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Addendum No. 3

**To Offerors: 21st Century School Buildings Program
Request for Proposals
Leasing of Portable Classrooms for Swing Space**

Date Issued: January 22, 2018

This addendum is hereby made part of the Request for Proposals dated January 4, 2017, on the subject work as though originally included therein. The following amendments, additions, and/or corrections shall govern this solicitation.

This addendum incorporates the following items:

1. The pre-proposal conference minutes and sign-in sheet are attached hereto.
2. **Attachment E** (Pricing Form) is attached hereto.
3. **Attachment G** (Standard Terms and Conditions) is attached hereto.
4. Section 1.2(e) is revised as follows: "Contract – The contract entered into between MSA and the selected Offeror. The Contract will include MSA's standard terms and conditions attached hereto as Attachment G and will incorporate the entire RFP, including any amendments and addenda."
5. Questions and Answers received to date are attached hereto.
6. Section 4.2(e) (Other Required Submissions) is revised to add the following as subsection (e) (6): Offerors shall include the proposed Sample Lease Contract. MSA's Standard Terms and Conditions and RFP and addenda will be part of the Agreement and their terms will prevail. Prior to award, MSA reserves the right to reject any terms included in Offeror's contract.
7. Short-listed Offeror will be notified on Thursday, January 25, 2018. Financial Proposals from Short-listed Offerors will be due on Friday, January 26, 2018 at 5:00 p.m.

Note: the Offeror in the Technical Proposal must acknowledge all addenda.

Carmina Perez-Fowler
Procurement Officer

End of Addendum 3

RFPs – Leasing of Portable Classrooms for Swing Space

January 11, 2018

10:00 a.m.

Points of Contact: Ms. Carmina Perez-Fowler, Procurement Officer

Discussion of GovDelivery Platform – Please change e-mail settings to allow MSA Contracting GovDelivery e-mails to go through. Check your junk mail folder for notices.

Key Procurement Dates

Questions Due: January 16, 2018 at 1:00 p.m.

Technical Proposals Due **(Revised per Addendum 2): January 24, 2018 at 5:00 p.m.**

Scope of Services – Please refer to Section 3, and pay special attention to sub-section 3.2, of your RFP for details regarding the SOW and the attachments relevant to the SOW.

MBE Participation: See Section 1.19 of the RFP for details

- 12% MBE goal with no subgoals.
- All subcontractors named by the Offeror as part of their MBE Schedule must be certified with the Maryland Department of Transportation (MDOT).
- Offerors' submissions must also include the MBE subcontractor's MDOT certification number & NAICS product and service description to be performed. It must be submitted with the Financial Proposal.
- For information on certified MBE firms, the directory is available at <http://mdot.state.md.us>. Select the MBE Program label at the left side of the website.
- The most current and up- to-date information on MBEs is available at this website. The Governor's Office of Minority Affairs has issued a Q&A regarding counting participation by MBE primes. Information is available on GOMA's website (<http://goma.maryland.gov/Pages/Reporting-Tool-MBE.aspx>).

Proposal Submissions:

- ❖ All submissions must be sent electronically. DO NOT send them via email. Use the link provided in Section 1.10 of the RFP.
- ❖ See Section 4 of the RFP for all proposal and submission requirements, including format requirements.
- ❖ Technical Volume:
 - Transmittal letter
 - Executive Summary
 - Work Plan and Offeror's Experience
 - Bid Affidavit

- Conflict of Interest Disclosure
 - Corporate Profile
 - Surety Letter
 - Offeror's Sample Contract (new requirement – see Addendum E)
 - Insurance Verification, including policy limits and current deductible amounts (see Standard Terms and Conditions)
- ❖ Financial Volume:
- Pricing Form
 - MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule

Evaluation Criteria:

- ❖ Technical Proposal – weighs heavier than financial with breakdowns pertaining to work plan, key personnel/staffing, and firm experience, among other factors.
- ❖ Financial Proposal – Submit only if requested.
- ❖ Selection Committee will review the Offerors' Technical Proposals upon submission. Firms deemed as meeting all requirements will be ranked and, based on the achieved rankings, selected firms will then be "short listed."
- ❖ The Selection Committee will then request Financial Proposals from short-listed Offerors.

Date: 01/11/2018

Pre-Proposal - RFP Leasing of Portable Classrooms for Swing Space

[illegible]

ATTACHMENT E
PRICING FORM

Please note that the Financial Form has two sheets.

The Excel Version can be downloaded via this link:

<https://mdstad.sharefile.com/d-s1ce6c256boa4ffea>

Maryland Stadium Authority

21st Century School Buildings Program

Leasing of Portable Classrooms for Swing Space

REQUEST FOR PROPOSALS

Unit Pricing Form

Name of Contractor: _____

Contractor's Signature: _____

Date: _____

The Pricing Form shall contain all price information specified on these pages. Failure to include the required information may result in the proposal being determined not susceptible for award and rejected by the Maryland Stadium Authority (MSA).

The Contractor agrees to furnish all supervision, labor, materials, travel, insurance, equipment, and services necessary to complete the work as indicated in this RFP, in accordance with the specifications detailed herein and all other contract documents for the prices shown below. The Contractor hereby declares to have carefully examined the specifications and has carefully examined the Contract Documents and inspected the sites where the proposed work will be performed, and has accepted all terms, and conditions outlined in the RFP.

Portable classrooms, as set forth in the RFP, must be ready for occupancy by July 15, 2018.

<u>Schedule of Values</u>		<u>Price</u>
Dumpster		\$ -
Covered Walkway		
Anchoring/Skirting		\$ -
Decks, Steps		\$ -
Dismantle & Remove		\$ -
Setup		\$ -
Delivery		\$ -
Electrical		\$ -
ALLOWANCE:	Plumbing/Sewer	\$ 25,000.00
ALLOWANCE:	Data/Security/PA/IT	\$ 20,000.00
ALLOWANCE:	Fire Alarm	\$ 10,000.00
Payment & Performance Bond		\$ -
Subtotal:		\$ 55,000.00
Owner's Contingency (20%)		\$ 11,000.00
Total:		\$ 66,000.00

Voluntary Alternates (provide details on separate page if needed):

12 Month lease of portable classrooms in accordance with RFP specifications.

**Provide Modular Classroom Buildings Installation Services at
Various Baltimore City Public Schools (City Schools)**

Prices include design and standard installation. Excluded items and excluded installations: security, fire alarm, and IT wiring. Assume that the utilities will be available within 50 feet of the classroom.

A.	28' x 32'	Single Modular Classroom without restroom	\$ - /ea
B.	28' x 64'	Double Modular Classroom without restroom	\$ - /ea
C.	28' x 64'	Double Modular Classroom/Daycare with restrooms and kitchen	\$ - /ea
D.	42' x 64'	Double Modular Classroom without restroom	\$ - /ea
E.	42' x 64'	Double Modular Classroom/Daycare with restrooms and kitchen	\$ - /ea
F.	36' x 28'	Double Modular Classroom	\$ - /ea
G.	64' x 28'	Double Modular Classroom	\$ - /ea
H.	64' x 28'	Double Modular Classroom/Daycare with restrooms and kitchen	\$ - /ea
I.	64' x 42'	Double Modular Classroom	\$ - /ea
J.	64' x 24'	Double Modular Classroom	\$ - /ea
K.	70' x 28'	Double Modular Classroom	\$ - /ea
L.	44' x 24'	Double Modular Classroom	\$ - /ea
M.	24' x 74'	Single Modular Classroom	\$ - /ea
N.	24' x 74'	Double Modular Classroom with Restrooms	\$ - /ea
O.	64' x 24'	Double Modular Rediplex Classroom	\$ - /ea
P.	64' x 24'	Double Modular Rediplex Classroom with Restroom	\$ - /ea
Q.	12 x 66'	Restroom Module	\$ - /ea
Subtotal for Item #_____:			\$ -

Addendum No. 3
Request for Proposals
21st Century School Buildings Program
Leasing of Portable Classrooms for Swing Space
RFP Questions and Answers

1. Will MSA accept “Like-New” portables?

Answer: Yes.

2. Please confirm/clarify if a Payment and Performance Bond will be required.

Answer: Yes. A Payment and Performance Bond will be required. Please refer to Attachment E - Pricing Form.

3. Will a civil plan be provided identifying site utilities?

Answer: No. However, the Site Plan is attached hereto.

4. Is the modular contractor responsible for providing new electric service to the portable classrooms?

Answer: Yes.

5. Please confirm if liquidated damages will be part of the contract.

Answer: Yes. The contract includes liquidated damages provisions relating to the MBE requirements. See Attachment G – Required Contract Provisions.

6. Please provide additional details relating to the fire alarm system currently installed (or to be installed) in the existing school so that we may ensure proper equipment is used in the portable classrooms and they can tie-in.

Answer: The fire alarm system for the swing space school has not been determined yet. An allowance has been included in the Pricing Form for this scope of work.

7. Who is performing the tie-in of the fire alarm system?

Answer: The Contractor selected pursuant to this RFP.

8. If the modular contractor is responsible for the fire alarm system, please include the location of the FACP in the existing building?

Answer: Please refer to questions 6 and 7 herein. See attached floor plans.

Addendum No. 3
Request for Proposals
21st Century School Buildings Program
Leasing of Portable Classrooms for Swing Space
RFP Questions and Answers

9. Page 84 of the bid docs provides a link to “Prototype Educational Specifications.” These specifications appear to be intended solely for permanent schools. Is there a specification for the portable classrooms? If not, is the modular contractor free to provide their standard specifications.

Answer: The Prototype Educational Specifications were included for informational purposes only. Modular contractors can use their standard specifications when submitting their proposals. Please include copies of these specifications in the Technical Proposal.

10. Is a floor plan available for the existing building showing the location of mechanical/equipment rooms?

Answer: Yes. See attached.

11. Will supply and waste storage tanks be acceptable as opposed to connections to public water and sewer?

Answer: In the Pricing Form, Offerors shall include pricing for connections to public water and sewer. Other methods to provide these services can be included in the Pricing Form as voluntary alternates.

12. Section 3.2 states “...permitting, construction and inspection required by all jurisdictions having authority.” During the pre-bid meeting, it was stated that MSA is exempt from Baltimore City Permits but uses a third party firm for review. Please elaborate further on the requirements of the bidders and how this process works.

Answer: Please refer to Addendum 1.

13. During the pre-bid meeting, it was stated that used, like-new, portable classrooms would be considered. Must the portable classrooms be constructed to current MD Building Codes or will used, like-new buildings be “grandfathered” to the code current at the time of original manufacture.

Answer: Portable classrooms must meet all applicable and current building occupancy codes.

14. What type of access is desired for ingress/egress for the portable classrooms? ADA/IBC compliant aluminum access ramps and steps are the industry standard.

Answer: Access shall be ADA compliant. In the Financial Proposal, Offerors shall propose solutions and pricing for ingress/egress.

Addendum No. 3
Request for Proposals
21st Century School Buildings Program
Leasing of Portable Classrooms for Swing Space
RFP Questions and Answers

15. Are cooperative purchasing contracts acceptable for this procurement (NCPA, National IPA/TCPN, TIPS, etc.)? We hold (3) Cooperative Contracts providing the aluminum access ramps and steps for portable classrooms.

Answer: Offerors shall provide a turnkey solution as set forth in the RFP. MSA will not procure separately the ramps or steps.

16. Will there be a possibility of a lease extension at the end of the base lease term?

Answer: Currently, the expectation is that the lease will end in July 2019 once construction of the new school is finalized. Financial Proposals shall include the fee for a 12-month lease and pricing for a month-to-month renewal up to 12 months.

17. Are all of the spaces to be housed in one building or will they need to be separate; i.e., the following:
(9) Standard classrooms
(1) Flex/ESOL classroom
(2) Offices

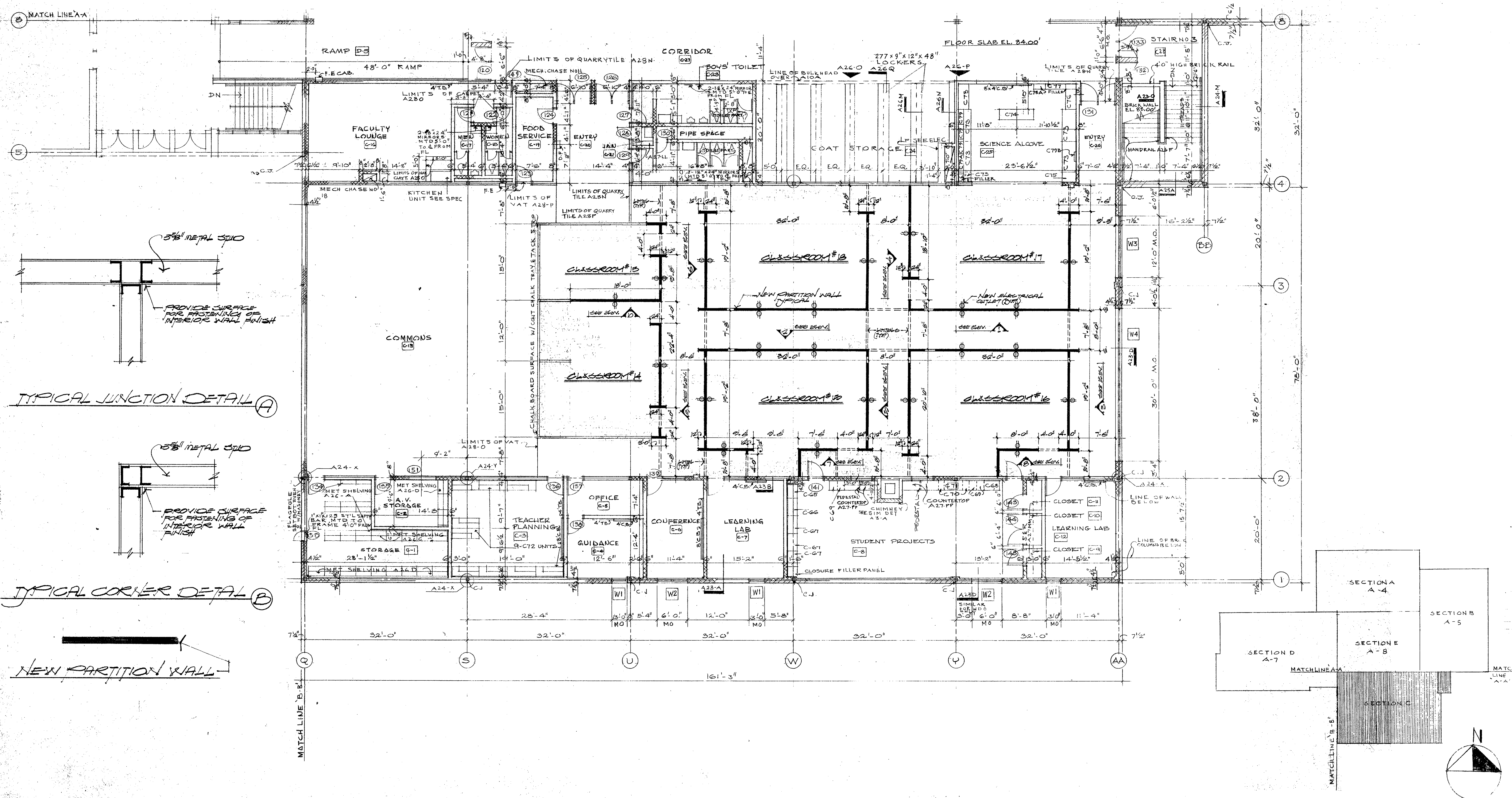
Answer: The spaces can be housed in one building. In addition to the spaces identified above, portable classrooms shall include one storage room, one IT/electrical room, and bathrooms per code.

18. What grades will be occupying the classrooms? What is the enrollment?

Answer: 6th (estimated enrollment 95) – 7th (estimated enrollment 66) –8th (estimated enrollment 62).

19. Is there adequate power within the school or will new BGE service be required?

Answer: There is no adequate electric service within the school for the portable classrooms. In consultation with MSA, the Contractor will determine the means/methods of providing electric service to the portable classrooms in accordance with applicable laws.



255 Southeast Middle School

for the MAYOR AND CITY COUNCIL OF BALTIMORE
Board of School Commissioners
Department of Public Works
Bureau of Inspection
Division of Public Building Construction

SMITH and VEALE
architects
Skarda and Rickert
structural engineers
Albert B Gipe and Assoc
mechanical engineers
Matz Childs and Assoc
civil engineers

CONSTRUCTION
OF NEW
PARTITION WALLS

DATE: JUNE 14, 2000

255 Southeast Middle School

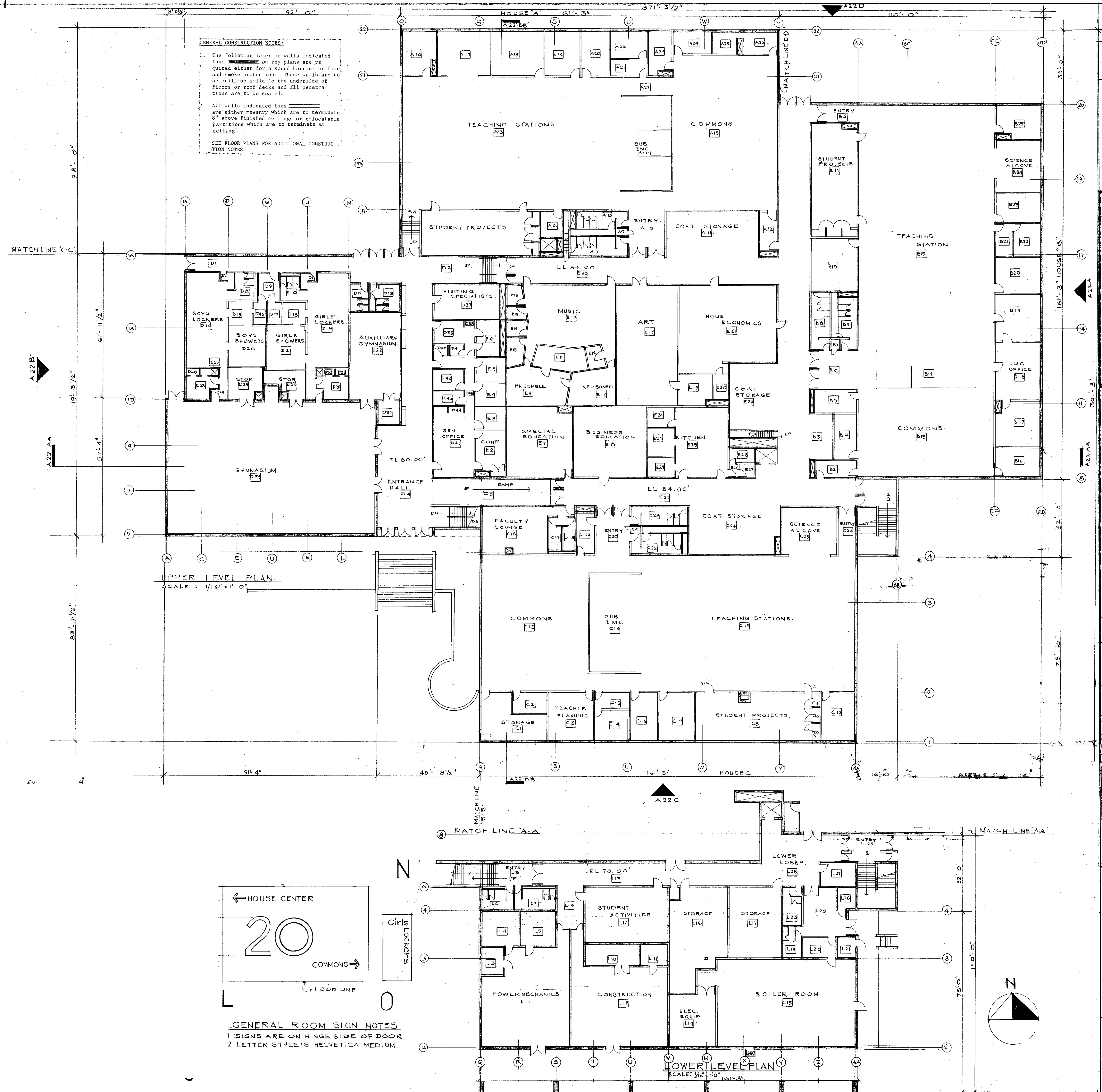
for the MAYOR AND CITY COUNCIL OF BALTIMORE
Board of School Commissioners
Department of Public Works
Bureau of Inspection
Division of Public Building Construction

SMITH and VEALE
architects
Skarda and Rickert
structural engineers
Albert B. Gipe and Assoc.
mechanical engineers
Matz Childs and Assoc.
civil engineers

key Plan

SCALE: 1/16" = 1'-0"

A 2



255 Southeast Middle School

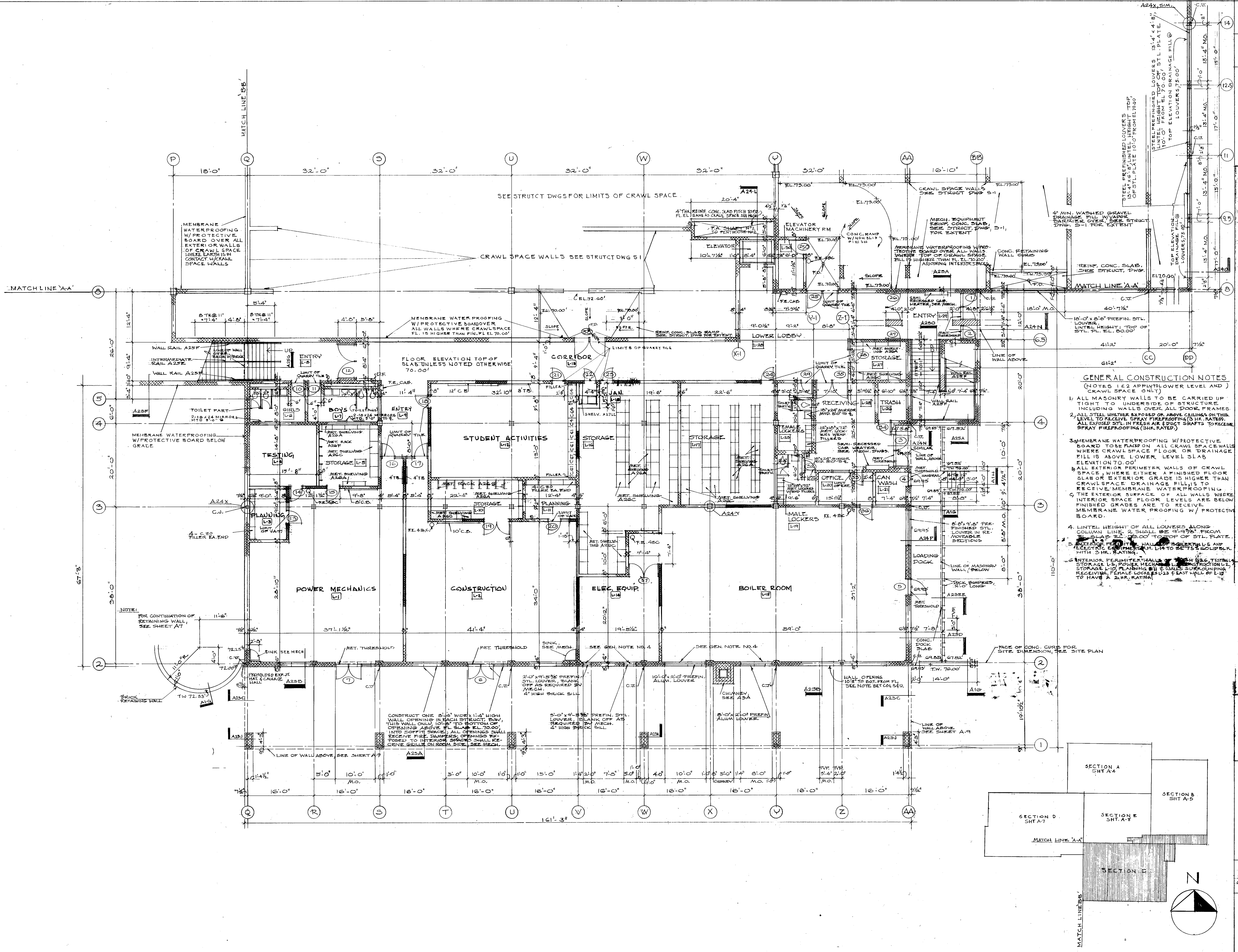
for the MAYOR AND CITY COUNCIL OF BALTIMORE
Board of School Commissioners
Department of Public Works
Bureau of Inspection
Division of Public Building Construction

SMITH and VEALE
architects
Skarda and Rickett
structural engineers
Albert B Gipe and Assoc
mechanical engineers
Matz Childs and Assoc
civil engineers

plan
lower level

SCALE: UNLESS OTHERWISE NOTED
1/8" = 1'-0"

A 3



- GENERAL CONSTRUCTION NOTES**
(NOTES 1 & 2 APPLY TO LOWER LEVEL AND)
(CRAWL SPACE ONLY)
1. ALL MASONRY WALLS TO BE CARRIED UP TIGHT TO UNDERSIDE OF STRUCTURE INCLUDING WALLS OVER ALL DOOR FRAMES.
 2. ALL STEEL WHETHER EXPOSED OR ABOVE CEILING ON THIS LEVEL TO RECEIVE SPRAY FIREPROOFING (SHR. RATED). ALL EXPOSED STL. IN FRESH AIR DUCT SHAFTS TO RECEIVE SPRAY FIREPROOFING (SHR. RATED).
 3. MEMBRANE WATERPROOFING W/ PROTECTIVE BOARD TO BE PLACED ON ALL CRAWL SPACE WALLS WHERE CRAWL SPACE FLOOR OR DRAINAGE FILL IS ABOVE LOWER LEVEL SLAB ELEVATION 70.00.
 4. ALL EXTERIOR PERIMETER WALLS OF CRAWL SPACE WHERE EITHER A FINISHED FLOOR SLAB OR EXTERIOR GRADE IS HIGHER THAN CRAWL SPACE DRAINAGE FILL IS TO RECEIVE MEMBRANE WATERPROOFING.
 5. THE EXTERIOR SURFACE OF ALL WALLS WHERE INTERIOR SPACE FLOOR LEVELS ARE BELOW FINISHED GRADES ARE TO RECEIVE MEMBRANE WATERPROOFING W/ PROTECTIVE BOARD.
 6. LINTEL HEIGHT OF ALL LOUVERS ALONG COLUMN LINE 2 SHALL BE 9'-9 3/4" FROM SLAB EL. 70.00 TO TOP OF STL. PLATE.
 7. INTERIOR PERIMETER WALLS OF POWER MECHANICAL, STORAGE L-5, PLANNING L-1, RECEIVING, FEMALE LOCKERS L-23 EAST WALL OF L-12 TO HAVE A 2 HR. RATING.
 8. INTERIOR PERIMETER WALLS OF SH-126 TESTING STORAGE L-5, POWER MECHANICAL, STORAGE L-10, PLANNING L-1, RECEIVING, FEMALE LOCKERS L-23 EAST WALL OF L-12 TO HAVE A 2 HR. RATING.

Southeast Middle School

for the MAYOR AND CITY COUNCIL OF BALTIMORE

for the MAYOR AND CITY COUNCIL OF BALTIMORE
Board of School Commissioners
Department of Public Works
Bureau of Inspection
Division of Public Building Construction

SMITH and VEALE
architects

Skarda and Rickert
structural engineers

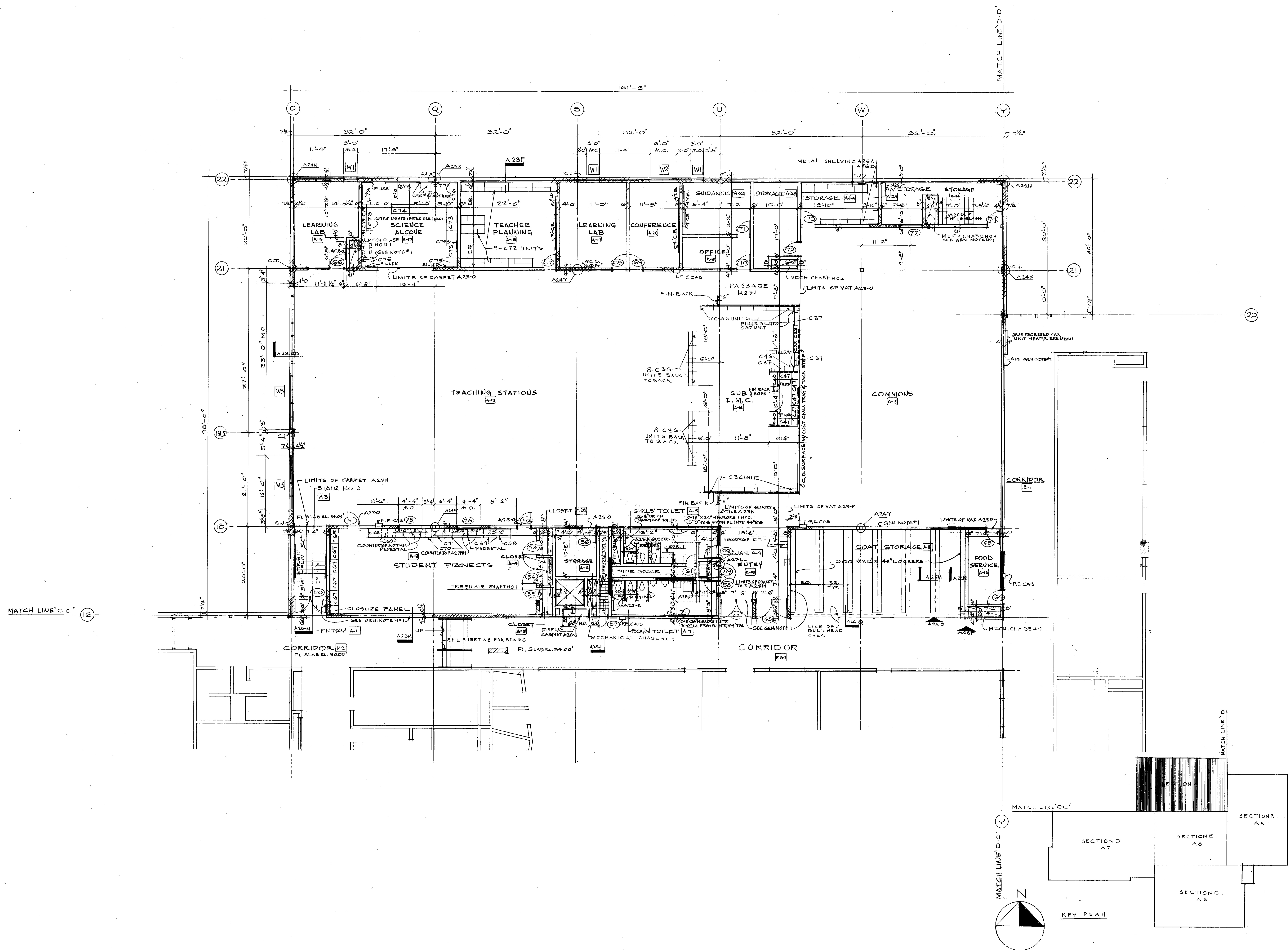
Albert B Gipe and Assoc
mechanical engineers

Matz Childs and Assoc
civil engineers

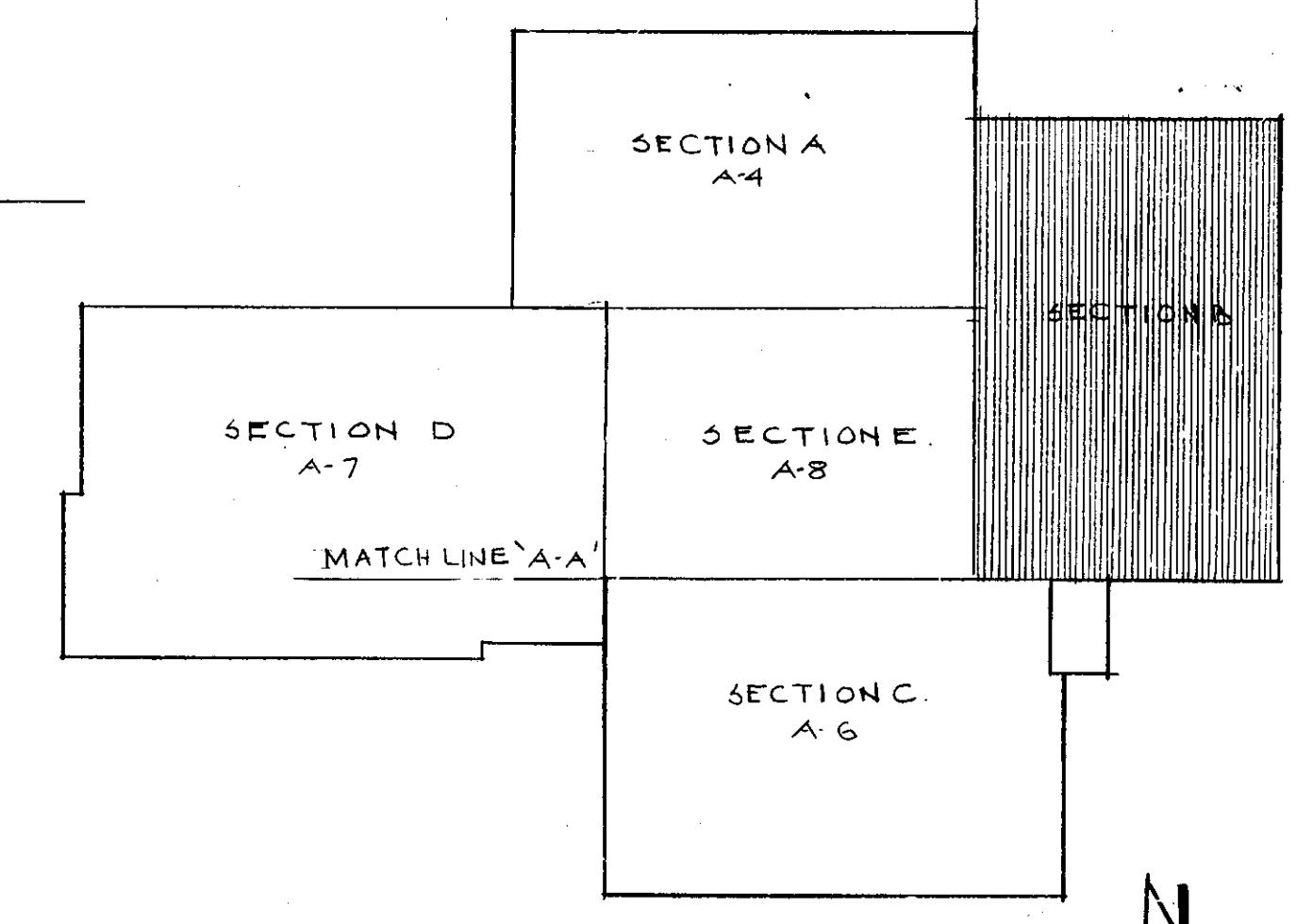
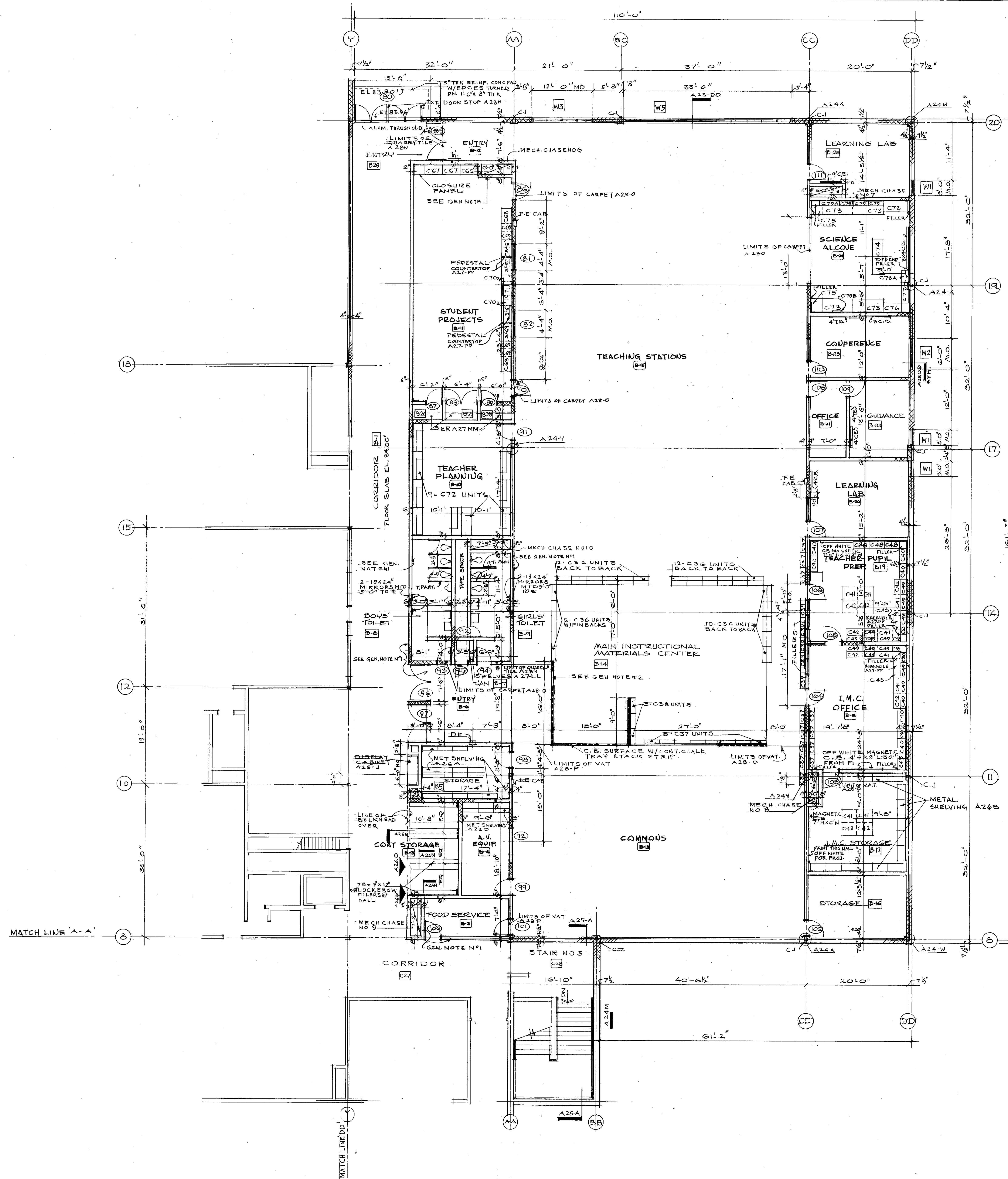
plan
section a

SCALE: $1/8" = 1'-0"$

A4



MARCH 1974



255 Southeast Middle School for the MAYOR AND CITY COUNCIL OF BALTIMORE Board of School Commissioners Department of Public Works Bureau of Inspection Division of Public Building Construction

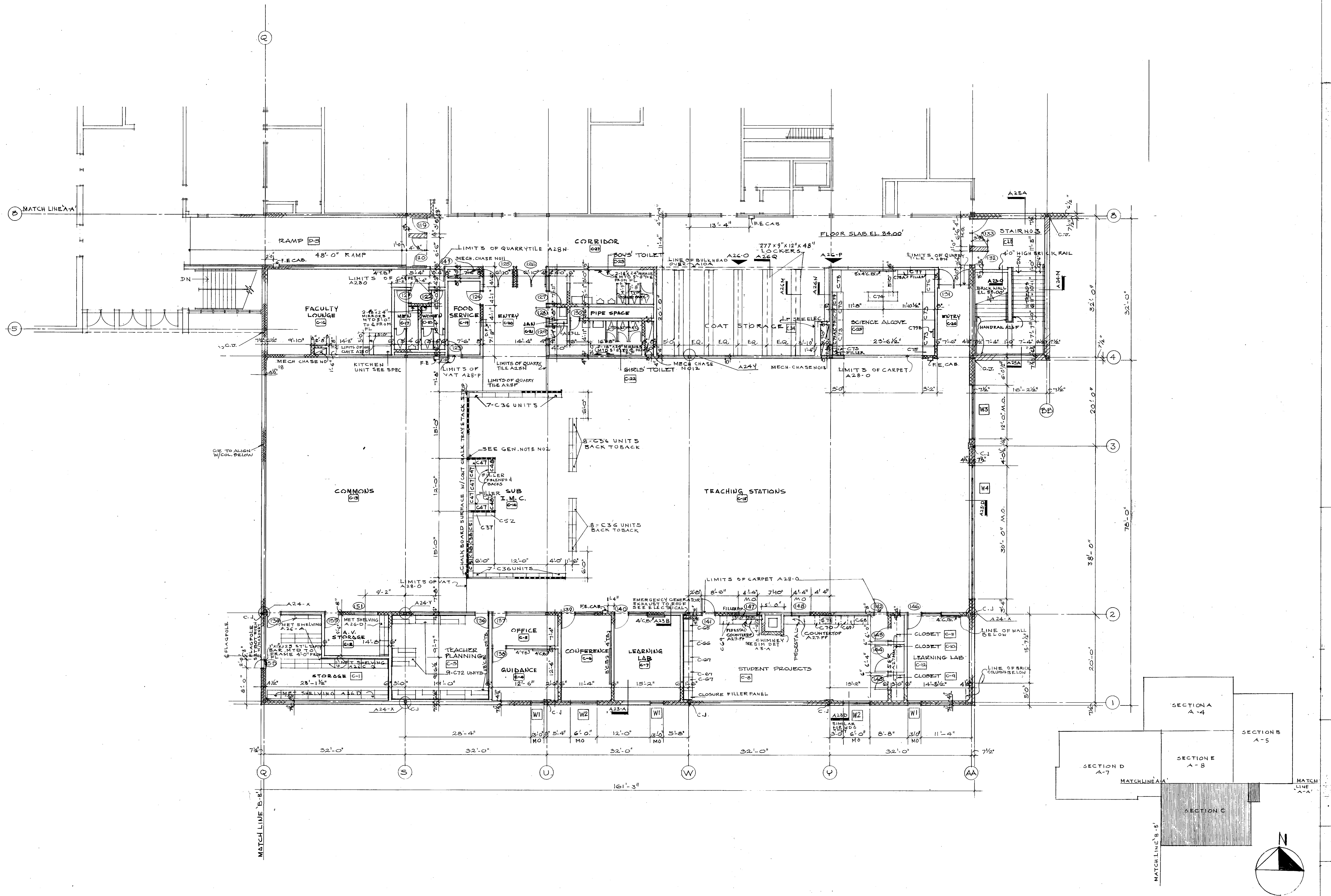
plan section b

SCALE: 1/8"=1'-0"

A5

2/4/74

255 Southeast Middle School
for the MAYOR AND CITY COUNCIL OF BALTIMORE
Board of School Commissioners
Department of Public Works
Bureau of Inspection
Division of Public Building Construction



plan
section c

SCALE 3/8" = 1'-0"

A6

2/5/74

255 Southeast Middle School

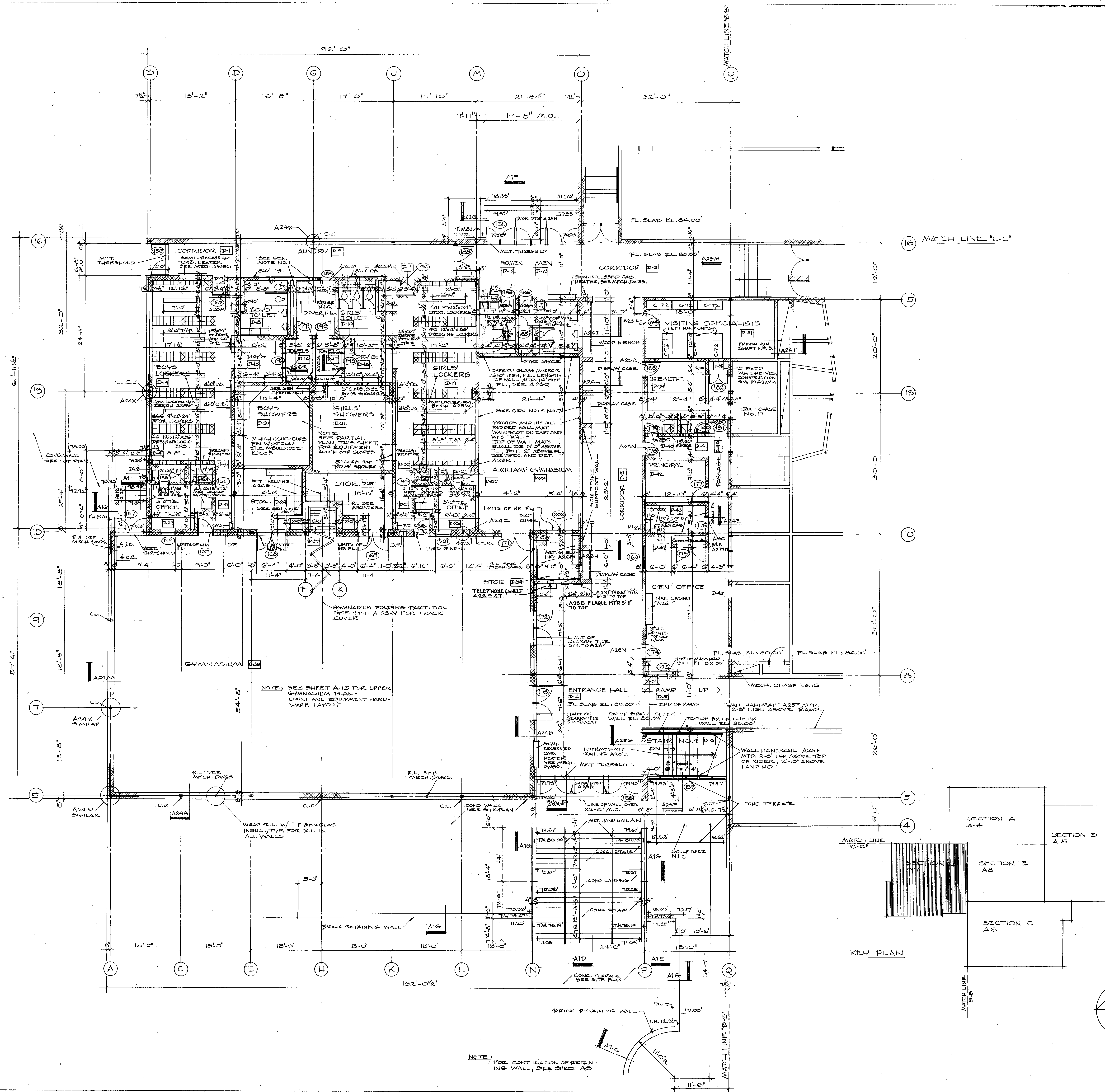
for the MAYOR AND CITY COUNCIL OF BALTIMORE
Board of School Commissioners
Department of Public Works
Bureau of Inspection
Division of Public Building Construction

SMITH and VEALE
architects
Skarda and Rickett
structural engineers
Albert B Gipe and Assoc.
mechanical engineers
Matz Childs and Assoc.
civil engineers

plan
section d

SCALE: 1/8"=1'-0"

A7



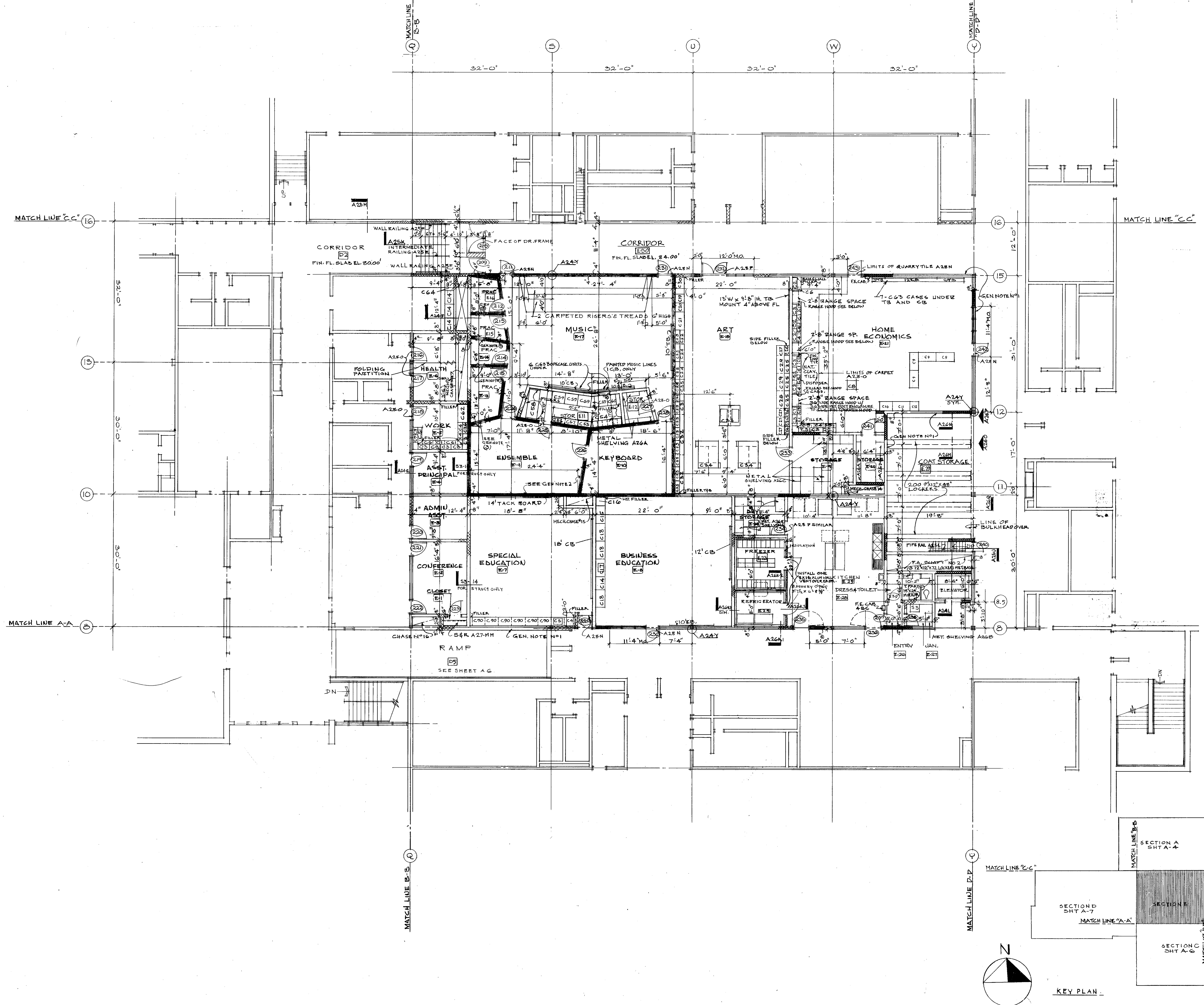
255 Southeast Middle School
for the MAYOR AND CITY COUNCIL OF BALTIMORE
Board of School Commissioners
Department of Public Works
Bureau of Inspection
Division of Public Building Construction

255

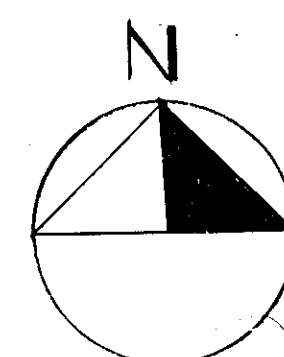
plan
section e

SCALE: 1/8"=1'-0"

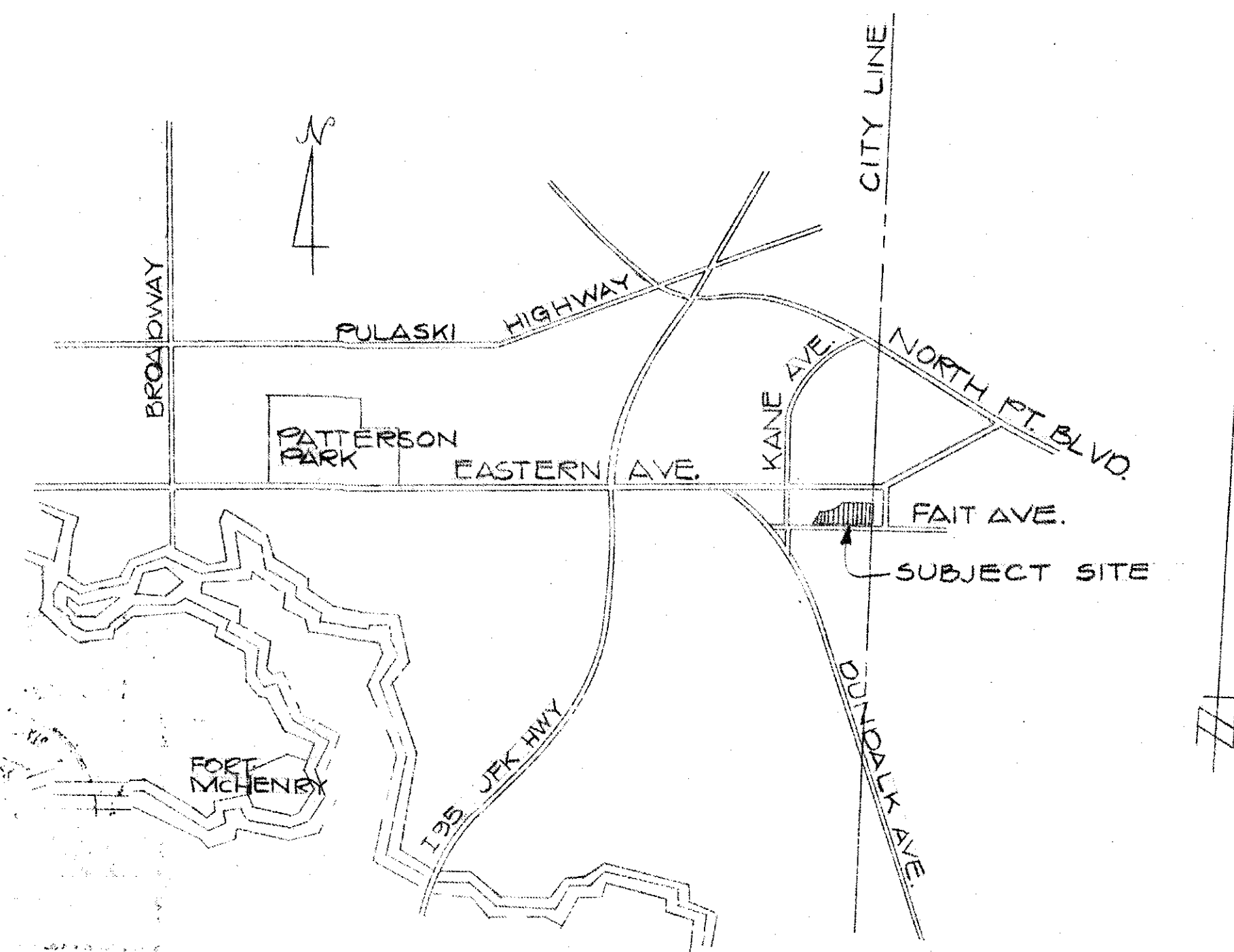
A 8



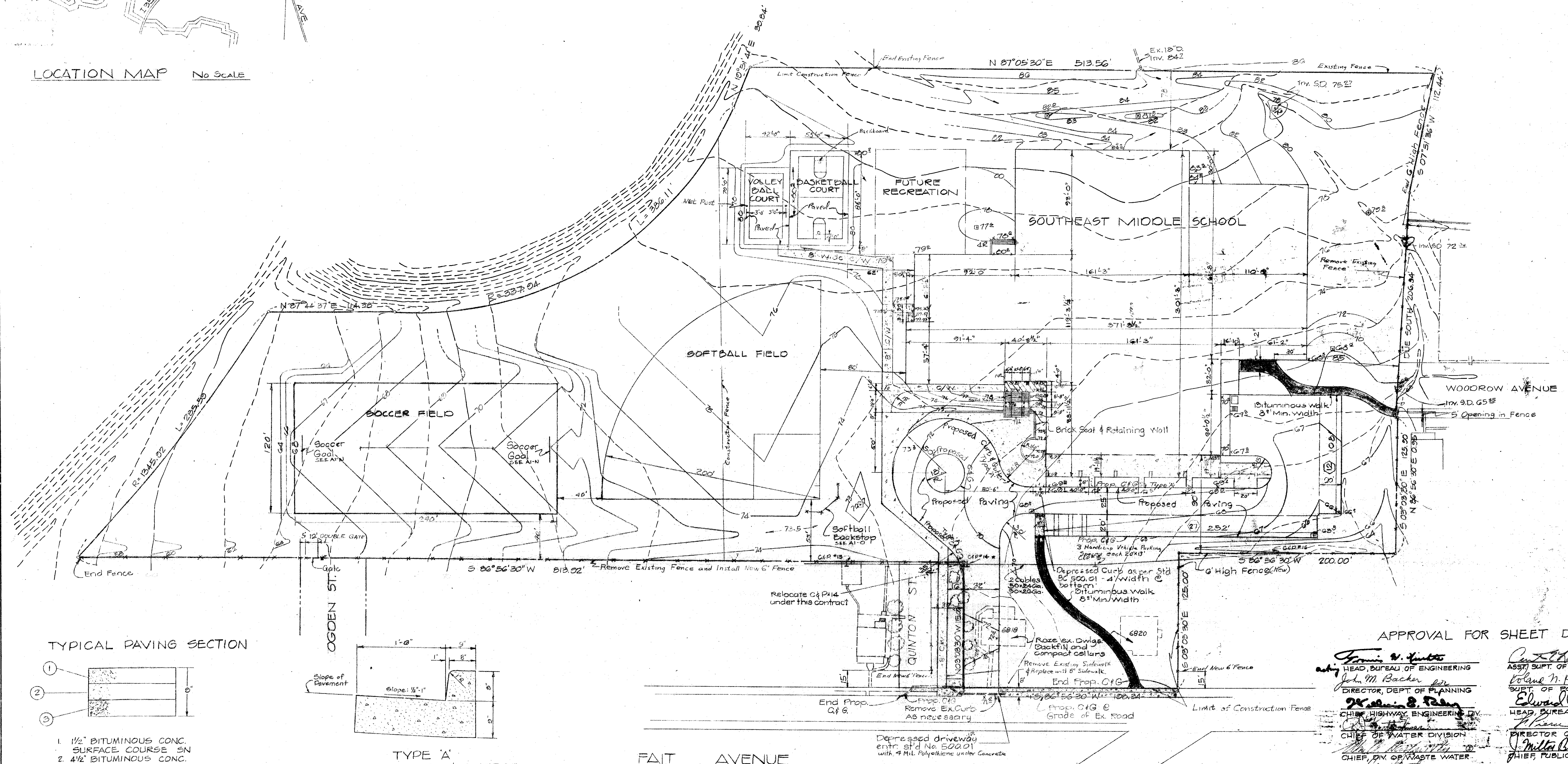
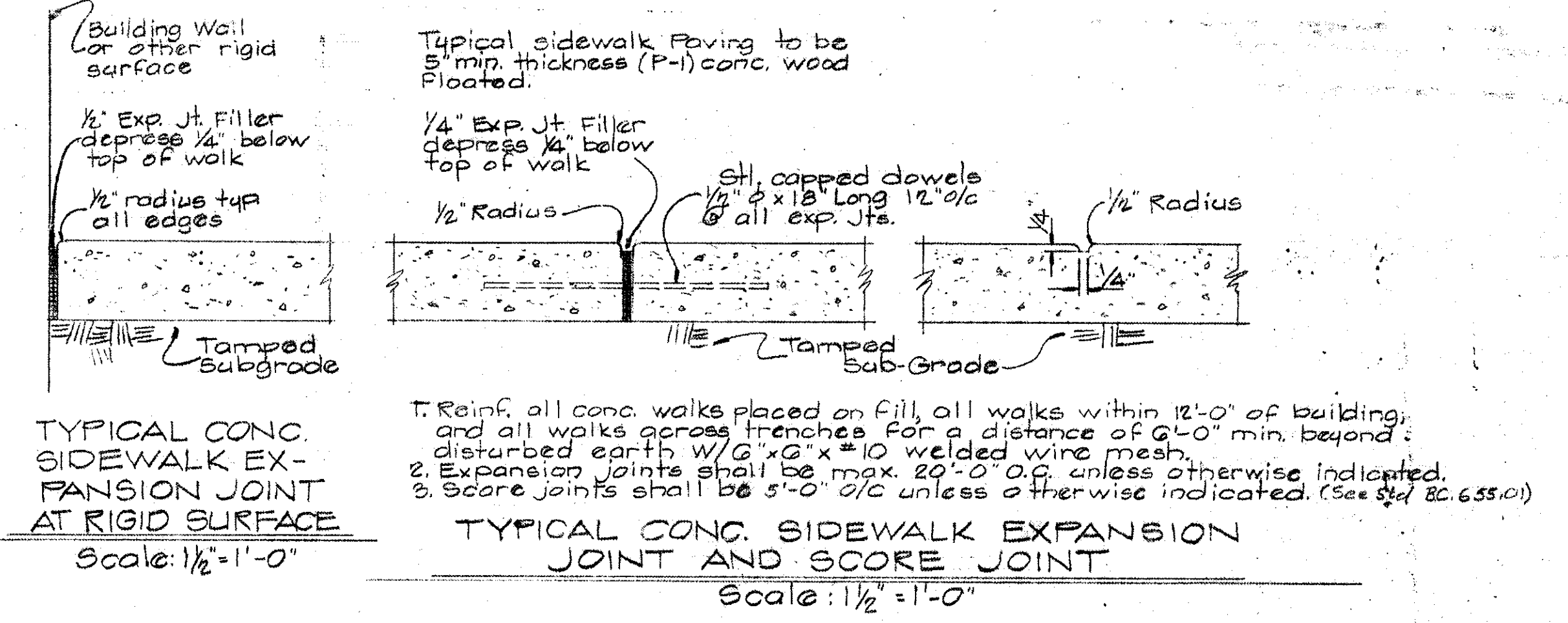
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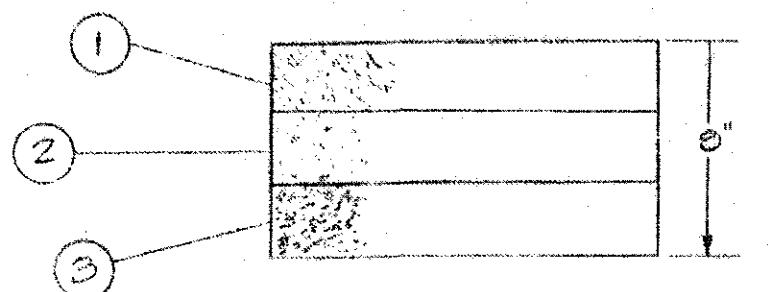
KEY PLAN



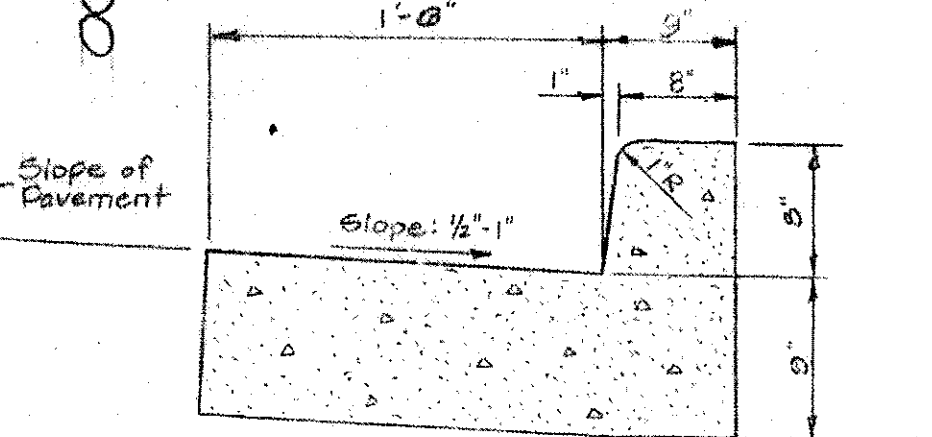
LOCATION MAP No Scale



TYPICAL PAVING SECTION

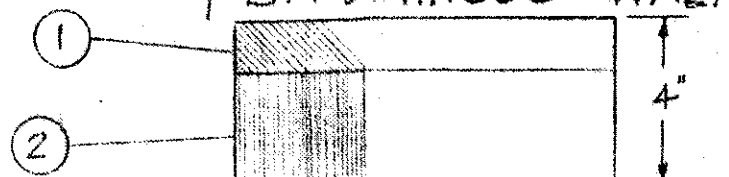


- 1 1/2" BITUMINOUS CONC. SURFACE COURSE SN
- 1 1/2" BITUMINOUS CONC. BASE COURSE B1
- 3" DENSE GRADED STABILIZED AGGREGATE BASE COURSE



TYPE 'A' STD. COMB. CURB & GUTTER

PAVING FOR PLAY AREAS & BITUMINOUS WALKS



- 1" HOT ASPHALT SURFACE COURSE (BAND ST)
- 3" HOT ASPHALT BASE COURSE (BAND B1)

1. BOUNDARY & TOPOGRAPHY BY BALTIMORE CITY BUREAU OF SURVEYS.
2. ALL DISTURBED AREAS TO BE SEEDDED PER THE SPECIFICATIONS.
3. ALL SWALES TO BE SODDED AS SOON AS COMPLETE.
4. ALL AREAS WITHIN 10' OF BUILDINGS, 9' OF WALKWAYS, ALL BANKS AND SWALES TO BE SODDED AS PER SPECIFICATIONS.

5. NO CONSTRUCTION SHALL BEGIN IN QUINTON STREET UNTIL RELEASED BY A REPRESENTATIVE OF THE DEPARTMENT OF EDUCATION.
6. ALL TREES WITHIN 6'-0" OF CURBS OR UTILITIES AND 10'-0" FROM THE BUILDING ARE TO BE REMOVED. TREES MARKED IN THE FIELD ARE TO BE REMOVED. ALL FRUIT TREES ON SITE TO BE REMOVED.

APPROVAL FOR SHEET D-1 TO D-4

James V. Smith
HEAD, BUREAU OF ENGINEERING

John M. Backer
DIRECTOR, DEPT. OF PLANNING

W. Edwin S. Peltz
CHIEF, HIGHWAY ENGINEERING DIV.

W. Edwin S. Peltz
CHIEF, WATER DIVISION

W. Edwin S. Peltz
CHIEF, DIV. OF WASTE WATER

W. Edwin S. Peltz
HEAD, BUREAU OF UTILITY OPERATIONS

Robert N. Patterson
ASST. Supt. OF PHYSICAL PLANT

Edward M. Oppel
Supt. OF PUBLIC INSTRUCTION

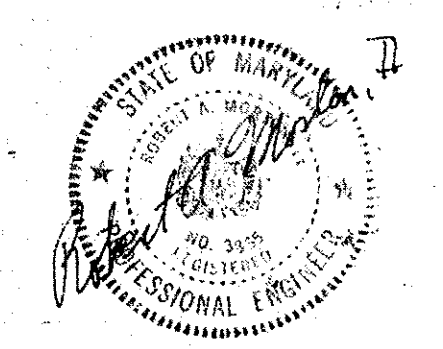
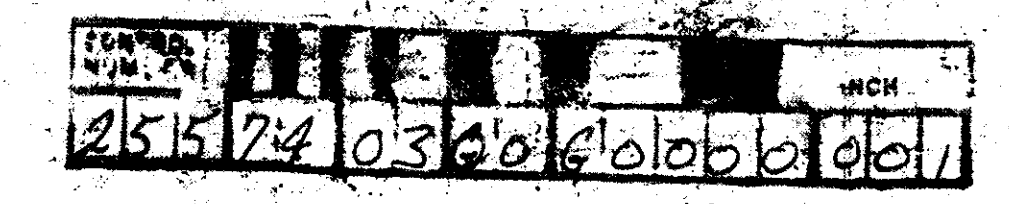
W. Edwin S. Peltz
HEAD, BUREAU OF INSPECTION

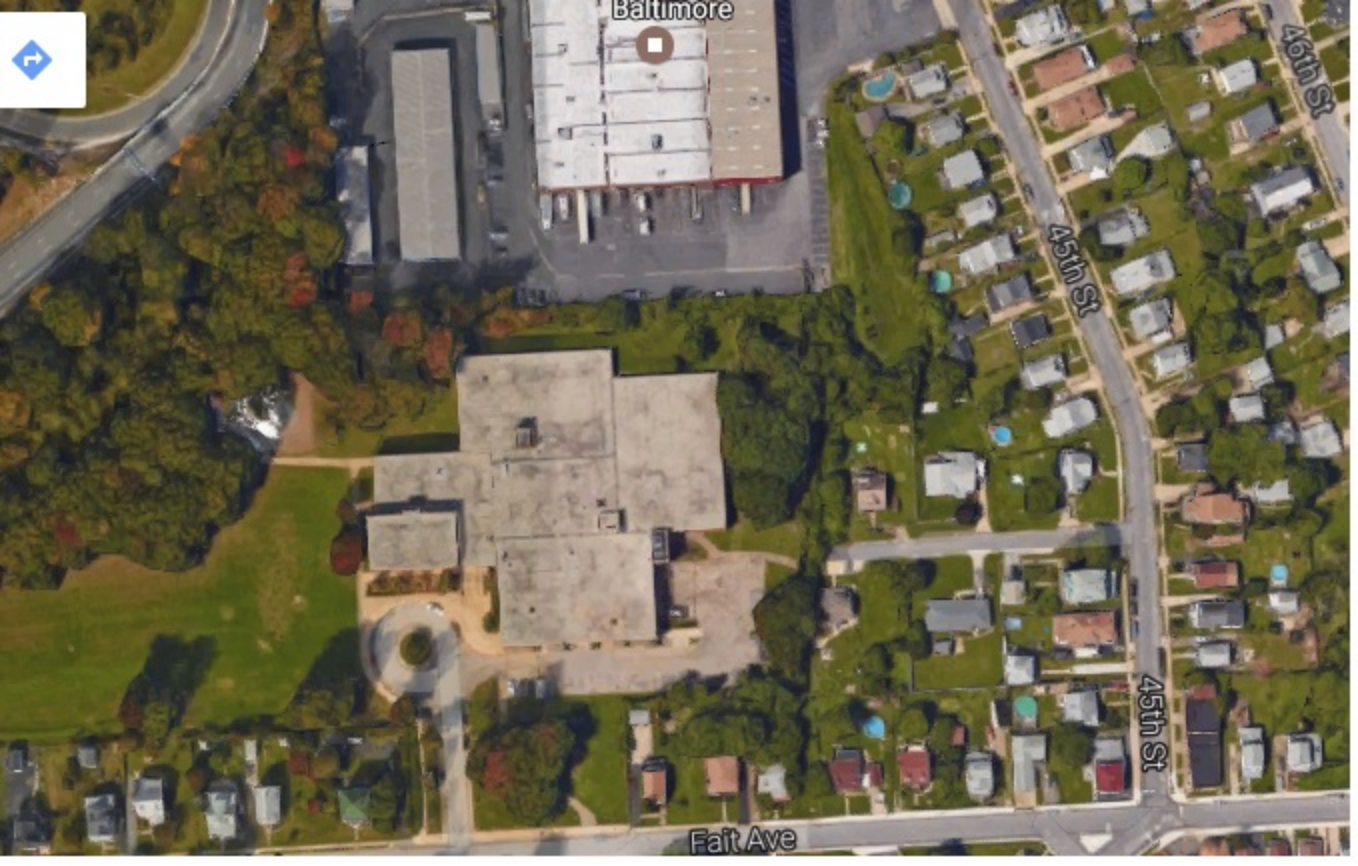
W. Edwin S. Peltz
DIRECTOR OF PUBLIC WORKS

W. Edwin S. Peltz
CHIEF, PUBLIC BUILDING CONSTR.

PAVING PLAN AND GRADING PLAN
SOUTHEAST MIDDLE SCHOOL
Baltimore City, Md.

Scale: 1" = 40'





Baltimore

46th St

45th St

45th St

Fait Ave

**MARYLAND STADIUM AUTHORITY
STANDARD TERMS AND CONDITIONS**

1. **Appointment.** Consultant accepts the relationship of trust and confidence established with MSA by this Agreement, and covenants to provide consultant reasonable skill and judgment and to cooperate with MSA and its various partners and contractors, including those working on the Project, in furthering the interests of MSA in connection with the Project.

2. **Independent Contractor.** Consultant is neither an employee of MSA nor of City Schools, but rather is and shall be an independent contractor as that term is defined under Maryland law. Consultant shall be responsible for providing all equipment and related services necessary for performance of all obligations under this Agreement, and for withholding any taxes and Social Security payment due in relation to services rendered under this Agreement. Consultant is not an agent of MSA, the State, or City Schools, cannot commit MSA, the State, or City Schools to any expenditure of funds, and cannot enter into any contractual obligation on behalf of MSA, the State, or City Schools.

3. **Standard of Care.** In performing its duties hereunder, Consultant shall use a level of skill and exhibit a standard of care that is appropriate for a Consultant providing the requisite services in connection with projects of similar size and scope to the Program. Consultant understands and acknowledges that MSA's decision to appoint Consultant is based upon the experience, qualification, and other materials submitted in response to the RFP. Consultant further represents and warrants that such materials are, as of the date that they were submitted and as of the date hereof, accurate in all material respects and fairly represent the capabilities of Consultant and its subcontractors.

4. **Performance of Services.** Consultant shall, at all times, meet the standard of care described above when fulfilling its duties and obligations under this Agreement and the Contract Documents. Consultant shall reasonably cooperate with MSA and its employees, agents, and contractors in delivering any service hereunder. At all times, Consultant shall keep MSA's Project Manager (as defined below) reasonably informed of the progress made in the performance of all assigned duties.

5. **Ownership and Use of Work Product.** Any work product, whether written or in electronic format, prepared by Consultant during the term of this Agreement for MSA shall become the sole and exclusive property of MSA. Such work product shall not be used by Consultants or its subcontractors for other projects without the specific written consent of MSA.

6. **Dissemination of Information.** Unless Consultant has obtained the prior

written consent of MSA's Contract Representative (as defined below), Consultant shall not (a) release, disseminate, publish, distribute, or circulate, in any manner whatsoever, any information, data, document or materials related to the services or performance of the services under this Agreement, or (b) publish any final reports or documents.

7. **Term.** Consultant shall complete the services under this Agreement as set forth in the Contract Documents.

8. **Extension for Completion of Tasks.** If this Agreement would otherwise expire in accordance with this provision, MSA may unilaterally extend the Agreement for such time as may be necessary to permit completion of tasks ordered by MSA that would otherwise remain incomplete at the time of expiration.

9. **Consultant's Project Team**

(a) Consultant shall not make any changes in the composition of its project team as specified in Consultant's Proposal without the prior written consent of MSA's Project Manager. Any change to the composition of Consultant's project team without the prior written consent of the Project Manager shall be deemed to be an event of default by Consultant under this Agreement.

(b) MSA's Project Manager may require Consultant to remove an employee of Consultant from its project team for sufficient cause. Such cause may include, but is not necessarily limited to: deficient performance, lack of responsiveness, illegal or immoral acts, negligence, incompetence, or inefficiency. Should replacement of an employee be required, Consultant shall submit a replacement to MSA's Project Manager for approval.

10. **Criminal Background Checks and Prohibitions**

(a) **Responsibility of the Consultant.** It is the responsibility of Consultant to make certain that its employees, agents, volunteers, and subcontractors (including all tiers) who will work at the Project premises be fingerprinted and have a background check completed in accordance with the provisions herein. Violation of any part of this subsection 6.2 may result in termination for default.

(b) **Background Checks.** Any and all current and future employees of Consultant who will work at the Project premises must have a criminal background check and fingerprinting conducted by City Schools or its designee before beginning work in any City Schools' building or building site. Previous background checks will not be accepted. The fee for the background check shall be paid by Consultant by check or money order at the time the fingerprinting is performed. No employee can begin work in or on any City Schools' building or building site until results have been received. Violation of this provision may result in termination for default. Maryland law prohibits the employment of individuals or the assignment of contractors to City Schools' projects who have committed crimes listed under § 14-101 of the Criminal Law Article of the Maryland Code.

(c) Employment of Sex Offenders. Consultant shall at all times be compliant with § 11-722 of the Criminal Procedure Article of the Maryland Code that states that a person who enters a contract with a County Board of Education (including the School Board and City Schools) or a nonpublic school may not knowingly employ an individual to work at a school if the individual is a registered sex offender. If a registered sex offender is employed by Consultant, Consultant is prohibited from assigning that employee to perform management, delivery, installation, repair, construction, or any other type of services on any City Schools' property.

(d) Additional Prohibitions. Neither Consultant nor any subcontractor of Consultant may knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of a crime involving:

(i) An offense under § 3-307 (Sexual Offense in the Third Degree) or § 3-308 (Sexual Offense in the Fourth Degree) of the Criminal Law Article of the Maryland Code, or an offense under the laws of another state that would constitute a violation of § 3-307 or § 3-308 of the Criminal Law Article if committed in Maryland;

(ii) Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or

(iii) A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in Maryland.

11. Subcontractors.

(c) Except as specified in Consultant's Proposal, Consultant shall not subcontract any of the work to be performed under this Agreement without the prior written approval of MSA. All work subcontracted for under this Agreement shall be based upon a written agreement between Consultant and subcontractor incorporating the provisions of this Agreement, unless expressly waived by MSA's Project Manager.

(d) Consultant shall comply with all applicable laws, regulations, and policies and procedures of MSA in the procurement of all subcontractors. The approval of a subcontract by MSA shall not operate as a waiver of this requirement or an acknowledgement that it has been satisfied.

(e) MSA's Project Manager, in his or her sole discretion, may require Consultant to replace a subcontractor for sufficient cause. Such cause may include, but is not necessarily limited to: deficient performance, lack of responsiveness, illegal or immoral acts, negligence, incompetence, or inefficiency. Should replacement of a subcontractor be required, Consultant shall submit a replacement to MSA's Project Manager for approval. MSA's Project Manager shall have the right to interview any

proposed replacement subcontractor before rendering a decision.

12. Prompt Payment Policy.

(a) If Consultant withholds payment of an undisputed amount to its subcontractor, MSA, at its option and in its sole discretion, may take one or more of the following actions:

(i) Not process further payments to Consultant until payment to the subcontractor is verified;

(ii) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

(iii) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to Consultant;

(iv) Place a payment for an undisputed amount in an interest-bearing escrow account; or

(v) Take other further actions as appropriate to resolve the withheld payment.

(b) An "**undisputed amount**" means an amount owed by Consultant to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to this Agreement.

(c) An act, failure to act, or decision of MSA's Project Manager, MSA's Contract Representative, or any other representative of MSA concerning a withheld payment between Consultant and a subcontractor under this provision may not:

(i) Affect the rights of the Parties under any other provision of law;

(ii) Be used as evidence on the merits of a dispute between MSA and Consultant in any other proceeding; or

(iii) Result in liability against or prejudice the rights of MSA.

(d) The remedies enumerated above are in addition to those provided in Section 6 of this Agreement.

13. Acts of Agents, Employees, and Subcontractors. Consultant shall be responsible to MSA for any and all acts and omissions of Consultant, its agents, employees, and subcontractors.

SECTION 6 – INSURANCE

During the Initial Term, any Renewal Term, and any other renewal or extension of the term of this Agreement, Consultant shall obtain, maintain, and provide satisfactory evidence of insurance coverage satisfying at least the minimum requirements set forth in the RFP and Exhibit 1 herein. Further, the Consultant shall

SECTION 8 – INDEMNIFICATION

Consultant shall indemnify, defend, and hold harmless MSA, the State, the City, and City Schools, and their respective employees, officers and agents (collectively, the "**Indemnitees**") from and against all liabilities, obligations, damages, losses, fines, penalties, claims, demands, costs, charges, judgments and expenses (including, without limitation, reasonable attorney's fees and disbursements) whatsoever, which may be imposed or incurred or paid by, or asserted against the Indemnities to the extent caused by the failure of Consultant to perform the work in accordance with the standard of care set forth in subsection 1.5 hereof. This Section shall survive the termination or expiration of this Agreement.

SECTION 9 – CHANGES

14. Changes Authorized. MSA may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the work required under the Agreement, including additions, deletions or modifications. Any such change must be conveyed by MSA to Consultant via a written change directive.

15. Executed Change Directive Required. Changes to the Agreement may be made only by a written change directive executed by MSA.

16. Prompt Notice. If Consultant encounters a situation which Consultant believes to be a change to this Agreement, Consultant shall provide MSA prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than five (5) calendar days after determining that it believed that there is a change to the Agreement. Consultant acknowledges that the failure to provide such notice in a timely manner could limit or eliminate MSA's ability to mitigate such events, and thus, Consultant may not be entitled to an adjustment in the event it fails to provide prompt notice. Consultant shall include provisions similar to this provision in all of its subcontracts.

17. Failure to Agree. If Consultant claims entitlement to a change in the Agreement, and MSA does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, MSA will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. Consultant shall proceed with the work and MSA's directives, without interruption or delay, and may

make a claim as provided in Section 10 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle MSA to all available remedies for such breach, including, without limitation, termination for default.

18. Informal Resolution. It is the mutual desire of the Parties to resolve any disputes arising under, or otherwise related to, this Agreement in an informal manner and by consensus. Toward this end, should any such dispute arise, the Parties shall use their best efforts to resolve the dispute without the need for formal litigation or process of any kind. In the event that any such dispute cannot be resolved by the Parties' field representatives, the parties shall arrange for representatives of their senior management to meet and, if possible, discuss the issue. If this process cannot resolve the problem, then either party may initiate the resolution procedure in accordance with Section 10.2 of this Agreement.

19. Formal Dispute Resolution Procedure.

(a) **Notice of Claim.** If Consultant wishes to assert a claim over a contract dispute, Consultant shall provide written notice of the claim to MSA, pursuant to procedures for dispute resolution in MSA's Procurement Policies and Procedures.

(b) **Contents of Notice of Claim.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time such notice is provided, Consultant shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that Consultant intends to assert a claim against MSA.

(c) **Appeal Procedures.** All claims arising under or in connection with the Agreement or its breach, or relating to this engagement, whether framed in contract, tort or otherwise, and which are not resolved via the dispute resolution process provided in MSA's Procurement Policies may be resolved by filing an appeal in accordance with MSA's Procurement Policies. However, if a third party brings any claim against MSA, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, MSA may bring an action for defense or indemnification against Consultant in the court in which such claim is being litigated.

20. Termination for Default. MSA may terminate this Agreement for default if Consultant fails materially to perform any of its duties or obligations under this Agreement and such failure continues for a period of at least seven (7) days after receiving written notice of such failure from MSA.

21. Termination for Convenience. MSA may, upon seven (7) days written notice to Consultant, terminate this Agreement in whole or specified part, for its

convenience, whether Consultant is in breach of this Agreement or not. In the event that MSA exercises its right to terminate this Agreement for convenience, Consultant shall not be entitled to recover for lost profits on the unperformed aspect of the work. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. In such event, Consultant shall promptly submit all documents and computer files it has prepared relating to this engagement. Consultant shall submit a proposal for settlement of all amounts due as a result of the termination for convenience.

22. Financial Disclosure. Consultant shall comply with Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies and received in the aggregate \$100,000 or more during a calendar year shall, within thirty (30) days of the time when the \$100,000 amount is reached, file with the Secretary of State a list that contains the name and address of: (i) any resident agent of the business; (ii) each officer of the business; and (iii) if known, each person who has beneficial ownership of the business.

23. Campaign Finance Disclosure. Consultant shall comply with Subtitle 1 of Title 14 of the Election Law Article of the Annotated Code of Maryland and all regulations promulgated by the State Board of Elections pursuant thereto, which provisions require that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives the specified aggregate amount or more, shall file with the State Board of Elections statements disclosing certain contributions at specified times.

24. Hiring Prohibition. No official or employee of the State of Maryland (as defined under General Provisions Article §5-101, Annotated Code of Maryland) whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement, shall during the pendency and term of this Agreement and while serving as an official or employee of the State become or be an employee of Consultant or any entity that is a subcontractor on this Agreement.

25. Prohibition of Gratuities and Benefits.

(a) No employee, officer, member, or representative of MSA, the State of Maryland, the City, or City Schools shall in any way personally share in any proceeds or benefit from this Agreement.

(b) If it is found by MSA that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by Consultant to any official, employee or agent of MSA, the State of Maryland, the City, or City Schools with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Agreement, MSA may, by written notice to Consultant, terminate the right of Consultant to proceed under the Agreement and

may pursue such other rights and remedies provided by law and under the Agreement.

(c) If this Agreement is terminated as provided in this subsection, MSA shall be entitled to pursue all available legal remedies to which it may be entitled by law, which may include, but not be limited to, exemplary damages.

26. Ethical Standards For Owner's Employees And Former Employees. MSA expects Consultant to observe the highest ethical standards and to comply with all applicable laws, rules, and regulations governing ethical conduct and conflicts of interest. Neither Consultant, nor any person associated with Consultant, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of MSA or City Schools. Consultant shall not engage the services of any person or persons in the employment of MSA or City Schools for any work required, contemplated or performed under this Agreement. Consultant may not assign to any former employee of MSA or City Schools who has joined Consultant's firm any matter on which the former employee, while in the employ of MSA or City Schools, had any involvement. Consultant shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each subcontractor or vendor.

27. False Statements. Consultant shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to MSA in connection with this Agreement.

SECTION 13 – RETENTION OF RECORDS; INSPECTIONS AND AUDITS

28. Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement. Consultant shall also maintain the financial information and data used in the preparation and support of the cost analysis and cost summaries submitted to MSA and the required cost submissions in effect on the date of execution of the Agreement. MSA, and any of its authorized representatives, shall have access to the books, records, documents and other evidence held, owned or maintained by Consultant for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to Consultant. Consultant shall provide proper facilities for such access and inspection.

29. The Consultant shall maintain, for each individual performing services under this Agreement, complete time records that document the services rendered. A summary of the time records (and any coding key necessary to interpret them), indicating the name of each employee, the services rendered, the hourly rate being charged, and the amount of time spent by each such individual, and the dates of performance, shall be available to MSA, and any auditors acting on behalf of MSA, at all reasonable times during the terms of this Agreement and for a period of seven (7) years after final payment hereunder.

30. Consultant shall retain and preserve all records and documents relating to this Agreement for seven (7) years after final payment hereunder, and shall make

them available for inspection and audit by MSA or its authorized representative's at all reasonable times.

31. Nondiscrimination.

(a) In accordance with State Finance and Procurement Article §13-219, Annotated Code of Maryland, Consultant agrees: (i) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (ii) to include a provision similar to that contained in the preceding clause (i) in any subcontract except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this paragraph.

(b) Consultant shall comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Consultant may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this paragraph does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Consultant understands that a material violation of this paragraph shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in State contracts, or other sanctions. This paragraph is not enforceable by or for the benefit of, and creates no obligation to, any third party.

(c) Upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Consultant under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Consultant agrees to provide, within 60 days after the request, a complete list of the names of all subcontractors, vendors, and suppliers that Consultant has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Consultant on each subcontract or supply contract. Consultant further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Consultant understands that violation of this paragraph is a material breach of this Agreement

and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

32. Compliance with Applicable Laws. It shall be Consultant's responsibility to perform under this Agreement in conformance with all applicable statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental entities. It is the sole responsibility of Consultant to determine the statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies that apply to the performance of this Agreement and their effects.

33. Permits, Licensing, Accreditation, and Regulation. Consultant shall secure and maintain at its expense all necessary permits, licenses, accreditations, and registrations and any other governmental approvals that are required to perform the services under this Agreement.

34. Governing Law. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Maryland, exclusive of conflicts of law provisions.

35. Assignment. Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by Consultant. Any such purported assignment shall be null and void.

36. Taxes. MSA shall not withhold federal, State, local or FICA taxes, if any, from payments made pursuant to this Agreement.

37. Electronic Funds Transfer. Consultant agrees to accept payments by electronic funds transfer.

38. Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, extend, or limit the scope or intent of such document or the intent of any provision contained therein.

39. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable. Each part of this Agreement is intended to be severable.

40. No Waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Agreement, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

CONSULTING SERVICES AGREEMENT

LIST OF EXHIBITS

Exhibit 1	Insurance Requirements
Exhibit 2	Request for Proposals
Exhibit 3	Technical Proposal
Exhibit 4	Pricing Form
Exhibit 5	Bid/Proposal Affidavit
Exhibit 6	Contract Affidavit
Exhibit 7	Conflict of Interest Statement

EXHIBIT 1

Insurance Requirements

Insurance coverage shall include:

A. Commercial General Liability Insurance

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for general liability claims (including, but not limited to, claims for bodily injury and property damage, including loss of use) arising from the operations of the Consultant, subconsultants, and suppliers that satisfies the following requirements:

1. Commercial General Liability ("CGL") insurance to be provided through the use of ISO Coverage Form CG-00-01-1001 or its equivalent.
2. Minimum coverage limits of: \$1,000,000 as a per occurrence limit; \$2,000,000 as a general aggregate limit (applied separately to claims arising from the Consultant's performance under the Contract); and \$2,000,000 as a products/completed operations limit.
3. Both MSA and City Schools shall be added as Additional Insureds by additional insured endorsements ISO CG-20-10 and CG-20-37 or their equivalents. As Additional Insureds, MSA and City Schools shall have coverage for liability arising out of the Consultant's ongoing and completed operations performed for either or both of MSA and City Schools.
4. The CGL insurance policy shall include waivers of subrogation in favor of MSA and City Schools.
5. The CGL insurance policy shall be primary and noncontributory with respect to the coverage afforded to MSA and City Schools.
6. The CGL insurance policy shall not contain any exclusion for: X, C and/or U hazards; third party actions over claims; or punitive damages.
7. The CGL insurance policy shall include Blanket Written Contractual Liability covering all contractual liabilities and indemnities assumed by the Consultant pursuant to the Contract.
8. The CGL insurance policy shall also include the following extensions:
 - a. The general aggregate limit shall apply separately to the Contract;
 - b. Premises/Operations;

- c. Actions of Independent Consultants;
- d. Products/Completed Operations to be maintained for at least two (2) years after the expiration or termination of the Contract;
- e. Personal injury liability including coverage for offenses related to employment and for offenses assumed under the Contract (including deletion of any standard employment and/or contractual exclusions if contained in the personal injury coverage section); and
- f. If a Program encroaches within fifty (50) feet of the centerline of a railroad, the CGL insurance policy shall include ISO Endorsement CG-24-17 or its equivalent prior to the Consultant beginning any work on such Project.

B. Automobile Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for third party legal liability claims arising from bodily injury and/or damage to property of others resulting from the ownership, maintenance, or use of any motor vehicle (whether owned, hired, or not owned), both on-site and off-site. Such Business Automobile Liability ("BAL") insurance shall also include coverage against uninsured motorists and automobile contractual liability. The BAL insurance shall satisfy the following requirements:

- 1. Minimum \$2,000,000 combined single limit on coverage.
- 2. The BAL insurance policy shall include waivers of subrogation in favor of MSA and City Schools.
- 3. The BAL insurance policy shall name both MSA and City Schools as Additional Insureds.
- 4. If a Project encroaches within fifty (50) feet of the centerline of a railroad, the BAL insurance policy shall include ISO Endorsement CA- 20-70 or its equivalent prior to the Consultant beginning any work on such Project.

C. Workers Compensation and Employers Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for claims arising from Workers Compensation statutes and from Employer's Liability or other third party legal liability claims arising from bodily injury, disease, or death of the Consultant's employees. Such insurance shall satisfy the following requirements:

- 1. The Consultant shall provide Workers Compensation coverage for all employees and require that their subconsultants provide Workers Compensation

coverage for all their employees in accordance with the statutory requirements of the jurisdiction in which the work is being performed.

2. The policy shall provide for both Workers Compensation coverage ("Part A") and Employers Liability coverage ("Part B").
3. The minimum limits of coverage for Part A (Workers Compensation) shall be in accordance with the statutory requirements of the jurisdiction in which the work is being performed. The minimum limits of coverage for Part B (Employers Liability) shall be \$1,000,000 for each accident, \$1,000,000 for each employee, and a \$1,000,000 aggregate policy limit for disease.
4. Part B (Employers Liability) of such insurance policy shall include waivers of subrogation in favor of MSA and City Schools. Both MSA and City Schools shall be named as Additional Insureds with respect to Part B (Employers Liability).

D. Excess Liability / Umbrella Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for third party legal liability claims against the Consultant that exceed the per occurrence or general aggregate limits of the CGL insurance policy, the BAL insurance policy, and Part B (Employer's Liability) of the Workers' Compensation and Employer's Liability insurance policy. Such excess/umbrella insurance shall satisfy the following requirements:

1. Unless otherwise specified by the Procurement Officer, the required minimum coverage limits for such insurance is \$2,000,000 per occurrence.
2. Both MSA and City Schools shall be named as Additional Insureds with respect to such excess/umbrella liability insurance.
3. The excess/umbrella liability insurance policy shall include waivers of subrogation in favor of MSA and City Schools.
4. The excess/umbrella liability insurance shall be primary and noncontributory with respect to the coverage afforded to both MSA and City Schools.

E. Professional Liability

The Contractor shall obtain and maintain a Professional Liability (**PL**) insurance policy to protect the Additional Insurance (as defined below) from damages arising from, and against liability for, errors and omissions in design work performed by the Contractor or any member of the Contractor's team providing professional contractual design services. Such PL insurance shall satisfy the requirements set forth in the following requirements:

- a) The minimum coverage limit of the PL insurance policy shall be \$1,000,000 per occurrence

- b) The Contractor shall furnish evidence satisfactory to the Owner that the limits of coverage stated above are available and unencumbered by previous losses on the policy.
- c) During the term of this Agreement, if the available limits in aggregate fall below 50%, the Contractor shall notify MSA and take action promptly to restore the limits to the required level.
- d) Deductibles shall be the responsibility of the Contractor and may not exceed \$25,000 without prior written approval from MSA.
- e) There shall be no exclusion for environmental claims arising out of the performance of the professional services.
- f) The PL insurance policy shall include contractual liability coverage, if available.
- g) The PL insurance policy shall provide coverage from and after either the date of this Agreement or the commencement of the Contractor's services in relation to the Project, whichever is earlier. The Contractor shall keep and maintain the PL insurance policy in effect for a period of at least five (5) years after the date of final payment to the Contractor or the date of final completion of the Project, whichever is later.

F. Additional insurance requirements

- 1. The amount of insurance coverage specified herein shall be the minimum amount of insurance available to satisfy claims. The Consultant shall purchase and maintain such insurance with a minimum of the limits of liability as specified herein, as otherwise specified by the Procurement Officer with respect to a particular project, or as required by law, whichever is greatest.
- 2. A policy is not acceptable if it allows the costs associated with investigating, managing, or defending against any claim or any other costs incurred by the insured or the insurer to be deducted from the policy limits.
- 3. Required insurance shall be purchased from and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Insurance companies providing coverage as required herein shall have an AM Best rating of A-VII or better. All policies must be on a primary basis. All policies, except Professional Liability and Workers' Compensation, shall name MSA and City Schools as "Additional Insured."
- 4. Consultant shall be responsible for the maintenance of this insurance regardless of whether the work is performed directly by Consultant, by any subconsultant, by any person employed by the Consultant or any subconsultant, or by anyone for whose acts the Consultant may be liable.
- 5. The Consultant agrees, for itself and for its insurers, that neither Consultant nor its insurers may raise or use in the adjustment of claims or in the defense of suits against MSA and/or City Schools, any immunity from or limitation of liability for torts (including under the Maryland Tort Claims Act and/or the Maryland Local

Government Tort Claims Act) unless requested by MSA.

6. MSA prefers that all liability insurance policies (whether for professional liability, commercial general liability, business automobile liability, excess and/or umbrella liability, employer liability, or otherwise) be written on an "occurrence basis." However, if any liability insurance policy is on a "claims made" basis, the insurance must be maintained for a period of no less than ten (10) years after the end of the term of the Contract and the retroactive date must be listed as prior to or on the date on which the Contract is executed. If the policy is scheduled to be cancelled, not renewed, or not replaced prior to the expiration of such ten (10) year period, then prior to such cancellation, nonrenewal, or non-replacement, the Consultant must purchase an Extended Reporting Coverage (Tail) to cover the exposures past the cancellation, termination, or expiration date, as applicable.
7. No acceptance and/or approval of any insurance by MSA shall be construed as relieving the Consultant, or the surety or bond, if any, from any liability or obligation imposed upon any of them by the Contract.