

## SECTION 00 73 16 - INSURANCE REQUIREMENTS

Contractor shall obtain at its own cost and expense all the insurance described below (the "Required Insurance") that will protect Contractor from claims that may arise out of or result from Contractor's operations and completed operations under the Contract and for which Contractor may be legally liable, whether such operations be by Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Before commencing the Work under the Contract, Contractor shall provide to Owner, for Owner's approval, Contractor's certificate of insurance provided in accordance with this Section and thereafter upon renewal or replacement of each policy of Required Insurance. The Required Insurance must be purchased from an insurer that is licensed, admitted, and authorized to write insurance in New York State, and is A.M. Best Rated "A-" or "Better". The provision by Contractor of the insurance coverage and limits required in this Section shall not limit Contractor's liability in any way.

The Rochester Joint Schools Construction Board ("RJSCB" or "Owner") is an entity created by special authorizing legislation of the State of New York to serve as an agent for the Rochester City School District ("RCSD") and City of Rochester ("City") for purposes of administering the Rochester School Modernization Program ("RSMP"). RSMP projects are funded in part through bonds made available by the County of Monroe Industrial Development Agency ("COMIDA" or "Agency"). Each of the RJSCB, RCSD, City, COMIDA, U.S. Bank National Association, the Trustee under the Indenture of Trust relating to the financing of the Project ("Trustee"), Savin Engineers, P.C., Gilbane Building Company, [Construction Manager], and [Architect] (collectively, the "Additional Insureds") shall be named as **Additional Insureds on a Primary and Non-Contributory basis** for all Required Insurance (other than Workers' Compensation and Employer's Liability Insurance). Contractor shall require each of its Subcontractors, in any written agreements with its Subcontractors, to add the foregoing Additional Insureds on a Primary and Non-Contributory basis for all Required Insurance (other than Workers' Compensation, Employer's Liability and Umbrella (Excess) Liability Insurance policies). Contractor shall provide proof of additional insured status through ISO endorsement CG 2010 11 85 or an equivalent endorsement acceptable to Owner; provided, however, that if endorsement CG 2010 11 85 is not available, then GC 20-37 07 04 shall also be required.

Required Insurance shall be written on an occurrence basis and maintained without interruption from the date of commencement of the Work until the date of final payment or such longer period for which any Required Insurance is required to be maintained under the Contract.

General Liability coverage is to remain in place for one (1) year after the Certificate of Occupancy is issued by the New York State Education Department.

Each of the policies or binders evidencing the Required Insurance shall:

(i) provide that there shall be no recourse against the Additional Insureds for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(ii) provide that in respect of the interests of the Additional Insureds in such policies, the insurance shall not be invalidated by any action or inaction of the

Additional Insureds and shall insure the Additional Insureds regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iii) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by or provided to the Additional Insureds to the extent that such other insurance provides any Additional Insured with contingent and/or excess liability insurance with respect to its interest as such in the facility;

(iv) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Additional Insureds until at least thirty (30) days after receipt by the Additional Insureds of written notice by such insurers of such cancellation, lapse, expiration, reduction or change; and

(v) waive any right of subrogation of the insurers thereunder against any person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy.

Prior to the commencement of any Work (and at such other times as Owner may request), Contractor shall deliver or cause to be delivered to Owner duplicate copies of insurance policies, with all endorsements or exclusions, that are obtained by Contractor hereunder, and/or binders evidencing compliance with the insurance requirements set forth herein. In addition, Contractor shall provide Owner with copies of CG2010 and CG2037 and of any endorsements subsequently issued amending coverage or limits. If any change shall be made in any such insurance, a description and written notice of such change shall be furnished to Owner thirty (30) days in advance of such change. At least thirty (30) days prior to the expiration of any insurance policy required hereunder, Contractor shall furnish Owner with evidence that such policy has been renewed or replaced or is no longer required hereunder. In the event Contractor fails to timely renew or pay any of the renewal premiums for any expiring Required Insurance policies, Owner shall have the right (but not the obligation) to (i) make such payments; and/or (ii) acquire replacement coverage, and thereafter set off the amount(s) or costs thereof against the next payment(s) coming due to Contractor under the Contract. Owner may withhold any payments due to Contractor from this Project unless certificates for current insurance are on file.

**The Required Insurance is as follows:**

1. Workers' Compensation, New York State Disability and Employer's Liability Insurance:

Contractor shall maintain workers' compensation insurance and employer's liability insurance and such other forms of insurance which Contractor is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of Contractor. Contractor shall require each of its Subcontractors of any tier to maintain workers' compensation insurance, employer's liability insurance and such other forms of insurance which Subcontractor is required by law to provide covering loss resulting from injury, sickness, disability or death of

the employees of Subcontractor. Contractor must maintain proof that each Subcontractor performing work under this Contract secured and maintains such coverage.

2. Commercial General Liability (including Products & Completed Operations, Personal Liability, and damages to rented premises on a per project basis): Contractor shall maintain commercial public general liability insurance with coverage amounts of no less than the following:

**Contractor required minimum policy limits:**

\$1,000,000 per occurrence / \$2,000,000 general aggregate (per project)  
\$1,000,000 per occurrence / \$2,000,000 Products & Completed Operations Aggregate  
\$1,000,000 per occurrence for personal liability  
\$50,000 Fire Damage Legal Liability  
\$5,000 Medical Expense Limit

a. Coverage must include but shall not be limited to: premises/operations; explosion, collapse and underground coverage; products and completed operations; contractual liability; independent contractors; broad form property damage; personal injury; and elevators.

b. Products and Complete Operations Aggregate shall be maintained for a period of two years after final acceptance of Owner.

c. The General Aggregate must apply on a per project basis.

d. Coverage must be written on CG0001 form or its equivalent and must not contain any endorsements reducing or excluding coverage for contractual liability or injuries to employees or independent contractors.

e. No coverage exclusion or limitation for work performed on your behalf by a Subcontractor.

f. Coverage must include ISO CG 00 01 12 07 Contractual Liability coverage or its equivalent, with no exclusion or limitation to the Separation of Insureds clause contained in Section V – Commercial General Liability policy conditions.

g. Coverage must contain a waiver of subrogation in favor of the Additional Insureds.

**3. Automobile Insurance:**

Contractor shall maintain Comprehensive Automobile Liability Insurance on owned, hired, or non-owned vehicle in amounts not less than \$1,000,000 Combined Single Limit each occurrence. If hauling of hazardous waste is part of the Work, Contractor shall maintain Automobile Liability Insurance with a \$1,000,000 combined single limit each occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and including MCS 90 endorsement and the ISO Form CA 99 48.

**4. Pollution Liability Insurance (required when asbestos or other hazardous material abatement is included in the Contract):** Contractor shall maintain Pollution Liability Insurance for services rendered to Owner, including but not limited to, removal, replacement enclosure, encapsulation

and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. The Pollution Liability Insurance shall have a minimum limit per occurrence of \$5,000,000 and a minimum aggregate specific to the project of \$5,000,000. In the event Contractor elects to engage a Subcontractor to perform any abatement, said Subcontractor must timely obtain and maintain the same Pollution Liability insurance coverage as set forth above.

5. Umbrella (Excess) Liability: Contractor shall maintain Umbrella or Excess Liability Insurance, providing coverage in excess of the amounts covered by the Comprehensive General Liability, Automobile Liability, Employer's Liability policies, with limits of not less than \$5,000,000 per occurrence and \$5,000,000 aggregate (per project). Self-Insured retention limit is \$10,000 per occurrence. Contractor acknowledges that it shall provide Umbrella Liability coverage on behalf of the Additional Insureds, that such insurance shall be as broad as that provided for the named insured Contractor, and that such insurance shall be primary and noncontributory and will be subject to vertical exhaustion before any other primary, umbrella or any other insurance obtained by the Additional Insureds will be triggered.

6. Contractor's Contingent Liability: Contractor shall procure and maintain such insurance as will protect Contractor from its contingent liability for damages and for injury to the person or property of another which may arise from the operations of all Subcontractors under this Contract.

7. Contractor's and Employee's Equipment: Contractor assumes responsibility for all injury or destruction of Contractor's materials, tools, machinery, equipment, appliances, shoring, scaffolding, false and form work, and personal property of Contractor's employees, from whatever causes. Any policy of insurance secured by Contractor or any Subcontractor and insuring Contractor or any Subcontractor against physical loss or damage to such property shall include an endorsement waiving the right of subrogation against Owner for any loss or damage to such property.

8. Subcontractors: Contractor shall include all Subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the certificates of insurance provided by each Subcontractor. Subcontractors shall be subject to all of the requirements stated herein, except as those requirements are modified below:

Workers' Compensation and Employer's Liability:	Statutory
Commercial General Liability:	General Aggregate: \$2,000,000 (per project); Products/Completed Operations Aggregate \$2,000,000; and each occurrence \$1,000,000 per claim.
Business Automobile Liability Umbrella Liability:	\$1,000,000 Combined Single Limit each occurrence In excess of Employer's Liability, Commercial General Liability and Automobile Liability with limits of \$2,000,000 per occurrence and in the aggregate.

Contractor shall require each of its Subcontractors to name the Additional Insureds as additional insureds on a primary noncontributory basis on all insurance policies required of such

Subcontractor. Owner reserves the right to request copies of Subcontractors' certificates of insurance at any time. If Contractor does not verify Subcontractors' insurance as described above, Owner has the right to withhold payments to Contractor until the requirements have been met. Contractor shall require that its Subcontractors of any tier waive any right of subrogation of the insurers thereunder against the Additional Insureds, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Additional Insureds.

9. Builder's Risk Insurance: Owner has purchased and shall maintain during the performance of the Work property insurance written on a builder's risk "all risk" or equivalent policy form. This insurance includes the interests of Owner, Contractor and Subcontractors of any tier on the Project.

10. Indemnity for Failure to Comply with Insurance Requirements: To the fullest extent permitted by law, Contractor agrees to fully defend, indemnify and hold harmless Owner and the other Additional Insureds from and against any and all claims, losses, expenses, costs, liabilities and damages of any nature whatsoever, including reasonable attorney's fees actually incurred, arising out of and/or relating to any failure of Contractor to obtain, furnish and maintain as required herein insurance complying with the provisions of this Section or any other failure of Contractor to comply with the provisions of this Section.

END OF SECTION 00 73 16