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JOINT SCHOOLS CONSTRUCTION BOARD
SCHOOL CONSTRUCTION AND REHABILITATION PROGRAM

WORKFORCE DEVELOPMENT AND DIVERSITY PROGRAM AGREEMENT

between

THE BUILDING AND CONSTRUCTION TRADES COUNCIL
OF BUFFALO, NEW YORK AND VICINITY, AFL-CIO;

EMPIRE STATE REGIONAL COUNCIL OF CARPENTERS
LOCAL UNION NO. 9; and

EMPIRE STATE REGIONAL COUNCIL OF CARPENTERS
LOCAL UNION NO. 42

and

LOUIS P. CIMINELLI MANAGEMENT COMPANY

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JOINT SCHOOLS CONSTRUCTION BOARD PROJECT AGREEMENT

This Workforce Development and Diversity Program Agreement (hereinafter, the “Agreement”) is entered into this ____ day of _____, 2003 by and among Louis P. Ciminelli Management Company, Program Packaging and Development Services Provider (hereinafter, “Program Manager”), the Building and Construction Trades Council of Buffalo, New York and Vicinity, AFL-CIO (hereinafter “Council”) on behalf of its affiliated Local Unions (hereinafter, collectively called the “Union” or “Unions”), and the United Brotherhood of Carpenters and Joiners of America Local Union No. 9 with respect to the new building construction and old building renovation work within the scope of this Agreement and under the direction of the Program Manager as assigned by the Joint Schools Construction Board of the city of Buffalo (hereinafter, “JSCB”) and the city school district of the city of Buffalo (hereinafter, “city school district”) for the following construction (the “Project”) :

The construction of new educational facilities and the rehabilitation and reconstruction of existing facilities in the city of Buffalo.

It is understood by the parties to this Agreement that if this Agreement is acceptable to the JSCB and reviewed and approved as described in Article XVIII, it becomes the policy of the JSCB that the construction work covered by this Agreement shall be contracted to Contractors agreeing to execute and be bound by the terms of this Agreement. The Program Manager shall monitor compliance with this Agreement by all Contractors, who through their execution of this Agreement, together with their subcontractors, have become bound hereto.

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The Unions, the Program Manager and all signatory Contractors agree to abide by the terms and conditions contained in this Agreement. This Agreement represents the complete understanding of the parties.

No Contractor is required to sign any other union collective bargaining agreement as a condition of performing work within the scope of this Agreement. This is a stand-alone Agreement, and nothing herein shall be construed to in any way whatsoever obligate or bind a Contractor with regard to any of its work outside the Project.

No practice, understanding or agreement between a Contractor and a Union which is not specifically set forth in this Agreement shall be binding unless endorsed in writing by the Program Manager.

It is understood and agreed that the Program Manager has signed this Agreement at the behest and direction of the JSCB, and that nothing herein shall be construed to in any way whatsoever obligate or bind the Program Manager with regard to any of its other work outside the Project.

ARTICLE I

DEFINITIONS

The term "Contractor" shall include all construction contractors and subcontractors of whatever tier engaged in on-site construction work within the scope of this Agreement.

Where specific reference to Louis P. Ciminelli Management Co. is intended, the term "Program Manager" is used.

The term "Labor Organization", "Labor Organizations", "Union", or "Unions" as used in this Agreement shall refer to the Building and Construction Trades Council of Buffalo, New York and Vicinity, AFL-CIO and Asbestos Workers Local Union No. 4, Boilermakers Local

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Lodge No. 7, Bricklayers Local No. 3, Carpenters Local No. 9, Carpenters Local No. 42, Cement Masons Local Union No. 111, Electrical Workers Local Union No. 41, Elevator Constructors Local Union No. 14, Glaziers Local Union No. 660, Ironworkers Local Union No. 6, Laborers Local Union No. 210, Operating Engineers Local Union No. 17, 17A, 17B, 17C and 17RA, Painters District Council No. 4, Plasterers Local Union No. 9, Plumbers and Steamfitters Local Union No. 22, Roofers Local Union No. 74, Sheet Metal Workers Local Union No. 71, Sprinkler Fitters Local Union No. 669, Teamsters Local Union No. 449, Technical Engineers IUOE Local No. 17D, and any other labor union which is signatory to this Agreement.

The term “Project” shall refer to the construction necessary for implementation of the city school district construction and reconstruction program as authorized by the Buffalo Cooperative School Construction Act (Chapter 605 of the Laws of 2000) and approved by the JSCB.

ARTICLE II

PURPOSE

The purpose of the Project is to implement a ten-year comprehensive redevelopment of the physical plant of the city school district. Such work will be structured to maximize the economic development potential for the city of Buffalo, New York and its residents.

The city of Buffalo and Buffalo Board of Education have created the Joint Schools Construction Board (“JSCB”), a new municipal board charged with planning, financing and constructing new schools in the city of Buffalo, and with overseeing the logistics, financing, and reconstruction of the existing city school district buildings.

In this regard, the State of New York recently enacted groundbreaking legislation (Chapter 605 of the Laws of 2000) to facilitate the construction of new schools and reconstruction of existing schools throughout the city of Buffalo. As part of this new law, the

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JSCB has been authorized to pursue innovative means to finance, construct, lease and otherwise develop modern school facilities in which to educate city residents. This new legislation allows Buffalo to undertake this comprehensive new school development program with exemption in part from Wicks Law restrictions and lowest bid requirements and provides for and requires the use of alternative financing methodologies such as Erie County Industrial Development Agency (ECIDA) bonding because of the city of Buffalo's and its school district's inability to finance this project.

A. Reconstruction

The city school district has used its existing schools stock long and hard—30 years longer than the national average. While in generally sound structural condition, many of the buildings are inadequate to meet the task of delivering a 21st century education. There is a vast disparity between the facilities offered in each of the schools. Many classrooms have inadequate electrical service for computers. Many buildings were built, or modified, prior to existing code restrictions. As the city school district competes for the best instructors, attractive and modernized surroundings will help in recruiting and retaining staff. A quality learning environment will convey to students and staff both the importance of education and the expectation of student success.

The city school district has spent more than \$80 million on school construction and renovation over the last five years, but has been unable to keep up with the enormous need. Recognizing this, the New York State Education Department (“SED”) offered an extraordinary opportunity to the city of Buffalo and its school district. In January 2000, the Office of Facilities Planning brought its entire team to Buffalo, reviewed plans for all existing schools, and gave a rated capacity and maximum cost allowance for each. The SED requested the city school district

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put together a long-range plan for hundreds of millions of dollars in reconstruction, prior to June 30, 2000, after which it would lock in the 93.7% reimbursement rate. The school district sent teams of architects and engineers to each school to conduct a detailed building conditions survey. These teams then developed a comprehensive list of necessary work they identified in each school. Buffalo and its school district presented the requested five-year plan to SED in June 2000 for \$671 million worth of school reconstruction that SED approved.

B. New Schools

Buffalo needs new schools. On average, a Buffalo public school is 70 years old, versus the national average of 40 years. Only three new schools have been built within the last 25 years. Buffalo is planning to build up to six new schools within the next ten years.

The JSCB was originally formed for the purpose of planning, financing and developing new schools. Its members are the Mayor, the Comptroller, a member of the Common Council, the Superintendent of Schools and two members of the Board of Education. Buffalo recognizes that effective urban schools include a variety of family and student support facilities. The JSCB envisions design concepts and financing scenarios that maximize state building aid on instruction spaces as well as shared facilities with organizations and institutions for spaces with little or no reimbursement, such as athletic facilities, family and social support services, health clinics and cafeterias, possibly under a master lease development framework/ownership. Buffalo and its school district have a primary objective: to develop the very finest schools offering a full range of family and student teaching and support services as efficiently and economically as possible.

ARTICLE III

UNIQUE FEATURES AND GOALS OF PROJECT

The Buffalo city school district is responsible for providing a quality education to

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thousands of children in elementary, secondary and special programs located in dozens of buildings throughout the city of Buffalo. That responsibility must be met, without interruption or delay, throughout the 10 year period during which the school district's physical plant is being rehabilitated or replaced. During this construction, it will be necessary to relocate children from their regular buildings to temporary facilities, utilize buildings on an interim basis that are less suitable for classroom purposes, and limit or deny access to portions of occupied buildings which are undergoing renovation. These relocations and inconveniences must be kept to an absolute minimum to avoid adversely impacting the educational opportunities of the children of Buffalo, to provide continuity of operations within the school district, and to manage the costs of the project by maintaining sequencing and coordination of schedules.

Therefore, it is essential that the construction work be done in an efficient and economical manner in order to secure optimum productivity and eliminate any delays or disruptions in the work. In recognition of the special needs of the Project and to maintain a spirit of harmony, cooperation, labor-management peace and stability during the term of this Agreement, the parties agree to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. To that end, the Unions agree not to engage in any strike, slowdown or interruption of work on or with respect to the Project sites and the Contractors agree not to engage in any lockout on or with respect to the Project sites.

With approximately one billion dollars worth of construction planned for sites throughout every neighborhood of the city of Buffalo, there is tremendous potential for multiplying the economic development benefits of such investment. The Project will be structured to encourage maximum benefit to the city school district, the city of Buffalo and all its residents and will be integrated with neighborhood, economic, and workforce development initiatives , minority and

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women owned business participation, neighborhood revitalization and other economic development initiatives of the Project. In addition, parties to this Agreement will be required to cooperate to the fullest extent with current and future city school district operations, initiatives and projects. The specific goals of the Project are as follows:

- a. Build new schools and reconstruct existing schools to create learning environments that are at the forefront of educational design and that deliver the flexible spaces, instructional technology and social support necessary to enhance student achievement, equal to or exceeding the NYS Regents standards.
- b. Build new and reconstruct existing schools such that the quality of facilities district-wide is equitable, and such that the quality of facilities is equal to or superior to those of any other school district in the state.
- c. Develop shared facilities for educational, public safety, social support and recreational purposes.
- d. Maximize the economic benefit from school construction and reconstruction to neighborhood development and economic revitalization throughout the city of Buffalo.
- e. Assist the city school district, local labor organizations, government and not-for-profit agencies to develop and train a skilled workforce which meets the diversity goals of the project.
- f. Encourage, assist and sustain business development of under represented populations (*i.e.*, people of color and women) and maximize the use of Buffalo-based labor and local professional and construction-related business enterprises through a progressive and comprehensive Workforce and Business Diversification

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- g. Identify and utilize innovative financing techniques to provide sources for the local share—that portion of the cost that is not reimbursable under the Project’s SED reimbursement formula—and to minimize (i) the local share of the costs of the program, (ii) debt incurred by the city of Buffalo for the program and (iii) net debt service and operation and maintenance costs.
- h. Find creative solutions for interim school space during project build-out in a manner that minimizes disruption to existing school operations and classroom instruction.

ARTICLE IV

SCOPE OF THE AGREEMENT

Section 1. This Agreement shall apply and is limited to certain construction, as described herein, performed under the direction of the signatory Contractors by those Contractors of whatever tier that are awarded contracts for such work following the effective date of this Agreement and its approval by the JSCB as described in Article XVIII. This Agreement shall cover and apply to such contracts, which shall be referred to in this Agreement as the “covered work.”

Contracts and work specifically excluded from the scope of this Agreement include the following:

- a. Any work by the JSCB and the city school district other than the Project specifically identified above.
- b. Work by employees of the city school district, and work by the Program Manager, architects/engineers, professional surveyors, testing and inspection firms, and other such

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professional services organizations on the Project sites.

c. Non-Project work and/or activity by employees of the city of Buffalo and the city school district and any entity engaged in the business of the city of Buffalo, the city school district and the JSCB.

d. Work of non-manual employees, including but not limited to: superintendents, supervisors, staff engineers, inspectors, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, security personnel, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory and management employees.

e. Work done by equipment or machinery owned or controlled and operated by the city of Buffalo, city school district and building custodian-engineers.

f. All off-site work, including delivery of any material fabricated off-site except for dedicated lay-down storage areas and delivery between such dedicated sites and the Project site.

g. The transportation off-site of scrap, surplus, spoilage, and waste materials.

h. Work associated with loose fixtures, furniture, and equipment such as computers, copiers, TV monitors, desks and chairs, and work associated with specialty type FF&E.

i. Work by employees of firms making deliveries to the Project, including dropping of materials on the jobsite during the delivery process.

j. All work done by public utility companies whether on-site or off-site (*e.g.*, telephone, cable TV, gas, water, electric, sewer).

k. All work done by government agencies (*e.g.*, Erie County Water Authority, Buffalo Sewer Authority, city school district, city of Buffalo).

l. All non-construction support services performed in connection with this Project.

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m. Any work done in city school district controlled areas of the buildings/sites after the district takes occupancy or early occupancy of a phase or a portion of a phase of the Project or in those cases in which the city school district retains occupancy of a portion of a building.

n. All work done by technical representatives performing startup-related services for permanent equipment.

o. All work done by the city of Buffalo or city school district in the nature of emergency repairs, remediation, or maintenance.

Section 2. It is understood by the parties that the JSCB may at any time and at its sole discretion determine to modify the Project currently proposed or not to build or to suspend any portion of the Project.

Section 3.

a. The JSCB, the Program Manager, and/or Contractors, as appropriate, have the absolute right to select any qualified Contractor for the award of contracts or subcontracts on this Project notwithstanding the existence or non-existence of any agreements between such Contractor and any Union, provided only that such Contractor is willing, ready and able to execute and comply with this Agreement should it be designated the successful Contractor.

b. It is agreed that all direct subcontractors of a Contractor, of any tier, who have been awarded contracts for work covered by this Agreement on or after the effective date of this Agreement shall be required to accept and be bound by the terms and conditions of this Agreement and shall evidence their acceptance by the execution of this Agreement or a letter of consent provided to the Program Manager prior to commencement of work. A copy of the Agreement or letter of consent executed by the subcontractor shall be available for review by the Union.

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Section 4.

a. The provisions of this Agreement (including the collective bargaining agreements in Schedule A, which are the collective bargaining agreements of the signatory Local Unions having jurisdiction over work on the Project) shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject addressed by the provisions of this Agreement is also covered by a local collective bargaining agreement in Schedule A, the provisions of this Agreement shall prevail, except that the work of the International Union of Elevator Constructors on this Project shall be performed under the terms of its national agreements, with the exception of Article VIII, IX and X of this Agreement, which shall apply to such work. Where a subject is covered by the provisions of a Schedule A local collective bargaining agreement and is not addressed by this Agreement, the provisions of the Schedule A agreement shall prevail.

b. Any timely dispute as to the applicable source between this Agreement and any Schedule A agreement for determining the wages, hours and working conditions of employees on the Project shall be resolved in accordance with the grievance and arbitration procedures of this Agreement. It is understood that this Agreement, together with the referenced Schedule A local collective bargaining agreements, constitutes a self-contained, stand-alone Agreement and that, by virtue of having become bound by this Agreement, neither the Program Manager nor any Contractors will be obligated to sign or in any way be bound by any other local, area or national agreement.

Section 5. This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other venues of any such party. Neither

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the JSCB, the city of Buffalo, nor the city school district is an employer in the construction industry, and shall not hire or be an employer of any employees hired to work on the Project covered by this Agreement. Further, by virtue of entering into this Agreement, the JSCB will not become party to any collective bargaining agreements with any signatory or non-signatory labor organizations. For purposes of this Agreement, the role of the JSCB shall be limited to approving this Agreement and designing bid qualifications that require successful bidders to comply with the terms of this Agreement.

Section 6. Once this Agreement is reviewed and approved by the JSCB as set forth in Article XVIII, it shall be the policy of the JSCB that construction work covered by this Agreement shall be contracted to Contractors who agree to execute and be bound by the terms of this Agreement.

Section 7. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed as limiting the JSCB's sole discretion to determine which Contractors shall be awarded contracts for phases of this Project included in the covered work. It is also understood that the JSCB, in its sole, exclusive, and non-reviewable discretion, may, for any reason, cancel, terminate, delay, modify or suspend any work to be performed on this Project, including any and all covered work, in whole or in part.

Section 8. Nothing in this Agreement shall be construed to prohibit or restrict employees of the city of Buffalo, the city school district or the owners of school buildings from performing on- or off-site work related to the Project. Further, the JSCB, city of Buffalo and city school district shall not be liable, directly or indirectly, to any party, for any act or omission of any Contractor, the Program Manager, the Council or any Union, including, but not limited to,

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any violation or breach of this Agreement by any Contractor, the Program Manager, the Council or any Union.

Section 9. It is understood that the liability of any Contractor and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employment status between or among the JSCB and/or the Program Manager, and/or any Contractor.

Section 10. None of the provisions of this Agreement shall be construed to prohibit or restrict the city of Buffalo and the city school district or their employees from performing work not covered by this Agreement on or around the construction site. As areas and systems of the covered work on the Project are inspected and tested by the Contractor, approved by the Engineer, and accepted by the JSCB, the Agreement shall have no further force or effect on such items or areas, except when the Contractor is directed by the JSCB or Program Manager to engage in repairs, modifications, checkout, and/or warranty functions related to such items or areas required by its contract(s).

ARTICLE V

UNION RECOGNITION AND EMPLOYMENT

Section 1. The Contractor recognizes the Unions as the sole and exclusive bargaining representatives of all craft employees working on the Project within the scope of this Agreement.

Section 2. The Contractor shall, consistent with the applicable Schedule A collective bargaining agreements, have the right to determine the competency of all employees, the number of employees required, and shall have the sole responsibility for selecting employees to be laid-off consistent with Section 3(d) of this Article.

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Section 3.

a. Subject to the provisions of this Agreement, the Contractor agrees to hire employees for covered work through the job referral systems provided for below. This job referral system will be operated in a non-discriminatory manner and in full compliance with federal, state and local laws and regulations which require equal employment opportunities and nondiscrimination, and referrals shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspects or obligations of union membership and shall be subject to such other conditions as established in this Article. The Contractor will hire, per craft, one (1) journeyman employee referred by the applicable trade or craft, and then one (1) core employee who is employed by that Contractor, and shall repeat the process, one and one, until the crew requirements for that craft are met. It is agreed and understood that if the Contractor does not have a regular core employee available, it must seek a referral from the applicable trade, consistent with the provisions of subsection (e) below. The Contractor shall have the right to reject any referral based on competency.

b. Contractors may be asked to demonstrate that their core employees have in fact been regularly employed by the Contractor for at least a reasonable period of time by evidence mutually acceptable to the Program Manager and the Union. A reasonable period of time shall be 1,000 hours of employment in the twelve (12) months preceding employment under this Agreement; or for newly established businesses that are less than seven months old as of the date of the award of the contract, employment for at least a period of time equal to one month less than the length of time the Contractor was in business as of the date of the award of the contract.

c. The Unions recognize and acknowledge that the Project has established goals for workforce development and minority and women owned business participation. The goals are

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reflected in the Development and Diversification Plan for Workforce and Business which is made part of this Agreement by reference and attached as Schedule B. The Unions recognize and acknowledge that the established goals set forth in the plan may be modified by the JSCB. The Unions agree that this Agreement shall be performed in a manner to achieve the workforce and business development goals of the Project and agree to the following terms to achieve such performance.

(i) **Workforce Development and Diversity**

The Unions agree to the following terms to meet the workforce development and diversity goals of the project:

- (A) Each Union will provide to the Program Manager, not less than once each year, a census report of its members. Such census report will provide information regarding the number of minority and women members and the status of those members as to apprenticeship and journeyman classification. The first such census reports shall be delivered prior to execution of this Agreement.
- (B) Each Union agrees to adopt a plan with membership enrollment goals of 35% minority and 10% women members within the first five years of the project, recognizing that the physical work of the trade, such as iron work, may discourage the enrollment of women.
- (C) The Unions agree that their enrollment goals for all pre-apprenticeship classes will be 35% minority and 10% women.
- (D) The Unions agree that their enrollment goals for all apprenticeship classes will be 25% minority and 10% women.

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- (E) The Unions agree that seniority or other preference rules may not be utilized to frustrate the diversity goals of the Project or workforce development and diversity provisions of this Agreement.
- (F) The Unions agree that individuals with construction industry experience outside of a unionized workforce who desire to become members of the various trade unions will be admitted at the status and grade commensurate with the skills acquired from their experience in the trade. Individuals who require additional training to achieve journeyman status will receive such training from the Unions.
- (G) The Unions agree to maintain the operation of the building trades pre-apprenticeship training center on Clyde Street in Buffalo, New York or at such other location as may be determined to provide the same quality of vocational training. To support the programs of the training center, the Contractors will contribute \$0.10 per hour worked on the Project toward the operation of the training center which contributions shall be utilized solely for training residents of Erie County. The training center's Board of Directors shall not exceed twenty (20) members. Union employers shall constitute not less than 30 percent of the Board of Directors.

(ii) **Minority and Woman Owned Business Participation**

The Unions acknowledge that another goal of the Project is to achieve participation in the work of the project by minority- and woman-owned businesses. More specifically, the Development and Diversification Plan for Workforce and Business adopted by the JSCB established a goal of 25% minority business and 5% woman business participation. The Unions

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agree that this Agreement will be implemented in a manner to assist minority- and woman-owned businesses to participate in the work of the Project. To that end, the Unions agree to:

- (A) Provide training to MBEs and WBEs whether union or non-union,
- (B) Facilitate, where possible, the retention of core employees employed by non-union MBE and WBE contractors, and
- (C) Help stabilize MBEs and WBEs to enable continued participation.

d. If the Contractor's employee mix is not sufficient to meet the Project's established workforce development goals, and the Union is unable to refer minority or women employees, the Contractor may recruit or assign minority or women employees to achieve those goals without regard to the "one and one" procedure set forth in paragraph (a) above. So too, if the Union has minority or women referrals available who will enable the Contractor to achieve its hiring goals, and the available core employees of the Contractor are not minority or women core employees, the Contractor shall be obligated to hire those Union minority or women referrals without regard to the "one and one" procedure set forth in paragraph (a) above.

e. In the event a reduction of force is required for such Contractor, employees will be laid off in the reverse order in which they were hired for the work covered by this Agreement.

f. Should a Contractor desire apprentices, he shall request them from the affected Union. Notwithstanding any restrictions on the referral of apprentices set forth in the local collective bargaining agreements in Schedule A, apprentices may be employed in numbers permitted by the New York State Department of Labor. Hired Union apprentices shall be counted the same as journeymen for the "one and one" procedure set forth in paragraph (a) above.

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g. In the event that a Local Union is unable to fill any requisition for employees within a twenty-four (24) hour period after such requisition is made by the Contractor (Saturdays, Sundays, and Holidays excepted) the Contractor may employ applicants from any other available source.

Section 4. All employees working on this Project and therefore covered by this Agreement shall be subject to the Union security provisions contained in the applicable local collective bargaining agreements in Schedule A. Any membership obligation will be limited, at the employee's option and in accordance with law, to financial core membership. No employee shall be compelled or required to attain or maintain membership in any labor organization to work on this Project.

Section 5. The Local Unions shall not knowingly refer employees to a Contractor under this Agreement who are currently employed by another Contractor working under this Agreement.

Section 6. The Local Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft workers to fulfill the manpower requirements of the Contractors.

Section 7. Except as provided in Section 3(e) of this Article and Article VI, Section 3, individual seniority shall not be recognized or applied to employees working on the Project.

Section 8. The selection of craft foremen and/or general foremen shall be the sole responsibility of the Contractor. This responsibility may be exercised without regard to the one and one ratio set forth in paragraph (a). The Contractor may determine the number of foremen to be utilized on the job, subject to safety considerations. All foremen shall take orders exclusively from the designated Contractor representatives and shall be compensated in accordance with the

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applicable local collective bargaining agreement. Craft foremen shall be designated as working foremen at the discretion of the Contractor. There shall be no premium pay for general foremen.

Section 9. Employees who have been terminated for cause who are subsequently referred by the Union for rehire may be rehired or not rehired in the Contractor's total discretion.

ARTICLE VI

UNION REPRESENTATION AND STEWARDS

Section 1. Authorized representatives of the Unions shall have access to the Project, provided they do not interfere with work of employees and further provided that such representatives fully comply with the visitor and security and safety rules of the Project and the JSCB, which may be established by the JSCB and/or the Program Manager in their sole discretion. A copy of those rules and any amendments thereto shall be provided to the Unions by the Program Manager within fifteen (15) days of their effective date.

Section 2.

a. Each signatory Local Union shall have the right to dispatch a working journeyman as a steward for each contractor and subcontractor for each shift at each work site, consistent with Article V, Section 3, and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of duties as steward. Such designated steward or stewards shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay of their respective crafts.

b. In addition to his work as an employee, the steward shall have the right to receive, but not solicit, complaints or grievances and to discuss and assist in the adjustment of same with the employee's appropriate supervisor. Each steward shall be concerned only with the employees of the steward's Contractor or subcontractor, and not with the employees of any other

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contractor or subcontractor. The Contractor will not discriminate against the steward with regard to the proper performance of his Union duties.

c. Notwithstanding any applicable provisions contained in any Schedule A collective bargaining agreement, the stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

Section 3. The Contractor agrees to notify the appropriate Union twenty-four (24) hours prior to the layoff of a steward, except in the case of discipline or discharge for just cause. If a steward is protected against such layoff by the provisions of any Schedule A, such provisions shall be recognized to the extent that the steward possesses the necessary qualifications to perform the work remaining. In any case in which a steward is discharged or disciplined for just cause, the appropriate Union shall be notified immediately by the Contractor.

Section 4. On work where personnel of the Owner and/or of Contractors performing work excluded from the scope of this Agreement may be working in close proximity to the covered work construction activities, the Unions agree that all employees will cooperate with efforts to coordinate work activities that are ongoing at the site.

ARTICLE VII

MANAGEMENT'S RIGHTS

Section 1. The Contractor retains the full and exclusive authority for the management of its operation. Except as expressly limited by other provisions of this Agreement, the Contractor retains the right to direct the work force, including the hiring, promotion, transfer, lay-off, discipline or discharge for just cause of its employees; the selection of foremen; the assignment and scheduling of work; the promulgation of reasonable work rules; and the requirement for overtime work, the determination of when it will be worked, and the number and

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identity of employees engaged for such work. The Contractor may utilize any methods or techniques of construction.

Section 2. There shall be no limitation or restriction upon the Contractor's choice of materials or design, nor regardless of source or location, upon the full use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. Further, nothing in any Schedule A collective bargaining agreement shall restrict the Contractor's choice of materials based upon the identity of the supplier of the material, the supplier's location, or any other criteria not allowed by law. The on-site installation or application of all items not specifically excluded in Article IV, Section 1(h) shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that installation of specialty items: (a) may be performed by employees employed under this Agreement with the participation of other personnel in a supervisory role; or (b) in limited circumstances, where employees working under this Agreement lack requisite special knowledge of the particular items(s) or cannot protect a vendor guarantee or warranty, may be performed by employees of the vendor or other companies who possess the required knowledge, skills or ability.

Section 3. Except as otherwise expressly stated in this Agreement, it is recognized that the use of new technology, equipment, machinery, tools and/or labor-saving devices and methods of performing work will be initiated by the Contractor from time to time during the Project. The Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to grieve and/or

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arbitrate the dispute as set forth in this Agreement.

ARTICLE VIII

WORK STOPPAGES AND LOCKOUTS

Section 1. There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason (including disputes relating to the negotiation or re-negotiation of the local collective bargaining agreements contained in Schedule A) by the Union or by any employees on or with respect to the Project sites. There shall be no lockout by any Contractor on or with respect to the Project sites. Failure of any Union or employee to cross any picket line established by any Union, signatory or non-signatory to the Agreement, or by any other organization at or in proximity to the Project construction sites is a violation of this Article.

Section 2. The Contractor may discharge any employee violating Section 1 above and any such employee will not be eligible for referral under this Agreement. The Program Manager and the Union shall take all steps necessary to obtain compliance with this Article and neither shall be held liable for conduct for which it is not responsible.

Section 3.

a. If the Contractor contends that any employee has violated this Article or the provisions of Article XXI, Section 3, it will notify the Local Union(s) involved of the violation in writing, with copies of such notice to the Building Trades Council and the Program Manager. Such notice shall be made by any means, including telegram, facsimile, hand delivery, or overnight delivery. The Local Union(s) will immediately instruct, order and use its best efforts to cause the employee(s) to cease any violation of this Article. A Union complying with this obligation shall not be liable for unauthorized acts of its members.

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b. If the Union contends that any Contractor has violated this Article, it will notify the Contractor and the Program Manager, in writing, setting forth the conduct it contends violates the Agreement.

Section 4. Any entity, that the parties agree is a party in interest for purposes of this Article, including the JSCB or the Program Manager, may institute the following procedure, in lieu of or in addition to any other action at law or equity, when a breach of Section 1, above, or Section 3 of Article XXI is alleged:

a. A party invoking this procedure shall notify Joseph Bania, whom the parties agree shall be the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable, the following alternates shall be contacted in turn: first, Stuart Pohl, then Judith Lamanna, and then James Southward. Written notice to the arbitrator shall be by the most expeditious means available, with notices to the party alleged to be in violation and to the Council if it is a Union alleged to be in violation. For purposes of this Section, written notice may be given by telegram, facsimile, hand delivery or overnight mail and will be deemed effective upon receipt.

b. Upon receipt of said notice, the arbitrator named above, or his alternate, shall sit and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists.

c. The arbitrator shall notify the parties of the place and time chosen for the hearing. Said hearing shall be completed in one (1) session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party or parties to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

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d. The sole issue at the hearing shall be whether or not a violation of Section 1 above or of Section 3 of Article XXI has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The arbitrator may order cessation of the violation of the Article and other appropriate relief, and such Award shall be served on all parties by facsimile, hand delivery, or overnight mail upon issuance.

e. Such Award shall be final and binding on all parties and may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above. Written notice of the filing of such enforcement proceedings shall be given to the other party. In any proceeding to obtain a temporary order enforcing the arbitrator's Award as issued under Section 4(d) of this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex parte*. Such an agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's Award shall be served on all parties in the manner designated by the court, or if not designated by the court, it may be served by facsimile, hand delivery, or overnight mail to their last known address or fax number.

f. Any rights created by statutes or law governing arbitration proceedings that are inconsistent with the above procedure or that interfere with compliance hereto are hereby waived by the parties to whom they accrue.

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g. The fees and expenses of the arbitrator shall be equally divided between the movant(s) and the respondent(s).

Section 5. Procedures contained in Article IX shall not be applicable to any alleged violation of this Article, with the single exception that any employee discharged for violation of Section 1, above, may resort to the procedures of Article IX to determine only if he was, in fact, engaged in that violation.

Section 6. The Program Manager is a party in interest in all proceedings arising under this Article and Articles IX and X and shall be sent contemporaneous copies of all notifications required under these Articles, and, at their option, may participate as a full party in any proceeding initiated under these Articles.

ARTICLE IX

DISPUTES AND GRIEVANCES

Section 1. This Agreement is intended to provide close cooperation between management and labor. The parties shall each assign a representative to this Project for the purpose of assisting the Council and Local Unions, together with the Contractors, to complete the construction of the Project economically, efficiently, continuously and without interruption, delays or work stoppages.

Section 2. The Contractors, Unions, and the employees collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the arbitration provisions set forth in this Article.

Section 3. Any question arising out of and during the term of this Agreement involving its interpretation and application (other than trade jurisdictional disputes or alleged

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violations of Article VIII, Section 1) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When an employee subject to the provisions of this Agreement feels he is aggrieved by a violation of this Agreement, he shall, through his Local Union business representative or job steward, within five (5) work days after the occurrence of the violation, give notice to the involved Contractor's work site representative stating the provision(s) alleged to have been violated. The Local Union's business representative or job steward and the Contractor's work site representative shall meet and endeavor to adjust the matter within three (3) work days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the grievance procedure by providing the Contractor's representative a written description of the alleged violation, the date on which the violation occurred, and the provision(s) of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 shall be non-precedential except as to the parties directly involved unless endorsed by the Program Manager within five (5) days after resolution has been reached.

(b) Should the Local Union(s) or Program Manager or any Contractor have a dispute with another signatory party, and, if after conferring, a settlement is not reached within three (3) work days, the dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Local Union's business representative or his designee, the Contractor's site representative, and the Program Manager's labor relations representative shall meet within seven (7) work days of the referral of the dispute to this second step to endeavor to reach a satisfactory settlement thereof. If the parties fail to reach an agreement, the dispute may

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be appealed in writing in accordance with the provisions of Step 3.

Step 3. (a) If the grievance is timely submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days after the initial Step 2 meeting, that the grievance be submitted to an arbitrator. The following shall be the arbitrators for disputes arising under this Article: (1) Joseph Bania, (2) Stuart Pohl (3) Judith Lamanna or (4) James Southward.

The above arbitrators shall be used on a rotation basis, *e.g.*, the first arbitration under this Agreement shall be heard by Joseph Bania and the next by Stuart Pohl, and so on. Should an arbitrator whose turn it is be unable or unwilling to serve, the next name in order shall be the arbitrator. The decision of the arbitrator shall be final and binding on all parties and the fee and expenses of such arbitrations shall be borne equally by the involved Contractor(s) and the involved Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues presented to him and shall not have the authority to change, amend, add to or detract from any of the provisions of this Agreement.

ARTICLE X

JURISDICTIONAL DISPUTES

Section 1. There will be no strikes, work stoppages, slowdowns, or other disruptive activity arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted as assigned by the Contractor.

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Section 2. Work shall be assigned by the Contractor in accordance with the prevailing practices in the Buffalo, New York area. Such assignments shall be disclosed by the Contractor at a pre-job conference, which pre-job conference will include a representative of the Program Manager.

Section 3. Notification of Work:

- a. Upon being awarded a contract for project work, the successful Contractor shall supply written notice to the President of the Building and Construction Trades Council of Buffalo, New York and Vicinity containing an accurate description of the work awarded, the Owner, the location of the work to be performed, and the expected date to begin work.
- b. Prior to the anticipated start date, the Contractor will convene a pre-job meeting by notifying the President of the Council of the time and place. At least two (2) days' notice prior to the meeting date shall be given.
- c. At the pre-job meeting, the Contractor and the Unions will attempt to agree upon all job assignments. If two or more Unions claiming the same portions of the work agree between themselves concerning such assignments, the Contractor shall accept such agreement in making the assignments. If the Unions cannot agree, the Contractor will make the assignment after a reasonable opportunity has been given each contending Union to present its views and arguments.
- d. In the event a subcontractor's scope of work has not been discussed at the Contractor's pre-job conference, the subcontractor shall be obligated to the above provisions.

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Section 4. Any jurisdictional dispute over the Contractor's assignment of work shall be settled as follows:

If the Unions are unable to resolve the dispute within seven (7) days, the dispute may be referred by any one of the disputing Unions or the involved Contractor, within five (5) days thereafter, to Dennis Campagna or, upon his unavailability, to Thomas Pagan. A hearing shall be held at a date, time and location set by the arbitrator, which in no case shall be more than twenty (20) calendar days from the date the dispute arose. The arbitrator shall, based upon the prevailing practices in the Buffalo, New York area, direct an assignment. The arbitrator may award compensatory damages only where he concludes that the Contractor willfully disregarded a clearly established practice in the Buffalo, New York area in making the initial assignment. Fees and expenses of such hearing shall be shared equally among the involved Unions and the involved Contractor, provided, however, the expense of representation by any of those parties shall be borne solely by each respective party.

Section 5. Any award or resolution made pursuant to Section 4 shall be final and binding on the disputing Unions and the involved Contractor on this Project only, and may be enforced in any court of competent jurisdiction. Such award or resolution shall not establish a precedent on other construction work not covered by this Agreement.

Section 6. In making any determination hereunder, there shall be no authority to assign work to a double crew, that is, to more employees than the minimum required to perform the work involved.

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ARTICLE XI

WAGES AND BENEFITS

Section 1. All employees covered by this Agreement shall be classified in accordance with work performed and paid in accordance with the Prevailing Rate Schedule contained in the bid specifications for this Project.

All employees covered by this Agreement shall be paid no later than 4:30 p.m. on Friday of each week. Contractors may pay by check provided such Contractors have obtained certification from the New York State Department of Labor. Any employee who is discharged or laid off shall be entitled to receive all accrued wages upon such discharge or layoff.

Section 2.

(a) Contractor agrees to pay contributions to the established employee benefit funds (hereinafter, "Trust Funds") in the amounts designated in the appropriate Schedule A and to make all employee-authorized deductions in the amounts designated in the appropriate Schedule A; provided, however, the Contractor and the Union agree that only such bona fide employee benefits as accrue to the direct benefit of the employee (such as pension and annuity, health and welfare, vacation, apprenticeship, training funds, etc.) shall be included in this requirement and paid by the Contractor on this Project. Bona fide jointly trusted fringe benefit plans or an authorized employee deduction program established or negotiated through collective bargaining during the life of this Agreement may be added subject to the limitation upon such negotiated changes contained in Article XXI, Section 2 of this Agreement.

(b) However, Contractors who designate "core" employees as defined in Article V, Section 3(b), or minority and women employees pursuant to Article V, Section 3(d), and who maintain bona fide private benefit plans which satisfy the requirements of Section 220 of the

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Labor Law, may satisfy the above benefit obligation with respect to those employees by providing those employees with coverage under their private benefit plans (to the extent consistent with Section 220) or by electing to pay into the applicable jointly trusted funds designated in Schedule A agreements on their behalf, at the Contractors' option. The total benefit payments to be made on behalf of each such employee must be equal the total Section 220 supplement amount and any shortfall must be paid by cash supplement to the employee.

(c) The Contractor agrees to be bound by the written terms of the legally-established jointly trusted Schedule A Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to work done on this Project and only for those employees for whom this Agreement requires such benefit payments. The Contractor authorizes the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor.

The Unions agree that all Schedule A Trust Agreements will be made available for inspection, on both a pre-bid and post-bid basis, to any Contractor or subcontractor who may be, or is, awarded Project work. Inspections shall be made on a craft basis, during regular business hours (M-F, 9-5) and at the following locations:

Asbestos Workers Local 4
976-B Union Road
West Seneca, NY 14224-3438

Boilermakers Local Union 7
5745 Big Tree Road (Route 20A)
Orchard Park, NY 14127

Bricklayers Local 3
1807 Elmwood Avenue
Buffalo, NY 14207
Cement Masons Local 111
165 Division St.
N. Tonawanda, NY 14120

Carpenters Local 9
3871 Harlem Road – Suite 1
Buffalo, NY 14215
Electricians Local 41
S-3546 California Road
Orchard Park, NY 14127

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Elevator Constructors Local 14
3527 Harlem Road (Room 10-A)
Cheektowaga, NY 14225

Glaziers Local 660
585 Aero Drive
Cheektowaga, NY 14225

Ironworkers Local 6
196 Orchard Park Road
West Seneca, NY 14224

Laborers Local 210
2750 Harlem Rd.
Cheektowaga, NY 14225

Operating Engineers Local 17, 17A, 17B,
17C and 17RA
150 N. America Drive
West Seneca, NY 14224

Painters District Council 4
585 Aero Drive
Cheektowaga, NY 14225

Plasterers Local 9
1065 Walck Rd.
N. Tonawanda, NY 14120

Roofers Local 74
1560 Harlem Road, Suite 4
Buffalo, NY 14206

Sheet Metal Workers Local 71
24 Liberty Ave.
Buffalo, NY 14206

Road Sprinklerfitters Local 669
P.O. Box 580
Hannibal, NY 13074

Teamsters Local 449
2175 William St.
Buffalo, NY 14206

Technical Engineers IUOE Local 17D
150 N. America Dr.
West Seneca, NY 14224

U.A. Plumbers and Steamfitters Local 22
3651 California Road
Orchard Park, NY 14127

The Unions further agree to meet, in a timely fashion, with any Contractor for the purpose of answering any questions germane to the Trust Agreements/Funds or the operations thereof.

(d) Upon execution of this Agreement (or a letter of consent, as the case may be) the Contractor shall make available to the appropriate Union(s) a complete set of plan documents for each non-Schedule A private benefit plan into which contribution may be made pursuant to the provisions of Section 2(b) above. Further, for each bargaining unit employee on whose behalf contributions are thereafter made to a private benefit plan, evidence of each such contribution shall be provided, upon written request, to the appropriate Union(s) in a form and manner

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acceptable to the Union(s).

Section 3. Industry Fund Obligations. It is agreed and understood that the amount of Industry Promotion Monies, which would otherwise be due under certain collective bargaining agreements in Schedule A, is hereby set at a fixed sum of \$.05 per hour for any work performed on the Project in the applicable trades.

ARTICLE XII

HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS

Section 1. Work Week and Work Day. The normal work week shall consist of forty (40) hours, Monday through Friday. The work week for payroll purposes will commence at 0001 Monday (12:01 a.m.) and end at 2400 Sunday (Midnight). The standard work day shall consist of eight (8) hours of work, exclusive of a one-half (½) hour unpaid lunch period.

Section 2. Start Time. Recognizing the importance of coordinating the Project construction and renovations with the uninterrupted and smooth operation of normal school activities, the Unions hereby agree that the regular work shift shall be between the hours of 7:00 a.m. and 5:00 p.m., with a project start time uniformly set for all contractors between 7:00 a.m. and 8:30 a.m., with a one-half (½) hour unpaid lunch period to commence no earlier than four (4) hours after the start of the shift and no later than five (5) hours after the start of the shift. If operational considerations warrant, the start of the work day may be moved to as early as 6:00 a.m. and as late as 9:00 a.m. by the Program Manager, provided at least three (3) days' written notice is given by the Program Manager to the Contractor, the Union and the affected employees, which notice shall contain the signature of a representative of the Program Manager. Further changes to the start and finish of the work day or times of the lunch periods may be made by agreement between the involved Union(s) and the Contractor(s), and such agreement shall not

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be unreasonably withheld.

Employees shall be at their actual work area ready to commence work at their regularly scheduled starting time.

Section 3. Overtime. Work performed outside the standard work day during the normal work week and all work performed on Saturdays (except for make-up work within the scope of Section 11 of this Article) will be at time and one-half. Work performed on Sundays and/or holidays will be paid in accordance with the New York State Prevailing Rate Schedule contained in the bid specifications for the Project. There will be no restriction on the Contractor's scheduling of overtime or the nondiscriminatory designation of employees who will work. There shall be no pyramiding of overtime pay under any circumstances.

Steward overtime work shall be as provided in the applicable Schedule A, provided the steward is qualified to perform the work available.

Section 4. Shifts. Shift work may be performed at the option of a Contractor upon three (3) days' prior notice to the Union, unless a shorter notice period is provided in the applicable collective bargaining agreement in Schedule A. A second shift may start as early as 1400 (2:00 p.m.) or as late as 1600 (4:00 p.m.). A third shift may start as early as 2200 (10:00 p.m.) or as late as 2400 (midnight). There shall be no penalty or premium if the Contractor works a second shift without working the first shift, or if the Contractor works a third shift without working a first or second shift. There shall be no premium pay for shift work.

Section 5. Special Shifts. If it is necessary for the operation of any school activity or program or to facilitate construction of the Project for other reasons, the Program Manager may establish a special shift for a crew of any craft or trade. Provided three (3) days' prior notice is provided by the Program Manager to the Union and the Contractor, there shall be no penalty or

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premium to a Contractor working a special shift at the direction of the Program Manager.

There shall be no intermingling of separate crews who are on different shift hours to defeat overtime.

Section 6. In the event that timely notice is not provided as called for in Sections 4 and 5 above, the shift premium otherwise due under the applicable Schedule A shall apply.

Section 7. Holidays. Recognized holidays on this Project shall be: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Holidays which fall on a Saturday shall be recognized on the preceding Friday. Holidays which fall on a Sunday shall be recognized on the following Monday. There shall be no change in the established holiday schedules, and the days upon which those holidays are celebrated, except by mutual agreement. Payment for holidays and overtime for work performed on holidays shall be governed by the New York State Prevailing Rate Schedule contained in the bid specifications for the Project.

Section 8. Reporting Pay.

a. Employees who report to the work location and who are not provided with work shall be compensated in accordance with the reporting pay provision of the applicable Schedule A in effect.

b. In all cases, if the employee is reporting on a day on which a premium rate is paid, reporting pay shall be calculated at that rate.

c. When an employee has completed a scheduled eight (8) hour shift and is “called out” to perform special work of a casual, incidental or irregular nature, he shall receive overtime pay for the additional hours worked.

d. When an employee leaves, or is dismissed or laid off from the job or work

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location for any reason, the employee shall be paid only for the actual time worked. Except where expressly provided in this Agreement, including Schedule A attached hereto, there shall not be any notice requirement prior to dismissal or layoff.

Section 9. Timekeeping. The Contractor may utilize any system to check employees in and out. Each employee must check himself in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

Section 10. Meal Period. Consistent with Section 1 of this Article, the Contractor will schedule a meal period of not more than one-half ($\frac{1}{2}$) hour's duration at the work location at approximately four (4) to five (5) hours into the scheduled work shift; provided, however, that the Contractor may, for efficiency of the operation, establish a schedule which coordinates the meal periods of two (2) or more crafts.

Section 11. Saturday Make-Up Day. Subject to the approval of the New York State Department of Labor, when conditions beyond control of the Contractor, such as severe and inclement weather, power failure, fire or natural disaster, prevent the performance of a particular Project work operation(s) or the entire Project on a regularly scheduled work day, the Contractor may schedule the Saturday of the calendar week during which work was prevented as a make-up day at straight time pay.

When conditions on the Project cause the Contractor to stop work or to be unable to commence work on the day in question, the Contractor will notify the Union and the employees at that time that Saturday will be a make-up day for the affected operation(s) and the Saturday work will then be at straight time for the work day or any portion thereof for which work was stopped. Hours worked on Saturday in excess of the make-up time shall be at time and one-half the straight time rate of pay. If a Contractor seeks to cancel a day's work in advance, and to

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schedule the following Saturday as a make-up day, the determination of whether the Contractor is unable to perform the affected work operation(s) shall be made jointly between the Contractor and the Union and the Union's agreement shall not be unreasonably withheld.

ARTICLE XIII

SAFETY, PROTECTION OF PERSON AND PROPERTY

Section 1.

a. It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Contractor, JSCB or Program Manager. It is understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the JSCB. Contractors and Unions are encouraged to have safety meetings on a regular basis.

b. Employees shall be bound by the safety, security and visitor rules established by the Contractor, the JSCB or Program Manager. An employee's failure to satisfy his obligations under this Section will subject him to discipline, including discharge.

c. If a Contractor wishes to implement substance abuse testing on this Project, and does not have an agreement with a Union concerning such testing, the Contractor may institute a reasonable substance abuse policy which meets the minimum standards established for drug testing by the Department of Transportation.

Section 2. A Contractor may suspend all or a portion of the job to protect the life and safety of an employee. In such cases, employees will be compensated for only the actual time worked; provided, however, that where the Contractor requests employees to remain at the site and available for work, the employees will be compensated for the standby time at their base

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hourly rate of pay.

Section 3. The Contractor shall provide adequate supplies of drinking water and sanitary facilities for all employees.

ARTICLE XIV

SECURITY OF MATERIAL EQUIPMENT AND TOOLS

The inspection of incoming shipments of equipment, apparatus, machinery and construction materials of every kind shall be performed at the discretion of the Contractor by individuals of its choice. All employees shall comply with the security procedures established by the Program Manager and/or the Contractor.

ARTICLE XV

NO DISCRIMINATION

Section 1. The Contractors and Unions agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, union affiliation, marital status, sexual orientation, or physical or mental disability in any manner prohibited by law or regulation.

Section 2. Any complaints regarding discrimination in violation of Section 1 should be brought to the immediate attention of the involved Contractor for investigation and resolution.

Section 3. The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

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ARTICLE XVI

TRAVEL, SUBSISTENCE AND PARKING

Section 1. Travel expenses, travel time, subsistence allowance and/or zone rates shall not apply to this Project.

ARTICLE XVII

WORKING CONDITIONS

Section 1. There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location.

Section 2. The JSCB and/or the Program Manager shall establish such reasonable Project rules as they deem appropriate, consistent with this Agreement. These rules will be explained at the pre-job conference and posted at the Project site by the Contractor and may be amended thereafter as necessary. An employee's failure to observe these rules and regulations may be grounds for discipline, including discharge.

Section 3. Tools of the Trade. The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of that trade. There shall be no restrictions on the emergency use of any tools by any qualified employee or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or equipment involved.

Section 4. Employees work under the supervision of the craft foreman or general foreman.

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Section 5. Work rules. Subject to the discretion and control of the Contractor(s):

- a. Pursuant to the National Labor Relations Act, as amended, there shall be no featherbedding.
- b. Teamsters, as opposed to another craft, shall not be required for the movement of on-site vehicles, or for the operation of vehicles on-site. The assignment of such work shall be in accordance with Schedule A.
- c. Foreman and stewards will perform work as directed by the Contractor(s).
- d. Contractor(s) may use their own employees in key management positions such as Superintendent or Assistant Superintendent. Alternatively, they may request by name and employ members of the trades for these positions.

ARTICLE XVIII

SUBJECT TO APPROVAL

Section 1. This Agreement is subject to the review and approval of the City of Buffalo Department of Law (“Corporation Counsel”) and the Joint Schools Construction Board. It is understood and agreed that this Agreement will not be in effect, nor will the requirements of this Agreement be included in any bid specification, unless and until it has been reviewed and approved by the Corporation Counsel and the JSCB.

ARTICLE XIX

SAVINGS AND SEPARABILITY

Section 1. It is not the intent of the parties to this Agreement to violate any federal, state or local law governing the subject matter contained herein. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid

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under applicable law, but in the event the application of any provision of this Agreement is held to be prohibited by or invalid under applicable law or is enjoined, on either an interlocutory or permanent basis, such provisions will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Such ineffective provision shall be rendered, temporarily or permanently, null and void. In such event, the Agreement shall remain in effect for contracts already bid and awarded or for construction where the Contractor voluntarily accepts the Agreement, and the parties to this Agreement will then enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for contracts to be let in the future. In the event that the parties are unable to negotiate a substitute provision in conformity with the law and the intent of the parties within fourteen (14) days of a court order, or no later than three (3) days prior to the deadline for receipt of bids, whichever is earlier, either party shall have the option to declare this entire Agreement null, void, and without effect.

Section 2. Non-Liability. In the event of an occurrence referenced in Section 1 of this Article, neither the JSCB, nor the Program Manager nor any Contractor nor any Union shall be liable, directly or indirectly, for any action taken, or not taken, to comply with any court order, injunction or determination. Project bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed or upheld.

ARTICLE XX

WORKERS' COMPENSATION ADR

Section 1. The parties agree that the Program Manager may implement a Workers' Compensation Alternative Dispute Resolution program which is consistent with Section 25

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(2-C) of the New York Workers' Compensation Law. The final terms of the program shall be determined by the Program Manager, after consultation with the Unions. If the Program Manager is not satisfied with the cost savings to be generated by such a program, it may, in its discretion, decline to implement, or at any time after implementation decline to continue, that program.

ARTICLE XXI

DURATION OF THE AGREEMENT

This Project Labor Agreement shall be entered into on _____, 2003, and shall continue in effect for the duration of the covered work.

Section 1.

a. Turnover. Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section, or segment has been turned over to the JSCB by the Contractor. As areas and systems of the covered work on the Project are inspected and tested by the Contractor, approved by the Engineer, and accepted by the JSCB, the Agreement shall have no further force or effect on such items or areas, except when the Contractor is directed by the Engineer or JSCB to engage in repairs, modifications, check-out and/or warranty functions required by its contract(s) with the JSCB.

b. Notice. A copy of the notice of each final acceptance issued by the Architect/Engineer/JSCB and received by the Contractor will be provided to the Union with the description of what portion, segment, etc., has been accepted. "Final acceptance" may be made subject to a "punch" list, and in such case, the Agreement will continue to apply to each such item on the list until it is completed to the satisfaction of the Architect/Engineer/JSCB and notice of acceptance is given by the Architect/Engineer/JSCB to the Contractor.

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c. Termination. Final termination of all obligations, rights and liabilities under this Agreement shall occur when no covered work remains under this Agreement.

Section 2. Schedule A collective bargaining agreements incorporated as part of this Agreement shall continue in full force and effect until the Contractor and/or Union parties to those collective bargaining agreements notify the Program Manager of the mutually agreed-upon changes to such agreements and their effective date(s).

The Contractor agrees and consents to pay the increased wages and the increased contributions to the relevant jointly administered trust funds pursuant to the provisions of any collective bargaining agreements negotiated by the Union during the course of this Project, retroactively to the expiration date of the attached Schedule A agreements; provided, however, if any such new collective bargaining agreement provides that the said increases shall not become effective until a date later than the expiration date, then that later date shall prevail; and provided further that the increased wages and contributions do not exceed the adjusted prevailing wage and supplement rates.

The parties agree that any such provisions or changes in rates of pay or fringe benefit trust fund contributions negotiated into said collective bargaining agreements will not apply to work covered by this Agreement if such provisions are less favorable to the Contractor than those uniformly required of contractors for construction work normally covered by those agreements; nor shall any provision be recognized or applied if it may be construed to apply exclusively or predominantly to work covered by this Agreement. Any disagreement between the parties over the incorporation into Schedule A of such provisions agreed upon in the negotiation of the local collective bargaining agreements which serve as the basis for the Schedule A shall be referred to the appropriate arbitrator in line under Article IX for resolution.

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Section 3. The Union agrees that there will be no strikes, work stoppages, sympathy strikes, picketing, slowdowns or any other disruptive activity affecting the Project by any Union involved in the renegotiation of the local collective bargaining agreements in Schedule A on or with respect to the Project sites nor shall there be any lock-out on this Project affecting the Union during the course of such negotiations on or with respect to the Project sites.

Section 4. This Agreement may be amended or supplemented only by mutual consent of the parties hereto, reduced to writing and duly signed by each.

In witness whereof, the parties have caused this Agreement to be executed and effective as of the day and year first above written.

**FOR THE BUILDING AND CONSTRUCTION
TRADES COUNCIL OF BUFFALO, NEW YORK
AND VICINITY, AFL-CIO:**

BY: _____

FOR THE LOCAL UNIONS:

ASBESTOS WORKERS LOCAL UNION No. 4

BY: _____

BOILERMAKERS LOCAL UNION No. 7

BY: _____

BRICKLAYERS LOCAL UNION No. 3

BY: _____

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CARPENTERS LOCAL UNION No. 9

BY: _____

CARPENTERS LOCAL UNION No. 42

BY: _____

CEMENT MASONS LOCAL UNION No. 111

BY: _____

**ELECTRICAL WORKERS LOCAL
UNION No. 41**

BY: _____

**ELEVATOR CONSTRUCTORS LOCAL
UNION No. 14**

BY: _____

GLAZIERS LOCAL UNION No. 660

BY: _____

IRONWORKERS LOCAL UNION No. 6

BY: _____

LABORERS LOCAL UNION No. 210

BY: _____

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**OPERATING ENGINEERS LOCAL UNION
No. 17, 17A, 17B, 17C and 17RA**

BY: _____

PAINTERS DISTRICT COUNCIL No. 4

BY: _____

PLASTERERS LOCAL UNION No. 9

BY: _____

**PLUMBERS AND STEAMFITTERS LOCAL
UNION No. 22**

BY: _____

ROOFERS LOCAL UNION No. 74

BY: _____

**SHEET METAL WORKERS LOCAL
UNION No. 71**

BY: _____

ROAD SPRINKLERFITTERS LOCAL UNION No. 669

BY: _____

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TEAMSTERS LOCAL UNION No. 449

BY: _____

**TECHNICAL ENGINEERS UIOE LOCAL
UNION No. 17D**

BY: _____

FOR THE PROGRAM MANAGER:

LOUIS P. CIMINELLI MANAGEMENT CO.

BY: _____

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