multi Project Labor Agreement, dated the 1st day of December, 1996, <sup>(excluding Roofers Local 11) & MOP</sup> is hereby extended from month to month. It may be terminated by either party upon fourteen (14) days' written notice to the other.

Chicago School Reform Board of Trustees

Building Trades Council of Cook County

By:  
Its:

*[Handwritten Signature]*

By:  
Its:

*[Handwritten Signature]*  
President

Dated:

June 21, 1999

Dated:

June 21, 1999



## MULTI-PROJECT LABOR AGREEMENT SUMMARY

The Project Labor Agreement (PLA) is an agreement between the Chicago School Reform Board of Trustees (Board) and the unions of the Chicago and Cook County Building and Construction Trades Council (Unions). The Board and the Unions entered into the PLA in order to eliminate the potential for disruption, due to labor disputes, of the Board's efforts to construct or modernize its schools and facilities.

With some limitations, the PLA requires the Board to contract or subcontract its construction work only with firms who have signed or are willing to sign the collective bargaining agreement of the applicable Union. The work covered by the PLA includes all construction, demolition, rehabilitation, repair, alteration, and/or painting done on Board property or at Board facilities. The PLA is limited to projects in excess of \$10,000. Further, a firm is obligated to enter into an agreement with the applicable union only for the duration of that firm's Board project, and only for the specific site of that project.

In exchange for the above, no Unions or workers may strike, picket a project site, or participate in a work stoppage or slowdown of any kind. This is true even for projects of less than \$10,000. The Unions have agreed to prevent or end any such disruption. The Unions and firms may discipline or discharge any worker who violates the PLA.

All parties—the Board, the Unions, and firms doing Board construction work—are expressly prohibited from engaging in "self-help" remedies. Neither Union representatives nor construction firms may stop or delay construction work because of an alleged PLA violation. Suspected violations of the PLA are to be dealt with by representatives of the Board, and not at the work site.

### Answers to Common Questions Regarding the Project Labor Agreement

Q: What is a "project"?

A: A project is defined by the PLA as construction, maintenance, repair, rehabilitation, painting or demolition of a dollar value greater than \$10,000. The PLA covers work performed by general contractors and subcontractors on CPS and PB properties, including work let by a school's principal. Projects cannot be split to avoid PLA coverage.

Q: Can a general contractor or subcontractor that does not currently employ union members perform work?

A: If a general contractor or its subcontractor is not a unionized firm and does not employ union members, the firm may work on CPS projects if, for the duration of a CPS project and for the employees working on that project, the firm signs the appropriate Chicago-Cook County Building Trades Council area-wide agreement. This may include, but is not limited to the payment of union dues for each employee, the use of a grievance procedure to resolve disputes, and payments to the union's fringe benefits fund.

Q: Do my employees have to become union members?

A: No. The PLA requires a general contractor or subcontractor to sign the applicable area-wide agreement, and then (for the scope and duration of the project) to treat its employees according to the terms of that agreement. The PLA does not require that individual employees join a union.

Q: Does a non-union contractor have to become a union contractor because of the PLA?

A: No. If a general contractor or subcontractor is non-union, it must simply become a signatory to the applicable area-wide agreement. The contractor may (but does not have to) limit the relationship with the union to the scope and duration of work performed on a CPS project.

Q: What if a general contractor or sub is performing other non-CPS work. How does the PLA impact that work?

A: The PLA covers only CPS projects; it does not impact work performed on other sites for other employers.

Q: My employees are already union members. What action do I have to take to comply with the PLA?

A: If your company is already unionized, you need not do anything additional. The PLA requires a contractor to sign and follow the applicable area-wide agreements; if the contractor has already done so, the PLA will not, in and of itself, require further action.

Q: What if the union tells my employees to stop working, or otherwise disrupts a worksite?

A: Under the PLA, no union representative, agent or member may participate in picketing, work stoppages, slowdowns, or other disruptive activities. If a union representative questions a particular contractor's compliance with the PLA, the contractor should contact the Board.

# CHICAGO BOARD OF EDUCATION

## MULTI-PROJECT LABOR AGREEMENT

This Multi-Project Labor Agreement ("Agreement") is entered into by and between the Chicago School Reform Board of Trustees ("Board" or "Trustees"), an Illinois governmental entity, and each of the undersigned labor organizations signatory hereto.

Because of the scope, cost and duration of, and important public purpose to be served by the construction and/or modernization of schools and school-related facilities by or related to the Chicago Public Schools ("CPS"), the parties to this Agreement have determined that it is in the public interest to have certain projects completed in the most timely, productive, economical and orderly manner possible and without labor disputes or disruptions of any kind that might interfere with or delay the projects.

The parties have determined that it is desirable to eliminate the potential for friction and disruption of these projects by using their best efforts and ensuring that all work is performed by the trade unions that are signatory hereto and which have traditionally performed and have trade and geographic jurisdiction over such work.

To further these goals and to maintain a spirit of harmony, labor-management cooperation and stability, the parties agree as follows:

1. During the term of this Agreement, the Board shall not contract or subcontract, nor permit any other person, firm, company or entity to contract or subcontract, any construction, demolition, rehab or renovation of any Board property, at any of its sites or locations where work in furtherance of the projects is being undertaken, either by the Board, or its contractor or construction manager, as owner, coordinator, manager, contractor and/or purchaser relating to construction work covered by this Agreement or within the trade jurisdiction of the signatory unions, to be done at the site of construction, alteration, painting or repair of a building, structure or other work at the site or location covered by this Agreement and/or owned, leased, or in any manner controlled by the Board, unless such work is performed only by a person, firm or company signatory or willing to become signatory to an existing collective bargaining agreement with the union or with the appropriate trade/craft union or subordinate body of the Chicago & Cook County Building & Construction Trades Council or the AFL-CIO Building & Construction Trades Department. Copies of all such current collective bargaining agreements constitute Appendix "A" of this Agreement, attached hereto and made an integral part hereof and as may be modified from time to time during the term of this Agreement. Said provisions of this Agreement shall be

included in all requests for bids and shall apply to all projects in excess of \$10,000.00; provided however, that said project contracts shall not be "split" so as to avoid the applicability of this Agreement.

2. With respect to a contractor or subcontractor who is the successful bidder, but is not signatory to the applicable collective bargaining agreement, the collective bargaining agreement executed by said bidder may be limited in scope to the project site(s).
3. During the term of this Agreement, project contractors and/or subcontractors shall engage in no lockout at any of the project sites.
4. During the term of this Agreement, no labor organization signatory hereto, or any of its members, officers, stewards, agents, representatives or employees, shall instigate, authorize, support, sanction, maintain, or participate in any strike, walkout, work stoppage, work slowdown, work curtailment, cessation or interruption of production, or in any picketing of any project sites for any reason whatsoever, including, but not limited to, a dispute between the Board, or any contractor or subcontractor, and any union or any employee, or by and between any unions, or in sympathy with any union or employee or with any other individual or group, or in protest of any project of \$10,000 or under.
5. Each union signatory hereto agrees that it will use its best efforts to prevent any of the acts forbidden in Paragraph 4, and that, in the event any such act takes place or is engaged in by any employee or group of employees, each union signatory further agrees that it will use its best efforts (including its full disciplinary power under its applicable Constitution and By-Laws) to cause an immediate cessation thereof.
6. Any contractor signatory hereto shall have the right to discharge or discipline any employee who violates the provision of this Agreement. Such discharge or discipline by a contractor or subcontractor shall be subject to the grievance-arbitration procedure of the applicable collective bargaining agreement only as to the fact of such employee's violation of this Agreement. If such fact is established, the penalty imposed shall not be subject to review and shall not be disturbed.
7. The parties expressly authorize a court of competent jurisdiction to order appropriate injunctive relief to restrain any violation of this Agreement, any form of self-help remedy is expressly forbidden. Nothing in the foregoing shall restrict any party to otherwise judicially enforce any provision of its collective bargaining agreement between any labor organization and a contractor with whom it has a collective bargaining relationship.

8. This Agreement shall expire on June 30, 1999 unless extended by mutual agreement of the parties but shall also extend until the completion of any work initiated pursuant to the agreement prior to June 30, 1999.

9. In the event a dispute shall arise between any contractor or subcontractor of the project and any signatory labor organization and/or fringe-benefit fund established under the appropriate collective bargaining agreement as to the obligation and/or payment of fringe benefits provided under the collective bargaining agreement, upon proper notice to the contractors and/or subcontractors by the appropriate labor organization or appropriate fringe benefit fund and to the Board, an amount sufficient to satisfy the amount claimed shall be withheld from the contractor's or subcontractor's regularly scheduled periodic payment from the Board or its agents until such time as said claim is resolved.

10. In addition to the obligations set forth in this Agreement, in the event a jurisdictional dispute by and between any of the unions, such unions shall take all steps necessary to promptly resolve the dispute. In the event of a dispute relating to the trade or work jurisdiction, all parties, including the employer (contractors or subcontractors), agree that a final and binding resolution of the dispute shall be achieved as follows:

- a.) Representatives of the affected trades shall meet on the job site within forty-eight (48) hours after receiving notice in an effort to resolve this dispute. (In the event there is a dispute between affiliates of the same International, the decision of the General President or his/her designee, as the internal jurisdictional dispute authority of that International, shall constitute a final and binding decision.) Any agreement reached at this step shall be final and binding upon all parties.
- b.) If no settlement is reached during the proceedings contemplated in Paragraph 10(a) above, the matter shall be immediately referred to the leadership of the Chicago & Cook County Building & Construction Trades Council, according to the historic practice, for a meeting between the parties. Any agreement reached at this step shall be final and binding upon all parties.
- c.) If no settlement is reached subsequent to the actions contemplated in Paragraph 10(b) above, the matter shall be referred to the Joint Conference Board established by the Standard Agreement between the Construction Employers' Association and the Chicago & Cook County Building &

Construction Trades Council for final and binding resolution of said dispute. A copy of the Standard Agreement is attached hereto and made a part hereof as Appendix "B".

It is explicitly agreed to by all parties that the parties to this Agreement, as well as each contractor and subcontractor performing work on or for the project, specifically are bound and stipulated to the jurisdiction and process of the Joint Conference Board. Said provision shall become a provision in all contracts and subcontracts issued by the owner, construction manager, contractor, subcontractor, or any agent thereof.

11. This Agreement shall be incorporated into any become part of the collective bargaining agreements between unions signatory hereto and contractors and subcontractors. In the event of any inconsistency between this Agreement and any collective bargaining agreement attached hereto, the terms of this Agreement shall supersede and prevail.
12. This Agreement constitutes the entire agreement between the parties hereto and may not be modified or changed except by the subsequent written agreement of the parties. Each party warrants and represents that they have the full legal authority and capacity to enter into this Agreement.
13. The parties agree that in the implementation and administration of this Agreement it is vitally necessary to maintain effective and immediate communication so as to minimize the potential of disputes arising out of this Agreement. To that end, each party hereto agrees to designate, in writing, a representative to whom can be directed problems which may arise during the term of this Agreement.
14. If any provision, section, subsection or other portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in whole or in part, and such determination shall become final, such provision or portion shall be deemed to be severed or limited, but only to the extent required to render the remaining provisions and portions of this Agreement enforceable. This Agreement, as thus amended, shall be enforced so as to give effect to the intention of the parties insofar as that is possible. In addition, the parties hereby expressly empower a court of competent jurisdiction to modify any term or provision of this Agreement to the extent necessary to comply with existing law and to enforce this Agreement as modified.

15. In the event the Board enters into an agreement or undertaking with any other governmental agency for the construction related activities contemplated under this Agreement, the terms and provisions of this Agreement shall apply to all such projects irrespective of the agency awarding the contract or supervising the work thereunder.

Dated this the \_\_\_\_ day of \_\_\_\_\_, 1996, in Chicago, Illinois.

**CHICAGO BOARD OF EDUCATION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Labor Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Franczek · Sullivan · Mann · Crement · Hein · Relias P.C.

SUITE 3400 300 SOUTH WACKER DRIVE CHICAGO, IL 60606-6785  
312-986-0300 FAX 312-986-9192

JAMES C. FRANCZEK, JR.  
312-786-6110

January 2, 1997

Via Facsimile and Messenger Delivery

Mr. Marvin Gittler  
Asher, Gittler, Greenfield,  
Cohen and D'Alba, Ltd.  
125 South Wacker Drive  
Chicago, IL 60606

Re: Project Labor Agreement ("PLA")

Dear Mr. Gittler:

This letter confirms the discussions that were held on November 27, 1996 with Kathryn Nelson, Tim Brandhorst, Paula Radtke McCabe, you and me, and on December 6, 1996 with the same people and, in addition, Ed Hogan, Diane Minor, and Alicia Garcia. During those conversations, the following issues were discussed and the understandings indicated reached.

I. Specific Project Limitations

Pursuant to Paragraph 2. of the PLA, a contractor's obligations to the union may be limited (but are not required to be so limited) to a specific project and only for the duration of that project.

II. MBE/WBE Concerns

We indicated to Mr. Hogan and to you the Board's concerns that MBE/WBE contractors be able to successfully bid and continue on projects. Mr. Hogan and you indicated that where a non signatory to a trade agreement is a successful bidder its current employees may but need not be terminated or replaced as a consequence of becoming a signatory. We also discussed that there may be certain instances where it is necessary to call upon the union for employees and in such instance the contractor will receive the union's complete cooperation. It was stated that with other project labor agreements, the parties have always been able to work out any problems that have arisen at the project and consonant with the employer's MBE/WBE commitments.

Mr. Marvin Gittler

January 2, 1997

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III. Projects of \$10,000 or Less

The Board representatives sought and you again indicated that there will be no picketing or other disruptions of projects less than \$10,000. We also recognize that, pursuant to Paragraph 4 of the PLA, splitting of contracts should not occur in order to avoid the \$10,000 amount.

IV. Students/Parents/Volunteers

We discussed and agreed that the PLA does not in any way affect the use of non-paid volunteers, parents or students for in-school projects. We specifically called your attention to the Student Builders program which involves students building houses and working on in-school rehabilitation projects as part of the education program. This and similar education-relation programs are not covered by the PLA.

V. Apprenticeship Programs

We indicated to you the great importance that the Board and CEO places on facilitating participation by CPS students in apprenticeship programs. It was indicated that the trades would cooperate fully with the Board with regard to facilitating CPS students' knowledge and exposure to procedures relating to participation in apprenticeship in apprenticeship programs, including, but not limited to, the following:

A. To work with and assist contractors who provide internships, training programs or tutoring to CPS students as part of their contract with the Board;

B. To advise the Board as promptly as possible of available statistical information that you may have with regard to the number of CPS graduates who currently are members of the various trade unions apprentice programs;

C. To provide in-service training, as appropriate, to academic and vocational teachers with regard to describing and detailing the apprenticeship process and programs available to students and how they can get into such programs;

D. To consider the possibility of waiving or subsidizing fees or expenses as appropriate for items such as uniforms or tools for CPS students who may enroll in trade union apprenticeship programs;

E. To investigate with the goal of implementing programs analogous to those used at the CHA for the purpose of exposing CPS students to the various trades and crafts at on-site construction projects;



Mr. Marvin Gittler

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F. To survey and submit to the Board as promptly as possible the current programs the trades are participating in at the Chicago Public Schools;

G. To establish a tracking system to provide information to the Board with regard to the placement and status of CPS students and provide mentoring or tutoring to CPS students enrolled in apprenticeship programs;

H. To work cooperatively with the Board at job fairs and other events that the District or the trades may participate in from time to time.

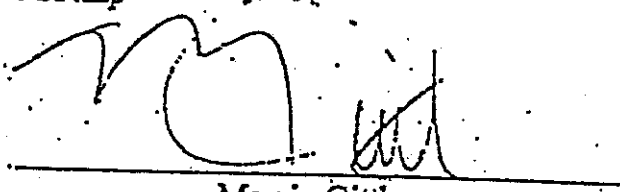
I. To establish an approximate process to ensure that the foregoing, as well as other specific actions or programs that facilitate the training and participation in apprenticeship programs by CPS students, are accomplished. At a minimum, such a process must include the prompt designation by the Board and the unions of at least one person on each side who will be primarily responsible for seeing that the apprenticeship initiatives are implemented.

I trust the above accurately summarizes our discussions with regard to the items indicated and, if so, please be kind enough to sign on the line indicated and send back a copy to me.

Very truly yours, -

  
James C. Franczek, Jr.

YCF:mp

  
Marvin Gittler

cc: Gery J. Chico, Esq.  
Mr. Paul G. Vallas  
Ms. Diane Minor  
Marilyn Johnson, Esq.  
Kathryn Nelson, Esq.  
Mr. Tom Doyle  
Mr. Tim Brandhorst ✓

List of Signatory Unions

Chicago Board of Education Multi-Project Labor Agreement

- Heat and Frost Insulators, Local 17
- Boilermakers Union Local No. One
- Chicago & Northeast Illinois District Council of Carpenters
- Cement Masons' Union Local No. 502
- Local Union 134, I.B.E.W.
- I.U.O.E. Local 150
- Glaziers, Architectural Metal and Glass Workers Local Union No. 27
- Architectural & Ornamental Iron Workers Local #63
- Marble Cutters, Setters & Masons Local 66
- Local #25 Tile Finishers Union B.A.C.
- Marble Finishers & Polishers #87 BAC
- Ceramic Tile Layers & Terrazzo Workers Local #67
- Sprinkler Fitters' Union Local #281, U.A.
- Sheet Metal Workers' International Association, Local 73
- United Union of Roofers, Waterproofers, and Allied Workers, Local No. 11
- Pointers, Cleaners & Caulkers Local 52, II.
- Chicago Journeymen Plumbers' Local Union 130, U.A.
- Journeymen Plasters Protective & Benevolent Society, Local No. 5
- Pipe Fitters' Association
- Machinists Local 126
- Iron Workers/Riggers L.U. 136
- Laborers District Council
- Laborers Local One
- Bridge, Structural and Reinforcing Iron Workers Local Union No. 1
- Painters District Council #14

## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

### I. INSURANCE COVERAGES PROVIDED UNDER THE OCIP:

A. The Board (hereinafter referred to as "Owner") will furnish the following coverages for the benefit of all eligible employees of enrolled Contractors and Subcontractors, performing Work at the Project Site:

#### 1. WORKERS' COMPENSATION & EMPLOYER'S LIABILITY:

Coverage: Statutory limits required by the Workers' Compensation laws of the State of Illinois with Employer's Liability.

Part One: Workers' Compensation: Statutory Limits

Part Two: Employer's Liability: Annual Limits per Insured  
Bodily Injury by Accident: \$1,000,000 each accident  
Bodily Injury by Disease: \$1,000,000 each employee  
Bodily Injury by Disease: \$1,000,000 policy limit

#### 2. COMMERCIAL GENERAL LIABILITY:

Coverage: Third Party Personal Injury, Bodily Injury and Property Damage Liability.

	<u>Limits of Liability</u> <u>Shared by all Insureds</u>
General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal/Advertising Injury Aggregate	\$ 1,000,000
Each Occurrence Limit	\$ 1,000,000

- NOTES:
- > This insurance will NOT provide coverage for products liability to any insured party, vendor, supplier, off-site fabricator, material dealer or other party for any product manufactured, assembled or otherwise worked upon away from the Project Site.
  - > Three (3) Year Products & Completed Operations extension, beyond Final Acceptance of the entire project with a single, non-reinstated aggregate limit.
  - > Excludes Real & Personal Property in the Care, Custody & Control of the insured; Asbestos; Discrimination & Wrongful Termination; Professional Liability; Owned & Non-owned Aircraft; Watercraft; Pollution (except Hostile Fire); Nuclear Broad Form Liability.
  - > See actual policy for terms and conditions.

## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

### 3. EXCESS LIABILITY: (Excess of Primary Commercial General Liability)

	<u>Limits of Liability</u> <u>Shared by all Insureds</u>
Each Occurrence Limit	\$100,000,000
Annual Aggregate Limit	\$100,000,000

NOTE: Follows form (provisions, coverages, exclusions, etc.) of underlying Commercial General Liability and Employer's Liability policies.

#### ➤ CONTRACTOR'S POLLUTION LIABILITY:

**COVERAGE:** Losses resulting from bodily injury, property damage, or environmental damage caused by pollution conditions from covered operations on site.

**Limit:** \$10,000,000 per occurrence and in the aggregate.

**Deductible:** \$5,000 per occurrence to be borne by the responsible contractor.

#### ➤ "ALL-RISK" BUILDER'S RISK/PROPERTY:

**COVERAGE:**

All materials, equipment and supplies intended for specific installation in the Project while such materials, equipment and supplies are located at a Project Site, in transit and while temporarily located away from the Project Site for the purpose of repair, adjustment or storage.. The Boards Builder's Risk Program does not cover theft losses.

**Limit:** \$30,000,000 at any one location. [Values in excess of \$30,000,000 must be reported to the Board of Education's Risk Management department].

**Deductible:** \$5,000 per occurrence to be borne by the responsible contractor.

## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

### B. NON-QUALIFIED/INELIGIBLE/EXCLUDED PARTIES UNDER THE OCIP

No insurance coverage provided by the Owner shall extend to the activities or products of the following:

- Any person or organization that fabricates or manufactures products, materials or supplies away from the project site(s).
- Any architect, engineer or surveyor and their consultants except when approved by the Owner.
- Truckers, material dealers, vendors, suppliers, and owner/operators (independent contractors), whose operation(s) or employee(s) is/are engaged solely in the loading, hauling or unloading of material, supplies or equipment to or from the project-site(s).
- Any employee(s) of an enrolled or non-enrolled Contractor or Subcontractor, including employee(s) of truckers, material dealers, vendors, suppliers and owner/operators (independent contractors), which is/are engaged solely in the loading, hauling or unloading of material, supplies or equipment to or from the project-site(s).
- Any employee(s) of an enrolled Contractor and Subcontractor that does not work or generate payroll at the project site(s).
- Any employee(s) of an enrolled Contractor and Subcontractor, that occasionally visits the project site(s) to make deliveries, pick up supplies or personnel, to perform supervisory or progress inspections, or for any other reason.
- Any Day Labor Employees (labor service employees whose coverage is provided by their employer)
- Owner's Insurance to be Excess - Any other insurance carried by the Owner shall be deemed excess and the Contractor's insurance shall be primary, despite any provisions in the Contractor's policy to the contrary.
- The Owner reserves the right to exclude any Contractor or Subcontractor from the OCIP. If the Owner elects to exclude a Contract from the OCIP, the Contractor and/or Subcontractor, of any tier, will be responsible for providing the insurance coverages outlined in Paragraph I above, with policy terms and conditions acceptable to the owner. The Contractor's and/or Subcontractor's Contract amount will be amended to include any additional insurance costs.
- Any other entity specifically to be determined by the Owner to be excluded.
- The Owner has the right to require the bidder to supply any requested information which the Owner, or its representatives, deem necessary to verify the accuracy of the excluded insurance costs identified in Contractor's or Subcontractor's OCIP Insurance Credit.
- Any Environmental/Asbestos Abatement Contractor or Subcontractor. Refer to Section II for Coverage applicable to Environmental and Asbestos Abatement Contractors and Sections III and IV for insurance required of such contractors.

## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

### II. INSURANCE COVERAGES PROVIDED FOR ENVIRONMENTAL CONTRACTORS:

The Owner is providing Abatement Contractors *only* with Environmental & General Liability insurance coverages for licensed Abatement Contractors and Abatement Subcontractors, along with their eligible employees performing Work at a Project Site. Abatement contractor's bids must exclude all costs for insurance coverages (including burden for overhead and profit, for Work performed at a Project Site) provided under the OCIP. Note - This program does not provide Workers' Compensation coverage to Abatement Contractors or Subcontractors.

#### A. General Liability

Coverage: (Excluding Automobile Liability and Professional Liability):  
Third party personal injury, bodily injury and property damage liability in a form providing coverage not less than the standard Commercial General Liability coverage part (Insurance Services Office [ISO] Occurrence Form 1996)

Minimum Limits of Liability:	All Insureds' Combined:
General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal/Advertising Injury Aggregate	\$ 1,000,000
Each Occurrence Limit	\$ 1,000,000

A deductible of up to \$5,000 per loss will be borne by the responsible Contractor for loss caused by the Contractor or its Subcontractor.

#### B. Environmental Liability

Coverage: Owner maintains blanket environmental liability insurance on an occurrence basis for all construction related claims :

Limit: \$10,000,000 Abatement Liability Insurance with shared limits covering contractors for bodily injury, property damage, cleanup costs and defense costs resulting from the abatement of asbestos, lead and PCBs including removal, enclosure or encapsulation, transportation by the Contractor of asbestos and lead-based paint waste, as well as coverage for both bodily injury and property damage for "...the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants" arising out of the Contractor's work at the Project site.

Deductible: Up to \$5,000 per loss will be borne by the responsible Contractor for loss caused by the Contractor or its Subcontractor.

The environmental liability insurance excludes the disposal and offsite storage of asbestos or lead-containing materials and PCBs. The Owner, Program /Construction Manager, Contractor and Subcontractors must be named as additional insureds on the transporters' liability policies, if the transporter is

## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

other than a covered Contractor.

### Exceptions/Notes:

- (a) The awarded Abatement Contractors, Subcontractors must be licensed to do such business within the State of Illinois. Upon their award, such Contractors will be provided with environmental liability insurance coverages for Work performed only at the Project Site.
- (b) The OCIP coverages are limited solely to Work performed at a Project Site. As such, products/completed operations coverage provided under the Commercial General Liability and the Excess Liability do not apply to any insured party, Contractor, Subcontractor, vendor, supplier, material dealer, or other product or material manufactured, assembled, or otherwise
- (c) This insurance will include a minimum of three (3) years products & completed operations extension, beyond final acceptance of the entire Project.

## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

### III. CONTRACTOR PROVIDED INSURANCE - ALL CONTACTORS

- Under the Owner Controlled Insurance Program, the Owner is providing certain insurance coverages for enrolled Contractors and Subcontractors, along with their eligible employees performing Work at a Project Site. Your bid must exclude all costs for insurance coverages provided under the OCIP.
  - It is a requirement that each bidder eliminate from it's bid the cost of providing Workers' Compensation, General Liability, Excess Liability, and Builder's Risk insurance, (including burden for overhead and profit), for Work performed at a Project Site.
1. The Amount of the Contract bid price must exclude the Contractor and its Subcontractors' of all tiers, insurance costs for the Board provided coverages outlined below:

The Board is providing insurance coverage on behalf of enrolled contractors and their enrolled subcontractors.

**On Site Insurance Coverage:** As indicated in Section I of Attachment D the Board will provide the selected Respondents with the following coverages:

- A. Workers' Compensation & Employers' Liability Coverage
- B. General Liability Coverage
- C. Excess/Umbrella Liability Insurance Coverage
- D. Contractor's Pollution Liability Coverage
- E. "All Risk" Builder's Risk/Property

Copies of the OCIP-1 Insurance Information Worksheet and OCIP-2 Insurance Summary form are enclosed for reference. The OCIP 1 and 2 forms are to be completed by the successful Contractor and submitted within 7 working days of the Notice of Award.

2. The contract bid must include costs for all required insurance coverages, not provided by the OCIP, but necessary to perform Work at the Project Site. This would include:
  - A. Automobile Liability Insurance
  - B. Off-Site Workers' Compensation & Employer's Liability Insurance
  - C. Off-Site General Liability
  - D. Aircraft/Aviation Liability (if applicable)
  - E. Professional Liability/Errors & Omissions Insurance
  - F. Maritime/Watercraft Insurance (if applicable)
  - G. Contractor's Property Insurance



## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

### A. Automobile Liability (for operations at and away from the Project-Site)

Coverage: Bodily Injury and Property Damage for all Owned, Hired and Non-owned automobiles, trucks and trailers with coverage not less than that of a Commercial Business Automobile Liability Policy

Combined Single Limit:           \$1,000,000 General Contractors  
  \$ 500,000 Subcontractors

### B. Off-Site Workers' Compensation and Employer's Liability

Coverage: Statutory limits required by the Workers' Compensation laws of the applicable jurisdiction, with Employer's Liability.

Part One:	Workers' Compensation:	Statutory Limits
Part Two:	Employer's Liability:	<u>Required Annual Limits</u>
	Bodily Injury by Accident:	\$500,000 Each Accident
	Bodily Injury by Disease:	\$500,000 Each Employee
	Bodily Injury by Disease:	\$500,000 Policy Limit

### C. Off-Site General Liability

Coverage: Third Party Personal Injury, Bodily Injury and Property Damage Liability (including products liability for any product manufactured, assembled or otherwise worked upon away from the Project Site).

Must provide Products/Completed Operations for a minimum of two (2) years following project completion.

Minimum Requirements:	<u>Annual Limits of Liability</u>
General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 1,000,000
Each Occurrence Limit	\$ 1,000,000

### D. Aircraft/Aviation Liability (if applicable)

Should aircraft of any kind be used by Contractor, Subcontractor of any tier, or by anyone else on its behalf, Contractor or Subcontractor shall maintain or cause the operator of the aircraft to maintain Aviation Liability Insurance subject to:

Combined Single Limit:           \$5,000,000

- The Owner and the Public Building Commission of Chicago must be added as an "additional insured" to the policy.
- Waiver of hull damage must be provided in favor of the Owner and the Public Building Commission of Chicago.
- If any lifts are performed, a "slung cargo" endorsement must be attached to the

## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

policy to cover the full replacement value of any equipment or material being lifted.

### E. Professional Liability/Errors & Omissions Insurance (if applicable)

In the event any Contract specifications requires a Contractor to provide professional services, such as but not limited to, architectural, engineering, construction management, surveying, design, etc., a certificate of insurance must be provided prior to commencing work evidencing such coverage with a limit of not less than \$2,000,000. Any material change in limits, coverages or loss of aggregate limit due to outstanding claims must be reported to the OCIP Administrator within thirty (30) days of any such event.

### F. Maritime/Watercraft Insurance (if applicable)

In the event a watercraft is used in connection with the Contract, it must be insured by a Hull and Protection and Indemnity Policy with the following requirements:

**Hull Coverage:** Limits of insurance sufficient to cover the watercraft, its equipment and all additional equipment aboard during the time it is in use on the job.

**Protection and Indemnity:** Liability limits of no less than \$5,000,000; including coverage for the construction activity for which the watercraft is used.

Master and Crew coverage shall include General Maritime Liability, Jones Act and Wages, Transportation, Maintenance and Cure.

### G. Contractor's Property Insurance

Property Insurance covering Contractor's/Subcontractor's personal property, tools and equipment, whether owned, leased, rented or borrowed by Contractor/Subcontractor.

## EXHIBIT D-OCIP INSURANCE REQUIREMENTS

### ADDITIONAL CONTRACTOR REQUIREMENTS - CONTRACTOR PROVIDED INSURANCE

If you are awarded the bid, Contractor and its Subcontractors, of all tiers must comply with the following:

- Best Rating - All insurers shall be licensed by the State of Illinois and rated A- VII or better by A.M. Best or comparable rating service. The Director of Risk & Benefits Management of the Board of Education of the City of Chicago must approve any deviation. Satisfactory evidence of insurance coverage shall be submitted to the Board and the OCIP Administrator upon request.
- Notice of Cancellation - Sixty-day (60) written notice shall be provided to the Owner regarding any change in or cancellation of Contractor-furnished insurance.
- Additional Insured - Each required liability insurance policy shall be endorsed to show the Board of Education of the City of Chicago, and its employees and the Public Building Commission of Chicago as additional insureds on a primary, non-contributory basis.
- Waiver of Subrogation - Each Contractor and its Subcontractors of all tiers shall require all policies of insurance that are in any way related to the Work and that are secured and maintained by the Contractor and Subcontractors to include clauses to waive all rights of recovery, under subrogation or otherwise, against the Owner, the Public Building Commission of Chicago, the Contractor and Subcontractors of all tiers.
- Contractor Waiver Each Contractors and its Subcontractors of all tiers waives all rights of recovery against the Owner, the Public Building Commission of Chicago, Subcontractors of all tiers, which the Contractor may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Work.



December 27, 2001

Richard J. Daley Center  
50 W. Washington Street  
Room 200  
Chicago, Illinois 60602  
(312) 744-3090  
Fax: (312) 744-8005

Joseph Scarpelli  
F.H. Paschen/SN Nielsen  
8725 West Higgins Road, Suite 200  
Chicago, Illinois 60631

BOARD OF COMMISSIONERS

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Forest Preserve District of Cook County

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EILEEN J. CAREY

Assistant Treasurer  
JOHN E. WILSON  
John E. Wilson, Ltd.  
Certified Public Accountants

Acting Assistant Secretary  
TIMOTHY J. MITCHELL

RE: Contract No.: 1264  
Project No.: CPS-10  
Type of Work: General Work  
Project: Neal F. Simeon Career Academy

**NOTICE TO PROCEED**

Dear Mr. Scarpelli:

Pursuant to Contract No. 1264, which was awarded to your firm on **December 11, 2001**, you are hereby notified that the commencement date for this project is **December 27, 2001**.

Pursuant to Specification Section 01030-Construction Operations Plan (Section 01030) of the contract, the preliminary acceptance and receipt of certificate of temporary occupancy for the primary scope of work is established as **August 4, 2003**. The preliminary acceptance and receipt of certificate of final occupancy for the secondary scope of work is established as **April 19, 2004**. Your attention is directed to specific completion dates for all scope of work as stipulated in Section 01030.

The administration and inspection of the work included in this Contract is under the direction of the Public Building Commission. **Alfred Benesch & Company** will perform as the Commission's Owner's Representative. Please submit the original and three copies of all correspondence pertaining to this work to:

Mr. Eric Borgman  
Alfred Benesch and Company  
205 N. Michigan Avenue, Suite 200  
Chicago, Illinois 60601



along with a copy to Mr. Yoav Yaakoby, the Commission's Project Manager. Please reference the PBC project number and Contract Number on all correspondence.

This Notice to Proceed authorizes you to enter upon the project site and commence with the work on December 27, 2001.

Sincerely,

**Public Building Commission of Chicago**

A handwritten signature in black ink, appearing to read "Eileen J. Carey".

Eileen J. Carey  
Executive Director

EJC/dz

cc: Timothy Martin  
Timothy Mitchell  
Rusty Castillo, CPS  
Val Lucas, CPS  
Jack Brankin  
K. Gujral  
Yoav Yaakoby  
Julia Sportolari  
Nancy Jahnel  
Eric Borgman  
Target  
Near North Insurance  
AON Risk Services, Inc. of Illinois