

CONTRACT NO.
E-DOC No.:

CONTRACT FOR PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES

FOR THE

BUILDING IMPROVEMENTS AT THE JOHN L. KINSEY ELEMENTARY SCHOOL

BETWEEN

THE SCHOOL DISTRICT OF PHILADELPHIA

AND

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Exhibits:

Exhibit A	School Reform Commission Resolution dated _____
Exhibit B	Request for Proposal (RFP) A Proposal for the Development, Design and Construction for Building Improvements at John L. Kinsey Elementary School (
Exhibit C	Construction Manager Proposal for the Development, Design and Construction for Building Improvements at the John L. Kinsey School Project dated 11, 2016
Exhibit D	Construction Manager Staffing Plan of Key Personnel
Exhibit E	Construction Manager Key Personnel Hourly Rates List
Exhibit F	Construction Manager Proposal, M/WBE Participation Plan
Exhibit G	Construction Manager Certificates of Insurance
Exhibit H	The School District of Philadelphia’s Notice to Proceed

Professional Construction
Management Services Contract
Contract No.

Approved by SRC Resolution #

Dated:

School District of Philadelphia

School Reform Commission

This Contract for Professional Construction Management Services for Building Improvements at John L. Kinsey elementary School Project (the "Contract") is made as of this _____ day of _____, 2017, by and between the SCHOOL DISTRICT OF PHILADELPHIA (hereinafter called "the School District"), located at 440 North Broad Street, Philadelphia, Pennsylvania 19130-4015, and _____ (hereinafter called "the Construction Manager" or "_____") located at _____.

BACKGROUND

The School District currently serves about 142,300 students enrolled in School District schools, which include pre-kindergarten, elementary, middle, high school and alternative schools. The School District was designated a distressed School District on December 21, 2001 pursuant to the Pennsylvania Public School Code ("PSC"), 24 P.S. §6-691(c). The School Reform Commission ("SRC") has been established pursuant to PSC, 24 P.S. §6-696, and is responsible for the operation and management and educational program of the School District pursuant to the PSC, 24 P.S. §6-696(e)(1). Various management structures are used to manage the education program in School District schools, including for-profit and non-profit organizations in addition to School District staff.

On June 30, 2015, the SRC approved a six (6)-year amended Capital Improvement Program ("CIP") for FY16 through FY21 totaling almost \$982 million. The CIP priorities include constructing new facilities and additions, renovation of existing facilities, life-cycle replacements and maintaining the physical integrity of existing buildings to meet code requirements and educational programming needs.

In its _____ Request for Proposal for A Proposal for the Development, Design and Construction for Building Improvements at John L. Kinsey Elementary School Project (hereinafter referred to as the "RFP for the Leeds Project"), the School District requested proposals from qualified Construction Managers to provide all the project components of development, design and construction for Building Improvements at John L. Kinsey Elementary School (hereinafter referred to as the "Kinsey Project" or the "Project"). The Construction Manager responded to the RFP with a Proposal dated _____

The School District is required to comply with the public bidding requirements and separate contract requirements of Section 751 of the School Code with respect to the Leeds Project. The School District and the Construction Manager desire that the Construction Manager perform, on time and on-budget, professional construction management services, for the Kinsey Project. The Construction Manager will perform, on-time and on-budget, the professional construction management services for this Project, and will assume the responsibilities, duties and liabilities

provided herein, consistent with the authorization of the School District of Philadelphia to perform a contract for professional construction management services; including professional design services, advertisement, procurement and award of separate construction contracts for the John L. Kinsey Elementary School Building.

On _____, the SRC, by Resolution _____, authorized the School District to execute, deliver and perform a contract for professional construction management services with _____ for the Kinsey Project. A copy of the SRC Resolution is attached as Exhibit “A” and incorporated by reference into this Contract.

NOW, THEREFORE, IN CONSIDERATION of the foregoing Background and the mutual covenants, promises, and agreements set forth herein, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the School District and the Construction Manager agree as follows:

Section 1. Incorporation of Background; Definitions; General Rules of Construction.

1.1 **Incorporation of Background.** The above Background is incorporated by reference into this Contract.

1.2 **Definitions.** Except as expressly provided otherwise in this Contract or in Exhibits A-F, capitalized terms shall have the meanings specified in this Paragraph 1.2. Such meanings shall be applicable to both the singular and plural of the term defined. Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa; and pronouns of any gender shall be deemed to include and designate the masculine, feminine, and neuter genders. “Or” shall include “and/or”.

(a) **Additional Services** – has the meaning attributed thereto in Paragraph 6.7, *Additional Services*.

(b) **Applicable Law** – means and includes all federal, state and local statutes, ordinances, resolutions and regulations, including the rules and regulations of any government authority, School District rules, regulations and policies applicable to the School District, the Construction Manager and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

(c) **Architect/Engineer or Architectural Designer or Engineer** – means the pre-qualified professional consulting services firm and its Subconsultants performing professional architectural design services or engineering design services or both for the Kinsey Project pursuant to a professional design services or engineering services contract approved by the School District.

(d) **Basic Services** – has the meaning attributed thereto in Paragraph 6.6, *Basic Services*.

(e) _____ **means** a company duly organized and existing under the laws of _____, and licensed and authorized to do business under the laws of the Commonwealth of Pennsylvania, with offices at _____

(f) **Capital Improvement Program or CIP or Capital Program** – means the amended 6-year Capital Improvement Program (FY16 through FY21) approved by the SRC on June 30, 2015, and any additions, deletions, changes, adjustments, and annual updates approved by the SRC.

(g) **City or Local** – means the City of Philadelphia and its legislative, executive, and administrative branches of government.

(h) **Commencement FY** – has the meaning attributed thereto in Paragraph 6.12, *Crossing Fiscal Years*.

(i) **Construction Manager or CM** – means _____ the firm performing professional construction management services for the Kinsey Project pursuant to this Contract.

(j) **Contract** – means this professional services contract for professional construction management services, including all exhibits or documents attached hereto and/or incorporated herein, as amended from time to time by written amendment executed by both parties, and all modifications or revisions made in accordance with the terms hereof.

(k) **Contract Administrator** – means a Contract Administrator designated by a party pursuant to Paragraph 7.1, *Contract Administrators*.

(l) **Contract Documents** – has the meaning attributed thereto in Paragraph 16.4, *Contract Documents; Order of Precedence*.

(m) **Contract Modification** – has the meaning attributed thereto in Paragraph 3.13, *Changes*.

(n) **Contractor(s) or Prime Contractor(s) or Construction Contractor(s)** – mean(s) the construction contractor(s) performing construction work, including general construction work, heating, ventilating and air conditioning (HVAC) work, plumbing work, and electrical work, to include their corresponding subcontractors, vendors, suppliers and materialmen, for the Kinsey Project, pursuant to a separate multiple construction contracts with the School District, under both (a) the bidding and contracts requirements of the PSC, 24 P.S. §7-751(a.2); and (b) the Separations Act, 71 P.S. §1618. The Kinsey Project construction contract(s) of the Contractor(s) or Prime Contractor(s) or Construction Contractor(s) is(are) referred to as “Prime Contract(s)” or “Construction Contract(s).”

(o) **Deliverables** – means all required submittals, work product, materials, documents, drawings, magnetic media and reports, including all underlying information, data and research, to be provided by the Construction Manager at regular review points and at the

completion of the work as expressly noted herein or as may be required by the Construction Manager.

(p) **Design Consultant(s)** – means the Architect/Engineer(s) or Architectural Designer(s) or Engineer(s) and its (their) Subconsultants assigned to the Project.

(q) **Effective Date** – means the date of execution of this document.

(r) **Extended Term** – means the optional additional term described in Paragraph 2.2, *Option to Extend*.

(s) **Federal** – means the United States of America and its legislative, executive, and administrative branches of government.

(t) **Force Majeure Condition** – means a force majeure event or condition described in Paragraph 3.14, *Force Majeure*.

(u) **Key Personnel** – means those job titles and the persons assigned to those positions in accordance with the provisions of Paragraph 3.2.14 and Paragraph 8.1, *Key Personnel* of this Contract.

(v) **MBE/WBE** – means minority-owned business enterprise and women-owned business enterprise as certified or qualified by the School District Office of Small Business Development or certified by the City of Philadelphia’s current Office of Economic Opportunity or former Minority Business Enterprise Council, or certified by the Southeastern Pennsylvania Transportation Authority’s DBE Program Office, PennDOT or certified by any other certifying agency designated by the School District in its discretion.

(w) **Notice to Proceed** – means written authorization by the Contract Administrator for the School District for the Construction Manager to commence its services, and attached as “Exhibit H”.

(x) **OSHA** – means the Occupational Health and Safety Act of 1970.

(y) **PDE** – means the Department of Education of the Commonwealth of Pennsylvania, i.e., the Pennsylvania Department of Education.

(z) **Project** – means the Building Improvements at the John L. Kinsey Elementary School.

(aa) **Project Schedule** – means the schedule developed for the Project and included in the approved Construction Documents for the Project, together with all modifications.

(bb) **Proposal** – means the Proposal dated _____, submitted by the Construction Manager in response to the RFP, together with all subsequent modifications and supporting materials submitted by the Construction Manager to the School District in response to

the RFP.

(cc) **Request for Information** or **RFI** – means Request for Information.

(dd) **Request for Proposals** or **RFP** – means the Request for Proposal issued by the School District, including all Addenda thereto issued, if any.

(ee) **School Board** – means the Board of Education of the School District.

(ff) **School District** – means the School District of Philadelphia.

(gg) **Services** or **Construction Management Services** – means, collectively, those services necessary to complete the Work, including without limitation those services, and such additional services as may be directed by the School District, to be provided by the Construction Manager in accordance with the terms and conditions of this Contract and set forth in the Construction Documents, including any Project Schedule, Work Schedule, Deliverables, supplements, modifications, or amendments hereto, and any work functions necessary in order to complete such Services.

(hh) **SRC or School Reform Commission** – means the School District's School Reform Commission appointed pursuant to the PSC, 24 P.S. §6-696, or any successor body.

(ii) **State** or **Commonwealth** – means the Commonwealth of Pennsylvania and its legislative, executive, and administrative branches of government.

(jj) **Subconsultant** – means any person, firm, partnership, corporation, other entity, or combination thereof, or their respective duly authorized representative(s), who has or will enter into a services contract or consulting agreement with the Construction Manager to perform any Services covered by this Contract, other than any contractor or subcontractor that will perform any construction work on the Project.

(kk) **Subcontract** – means a contract or consulting agreement entered into by the Construction Manager with any Subconsultant or entered into by any Contractor(s) or Prime Contractor(s) or Construction Contractor(s) with any contractor or subcontractor, in order to perform, directly or indirectly, the Construction Manager's Services under this Contract. The term "Subcontract" does not include the contracts with the construction contractors.

(ll) **Term** – means the Term specified in Paragraph 2.1.

(mm) **Termination Notice** – means a notice given by the School District of its intent to terminate and its termination of this Contract. The termination procedure is set forth in Section 14, *Termination*.

(nn) **Work** – means the Scope of Services set forth in Section 4 of this Contract.

(oo) **Work Schedule** – means that schedule submitted to and approved by the School District for the completion of those tasks necessary to complete the Work, as may be amended from time to time subject to the written approval of the School District.

1.3 **General Rules of Construction.** Except as expressly stated otherwise, all references to “Paragraph(s)” or “Section(s)” in this Contract are references to Paragraphs and Sections of this Contract or the Exhibits attached to this Contract; and all references to Exhibit(s) are references to the Exhibits attached hereto. The table of contents and headings used in this Contract are for reference and convenience only, do not in any way define, limit, describe, or amplify the provisions of this Contract or the scope or intent of its provisions, are not a part of this Contract, and will not enter into the interpretation of this Contract. All references to “days” in this Contract mean calendar days unless otherwise stated. The term “business day” or “working day” means Monday through Friday, excluding holidays observed by the School District.

Section 2. Term of Contract.

2.1 **Term.** The Term of this Contract shall commence on the date that the Construction Manager commenced services under this Contract and, unless sooner terminated by the School District pursuant to the terms of this Contract, shall continue in full force and effect until final completion of all required Services under this Contract, unless sooner terminated by the School District.

2.2 **Option to Extend.** The School District may, at its reasonable discretion, extend the term of this Contract for an additional time period (“Extended Term”). Pricing for the Extended Term shall be subject to renegotiation between the parties at the time the School District exercises its option to extend. Except as expressly stated otherwise in an Amendment, the terms and conditions of this Contract shall apply throughout the Extended Term. Prior to the expiration of the contract term, the School District, at its sole discretion, may notify the Construction Manager, in writing, of its intention to recommend extension of this Contract for an additional time period to the SRC. Within ten (10) days of the Construction Manager’s receipt of the School District’s notice of its intention to recommend extension of this Contract, the Construction Manager shall supply a written price quote to the School District for the Extended Term. Extension shall be effective only upon formal approval by resolution of the SRC. Notwithstanding the above, in the event the project is delayed due to circumstances beyond the control of CONSTRUCTION MANAGER resulting from the shift in project delivery from “turnkey development” to “professional services construction management” or commensurate with paragraph 3.14, the School District agrees to recommend an extension of this contract to the SRC upon such justification.

Section 3. Construction Manager’s Services and Responsibilities.

3.1 **Status of Construction Manager.** The Construction Manager is an authorized representative of the School District on the Project, and shall have the powers, duties and responsibilities that are delegated by the School District to the Construction Manager under this Contract. Neither the Construction Manager nor any of its agents, employees or Subconsultants constitute employees of the School District, and these persons shall have no right to receive any

School District employee benefits, or any other privileges available to School District employees.

3.2 **Construction Manager's Representations, Warranties and Commitments.** The Construction Manager hereby represents, warrants and commits to the School District, which representations, warranties and commitments shall survive the execution and delivery of this Contract, that:

3.2.1 The Construction Manager has the power and authority to enter into and perform this Contract.

3.2.2 This Contract, when executed and delivered, shall be a valid and binding obligation of the Construction Manager enforceable in accordance with its terms.

3.2.3 The Construction Manager is financially solvent and possesses sufficient working capital to perform the Services set forth in this Contract, on-time and on-budget, and is current in the payment of all taxes to all taxing entities and other indebtedness, including taxes and indebtedness to the City of Philadelphia and the Commonwealth of Pennsylvania.

3.2.4 The Construction Manager is ready, willing and able and has sufficient experience and competence to perform all of the responsibilities and duties set forth in this Contract, on-time and on-budget.

3.2.5 The Construction Manager is authorized to do business in the Commonwealth of Pennsylvania and is properly licensed or registered by all necessary governmental and public and quasi-public authorities having jurisdiction over it the Services required hereunder.

3.2.6 The Construction Manager is a firm experienced and skilled in the management of construction projects comparable to the School District's capital projects, including this Project, in size and complexity and locale.

3.2.7 The Construction Manager is thoroughly familiar with the relevant construction market in the School District's geographical area and remains current with changing market conditions related to the cost and availability of all trades of skilled labor, equipment and material availabilities.

3.2.8 The Construction Manager is thoroughly familiar with all Applicable Law, including but not limited to applicable licensing requirements related to every aspect of performance of the construction for the Project under this Contract.

3.2.9. The Construction Manager has the necessary skills, experience and expertise required to create a harmonious relationship with, and to coordinate the activities of all Project construction contractors in a fast paced urban school construction environment, and to provide valued assistance in the resolution of all disputes, including, but not limited to, labor management disputes and jurisdictional disputes.

3.2.10 The Construction Manager has visited the site of the Project and familiarized

itself with the local conditions under which the Services required hereunder are to be performed.

3.2.11 The Construction Manager's construction management work shall be reviewed and approved by architectural, engineering, and construction management personnel, if applicable, registered to practice in the particular professional field involved in the Commonwealth of Pennsylvania.

3.2.12 The Construction Manager shall provide and maintain sufficient organization, personnel and management to carry out the requirements of this Contract, on-time and on-budget, including a competent management team as necessary to provide contract administration and to coordinate the work of the Project Contractors. The Construction Manager shall assign to this Contract personnel having the necessary competency, qualifications, experience, skill and knowledge required to perform the respective services. The School District reserves the right to direct the Construction Manager to remove any personnel from the Services provided under this Contract upon material reason therefore given in writing, in advance with opportunity to cure such discrepancy. If removal of personnel is for cause, any costs of such removal shall be borne by the Construction Manager.

3.2.13 All team members of the Construction Manager shall have permanent residence in the Greater Philadelphia area for the duration of the Project.

3.2.14 **Construction Manager's Key Personnel.** The Key Personnel of the Construction Manager and its Subconsultants, all of whose current resumes have been provided, and all of whom have been identified in writing and approved in advance by the School District, are listed in the Staffing Plan, attached as Exhibit "D" and incorporated by reference into this Contract. All Key Personnel shall be on-site full-time **at least** from the start of construction through Substantial Completion. The Construction Manager shall maintain adequate, dedicated, on-site, full-time staffing through Final Completion to assure timely completion of punch list and corrective work for final acceptance. The Construction Manager shall be responsible for determining the staffing requirements and distribution of responsibilities among Project personnel to provide all the required Services over the duration of the Project. These persons shall devote their time as necessary to the Project to ensure the Construction Manager's full and timely performance of this Contract, on-time and on-budget. The Construction Manager shall not remove, reassign, replace, or substitute any listed or identified Key Personnel, without the prior written notice to and consent of the School District, which consent shall not be unreasonably withheld. In the event that these persons become unavailable to serve on the Project, the Construction Manager shall obtain the School District's prior approval of any selected substitute personnel, which approval shall not be unreasonably withheld.

3.2.15 **Construction Manager's Consultants.** The Construction Manager shall engage the Consultants, which have been approved by the School District, to perform construction management and other services required of the Construction Manager under this Contract, on-time and on-budget. The Construction Manager shall not engage any Subconsultant that has not provided proof of valid business registration with the Commonwealth of Pennsylvania to the School District. The Construction Manager shall not employ, contract with, or use the services of any person or firm, as a Subconsultant or otherwise, without the prior written approval of the School District, which approval shall not be unreasonably withheld.

3.2.16 The Construction Manager shall coordinate the activities of all its Consultants and all other members of its construction management team. The Construction Manager shall be responsible for all actions of its Subconsultants and other team members in accordance with Paragraphs 3.4, *Standard of Performance*, 3.5, *Labor, Materials, Supplies and Equipment*, and 3.10, *Subletting and Assignment*, of this Contract.

3.2.17 Any written commitment, warranty or representation by the Construction Manager within the scope of this Contract shall be binding upon the Construction Manager, whether or not incorporated into this Contract. Failure of the Construction Manager to fulfill any such commitment, warranty or representation, or if any commitment, warranty or representation was untrue in any material respect when made, shall constitute a default under Section 14 (*Termination*). The commitments, warranties and representations of the Construction Manager within the meaning of this Paragraph 3.2.17 shall include, without limitation, the following:

(a) fees, costs and rates committed to remain in force over specified period(s) of time;

(b) any representation or warranty made by the Construction Manager in a proposal as to the Services to be performed under this Contract, the qualifications, licenses, certifications, credentials, training, experience, and capabilities of the Construction Manager and its personnel, and the licenses, certifications, capabilities, and experience of its Subconsultants;

(c) any representation or warranty made by the Construction Manager concerning the characteristics of items of Services described in this Paragraph 3.2.17 made in any literature, descriptions, or documents accompanying or referred to in a proposal;

(d) any modification of, or affirmation, or representation as to the characteristics of items of Services described in this Paragraph 3.2.17 which is made by the Construction Manager in writing during the course of discussions whether or not incorporated into a formal amendment to the proposal in question; and

(e) any commitment, warranty or representation by the Construction Manager in a proposal, supporting documents, or other writing issued during the course of the proposal review as to Services to be performed, or any other similar matter, regardless of the fact that the duration of such commitment, warranty or representation may exceed the term of this Contract.

3.3 **Basic Services and Additional Services.** The Scope of Services and other requirements of this Contract constitute Basic Services, for which compensation will be paid under Paragraph 6.1 herein, but are not intended to have the effect of excluding services which are not specifically mentioned, but which are normally basic services required for performance of the obligations of the Construction Manager under this Contract. The Construction Manager shall furnish all other Services that are necessary or required to fulfill the objectives of this Contract, for which Additional Services the Construction Manager will be compensated under Paragraph 6.7 of this Contract. The Services and responsibilities delineated in this Contract are intended to define substantively the role of the Construction Manager, but may not include all of the Services

required of the Construction Manager under this Contract.

3.4 **Standard of Performance.** The Construction Manager shall exercise a high degree of professional skill, care, diligence and competence in the rendition of its Services under this Contract in accordance with the professional standards prevailing in the metropolitan Philadelphia area for the provision of the Services. The Construction Manager's attention is directed to the fact that the Services are urgently needed by the School District. The Construction Manager's Services under this Contract shall be performed as expeditiously as is consistent with said professional standards and sound professional practices. The Construction Manager shall use its best efforts to assure timely and satisfactory completion of its Services in accordance with the Project Schedule and Project Budget. The Construction Manager shall at all times act in the best interest of the School District, consistent with the professional obligations assumed by it in entering into this Contract. The Construction Manager shall perform all Services under this Contract in accordance with the terms and conditions of this Contract and to the reasonable satisfaction of the School District.

3.4.1 All Services to be performed by the Construction Manager that require the exercise of professional skills or judgment shall be accomplished by professionals licensed or registered to practice in the applicable professional discipline in the Commonwealth of Pennsylvania as may be applicable. The Construction Manager shall remain responsible for the professional and technical accuracy of all Services or Deliverables furnished under this Contract.

3.4.2 When the Scope of Services of this Contract requires the Construction Manager to prepare documents, reports, procedures, manuals or other assigned Project-related items of a similar nature, the Construction Manager understands that such items must receive the School District's review and approval prior to their use in the assigned Project. All Deliverables shall be prepared in a form and content satisfactory to the School District, and shall be delivered in a timely manner consistent with the approved Scope for the Project and all modifications thereto, Work Schedule, Project Schedule, and Cost Guidelines.

3.4.3 In the event the Construction Manager fails to comply with the standards specified in Paragraph 3.4 of this Contract, the Construction Manager shall perform again, at its own expense, any and all of the Services or Work that is required to be re-performed as a direct or indirect result of such failure. Notwithstanding any review, approval, acceptance, or payment for any and all of the Services by the School District, the Construction Manager shall remain solely responsible for the professional and technical accuracy of all of the Services and Deliverables, as defined herein and furnished under this Contract. Neither this provision nor the School District's approval shall in any way be considered as limiting the rights of the School District against the Construction Manager either under this Contract, in law or in equity.

3.4.4 With the exception of information, data, test results and other materials provided to the Construction Manager by others, upon which the Construction Manager is entitled to rely for accuracy and completeness under this Contract, the Construction Manager shall be responsible for the professional quality, technical accuracy, completeness and coordination of all specifications, reports, and other Services furnished by the Construction Manager and its Subconsultants under this Contract. Any specifications furnished by the Construction Manager or its Subconsultants found to be defective, solely as a result of the errors, omissions or negligence of

the Construction Manager or its Subconsultants, shall be promptly corrected by the Construction Manager or its Subconsultants, at no cost to the School District.

3.5 **Labor, Materials, Supplies and Equipment.** The Construction Manager shall furnish all personnel, labor, materials, supplies, equipment, tools, and instruments necessary for the proper provision of the Services described in this Contract, on-time and on-budget. The Construction Manager shall furnish the personnel and a sufficient amount of materials, supplies, equipment, tools, and instruments to perform the required Services, on-time and on-budget, in a complete, accurate, and timely manner consistent with the School District's interests or the requests of the School District and the requirements of this Contract. The Construction Manager shall be responsible for the means, methods, techniques, sequences, and procedures to perform the Services required under this Contract. The Construction Manager shall perform the required Services in such a manner as to not create a risk of harm to the School District, its agents, representatives, and employees, the general public, and the environment. The Construction Manager shall perform the Services required under this Contract using qualified, licensed, or registered personnel as applicable and necessary to the particular scope of work.

3.6 **Revisions to Work and Documents.** The Construction Manager shall make revisions in documents produced for the Project, at no additional cost to the School District, whenever such revisions are required by reason of: (a) the documents for the Project being inconsistent with the approvals or instructions previously given by the School District; or (b) such revisions are due to causes solely within the control of the Construction Manager. The School District has the right to inspect the Work of the Construction Manager and its Subconsultants in progress at any reasonable location and at any reasonable time. The Construction Manager shall revise its Work, at no cost to the School District, in accordance with the written directives of the School District's designated representatives, provided such directives are not inconsistent with previous approvals or instructions.

3.7 **Project Minutes, Reports, Correspondence and Communications.** During the Construction Phase on the Project, the Construction Manager shall prepare and distribute minutes of meetings, progress reports, and any other reports, correspondence and communications on the Project to representatives of the School District in an electronic format designated by the School District. The Construction Manager shall prepare and distribute the foregoing minutes, reports, correspondence and communications to the School District and its Project Subconsultants. Upon request or as required by this Contract, the Construction Manager shall provide the School District with oral or written reports of its activities, on a bi-weekly basis or more often as needed, required or reasonably requested by the School District.

3.8 **Coordination and Safety of Onsite Activities.** The Construction Manager shall cooperate and coordinate with all other School District consultants, contractors, and vendors and with School District personnel and consultants whose services for the School District relate to the Construction Manager's Services, or requires them to perform activities in support of or in conjunction with the Construction Manager's Services; and the Construction Manager shall conduct its operations so that it does not interfere with such other School District consultants, contractors, and vendors and School District personnel and consultants. Any difference or conflict that may arise between the Construction Manager and other School District consultants, contractors, or vendors, or between the Construction Manager and School District personnel or

consultants shall be decided by the School District. While on the premises of the School District or of any governmental or other entity other than the School District, the Construction Manager shall comply with all rules and regulations of the School District or such other entity, including all safety and security requirements.

3.9 Subletting and Assignment.

3.9.1 The Construction Manager shall not subcontract any Services hereunder without the School District's prior written consent, other than to the Subconsultants which have been approved by the School District under Paragraph 3.2.15 herein, nor permit any of its Subconsultants to do so. If the Construction Manager subcontracts any Services hereunder without the School District's prior written consent, said subcontracting shall be deemed a material breach of this Contract, thereby giving the School District the right to immediately terminate this Contract with no further obligation whatsoever on the part of the School District. Nothing in this paragraph 3.10 shall preclude the Construction Manager from self-performing services under this Contract with its own forces, in accordance with otherwise applicable provisions of this Contract, including without limitation, Exhibits "C", Construction Manager Proposal and "D", Staffing Plan. For purposes of clarity, nothing in this Contract shall be construed to allow the Construction Manager to perform construction that is subject to the mandatory bidding requirements of Applicable Law.

3.9.2 All Subcontracts between the Construction Manager and its Consultants must be in writing, and shall include at least a detailed description of the Services to be performed, and the agreed-upon compensation schedule. All Subcontracts must contain all contract provisions and certificates as are required by the School District and any State funding agency. In the event of non-performance by a Subconsultant under this Contract, the Construction Manager shall be responsible to perform these Services, on-time and on-budget. All terms and conditions under this Contract applying to the Construction Manager shall apply equally to its Consultants. The Construction Manager agrees that all Subcontracts made pursuant to this Contract shall be made expressly subject to all of the terms and conditions of this Contract. The Construction Manager shall ensure that it legally binds all Consultants to the same terms and conditions as the Construction Manager under this Contract.

3.9.3 The Construction Manager shall submit to the School District copies of all Subcontracts prior to execution by the Construction Manager with the Construction Manager's written request for the School District's consent. The Construction Manager shall not enter into any Subcontract without first obtaining the School District's written consent to the proposed Subconsultant and the proposed subcontract. In the event the School District does not consent to a proposed Consultant, the Construction Manager shall immediately replace the proposed Consultant with one to which the School District does consent; and if the School District does not consent to a proposed subcontract, the Construction Manager shall revise the subcontract as required by the School District. In no event shall the Compensation or time of performance be increased on account of the School District's exercise of any of its rights under this paragraph 3.9.3. The School District's consent to or approval of any Subcontract or Subconsultant shall not create any obligation of the School District to any Subconsultant or in any way relieve the Construction Manager of its responsibility for the performance of Subconsultants and their consultants.

3.9.4 Except as set forth herein, The Construction Manager shall be fully responsible and liable for the performance of all Services, on-time and on-budget, required under this Contract in accordance with the Contract Documents, whether performed by the Construction Manager's own personnel, by Subconsultants of the Construction Manager, or by consultants of the Subconsultants.

3.9.5 The School District shall have no obligation to any Subconsultant. The Subconsultants shall have no recourse to the School District for any payment or for performance under their Subcontracts. No Construction Manager, nor its Subconsultants, or any other person or entity employed by any of them, shall have any right or claim against the School District for any costs or damages arising from their performance of any of the Services, or for any monies due and owing to the Construction Manager for the performance of any of the Services. The Construction Manager shall incorporate this requirement in all Subcontracts with Subconsultants.

3.9.6 The Construction Manager shall not assign or otherwise transfer all or any part of its rights, duties or obligations under this Contract, in whole or in part, except with the prior written consent of the School District, which shall not be unreasonably withheld; any assignment or transfer (including, but not limited to, assignment of any Subcontract) without such written consent shall be null and void. The absence of such provision or written consent shall void the attempted assignment or transfer, and the attempted assignment or transfer shall be of no effect as to the Services, the Work, the Project or this Contract and the attempting assignor shall nevertheless remain legally responsible for all obligations under the Contract.

3.9.7 In no event shall the School District's consent to any assignment or transfer by the Construction Manager of any rights, duties or obligations under this Contract relieve the Construction Manager from its obligations hereunder or change the terms of this Contract. The Construction Manager accepts full responsibility for and guarantees the performance of any and all assignees and transferees (including Subconsultants) of the Construction Manager. The Construction Manager shall not transfer or assign any contract funds or monies or claims due or to become due hereunder, in whole or in part, without the School District's prior written approval not unreasonably withheld. The attempted transfer or assignment of any contract funds or monies which are due or which become due to the Construction Manager, in whole or in part, or any interest therein, without such prior written approval, shall have no effect upon the School District.

3.9.8 Any assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. For purposes of this Paragraph 3.9 (*Subletting and Assignment*), an assignment includes the acquisition of the Construction Manager, or a controlling interest therein, through an asset sale or a corporate or other merger, the appointment of a receiver or bankruptcy trustee for the Construction Manager, and the transfer of this Contract or the Construction Manager in any bankruptcy or other insolvency-related proceeding. A receiver or trustee of or for the Construction Manager in any federal or state bankruptcy, insolvency or other proceeding concerning the Construction Manager shall comply with the requirements set forth in this Contract, including but not limited to this Paragraph 3.10 (*Subletting and Assignment*).

3.10 **Legal Costs.** The Construction Manager shall be responsible for all legal costs that it may incur in connection with the negotiation and execution of this Contract and for all legal costs that must be incurred to defend, indemnify, and hold the School District harmless from and against any claims, causes of action, lawsuits, or actions which are brought against the School District and any of the other Indemnitees identified in Section 9 by any governmental entity or any third party as a result of any of the matters described in Section 9, *Indemnification*, of this Contract.

3.11 **Claims Services and Cooperation With Litigation.**

3.11.1 During the duration of this Contract, the Construction Manager shall provide any Services which may be required to review and evaluate claims relating to the execution or progress of construction, or the interpretation of the Construction Documents submitted in connection with the Work on the assigned Project, so long as the Construction Manager is qualified to provide such interpretation and it relates to aspects of the assigned Project for which the Construction Manager is responsible. Such Services shall be rendered by the Construction Manager, on-time and on-budget, without additional fee or compensation, unless they require participation or involvement in litigation or arbitration to which the Construction Manager is not a party. The Construction Manager shall provide any Services that may be required to review and evaluate claims (whether submitted pre-litigation or during litigation) relating to the provision of the Services, without additional fee or compensation, unless they require participation or involvement in litigation or arbitration to which the Construction Manager is not a party. During the duration of this Project, at no additional cost to the School District, except where the Construction Manager is not a party, the Construction Manager shall assist the School District in the investigation and defense of any claims which arise from the specifications or other documents prepared by the Construction Manager or its Subconsultants or which result solely from the breach of contract, errors, omissions or negligence of the Construction Manager or its Subconsultants. At no additional cost to the School District, except where the Construction Manager is not a party, the Construction Manager shall assist the School District in the investigation and defense of any claims (whether submitted pre-litigation or during litigation) which arise from the provision of the Services, or which result solely from the Construction Manager's breach of contract, errors, omissions or negligence. The Construction Manager reserves the right to join all parties necessary to any legal proceedings that arise from this agreement in order that all claims and counterclaims may be adjudicated in one proceeding.

3.11.2 **Notice of Claims.** If the Construction Manager receives notice of a legal claim against it in connection with or in any way related to this Contract, the Construction Manager shall (a) submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, (b) within five (5) business days of receipt of notice of the claim, give notice of such claim to the School District.3.12.3

3.11.3 Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the School District or the Construction Manager.

3.12 **Changes.**

3.12.1 At any time during the term of this Contract, the School District or the Construction Manager may, without invalidating this Contract, make changes in any of the Services required under this Contract, within the general scope of this Contract as set forth in Section 3 (*Construction Manager's Services and Responsibilities*), including, without limitation, requiring additional or different services, and changes in the time of performance; provided, however, as follows: (i) All such changes shall be made in accordance with the terms and conditions of this Paragraph 3.12 and the other provisions of this Contract, and shall be by Contract Modification, which shall be a written order or request that is accepted and agreed to by both the School District and the Construction Manager, as evidenced by the signatures of both the School District's Contract Administrator and the Construction Manager's Contract Administrator, prior to the commencement of the Modified Work. (ii) If any such change causes an increase or decrease in the prices of services or the time required for the performance of this Contract, the Construction Manager shall notify the School District at the earliest reasonable opportunity, and an equitable adjustment of this Contract amount or time of performance will be made, and will be incorporated as part of the Contract Modification, subject to the following conditions: (a) Except as set forth herein, Construction schedule delays shall not increase the Construction Manager's Fees; and (b) Increased construction value due to construction change orders resulting from the Construction Manager's inability to control costs shall not increase the Construction Manager's Fees; and (3) In no event shall the School District be liable to the Construction Manager for additional compensation for any alleged change to the Services for which the School District has not agreed to and signed a Contract Modification. A Contract Modification shall set forth this Contract of the Construction Manager and the School District on all of the following: (i) a change in the Services; (ii) the amount of adjustment in the Compensation, if any; and (iii) any adjustment in the time of performance. If the aggregate amount of the \$_____ guaranteed maximum price is exceeded, any Contract Modification that increases the Compensation set forth in Paragraph 6.1 must be formally approved by Resolution of the SRC to become effective.

3.12.2 Except as set forth herein, all changes in the Services pursuant to this Paragraph 3.13 shall be performed, on-time and on-budget, under applicable provisions of this Contract, and the Construction Manager shall proceed to perform the change in accordance with the time of performance provided in the Contract Modification, or if none is provided, shall proceed promptly to avoid adverse impact to the Services under its direct control.

3.13 **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract because of reasons beyond its reasonable control, including but not limited to natural disaster, any act of God, war, civil disturbance, court order, labor dispute, change in governmental regulations, delay or failure by third parties to provide critical goods or services, delay in obtaining Project site access due to problems or delays in the land acquisition process that are not caused by the School District, delay in obtaining Project site access due to failure or refusal of adjoining property owner to give necessary permission for required construction work or necessary entry onto adjoining property to perform required construction work, or delay or failure of governmental or regulatory authorities having jurisdiction over the assigned Project to give necessary or required approvals or documents for Project site access, construction work, or remediation of known, unknown, differing, or unforeseen Project site conditions or environmental hazards or conditions, (hereinafter referred to as a "Force Majeure

Condition”), the party that has been so affected shall immediately give notice to the other party; and shall exercise every commercially reasonable effort to resume performance as quickly as possible. The Construction Manager shall not be in default under Paragraph 14.2, *Termination for Default*, if any event of default as provided therein is the result of a Force Majeure Condition and its occurrence is without the fault or negligence of the Construction Manager. The School District shall not be liable to the Construction Manager for any failure to perform any of its obligations under this Contract if such failure is the result of a Force Majeure Condition. Neither party shall be entitled to compensation for the other party’s delays or nonperformance resulting from Force Majeure Conditions.

3.13.1 Any event of Force Majeure shall excuse a failure to pay any amount of money due either party under this Agreement.

3.13.2 In the event that the Project is delayed due to circumstances beyond the control of the Construction Manager and without the fault, negligence, breach of contract or willful acts or omissions of the Construction Manager which results in damages, losses, costs or expenses to the Construction Manager, the Construction Manager shall have the right to make a request for an equitable adjustment in its Compensation amount, which must be supported by written evidence documenting such request for additional Compensation and substantiating that the Construction Manager has made every reasonable effort to recover all schedule delays on the construction Project up to the time of its request for an equitable adjustment and all schedule delays on the construction Project attributable to a Force Majeure Condition under Paragraph 3.14 herein or changes in Services under Paragraph 3.13 herein. The School District shall review the Construction Manager’s request for an equitable adjustment and its supporting written documentation, and shall determine, using reasonable judgment, whether additional Compensation to the Construction Manager is justified under the particular circumstances of the equitable adjustment request as provided in this Paragraph 3.14.1, and a Contract Modification may be issued, notwithstanding any other terms of this Contract to the contrary, including by way of example only, Paragraphs 3.12, 3.13, 3.14, 6.1 and 6.7. In making this determination, the School District shall consider, among other things: (1) whether the Construction Manager had exerted efforts to the reasonable satisfaction of the School District, to recover such construction Project schedule delays and to mitigate the effects of such construction Project schedule delays on the overall construction Project and resulting damages to all the Project participants; (2) whether the Construction Manager has done recovery schedules; (3) whether the Construction Manager has involved the School District in its recovery schedule efforts; (4) whether the School District has witnessed the recovery schedule efforts of the Construction Manager. If the aggregate amount of the \$ guaranteed maximum price is exceeded any equitable adjustment as provided in this Paragraph 3.14.1 that increases the Construction Manager’s Compensation set forth in Paragraph 6.1 must be approved by Resolution of the SRC. Nothing contained in this Paragraph 3.14.1 shall prevent the Construction Manager from invoking any of its rights pursuant to Section 12 hereof.

3.14 **Ownership and Use of Documents.**

3.14.1 Design Consultant’s Reserved Rights and School District’s Granted Rights. The Designs, Drawings, Specifications and other documents prepared by the Design Consultant for the Project are instruments of the Design Consultant’s service for use solely with

respect to the Project and shall remain the property of the Design Consultants, whether the Project for which they are made is executed or not. Unless otherwise provided, the Design Consultants shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The School District shall have the right to retain copies, including reproducible copies, of the Design Consultant's Design Consultant's Designs, Drawings, Specifications and other documents for information and reference in connection with the School District's use and occupancy of the Project. The Design Consultant's Design Consultant's Designs, Drawings, Specifications or other documents shall not be used by the School District or others on other projects unless by Contract in writing and with appropriate compensation to the Design Consultants. If the Design Consultants are in default of this Contract or their contract with the Construction Manager, title to and exclusive use of the Design Consultant's Design Consultant's Designs, Drawings, Specifications and all related documents shall vest in the School District, but the School District shall indemnify and hold harmless the Design Consultants and their officers and employees from any liability arising from the use or reuse of such documents without the assistance of the Design Consultants, including costs of litigation, reasonable attorneys' fees and time spent by the Design Consultants attending depositions and court proceedings.

3.14.2 School District's Rights to Use for the Project. It is expressly understood and agreed that the School District shall have the right to utilize the Design Consultant's Design Consultant's Designs, Drawings, Specifications and other documents in the event the School District extends or makes an addition to the Project, corrects any deficiencies, makes any renovations or repairs to the Project, completes the Project after any prior termination thereof due to the Design Consultant's Design Consultant's default of this Contract or its contract with the Construction Manager, or for future Project design use other than the construction of another building, at no additional cost to the School District. The School District agrees to indemnify and hold harmless the Design Consultants and their officers and employees from any liability arising from the use or reuse of such documents without the assistance of the Design Consultants, including costs of litigation, reasonable attorneys' fees and time spent by the Design Consultants attending depositions and court proceedings.

3.14.3 Special Publication Rights; Restrictions on Design Consultant's Design Consultant's Use. The Design Consultants shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among their promotional and professional materials and for publication and teaching purposes. The Design Consultant's promotional and professional materials, as well as their publication and teaching materials, shall not include any information designated by the School District as proprietary or confidential, unless the School District has given its prior written consent to such inclusions, which consent shall not be unreasonably withheld. Professional credit may be provided for the Design Consultant on the construction sign and in the promotional materials for the Project. Except as provided in this Paragraph, the Design Consultant shall not, without the prior written consent of the School District, use or allow to be used the Designs, Drawings, Specifications or other documents uniquely developed specifically for the Project pursuant to this Contract, or any documents, drawings or specifications substantially similar thereto for any project other than the Project.

3.14.4 Ownership of Documents, Data and Files. Subject to Paragraphs 3.15.1 and 3.15.2, all documents in any form, data studies, computer files of any type, database records,

and reports that are produced by the Construction Manager under this Contract are to be the property of the School District, and shall remain the property of the School District.

3.14.5 **Risk of Loss.** During the performance of the Services herein provided for, the Construction Manager shall be responsible for any loss or damage to the documents, data, records, reports, and files that are produced by the Construction Manager under this Contract while they are in its possession, and any such documents, data, records, reports, and files lost or damaged shall be restored at the expense of the Construction Manager.

3.14.6 **Review and Access.** Full access to the Work during the Construction Manager's preparation of the documents, data, records, reports, and files shall be available to the School District and other public agencies interested in this Work during normal business hours upon reasonable notice. For additional requirements pertaining to review and access to records, reports, and documents, see Paragraph 6.12, *Audits; Records and Payments*, Paragraph 16.8, *General Publication Rights*, and Paragraph 16.15, *Examination of Records*.

3.14.7 **Termination or Expiration.** Upon termination or expiration of this Contract, the Construction Manager shall deliver copies of those records, data, information and other documents, delivery of which is required by this Contract, to the School District. Said copies of records, data, information and documents shall remain the property of the School District.

3.15 **Findings Confidential.** Information developed and obtained by the Construction Manager is considered confidential by the School District. The Construction Manager agrees to refer all inquiries by outside parties to the School District. The Construction Manager further agrees that it will not publish any articles, newsletters, marketing materials or other informational materials for public release or its own benefit regarding the Project, or any information developed or obtained during the performance of Services for the Project, without the express written approval of the School District. Employee newsletters and professional experience statements are not subject to this Paragraph 3.16. For additional requirements pertaining to confidentiality, publicity, and publication, see Section 11, *Confidentiality*, Paragraph 16.7, *Publicity*, and Paragraph 16.8, *General Publication Rights*.

3.16 **No Responsibility for Hazardous Materials.** Unless otherwise provided in this Contract, the Construction Manager and its Consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the assigned Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl ("PCB") or other toxic substances; provided, however, the Construction Manager shall report to the School District the presence and location of any hazardous material that it notices or that a Construction Manager of similar skill and expertise should have noticed. Nothing in this Contract shall impose liability on the Construction Manager for claims, lawsuits, expenses or damages arising from or in any manner related to the exposure to or the handling, manufacture or disposal of asbestos, asbestos products, or hazardous waste in any of its various forms, as defined by the United States Environmental Protection Agency.

3.17 **Deliverables.** The Construction Manager shall provide the Deliverables identified in Section 4, *Scope of Services*, of this Contract, or otherwise described in this Contract, on-time and on-budget, in strict conformity with the Scope for the Project and all modifications thereto, the

Project Schedule, and the Work Schedule. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the School District. Such partial or incomplete Deliverables may not be considered as satisfying the specific submittal requirements as set forth herein. Partial or incomplete Deliverables shall in no way relieve the Construction Manager of its schedule or cost commitments hereunder.

3.18 **Safety Services and Responsibilities.** The Construction Manager shall perform the safety services that are set forth in this Paragraph 3.19, *Safety Services and Responsibilities*.

3.18.1 **Public Convenience and Safety.** The safety, protection and convenience of the School District's students, the general public, the School District's employees, and the Contractor's employees are of primary importance, and shall be monitored by the Construction Manager in an adequate and satisfactory manner. Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of the School District of Philadelphia Safety Manual and applicable laws, rules and regulations, and codes shall be observed. If any operation, practice or condition during the course of the work is deemed by the School District or its representatives to be unsafe, the Construction Manager shall make sure that appropriate corrective action is taken by the Contractor. Where and when any operation, practice or condition endangers persons or property, it shall be discontinued and adequate remedial action taken before such work is resumed. The Construction Manager shall monitor corrective actions. The Construction Manager shall maintain NCR (Non-Compliance Reports) log using the approved project management program.

3.18.2 **Construction Manager's Safety Program.** The Construction Manager shall be responsible for developing, initiating, maintaining and supervising an approved Safety Program required for its employees. This Safety Program shall ensure compliance with the Safety Manual established for the School District of Philadelphia and all Applicable Law. It is the responsibility of the Construction Manager to ensure that the work of its employees required hereunder is performed in a safe and workmanlike manner and in compliance with general safety standards for the performance of such work. Within five (5) days from award of a Construction Contract for the Project, but *before commencement of any on-site work*, the Construction Manager shall submit for approval to the School District, its Safety Program which satisfies all requirements of Paragraph 3.19.3, *Safety Program*, and implements fully all OSHA and other Applicable Law as well as any applicable professional board or association standards of practice, for safe performance of the work required for this procurement. The Construction Manager shall also review the Safety Plans of the Construction Contractors for their conformance to the requirements of the approved Safety Program, the School District's Safety Manual and all applicable federal, state and local safety laws, rules, regulations and codes.

3.18.3 **Safety Program.** The approved Safety Program shall be used by the Construction Manager to guide and control the performance of work at the work site so as to preserve safe work practices and safe working conditions. The Safety Program shall provide that the Construction Manager, through its Safety Program Compliance Officer or Safety Inspector, shall monitor Construction Contractors' compliance with their Safety Plans and **shall stop work** in the event that any condition(s) not complying with Applicable Law or compromising safety should be present at the work site. The Safety Program shall also provide that, in the event that the School District or its representatives advises the Construction Manager of any such

condition(s), work stoppage shall be immediate in the area where the exposure exists. When stopped, work shall be resumed only after the Construction Manager has verified that the Contractor has corrected the offending condition(s) satisfactorily. The following safety provisions, to the extent they are stricter than Applicable Laws or any separate regulations prescribed by the School District, shall be complied with as part of the School District of Philadelphia Safety Manual for all personnel on the job. Construction Manager:

(1) 100% physical fall protection is required for working at heights of six feet or more above a lower level. This is a no second chance policy. Any employee observed in non-compliance with the fall protection requirements will be removed from the Project immediately. This employee will not be permitted to return to any School District of Philadelphia Project and written notice to the School District shall be provided with all pertinent identifying information.

(2) Appropriate eye protection is required when there is a potential for a foreign object to enter an employee's eye. Eye protection must meet ANSI standards. The Contractor shall have the option to require 100% eye protection at all times. If the Contractor specifies 100% eye protection, the Construction Manager shall comply with this requirement.

(3) 100% wearing of heavy duty work boots/shoes is required (no sneakers or sandals).

(4) 100% wearing of hard-hat.

(5) 100% wearing of shirt with at least a 4 inch sleeve and long pants (no shorts). No muscle shirts or cut off shirts are permitted.

(6) Operations that require a Ground Fault Circuit Interrupter (GFCI) or an Assured Equipment Grounding Program in accordance with the OSHA 1926 Construction Safety and Health Standards, will use GFCIs and not the Assured Equipment Grounding Program option.

(7) Hot work permits will be issued by the Contractor. Fire watch will be 2 hour in duration. Fire watch for new construction will be per OSHA regulations. The Construction Manager shall monitor this to verify that the Contractor is following the School District of Philadelphia safety requirements.

(8) Annual crane inspection certificate must be presented to the Contractor prior to any mobile crane being brought onto the site. All mobile cranes must have an anti-two block device. Only qualified operators are permitted to operate cranes on site. Operator qualifications must be submitted to the Contractor prior to the use of the crane on site. The Contractor shall forward the annual crane inspection certification and the operator qualifications to the Construction Manager prior to crane usage on site. The Contractor or Subcontractor shall submit a Crane Lift Plan to the Construction Manager for each phase of work on site if a crane is to be used.

(9) All trenches and excavations must meet OSHA Regulations.

(10) Each Contractor and Subcontractor must conduct weekly toolbox safety meetings. The toolbox meetings must be documented. The Contractor must forward documentation of toolbox talks to the Construction Manager.

(11) Each Contractor and Subcontractor must inspect work areas daily. Safety deficiencies must be corrected immediately. The Contractor shall submit a weekly Project Self-Inspection Report to the Construction Manager.

(12) Housekeeping will be closely monitored. All Contractors must clean their work areas by the end of the workday and properly dispose of debris. The Contractor shall strictly monitor and enforce this requirement. The Construction Manager shall monitor housekeeping on the Projects and bring deficiencies to the attention of the Contractor.

(13) The Contractor shall conduct Project safety meetings at least every two (2) weeks on the site. Attendance by each Subcontractor is required. The Construction Manager shall have representation at these meetings.

3.18.4 Safety Responsibilities. It is expressly understood that the requirements of safety in conduct of the work to be performed hereunder shall be fundamental to the execution of the Construction Manager's work. The Construction Manager shall perform its work with due regard to the safety of persons and property. The Construction Manager's employees shall abide by all Applicable Law, including but not limited to School District Safety requirements and all applicable OSHA Regulations. The Construction Manager's employees shall wear a hard-hat, long pants, shirts, and proper footwear while on the Project site. Appropriate eye protection is required when there is a potential for a foreign object to enter an employee's eye. The Project shall have a 100% physical fall protection requirement for working at heights of six feet or more above a lower level. The Construction Manager shall fully comply with the Project fall protection requirements. The Construction Manager shall attend and participate in the Project Safety Meetings. It is a condition of this Contract, and the Construction Manager agrees, that the Construction Manager shall not require its employees employed in the performance of this Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to personal health and safety, as determined under the provisions of the Safety Manual established for the School District of Philadelphia, as well as any applicable OSHA regulations. The Construction Manager shall monitor work areas, as required by existing conditions and progress of the work, in order to verify that all reasonable safeguards for safety and protection, including barriers, danger and warning signs, fences, railings, and floor coverings are in place in order to reduce the potential for an incident on site. Safety deficiencies shall be brought to the attention of the appropriate Contractor. The Construction Manager shall monitor corrective actions. The Construction Manager shall be responsible for issuing the following:

(1) Notices of non-conformance notices for work not in compliance with the School District of Philadelphia safety processes.

(2) Notices of non-compliance for work not installed according to plans and specifications.

(3) Stop work notices for work that may cause immediate danger to the construction workers or school community.

Compliance with and written response to any/all such notices are the responsibility of the respective Contractor(s). Failure to follow or make corrections as stipulated in such notices may result in deduction from or holdover of any subsequent payment request until the situation has been rectified to the satisfaction of the Construction Manager. The Construction Manager must ensure that all personnel are able to adhere to the School District of Philadelphia safety requirements. All Construction Manager personnel must be properly trained per OSHA requirements. The Construction Manager must participate in and comply with the School District's Substance Abuse Program. Construction Manager personnel are prohibited from use and possession of alcoholic beverages, drugs (other than prescription), weapons or ammunition onto the joConstruction Managerte. The Construction Manager further agrees to comply with any postings or notices located at the joConstruction Managerte regarding safety, security or weapons. The Construction Manager shall institute a drug-free joConstruction Managerte policy on this Project. Such policy shall include employee drug screening prior to an employee being permitted to work on site (pre-work), reasonable suspicion, and post-accident screening. The Construction Manager shall require that any person who expects to have unescorted access to the joConstruction Managerte will conform to this drug-free joConstruction Managerte policy. The Construction Manager shall fully comply with the Accident Reporting Procedures outlined in the Project's Safety Manuals. The Construction Manager shall obtain documentation of accident investigation resulting from any joConstruction Managerte accident. Accident Investigation reports are required for all employee injuries (no matter how minor), property damage, general liability, and near miss incidents. Accident Investigation Reports must be completed within twenty-four (24) hours of the incident unless the circumstances surrounding the incident require additional investigation. The Construction Manager shall keep records in a bound book of all accidents on the Project. The Construction Manager shall ensure that the Contractor is providing adequate security on the Project. The Construction Manager must ensure the Contractor understands the process for handling hazardous materials removal if encountered during construction. The Construction Manager must ensure that the Contractor is prepared for the possibility of uncovering hazardous materials during demolition. If the Contractor uncovers materials suspected to be hazardous, work must stop immediately in the area where the suspected material is uncovered (the Contractor may continue to work in other areas), the Construction Manager must be contacted (and supported in writing), and a licensed, qualified Industrial Hygienist contacted to test the suspected material. The Contractor shall be responsible for contacting the Industrial Hygienist. If the material is tested to be positive, then a licensed abatement contractor must remove the material. After the material is removed and the Industrial Hygienist approves the site, demolition and construction in the area can resume. The Construction Manager shall monitor the Contractor to verify that all work permits and field construction safety forms as required by the School District of Philadelphia Safety Manual are filled out by the Contractor.

3.18.5 Accidents. The Construction Manager shall provide such equipment and facilities as necessary or required for first aid service for its employees, who may be injured in the progress of the work. The Construction Manager must promptly report all accidents per School District safety requirements. If any claim is made by any third person against the Construction Manager on account of any occurrence involving the Services to be rendered hereunder, the

Construction Manager shall promptly report the fact in writing to the School District, giving full details of the claim.

3.19 **Print and Electronic Media Copies.** During the design of the Project work, the Construction Manager shall promptly provide to the School District one (1) complete set of all Record Documents on electronic media acceptable to the School District (e.g., CD-ROM) and sets of prints to the School District for design phase submissions in the number requested by the School District. During advertisement for bids for Project work, the Construction Manager shall provide an electronic media copy of the approved Construction Documents, a full set of prints of the Drawings in PDF format, and a full set of single sided copies of the Specifications in MS Word including the Table of Contents, list of Drawings and Summary of Work. At completion of each construction contract of the Project work, the Construction Manager shall submit a scanned copy on electronic media in PDF Format of the “as-built” Drawings submitted by the Contractors, and a complete set of the Contract Drawings on electronic media in AutoCAD format, conformed to include revisions by addenda, bulletins or other changes to the Drawings prepared by the Design Consultant and any of their Subconsultants.

Section 4. Scope of Services.

4.1 Schedule.

4.1.1 **Mobilization.** The Construction Manager shall commence its Services immediately upon receipt of the written Notice to Proceed issued by the School District.

4.1.2 **Work Schedule.** The Construction Manager’s construction management services shall be required for the duration of the Pre-Construction, Construction, Post-Construction (i.e., Closeout and Commissioning) and Warranty Inspection Phases (Periods) on this Project. Schedule information for the Construction Manager’s Services will be described in the Work Schedule and the Project Schedule and all modifications thereto for this Project as appropriate. The Construction Manager’s Services must be provided within the time schedule provided in the Work Schedule and the Project Schedule and all modifications thereto for this Project. The Construction Manager shall utilize the project management software program of its choice, provided it has been approved by the School District, and is compatible with Primavera P6 scheduling software, which shall be used to track and monitor the project. Microsoft Project convertible to P6 is acceptable. All reports to the School District shall be in PDF, docx, Excel or other format, as the type of report dictates, so that it does not require the School District to purchase or subscribe to the Construction Manager’s selected project management software program. All Project files and documents will become the property of the School District at Project completion.

4.1.2.1 The Project Schedule shall be developed for the Project by the Construction Manager and shall be included in the Construction Documents and all modifications thereto for the Project. The Project Schedule shall include conceptual milestone dates for all activities described in the Project scope of work. The Project Schedule for the Project shall include Pre-Construction, Construction, Post-Construction, and Warranty Inspection tasks.

4.1.3 Time is of the Essence. Time is of the essence. The Construction Manager shall commence its Services immediately upon Notice to Proceed and shall diligently prosecute the Work to completion. The Construction Manager shall use its best efforts to complete the Work on or ahead of the Work Schedule and the Project Schedule and all modifications thereto for the Project. Wherever this Agreement provides for a date, day or period of time on or prior to which action or events are to occur or not occur, time shall be of the essence. If the date, day or period for the occurrence is a weekend or holiday at the jurisdiction of the Project, reference shall be deemed to be to the next business day.

4.2 **Statement of Services.** The Construction Manager shall perform and provide for construction management services for this project, including but not limited to, design services, pre-construction services, value engineering, bidding and procurement support, construction phase oversight and coordination, schedule/phasing oversight, quality control/quality assurance, safety monitoring, building commissioning services, post-construction services, and warranty inspection services, all as more thoroughly described in this Contract, on-time and on-budget. Without limiting the generality of the foregoing, the Construction Manager's construction management services shall provide thorough management of the design, pre-construction, construction, and post-construction activities, and strict emphasis shall be placed on safety, communication, quality assurance, schedule, and budget. The Construction Manager shall perform all of the services that are necessary and required to fulfill this Contract. The services and responsibilities delineated in this Contract are intended to define substantively the role of the Construction Manager, but may not include all of the services required of the Construction Manager under this Contract. More detail on the services of the Construction Manager is found in the Project Scope section of the RFP, which is attached as part of Exhibit B and incorporated by reference into this Contract, and the Construction Manager's Proposal referred to as Exhibit C and incorporated by reference into this Contract. Commensurate with the SRC Resolution authorizing the School District to execute, deliver and perform a contract for professional construction management services with _____ for renovations at the John L. Kinsey Elementary School Project, the Construction Manager shall perform all such services; including professional design services, advertisement, procurement and award of separate construction contracts, as set forth therein and incorporated by reference into this Contract in their entirety.

4.2.1 Notwithstanding anything herein to the contrary, and in light of the explanation given in the Background of this Contract, the Construction Manager is not required to perform any construction described in the RFP or in its Proposal. Instead, Construction Documents will be prepared and bidding will take place for the construction work of this Project, as more fully described hereinafter.

4.2.2 The Construction Manager's team shall report directly to the School District. The School District's Office of Capital Programs shall directly supervise the work of the Construction Manager. The Construction Manager shall directly supervise the work of all its Subconsultants and the Project Contractors, emphasizing on-time and on-budget performance. All construction contracts shall be with the School District and the Construction Manager.

4.2.3 The School District's Standards require a phase submission by the Construction Manager. The School District's Standards establish minimum acceptable elements

of service required to be completed during each phase.

4.2.4 Prior to the commencement of services for this project, the Construction Manager shall submit the resumes of the proposed Key Personnel for this work assignment for prior approval by the School District.

4.2.5 Specific Services. The Construction Manager shall perform the services and responsibilities summarized in Paragraphs 4.2.5.A. through 4.2.5.H below within the time deadlines set forth in Paragraph 4.1, *Schedule*, of this Contract and within budget requirements.

A. Design Services.

1. Using properly credentialed and licensed Design Consultant (*i.e.*, Architects and Engineers) approved in writing by the School District, the Construction Manager shall provide, as part of Basic Services and at no additional compensation, the design or engineering duties, responsibilities, and liabilities of the Design Consultant for design or engineering services with the School District with regard to the Project, or any of the customary design or engineering duties, responsibilities, or liabilities of a design professional, such as an architect or an engineer, on a construction project.

2. All design documents for the Project shall be approved in writing by the School District, not unreasonably withheld or delayed. All design documents for the Project shall follow the School District's standard specification and drawings format.

3. All design work for the Project shall comply with the standards as established by the School District, which include "Educational Standards" and "Building Design Criteria and Technical Standards". All design work for the Project shall include Attachment "F", Attachment "G" and Attachment "H" of the RFP.

4. The Design Consultant shall exercise a high degree of professional skill, care, diligence and competence in the rendition of architectural, engineering or design-related services for the Project in accordance with the professional standards prevailing in the metropolitan Philadelphia area for the provision of design services such as those provided in this Contract. The Design Consultant shall design to cost and shall place strict emphasis on design quality, schedule, and budget. The Design Consultant shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Project designs, plans, specifications, plats, drawings, specifications, reports and other services furnished for the Project. Without any additional compensation, the Design Consultant shall diligently and expeditiously correct any errors, deficiencies or omissions in the design and design-related services or work and shall remain liable in accordance with this Contract and Applicable Law for all damages to the School District caused by the design or design-related services. Any Project designs, plans, specifications, plats, drawings and specifications furnished by the Design Consultant found to be defective, solely as a result of the errors, omissions or negligence of the Design Consultant, shall be promptly corrected by the Design Consultant, at no cost to the School District.

5. The Construction Manager through its Design Consultant, shall

submit, for review by the School District's Office of Capital Programs, design work and design documentation at designated stages during the Project, as necessary or required by the School District. The Construction Manager through its Design Consultant shall make revisions in designs, plans, plats, drawings, specifications, reports, or other documents produced for the Project, at no additional cost to the School District, whenever such revisions are required by reason of the documents for the Project being inconsistent with the approvals or instructions previously given by the School District, or such revisions are due to causes solely within the control of the Construction Manager or the Design Consultant. The School District has the right to inspect the design services or work of the Design Consultant in progress at any reasonable location and at any reasonable time. The Construction Manager and the Design Consultant shall revise Project design work and documentation, at no cost to the School District, in accordance with the written directives of the School District's designated representatives, provided such directives are not inconsistent with previous approvals or instructions.

6. The Construction Manager shall require the Design Consultant to place their licensed architect or design professional stamps (with seal, name and dated signature) on any Project drawings, specifications and other design and construction documents prepared by their licensed architects or design professionals in accordance with the Pennsylvania Architect Licensure Law, 63 P.S. §§34.12, and their licensed engineering stamps (with name, seal, and dated signature) on any Project plans, plats, specifications and reports prepared by their licensed engineers in accordance with the Pennsylvania Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. §§152 & 154.

7. A summary of the design services that may be required for the Project are as follows:

(a) Attend design and public meetings with the Construction Manager, School District's Office of Capital Programs staff, community development teams, and other School District personnel.

(b) Make presentations as required by the School District throughout the design phases.

(c) Prepare initial design schedule and update schedule as required by the School District.

(d) Confirm Building Assessment, Design Concept, Program of Requirements and initial estimate.

(e) Submit to the School District's Office of Capital Programs progress drawings, specifications, submittal review forms and supporting documentation at various stages throughout the design process.

(f) Prepare detailed cost estimates at various stages throughout the design process, and meet with Project team to reconcile estimates prepared by the School District's Office of Capital Programs, if any, with those of the Design Consultant.

- (g) Participate in Value Engineering (scope to budget analysis).
- (h) Prepare design status reports as needed or required.
- (i) Participate in constructability and value engineering meetings at various design phases.
- (j) Research and initiate the effort in obtaining all required approvals.
- (k) Determine all required permits for construction, utilities, soils conservation, etc.
- (l) Apply for preliminary building permits and attend hearings if required.
- (m) Prepare Project phasing plans.
- (n) Attend Construction Contractors pre-bid meetings, answer bid RFIs and issue addenda.
- (o) Assist the assigned School District representative and the Construction Manager in Construction Contractor bid evaluations.
- (p) Attend Pre-Construction meetings.
- (q) Review and take appropriate action on all submittals and shop drawings.
- (r) Review and take appropriate action on Applications for Payment.
- (s) Monitor and document Change Management process (including RFIs, Design Bulletins, Field Instructions, Requests for Change, Change Orders and Construction Change Directives).
- (t) Monitor and review the Construction Contractors submittal process.
- (u) Assist in the development of Quality Assurance plans for the Project.
- (v) Attend Construction Progress meetings with the School District's Office of Capital Programs, school staff representative, Construction Contractors, and the Construction Manager.
- (w) Attend Project Core Meetings. These meetings shall

include the Design Consultant, Construction Manager, School Building representatives, School District and School District representatives. Agenda shall be any issues important for the progress of the Project identified by the attendees.

(x) Assist in the coordination of overall site logistics.

(y) Review final as-builts.

(z) Conduct substantial completion and punch-list inspections with the representatives of the School District's Office of Capital Programs and the Construction Manager. Participate in final inspections with the Construction Manager and representatives of the School District's Office of Capital Programs.

(aa) Participate in O&M training sessions with the representatives of the School District's Office of Capital Programs, the Construction Manager and the Construction Contractors.

(bb) Attend Turnover meeting with the School District, the Construction Manager and the Construction Contractors.

(cc) Commissioning to assure the school operates in accordance with design intent, test, verify and fine tune the performance of key building systems.

(dd) Perform Construction Administration Services. Construction Administration Services shall include (as dictated by the needs of the Project) submittal review and approvals, construction site observation, response to Requests for Information (RFIs), issuance of Proposal Requests, review of Proposals and providing of recommendations for modifications. In general, for projects constructed by Contractors, the Design Consultant shall be expected to provide Construction Administration consistent with industry standards.

8. Consent to Use of Other Design Consultants upon the Design Consultant's Termination for Default. In the event of the termination of the Design Consultant under their contract with the Construction Manager due to the default of the Design Consultant, the Design Consultant consent to the School District's and the Construction Manager's selection of other Design Consultants of the School District's or the Construction Manager's choice to assist the School District or the Construction Manager in any way in completing the Project. The Design Consultants further agree to cooperate and provide any information requested by the School District or the Construction Manager in connection with the completion of the Project. The Design Consultants authorize the making of any reasonable changes to the design of the Project by the School District or the Construction Manager and such other Design Consultants as the School District or the Construction Manager may desire. In the event that other Design Consultants are selected or changes are made to the design of the Project, the School District agrees to indemnify and hold harmless the Design Consultants and their officers and employees from any liability arising from use and changes to the design and design documents, including costs of litigation, reasonable attorneys' fees and time spent by the Design Consultants and their Subconsultants attending depositions and court proceedings.

9. Design Consultant's Indemnification of School District. Each Design Consultant agrees to assume liability for and does specifically agree to indemnify, save, protect, and hold harmless the School District, its officers, employees, agents and members of the School Reform Commission and the Board of Education from and against any and all liability, losses, claims, suits, actions, costs, damages and expenses (including, but not limited to, attorneys' fees, court costs and legal expenses of whatever kind or nature) imposed on or asserted against the School District, and arising out of or in any way related to or resulting from the Design Consultant's carrying out the provisions of its contract with the Construction Manager or any provisions of this School District Contract, including, but not limited to, any claim for actual or alleged loss of life, bodily injury, personal injury, or damage to property, alleged to have been caused, in whole or in part, by the negligent acts, errors, omissions, breaches of contract, intentional acts or omissions, or employment discrimination of the Design Consultant, its officers, agents, employees, servants, or Subconsultants acting pursuant to its contract with the Construction Manager or any provisions of this School District Contract; and, absent gross negligence or willful misconduct, related to any claim whatsoever brought by or against any agent, servant, employee or Subconsultant of the Design Consultant for any alleged negligence or condition caused or contributed to, in whole or in part, by the School District. and from any claim for license fees or taxes for which the Design Consultant is or may become responsible. Each Design Consultant agrees that in the event that any employee of the Design Consultant makes any claim or files a lawsuit against the School District for any alleged injury on School District property or in connection with services being performed by the Design Consultant under this Contract that the Design Consultant shall fully defend, indemnify and hold harmless the School District for all damages, losses and expenses which may result therefrom (including attorneys' fees, court costs and legal expenses of whatever kind or nature). This indemnity provision is expressly intended to waive the statutory immunity afforded to the Design Consultant as an employer pursuant to §481(b) of the Pennsylvania Workers' Compensation Act, 77 P.S. §481(b), and to permit the School District to seek contribution or indemnity from the Design Consultant in the event that the School District is sued by an employee of the Design Consultant. The parties further intend that this waiver satisfy the judicial requirements applicable to an express waiver as articulated by the Superior Court of Pennsylvania in Bester v. Essex Crane Rental Corp. v. Russell Construction Co., 619 A.2d 304 (Pa.Super. 1993). The Design Consultant and its officers, agents, representatives and employees must sign a legally enforceable waiver and release of any and all claims that the representative, employee, agent, or subcontractor may have to make a claims, or commence a lawsuit, or recover damages or losses from or against the School District (and the employees, agents and officials of the School District) or from or against any student (and the parents, guardians or custodians of the students) enrolled in any School District program or activity arising from or related to any injuries which are covered under Pennsylvania's Workers' Compensation statute or which would be covered if the representative, officer, agent, or subcontractor were an employee.

10. Design Consultant's Professional Liability Insurance. Each Design Consultant shall provide Architects and Engineers Professional Liability Insurance in the following coverages:

- (1) Limit of Liability: \$2,000,000 with a deductible not to exceed \$50,000.

- (2) Coverage: Architectural errors and omissions, including liability assumed under this Contract.
- (3) Architects and Engineers Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of the performance of the Services required under this Contract shall be maintained in full force and effect for a retroactive date prior to work and an extending reporting period of three (3) years after completion of work.

11. The Construction Manager shall include all of the provisions of Paragraph 4.2.5A of this Contract in its contract with the Design Consultants.

B. Pre-Construction Services:

1. The Construction Manager shall perform and prepare a detailed constructability review of the Construction Documents and submit recommendations to the School District and the Design Consultant.

2. The Construction Manager shall perform and prepare a detailed final construction cost (pre-bid) estimate of the Construction Documents.

3. The Construction Manager shall prepare a Preliminary CPM Construction Schedule based on the Constructability Review that integrates critical design and construction activities, illustrates an understanding of the School District's processes, required Project approvals, and durations for design reviews, coordinates Project milestones and required phasing with critical review and approval and construction activity links, and identifies sequences and relationships for critical submittals and shop drawings.

4. The Construction Manager shall obtain or shall require the appropriate construction contractor(s) to obtain all required permits for the Project.

C. Procurement Support Services (Bidding Phase):

1. For, on behalf of, and in the name of the School District, the Construction Manager shall advertise for bids in accordance with Applicable Law, including but not limited to, section 751 of the School Code, 24 P.S. §7-751. The advertisements and method of advertisement shall be subject to the prior written approval of the School District.

2. For and on behalf of the School District, the Construction Manager shall prepare full, complete and proper bid documents, including but not limited to necessary specifications and contract documents (hereinafter referred to either individually or together as the "Construction Documents") for the construction contractors that will perform the construction at the Project.

2.1. The Construction Manager shall ensure that all Construction Documents are in accordance with all Applicable Law and will require the construction contractors to comply will all Applicable Law, including but not limited to the following:

- a. The Public School Code, 24 P.S. §1-101 *et seq.*;
- b. The Separations Act, 71 P.S. § 1618;
- c. The applicable provisions of the Commonwealth Procurement Code, 62 Pa.C.S.A. § 101, *et seq.*;
- d. The Davis-Bacon Act, 40 USCS § 3141 *et seq.*, or The Prevailing Wage Act, 43 P.S. § 165-1, *et seq.*; as applicable
- e. Applicable anti-discrimination laws, including but not limited to the Pennsylvania Human Relations Act, 43 P.S. § 951 *et seq.*, and 16 PA Code Chapter 49;
- f. The Workers' Compensation Act, 77 P.S. §1 *et seq.*;
- g. Applicable Law regarding bid bonds, payment bonds and performance bonds;
- h. The Protection from Abuse Act, 23 Pa.C.S.A. § 6101, *et seq.*;
- i. Applicable Law relating to federal and state employment eligibility and verification of eligibility;
- j. The Steel Products Procurement Act, 73 P.S. § 1881, *et seq.*;
- k. Section 111 of the School Code, 24 P.S. §1-111;
- l. The Antibid-Rigging Act, 62 Pa.C.S.A. §4501, *et seq.*;
- m. Applicable Anti-pollution Legislation; and
- n. Applicable Law with regard to Erosion Control.

2.2 The Construction Documents shall be subject to the prior written approval of the School District. The form of Payment Bond and Performance Bond will be provided by the School District to the Construction Manager.

2.3 The Construction Documents shall contain all necessary and customary contract provisions, including but not limited to Attachment "J" of the RFP, as well as all provisions required by Applicable Law, and shall be subject to the prior written approval of the School District. Without limiting the generality of the preceding sentence, the Construction Documents shall contain the following provisions:

2.3.1 Both the School District and the Construction Manager shall be named parties in the Construction Documents in the general capacity as the "Owner," as that term is generally understood.

2.3.2 Assignment of School District's Right to File Direct Claims against the Prime Contractor(s) for the Construction Manager's Additional Services. The Construction Documents prepared by the Construction Manager shall require that the Construction Contractor(s) bear the responsibility for any damages, losses, costs and expenses which the Construction Manager incurs as a result of the fault, negligence, breach of contract or willful acts or omissions of the Construction Contractor(s) and its (their) Subcontractors or due to delay, disruption, interference or hindrance caused by the Construction Contractor(s) or its (their) Subcontractors.

2.3.3 Any provisions reasonably necessary so as to coordinate the Construction Documents with the terms and conditions of this Contract.

2.3.4 The Construction Documents prepared by the Construction Manager shall require that the Contractors' and Subcontractors' officers, agents, representatives and employees must sign a legally enforceable waiver and release of any and all claims that the representative, employee, agent, or subcontractor may have to make a claims, or commence a law suit, or recover damages or losses from or against the School District (and the employees, agents and officials of the School District) or from or against any student (and the parents, guardians or custodians of the students) enrolled in any School District program or activity arising from or related to any injuries which are covered under Pennsylvania's Workers' Compensation statute or which would be covered if the representative, officer, agent, or subcontractor were an employee.

2.3.5 The Construction Documents prepared by the Construction Manager shall require that :

(a) notwithstanding any other provisions of the Construction Documents or any Addenda or Exhibits to the contrary, the School District, its officers, employees and agents and members of the School Reform Commission and the Board of Education, retain their statutory governmental, official and any other immunity as provided pursuant to the Applicable Law, including 42 Pa C.S.A. §§8501 and 8541 *et seq.*, and do not waive the defenses of governmental and official immunity derived from such laws; and

(b) The School District does not waive for itself or for its officers, employees, agents, or for the members of the School Reform Commission and Board of Education, , any other defenses or immunities available to it or any of them.

2.3.6 The Construction Documents prepared by the Construction Manager shall require that all services performed and construction provided by the Contractors shall strictly conform to all Applicable Law and the applicable rules, regulations, policies, methods and procedures of the School District and all governmental bodies, boards, bureaus, offices, commissions, and other agencies, with respect to the Work.

3. Nothing in this Contract shall be construed to limit the number of construction contracts that the Construction Manager deems reasonably necessary for the execution of the work effectively and efficiently and in compliance with the deadlines for the completion of the work, provided that the terms and conditions of the Separations Act are met. The Construction Manager may, at its discretion, break down the construction work if necessary for efficiency and economy; provided, however, that all such contracts shall be publicly bid in accordance with Applicable Law and provided further, that plumbing, heating and ventilating and electrical work shall not be combined with work of a different nature.

4. The Construction Manager shall prepare and issue Addenda in consultation with the Design Consultant and the School District.

5. The Construction Manager shall evaluate bids received, de-scope low bids for each separate Construction Contract in coordination with the Design Consultant, and make recommendations to the School District for award.

D. Construction Phase Field Oversight and Coordination Services:

1. The Construction Manager shall conduct Pre-Construction meetings.

2. The Construction Manager shall prepare the Baseline Project CPM Construction Schedule with scheduling input provided by the Construction Contractors. The Construction Manager shall review and approve the Construction Contractors' Schedules of Value, and enter the Schedules of Value into the Baseline Project CPM Construction Schedule and the approved project management program utilizing the School District's coding structure.

3. The Construction Manager shall review and analyze the coordinated Baseline CPM Construction Schedule for all the separate Prime Contracts submitted by the General Construction Contractor, including cost and resource loading, and advise the Construction Contractors of necessary corrections and revisions, and approve the corrected and revised schedule as the Baseline Project CPM Construction Schedule. The Construction Manager shall update the Baseline Project CPM Construction Schedule at least monthly.

4. The Construction Manager shall review and analyze the monthly schedule updates to the Baseline Project CPM Construction Schedule submitted by the Construction Contractors, and advise the Construction Contractors of necessary corrections and revisions, and approve the corrected or revised schedule as the Updated Project CPM Schedule.

5. The Construction Manager shall conduct and document Pre-Construction meetings.

6. The Construction Manager shall provide continuous, full-time, on-site monitoring of the activities of the Construction Contractors through Substantial Completion. The Construction Manager shall monitor and inspect the Construction Contractors' work and ensure that the Construction Contractors' are performing their work in accordance with the Construction Documents. The Construction Manager shall issue Non-Compliance Reports, monitor corrective actions, and maintain Project Quality Control logs using the approved project management program.

7. The Construction Manager shall prepare daily logs recording all construction activities, manpower and equipment and weather conditions at the Project site utilizing the approved project management program.

8. The Construction Manager shall prepare and submit to the School District a monthly status report that addresses status of construction, cost and schedule, progress since last report, project delays and their causes, status of submittals, change orders and significant construction or schedule issues that require resolution.

9. The Construction Manager shall conduct and document all progress, schedule and coordination meetings.

10. The Construction Manager shall maintain a log of all shop drawing submissions, Requests for Information (RFIs) and other required submittals. The Construction Manager shall monitor and document the Construction Contractor submittal process using the approved project management program. The Construction Manager shall ensure that submittals of the Construction Contractors are in accordance with submittal requirements prior to transmittal to the Design Consultant. The Construction Manager shall coordinate and track all submittals to the Design Consultant and all responses by the Design Consultant to the Construction Contractors.

11. The Construction Manager shall ensure that the Construction Contractors are coordinating their work with their Subcontractors and with other Construction Contractors on the Project. The Construction Manager shall review coordination drawings prepared by the Construction Contractors. The Construction Manager shall conduct weekly coordination meetings with the Construction Contractors.

12. The Construction Manager shall monitor construction progress and direct the Construction Contractors when schedule recovery is required on the Project. The Construction Manager shall prepare Project cost reports in the approved project management program (based on schedules) on a monthly basis, and submit them to the School District.

13. The Construction Manager shall review the Construction Contractors' two (2) week look-ahead construction schedules.

14. The Construction Manager shall coordinate and witness all required testing, whether the responsibility of the School District and/or the Construction Contractors, and receive copies of test reports from the testing entities, and shall distribute all test reports to Project participants.

15. The Construction Manager shall review all monthly invoices for progress payments submitted by the Construction Contractors for accuracy and consistency with the actual progress of the work, revise or correct as needed, and make payment recommendations to the School District.

16. The Construction Manager shall monitor and document the Change Management process (including RFI's, Design Bulletins, Field Instructions, Requests for Change, Change Orders and Construction Change Directives) using the approved project management program .

17. The Construction Manager shall evaluate all Construction Contractor requests for change orders, prepare independent cost estimates of the proposed changes, and make recommendations to the School District for approval, partial approval or rejection.

18. The Construction Manager shall conduct inspections for Substantial Completion and for Final Completion in conjunction with the Design Consultant and the School District's Office of Capital Programs, make recommendations for acceptance of the work as substantially complete, and prepare punch lists for correction or completion of work for

Substantial Completion and Final Completion, as the case may be, all in conjunction with the Design Consultant and the School District's Office of Capital Programs.

19. The Construction Manager shall monitor and coordinate Commissioning/Startup/Testing of building HVAC, Plumbing, Electrical and IT Systems for acceptance.

20. The Construction Manager shall inform School District staff and the school staff representative of construction progress. The Construction Manager shall inform the school staff representative when potentially disruptive work will be performed, and facilitate cooperation between the Construction Contractors and the school in order to minimize disruptions.

21. The Construction Manager shall develop Quality Assurance plans.

22. The Construction Manager shall enter all project correspondence into the approved project management program.

23. The Construction Manager shall coordinate overall site logistics.

24. The Construction Manager shall assist the School District's Office of Capital Programs and Office of General Counsel with the estimating, review, and resolution of Project claims, change orders and lawsuits.

E. Safety Monitoring Services:

1. The Construction Manager shall ensure that the Construction Contractors are providing adequate site security.

2. The Construction Manager shall prepare the Safety Program described in Paragraph 3.19.3 of this Contract for its employees.

3. The Construction Manager shall review the Construction Contractors' Safety Plans for the Project for conformance to the School District Safety Manual and all other applicable safety requirements. The Construction Manager shall ensure that the Construction Contractors are working in accordance with their approved Safety Plans. The Construction Manager shall provide a Safety Program Compliance Officer or Safety Inspector to conduct audits and monitor construction safety, including Construction Contractors' compliance with Project safety requirements and their Safety Plans. The Construction Manager shall attend the Construction Contractors' weekly tool box safety sessions. The Construction Manager shall issue Non-Compliance Reports (NCRs) or stop work notices (where necessary or required), and shall monitor corrective actions. The Construction Manager shall maintain NCR log using the approved project management program.

4. The Construction Manager shall provide coordination of hazardous materials abatement when encountered during the demolition process and site work.

F. Building Commissioning Services: For the purpose of this Paragraph 4.2.5.E., the School District adopts the following definition of “commissioning” as “the quality process for achieving, validating and documenting the performance systems, sub systems and equipment to meet the basis of design and preparing facility personnel for maintenance and operation”.

1. The Construction Manager shall oversee installation of building systems and equipment.

2. The Construction Manager shall manage and facilitate the implementation of all commissioning processes and guidelines throughout the duration of the Project.

3. The Construction Manager shall ensure that all equipment and facility inventory information is inputted into the School District facilities inventory database.

4. The Construction Manager shall ensure that work by other School District departments is coordinated with the work of the Construction Contractors.

5. The Construction Manager shall ensure that the Construction Contractors are maintaining progressive as-built construction drawings. The Construction Manager shall review the final as-built construction drawings, and ensure that the final as-builts construction drawings are submitted to the appropriate School District representative.

6. The Construction Manager shall verify the Construction Contractors’ punch lists. The Construction Manager shall ensure that the Construction Contractors’ punch lists are entered into the approved project management program. The Construction Manager shall conduct substantial completion inspections with the School District and the Design Consultant. The Construction Manager shall issue Notices of Substantial Completion. The Construction Manager shall conduct final inspections with School District staff.

7. The Construction Manager shall coordinate between School District staff and the Construction Contractors for training sessions. The Construction Manager shall monitor all required demonstration and training of School District personnel.

8. The Construction Manager shall attend the Turnover meeting with the School District and the Construction Contractors.

G. Post-Construction Services.

1. The Construction Manager shall provide adequate, dedicated on-site project staffing through Final Completion to monitor and assure timely completion of punch lists or corrective work to assure final acceptance without delay.

2. The Construction Manager shall prepare punch lists, in conjunction with the Design Consultant, for correction or completion of work after Substantial Completion

for Final Completion. The Construction Manager shall monitor Construction Contractors' performance of punch lists or corrective actions, prepare updated punch lists as necessary, and make recommendations for final acceptance, all in conjunction with the Design Consultant and the School District's Office of Capital Programs.

3. The Construction Manager shall conduct punch list inspections in conjunction with the Design Consultant and the School District's Office of Capital Programs, prepare reports of remaining items for completion or correction, and submit these reports to the School District.

4. The Construction Manager shall conduct Punch List Review Meetings with the Construction Contractors at least bi-weekly to monitor scheduling and completion of punch list and corrective work.

5. The Construction Manager shall receive as-built drawings from the Construction Contractors and transmit them to the Design Consultant.

H. Warranty Inspection Services

1. The Construction Manager shall conduct end of warranty inspection eleven (11) months after Final Completion in conjunction with the Design Consultant and the School District's Office of Capital Programs, and prepare list of warranty claims for the School District.

4.2.6 Limits On Authority and Responsibility.

(1) The Construction Manager is not authorized to change, enlarge, relax, alter or release any requirement of any of the Construction Documents or the Prime Contract(s), or to approve or accept any construction work that is not performed in accordance with the Construction Documents.

(2) Nothing contained in this Contract shall be construed to mean that the Construction Manager assumes any of the contractual construction duties, responsibilities, or liabilities of the Construction Contractors in their contracts for construction work with the School District, or any of the customary construction duties, responsibilities, or liabilities of a construction contractor on a construction project.

(3) Notwithstanding the School District of Philadelphia Safety Manual, and the Construction Manager's Safety Program, and the provisions of Paragraph 3.19, *Safety Services and Responsibilities*, and Paragraph 4.2.5 E., *Safety Monitoring Services*, and the safety monitoring requirements set forth in the Project Scope section of the RFP, attached as part of Exhibit B, and incorporated by reference into this Contract, and any other provisions contained in this Contract, the Construction Manager is not acting in any manner so as to assume responsibility, in whole or in part, for noncompliance of any Construction Contractors and their subcontractors with applicable federal, state, and local safety laws, statutes, ordinances, codes, rules, regulations, orders and decrees, including but not limited to, OSHA, or with safety standards and regulations established by the School District for the assigned Project, including

but not limited to standards and regulations set forth in the Safety Manual established for the School District of Philadelphia, or with federal, state, and local health laws, regulations and building codes, or for any accidents arising out of or in connection with safety precautions and safety programs in connection with the construction work on School District construction projects which caused death, personal injury or property damage and which were caused by any Construction Contractors or their subcontractors. Nothing contained in this Contract, or the School District of Philadelphia Safety Manual, or the Construction Manager's Safety Program shall be construed to mean that the Construction Manager is acting in a manner so as to assume the Construction Contractors' and their subcontractors' responsibilities or liabilities, in whole or in part, for safety precautions and safety programs in connection with construction work on School District construction projects. Nothing contained in the School District of Philadelphia Safety Manual or the Construction Manager's Safety Program shall be construed to mean that the School District or the Construction Manager are responsible for direct control over or charge of the acts or omissions for the joConstruction Managerte safety of the construction means, methods, techniques, sequences, or procedures utilized by the Construction Contractors and their subcontractors, agents or employees of the Prime Contractors, or any other persons performing portions of the Work in connection with construction work on School District construction projects. The Construction Contractors and their subcontractors shall supervise and direct the work and maintain an active role in the development, implementation, maintenance and monitoring of on-site project safety for its respective employees as well as be fully and solely responsible for joConstruction Managerte safety as well as fully and solely responsible for the construction means, methods, techniques, sequences, and procedures utilized by the Construction Contractors and their subcontractors in connection with construction work on the assigned Project. The Construction Contractors and their subcontractors are responsible for maintaining and supervising all safety precautions and programs in connection with construction work on the Projects, and for any violations of the safety precautions and programs in connection with construction work on the Project. The Construction Contractors and their subcontractors are also responsible for complying with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property, or their protection from damage, injury or loss, in connection with construction work on the Project, and for taking all necessary precautions to protect the safety and health of their employees and others on the joConstruction Managerte, including compliance with all applicable federal, state and local safety and health laws, regulations, and building codes, and for adhering to and enforcing the safety regulations set forth in the Construction Documents and in the Safety Manual established for the Project.

Section 5. School District's Services and Responsibilities.

5.1 **Summary of Services and Responsibilities.** Without reducing or eliminating any of the School District's duties under this Contract, the Construction Manager will generally supervise and manage the design and construction of the assigned Project. The School District's services, duties and responsibilities may include, but not be limited to, the following: (a) reviewing the overall Project design process from conceptual design through schematic and detailed Project design and construction contract documents; (b) monitoring Project submittals to see that the Construction Manager has obtained approvals and permits necessary by all regulatory agencies and local authorities having jurisdiction; (c) monitoring the Construction Manager's Project construction management services; (d) monitoring and facilitating all

applicable regulatory requirements and approvals upon request; (e) assisting in coordinating Project furnishings, fixtures and equipment acquisition and installation; (f) expediting final Project closeout and approval for final payment; and assisting in all post-construction dispute resolution as necessary; (g) monitoring the processing and approval of invoice payments for all Project consultants and contractors; (h) reviewing and evaluating change order requests, claims and lawsuits; (i) observing, with School District Office of Capital Programs personnel and maintenance personnel and the Construction Manager and the Design Consultant, the Construction Contractors' verifications for compliance to the Project specifications of utilities, building systems, and equipment readiness; and assisting in their initial start-up and testing; and (j) coordinating the training of School District personnel on the operation and maintenance of Project building systems and equipment.

5.2 **Land Surveys and Site Legal Information.** If required, the School District shall furnish a certified land survey of the assigned Project site describing physical characteristics, legal limitations and utility locations for the site and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; right-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available utility services and including inverts and depths. All information on the survey shall be referenced to a Project benchmark. The School District shall make available to the Construction Manager documentation pertinent to the assigned Project, including site plans and soil analyses.

5.3 **Site Surface and Subsurface Information.** If required, the School District shall furnish the services of geotechnical engineers, soil engineers or other consultants when such services are reasonably required by the scope of the Project. Such services shall include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, soil reports, subsurface investigations, air and water pollution tests, evaluations of hazardous materials and hazardous materials storage, ground corrosion and resistivity tests, including necessary operations for determining or anticipating subsoil, air and water conditions, with reports and appropriate professional recommendations. The Construction Manager shall review and confirm the sufficiency of the tests and information furnished to the Construction Manager, by or on behalf of the School District pursuant to this paragraph, based upon conditions then known to exist, but such review shall not constitute confirmation of their accuracy.

5.4 **Site Laboratory and Environmental Test Information.** If required, the School District shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by and/or recommended by the Construction Manager.

5.4.1 **Structural and Environmental Tests, Surveys and Reports.** The School District shall furnish surveys, drawings, tests, inspections and reports concerning the conditions of the site, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, tests for hazardous materials and environmental tests, inspections and reports which are required by law. The School District shall furnish the following information or services with reasonable promptness and at the School District's expense.

The School District shall also furnish any other information or services under the School District's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving Construction Manager's written request for such information or services. Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the School District but shall exercise proper precautions relating to the safe performance of the Work.

5.5 **Furnished Equipment and Furniture Plan.** The School District shall furnish a list of School District furnished equipment, and a furniture plan, including electrical characteristics and heat load.

5.6 **Time for Furnishing Information and Reliance on Information.** The services, information, surveys and reports required by the above paragraphs, or otherwise to be furnished by the School District or other consultants employed by the School District, shall be furnished with reasonable promptness at the School District's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

5.7 **Information Required by Governmental Authorities.** The School District shall provide special surveys, environmental studies and submissions required for approval of governmental authorities or others having jurisdiction over the assigned Project.

5.8 **Required Documents and Fees for Construction, Use and Occupancy.** The City Administrative Board has approved a waiver of the construction permit fees imposed under Section A902.2 of the City Administrative Code and levied by the City Department of Licenses and Inspections ("L&I Department") for School District capital projects, effective prospectively from October 12, 1999. In accordance with the City Administrative Board Rule No. 4, no permit fee is to be paid by the School District to the City for the following permits: zoning, building, fire service, plumbing, electrical, and other similar construction permits. With assistance from the Design Consultant or Construction Manager, the School District shall complete and file the required Waiver of Permit Fees applications for the zoning and building permits with the City L&I Department, Permit Services Division, in order to obtain City waivers of the zoning and building permit fees for the Project.

5.9 **Review and Changes to Documents and Information.** The School District shall review all Specifications, Bid Documents, Construction Documents and other information prepared and submitted by the Construction Manager to the School District under this Contract, and shall advise the Construction Manager of any suggested changes, comments or recommendations thereto in a timely manner so as to cause no delay to the Construction Manager.

5.10 **No Waiver by Review, Approval, Acceptance or Payment.** Neither the School District's review, approval or acceptance of, nor payment for, any of the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.

5.11 **Purpose of Review and Approval.** Notwithstanding anything to the contrary contained in this Contract, the School District's review and approval of any and all documents or other matters required herein shall be for the purpose of providing the Construction Manager with

information as to the School District's objectives, goals and educational requirements with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents.

Section 6. Compensation and Payment.

6.1 Compensation.

6.1.1 Project Compensation. The School District's SRC has authorized an expenditure of funds not to exceed the total amount of:

_____ Dollars
(\$ _____) as compensation for the Services performed and Reimbursable Expenses incurred by the Construction Manager under this Contract. Except as set forth herein, The Construction Manager hereby acknowledges and agrees that construction schedule delays will not increase the Construction Manager's Project Compensation. The Construction Manager hereby also acknowledges and agrees that except as set forth herein increased construction value due to construction change orders resulting from the Construction Manager's inability to control costs will not increase the Construction Manager's Project Compensation.

6.2 Payment

6.2.1 The School District shall pay the Construction Manager for Services actually performed on this Project, on a monthly basis, based on defined staffing and contract rates (hourly rates). The defined staffing and contract rates were listed on the Construction Manager's Key Personnel Hourly Rates List, which is attached as part of Exhibit E and incorporated by reference into this Contract. These hourly rates shall apply to all Construction Manager personnel and Subconsultant personnel listed on the Construction Manager's Staffing Plan (Exhibit D), and in Paragraphs 3.2.14 and 8.1 of this Contract. These hourly billable wage rates shall be fully loaded, and shall include all labor, benefits, taxes, insurances, fees, overhead costs, administrative costs, reimbursable costs, and profit costs, and shall be a firm and fixed rate for the entire duration of this Contract. These hourly billable wage rates shall be all-inclusive wage rates for all personnel included in the Construction Manager's Staffing Plan (Exhibit D), and Paragraphs 3.2.14 and 8.1 of this Contract. These hourly wage rates shall be used for all services. Only one (1) hourly wage rate for each position of Key Personnel for the duration of the Contract shall be permitted and accepted. Ranges for positions of Key Personnel shall not be accepted by the School District.

6.2.2 The Construction Manager's Contract is for a lump sum amount for all required Services, subject to a Guaranteed Maximum Price.. Except as set forth herein, the lump sum amount of the Project Compensation shall not be adjusted for delays to Substantial Completion of ninety (90) days or less. For purposes of this requirement, Substantial Completion means completion of all areas or phases so that they are suitable for full occupancy or operation as intended, with only minor punch lists remaining uncompleted. Delays to Substantial Completion shall not increase the compensation for Post-Construction Phase Services.

6.2.3 The percentage of the total fee to be paid for completion of each phase (period) of the Contract (Pre-Construction, Construction, Post-Construction and Warranty

Inspection) shall be based on the percentage of estimated man-hours to be expended during that phase (period), and shall not exceed the percentage of the total fee for the Contract allocated to that phase (period).

6.2.4 Monthly progress payments for the Construction Phase (Period) shall be based on a pro rata portion of the Baseline Schedule duration (e.g., 33 months to Substantial Completion means 1/33 of the Construction Phase Budget each month), but not to exceed the overall percentage of completion for the Construction Contracts.

6.3 Applications for Payment and Subconsultant Payment Confirmation.

6.3.1 The Construction Manager shall submit monthly invoices for payment of Services actually performed and approved Reimbursable Expenses actually incurred during the previous calendar month to the School District administrator named in Paragraph 7.1 of this Contract.

6.3.2 Invoices for Services shall be limited to the Key Personnel persons listed on the Construction Manager's Staffing Plan (Exhibit D) or in Paragraphs 3.2.14 and 8.1 of this Contract, and at the hourly billable wage rates indicated on the Construction Manager's Key Personnel Hourly Rates List (Exhibit E). Any additional personnel added to the Services and their hourly billable wage rate must be approved by the School District before the Construction Manager's submission of invoices for their time expended on the Services. The School District shall not make payment to the Construction Manager for Services performed by persons not listed on the Construction Manager's Staffing Plan (Exhibit D) list, or in Paragraphs 3.2.14 and 8.1 of this Contract, or additional personnel added to the Services that have not been approved in advance by the School District. The School District shall also not make payment to the Construction Manager for Services performed by persons or additional personnel whose hourly billable wage rates have not been approved in advance by the School District.

6.3.3 All invoices must be submitted in a form acceptable to the School District, and shall, at a minimum, include the following: (1) amount of payment applied for; (2) itemized description of all Services actually performed during the previous calendar month for which payment is sought; (3) total charges based upon the hourly billable wage rates indicated on the Construction Manager's Key Personnel Hourly Rates List, attached as Exhibit E and incorporated by reference into this Contract; and (4) School District SCS number (where applicable) and Contract number and such supporting evidentiary documents as the School District may require.

6.3.4 Invoices shall be exclusive of state or local sales, use or gross receipts taxes, and federal excise taxes. The School District's Pennsylvania Sales Tax Blanket Exemption Number is 76-51500-1; its Federal I.D. Number is 23-600-4102; and its Federal Excise Tax Number is 23-63-0021-K.

6.3.5 Payment shall be made by the School District within thirty (30) working days after its receipt and approval of the Construction Manager's invoices. No payment shall be due to the Construction Manager before the School District's receipt of a properly itemized invoice from the Construction Manager.

6.3.6 The Construction Manager's Federal Tax Identification Number is:

_____.

6.3.7 All amounts paid shall be subject to audit by the School District pursuant to Paragraph 6.13, and all invoices must be approved by the School District's Accounting Services or Auditing Services Department as a condition of payment.

6.3.8 Each pay application by the Construction Manager for payment shall not act as an estoppel on claims not then made.

6.3.9 Subconsultant Payment Confirmation. The Construction Manager shall pay each Subconsultant performing Services promptly, after receipt of payment from the School District, out of the amount paid to the Construction Manager on account of the Services of such Subconsultant the amount to which such Subconsultant is entitled. Together with each monthly invoice, exclusive of the first monthly invoice, the Construction Manager shall submit, to the School District administrator named in Paragraph 7.1 of this Contract, a written release or affidavit or payment confirmation from each Subconsultant that such Subconsultant has received from the Construction Manager full payment of the amount to which such Subconsultant was entitled to receive from the Construction Manager the previous calendar month. No payment shall be due to the Construction Manager by the School District before the School District's receipt of all required Subconsultant Payment Confirmations from the Construction Manager.

6.4 Withholding of Payments. Notwithstanding any other payment terms or conditions to the contrary, the School District reserves the right to withhold promised payments for the Construction Manager's substantial failure to perform as agreed. However, before withholding payment under this Contract, the School District shall notify the Construction Manager in writing of such failure and grant the Construction Manager the opportunity to remedy same within fourteen (14) working days of said written notice. The School District may extend such remedial period, at its sole discretion, if there is evidence of the Construction Manager's good faith effort to remedy the failure. The School District will pay pro rata for the Construction Manager's partial performance, provided such performance is acceptable to the School District and is rendered satisfactorily. Absent any good faith dispute, the School District shall pay Construction any remaining retainage withheld on the Work within thirty (30) days of project's final completion

6.5 Final Payment. Final payment, including any unpaid balances and unpaid Reimbursable Expenses to date, shall not be issued to the Construction Manager until the Construction Manager has satisfactorily completed all Services on the Project, and the School District has received all deliverables required under this Contract, and has approved all deliverables required under this Contract as being in compliance with the Contract requirements. Absent any good faith dispute, the School District's final payment to Construction Manager shall be made no later than 30 days after the School District's receipt of CONSTRUCTION MANAGER's final Certificate for Payment

6.6 Basic Services. All services that the Construction Manager is required to perform under this Contract shall constitute Basic Services for which compensation will be paid under

Section 6.1 herein. Home office management and support services are deemed to be overhead costs and shall not be separately compensated.

6.7 **Additional Services.** The Construction Manager hereby acknowledges and agrees that increased construction value due to construction change orders resulting from the Construction Manager's inability to control costs, shall not increase the Construction Manager's Compensation allowed under Paragraph 6.1.1 herein. The Construction Manager may be entitled to an increase in the Compensation allowable under Paragraph 6.1.1 herein for the performance of construction management services that are beyond the scope of Services set forth in this Contract, the RFP, and the Construction Manager's Proposal, including the Scope of Services of the RFP (hereinafter called "Additional Services"), provided such construction management services are not required due to the fault, negligence, failure to act, error, omission or breach of contract of the Construction Manager.

6.7.1 All Additional Services of the Construction Manager must be approved in advance by the School District's designated representative.

6.7.2 The Construction Manager did not provide a separate Schedule of Hourly Rates for Additional Services, beyond the Basic Services, authorized by the School District, in its Fee Proposal. The Construction Manager acknowledges and agrees that the hourly rates listed on its Construction Manager Staffing Plan (Exhibit D), also apply to Additional Services. The hourly rates, which apply to Additional Services, shall be fully-loaded (including labor, benefits, taxes, insurances, fees, overhead costs, administrative costs, reimbursable costs, and profit costs), all-inclusive wage rates for all positions included in the Basic Services Staffing Plan, attached as Exhibit D and incorporated by reference into this Contract, and in Paragraphs 3.2.14 and 8.1 of this Contract. The hourly rates, which apply to Additional Services, shall be used for all Additional Services. Only one (1) hourly rate for Additional Services for the duration of the Contract for each position of Key Personnel shall be permitted and accepted. Hourly rates for Additional Services shall be consistent with the hourly rates used for Basic Services.

6.7.3 The School District agrees to pay the Construction Manager for its identified and approved Additional Services in accordance with the hourly billable wage rates for its Key Personnel that are set forth on the Construction Manager's Key Personnel Hourly Rates List, which is attached as Exhibit E and incorporated by reference into this Contract. The School District also agrees to pay the Construction Manager for Additional Services performed by persons not listed on the Construction Manager's Staffing Plan (Exhibit D), or in Paragraphs 3.2.14 and 8.1 of this Contract, or additional personnel added to the Services, provided the persons not listed or the additional personnel, together with their hourly billable wage rates, have both been approved in advance by the School District.

6.7.4 Assignment of School District's Right to File Direct Claims against the Prime Contractor(s) for the Construction Manager's Additional Services. The Construction Documents with the Construction Contractor(s) will require that the Construction Contractor(s) bear the responsibility for any damages, losses, costs and expenses which the Construction Manager incurs as a result of the fault, negligence, breach of contract or willful acts or omissions of the Construction Contractor(s) and its (their) Subcontractors or due to delay, disruption, interference or hindrance caused by the Construction Contractor(s) or its (their) Subcontractors.

Accordingly, in the event that the Construction Manager, in fact, incurs any such damages and the Construction Manager is unable to recover same as against the Construction Contractor(s) after a reasonable period of good faith negotiations not to exceed thirty (30) days on the part of the Construction Manager in which the School District shall assist the Construction Manager as may be reasonably requested, in addition to the Construction Manager's right pursuant to Paragraph 3.14.1 to make a request for an equitable adjustment in its Compensation amount in the event that a construction Project is delayed due to circumstances beyond the control of the Construction Manager and without the fault, negligence, breach of contract or willful acts or omissions of the Construction Manager which results in damages, losses, costs or expenses to the Construction Manager, the Construction Manager shall be entitled to make, assert, file or bring a direct claim, action, cause of action or lawsuit against the Prime Contractor(s) or any of its(their) subcontractors or consultants, as an assignee of the School District, pursuant to this Paragraph 6.7.3, for its Additional Services, or its damages, losses, costs or expenses, that are caused by or attributed to the fault, negligence, breach of contract, willful act or omission of the Prime Contractor(s) or any of its(their) subcontractors or consultants on the assigned Project, or the delay, disruption, interference or hindrance, of the Prime Contractor(s) or any of its(their) subcontractors or consultants in construction on the assigned Project. For the sole and only purposes of making, asserting, filing or bringing direct claims, actions, causes of actions or lawsuits against the Prime Contractor(s) or any of its(their) subcontractors or consultants, the School District hereby assigns to the Construction Manager the School District's right under the Prime Contract(s) to make, assert, file or bring direct claims, actions, causes of action or lawsuits against the Prime Contractor(s) or any of its(their) subcontractors or consultants for any additional compensation due to the Construction Manager for the Construction Manager's Additional Services, damages, losses, costs and expenses that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor(s) or any of its(their) subcontractors or consultants on the assigned Project, or the delay, disruption, interference or hindrance of the Prime Contractor(s) or any of its(their) subcontractors or consultants in construction on this Project. Notwithstanding any other terms of this Contract to the contrary, nothing contained in Paragraph 3.14.1 and this Paragraph 6.7.3 shall prevent the School District from invoking its rights to backcharge the Prime Contract(s) of the Prime Contractor(s), or to also make, assert, file or bring direct claims, actions, causes of action or lawsuits against the Prime Contractor(s) or any of its(their) subcontractors or consultants, for additional compensation or payments made to the Construction Manager for Additional Services, damages, losses, costs and expenses that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor(s) or any of its(their) subcontractors or consultants on the assigned Project, or the delay, disruption, interference or hindrance of the Prime Contractor(s) or any of its(their) subcontractors or consultants in construction on the assigned Project. Nothing contained in this Paragraph 6.7.3 shall prevent the Construction Manager from invoking any of its rights pursuant to Paragraph 3.14.1 hereof. In the event that the School District backcharges such damages to the Construction Contractor(s) and the Construction Contractor(s) make(s) a claim against the School District, the Construction Manager shall assist the School District in the defense of such claim.

6.8 **Reimbursable Expenses.** The School District agrees to pay the Construction Manager, as Reimbursable Expenses, at One Hundred Percent (100%) of its actual costs, only for incidental materials and services authorized by the School District, including reproduction of bidding documents, special presentation documents required for public meetings, and testing

services. The Construction Manager shall not be entitled to any other Reimbursable Expenses, except with the prior written consent of the School District. Normal printing of documents for the School District's approvals or the Construction Manager's use, or its Subconsultant(s)' use, travel expenses, and meals shall not be paid as Reimbursable Expenses. The cost of normal progress prints requested by the School District for its review or record shall not be considered a Reimbursable Expense.

6.9 **Release.** Prior to final payment, the Construction Manager shall furnish to the School District a release of all claims against the School District.

6.10 **Non-Authorization of Funds.** The Construction Manager acknowledges that payments under this Contract may not exceed the amount that the School District's Auditing Services Department certifies as available for this Contract. The School District reserves the right to fund the balance of the Compensation in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. The Construction Manager agrees that the School District shall not be obligated to fund this Contract except out of funds certified by the School District's Auditing Services Department as currently available, even if those funds are less than the maximum amount stated in this Contract. If at any time sufficient funds are not certified as available, the School District may, at its sole discretion, exercise its options described in Paragraph 6.11, *Unavailability of Funds*.

6.11 **Unavailability of Funds.** In the event the School District, in its sole discretion, does not or cannot obtain or continue the funding for this Contract from any source or sources at an aggregate level sufficient to allow for payment for the Services required under this Contract, the School District may, in its sole discretion, exercise one of the following alternatives:

(a) Terminate this Contract effective upon a date specified in a Termination Notice pursuant to Section 14, *Termination*; or

(b) Continue this Contract by reducing, through written notice to the Construction Manager, the scope of the Services required under this Contract and the amount of the Compensation, consistent with the nature, amount, and circumstances of the loss of funding; or

(c) Suspend the Services until such time as sufficient funds are available; provided, that in the event of such suspension, but only upon the availability of sufficient funds, the Construction Manager shall resume the Services within thirty (30) calendar days following the School District's written notice to resume.

Any reduction of this Contract pursuant to this Paragraph shall not affect any obligations or liabilities of either party accruing prior to such reduction. The School District shall not face any liability or penalty as a result of such reduction of this Contract. In the event of termination or suspension pursuant to this Paragraph, the Construction Manager shall have the rights and obligations set forth in Paragraph 13.2, *Suspension for Convenience* and Paragraph 14.1, *Termination for Convenience*.

6.12 **Crossing Fiscal Years.** If the School District will pay any portion of the

compensation set forth in this Section 6 in any School District fiscal year (the School District's fiscal year runs July 1 - June 30) subsequent to the fiscal year in which the Initial Term or an Extended Term of this Contract commences (in either case, "Commencement FY"), the Construction Manager understands and agrees that the portion of the compensation under this Contract payable with School District funds that may accrue hereunder in a subsequent fiscal year remains subject to legally mandated budget authorization by the SRC of the School District under Applicable Law. If for any reason funds for that portion of the compensation that may accrue hereunder in a subsequent fiscal year are not continued in any subsequent School District fiscal year, this Contract and the School District's liability under this Contract shall automatically terminate at the end of the fiscal year of the then current Commencement FY; provided, however, that the Construction Manager shall be compensated in accordance with the terms of this Contract for Services that have been provided and accepted by the School District prior to the end of the fiscal year of the then current Commencement FY. Payments to the Construction Manager pursuant to this Contract shall not exceed the amount authorized for this Contract plus any other amounts properly available for obligation for this Contract. If such funding is not available in a timely manner, the School District shall have the right to terminate this Contract. In the event of termination or suspension pursuant to this Paragraph, the Construction Manager shall have the rights and obligations set forth in Paragraph 13.2, *Suspension for Convenience* and Paragraph 14.1, *Termination for Convenience*. Notwithstanding anything in this Paragraph, the School District represents that this Project is funded. See the resolution of the School Reform Commission authorizing this Project.

6.13 **Audits; Records and Payments.**

6.13.1 **Audits.** From time to time during the term of this Contract and for a period of six (6) years after the expiration or termination of this Contract (*see* 24 P.S. §5-518), the School District (including, without limitation, the Auditing Services Department), the Controller of the City, the Commonwealth of Pennsylvania (including, without limitation, its Auditor General and the Pennsylvania Department of Education), or a department, agency or instrumentality of the United States of America if the School District funds this Contract with federal funds, or any of their authorized representatives (each, for the purposes of this Paragraph, an "Auditor") may audit any and all aspects of the Construction Manager's performance under this Contract, including but not limited to its billings and applications for payment or invoices and payments received. If requested by an Auditor or the School District, the Construction Manager shall submit to the Auditor and the School District, for review or inspection, all vouchers and applications or invoices presented for payment pursuant to this Contract, all cancelled checks, Materials, invoices, vouchers, reports, work product, work papers, books, records and accounts (whether in electronic, paper, or other form or medium) upon which the vouchers or applications or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract.

6.13.2 **Inspection.** The Construction Manager acknowledges and agrees that any Auditor may inspect or review all of its Work and all of its sites, locations and facilities related to its performance under this Contract. Inspection and review of Work and Materials shall take place at the offices of the Construction Manager in the School District, or in another location with the Auditor's consent. The Construction Manager shall cooperate with all School District, City, Commonwealth of Pennsylvania and federal inspections and reviews conducted in accordance

with the provisions of this Contract. The scope of such inspection and review of the Work and Materials, sites, locations and facilities, including, without limitation, programs, lies in the sole discretion of the Auditor. Such inspection or review may include, without limitation, meetings with persons receiving services under this Contract, review of staffing ratios and job descriptions, and meetings with any of the Construction Manager's staff members who either directly or indirectly participate or participated in carrying out any of the Work, including preparing, delivering or installing any Materials.

6.13.3 Availability of Records. The Construction Manager shall make available, within the School District or in the School District or at the Construction Manager's offices during regular business hours, at reasonable times during the term of this Contract and for the period set forth above in this Paragraph 6.13, all records (whether in electronic, paper, or other form or medium) pertaining to this Contract for the purpose of inspection, audit or reproduction by any Auditor. The Construction Manager shall provide such records without unreasonable delay when requested by an Auditor.

6.13.4. Retention of Records. The Construction Manager shall retain all records, books of account and documentation pertaining to this Contract, including applications for payment, invoices, payments, or the documentation thereof under this Contract, for the greater of the period required by Applicable Law or six (6) years following expiration or termination of this Contract; however, if any litigation, claim or audit commences prior to expiration of said six (6) year period, then the Construction Manager shall retain the records until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal. The Construction Manager shall include this Paragraph 6.13 in all Subcontracts for Services required by this Contract.

Section 7. Contract Management.

7.1 Contract Administrators. The Construction Manager and the School District shall each designate a qualified Contract Administrator prior to the Construction Manager's commencement of the Services. The Contract Administrators shall be in charge of the work covered by this Contract and the principal points of contact with respect to administration of this Contract and the parties' overall relationship, and resolution of disputes arising hereunder. Either party may designate a successor Contract Administrator at any time by giving notice to the other party.

7.1.1 The Construction Manager's initial Contract Administrator shall be:

Telephone number:
Facsimile number:
Email address:

7.1.2 The School District's initial Contract Administrator shall be:

Danielle Floyd, Director of Capital Programs or
Leigh Clark, Operations Manager of Capital Programs
The School District of Philadelphia
Office of Capital Programs
440 North Broad Street, Suite 371
Philadelphia, PA 19130-4015
Telephone number: (215) 400-4730
Facsimile number: (215) 400-4731
Email address: dfloyd@philasd.org or lclark@philasd.org

Section 8. Employment Practices.

8.1 **Key Personnel.** Upon Contract award, the Construction Manager shall provide current resumes and obtain the School District's prior approval for all personnel proposed to perform the pre-construction services, procurement support, field oversight and coordination, safety monitoring, and building commissioning construction management services of the Construction Manager required under this Contract:

The List of Key Personnel of the Construction Manager is set forth in Exhibit "D" attached hereto.

The Construction Manager shall not reassign or replace any Key Personnel listed above, or who is listed on the Staffing Plan attached as Exhibit D, or any Key Personnel for this Project identified in writing and approved in advance by the School District, without the School District's prior written consent, which consent shall not be unreasonably withheld. All Key Personnel must participate in their respective roles, and failure of any Key Personnel to do so may be grounds for termination of this Contract pursuant to Section 14, Termination. The School District reserves the right to direct the Construction Manager to remove any personnel from the Services provided under this Contract upon material reason therefore given in writing, and to review and approve the replacement of Key Personnel. If removal is for cause, any cost of such removal shall be borne by the Construction Manager.

8.2 **Subconsultants.** Subconsultants of the Construction Manager shall look only to the Construction Manager for payment, satisfaction, or legal redress in the event of any dispute arising out of this Contract, and hereby waive any claim or cause of action against the School District arising out of a Subcontract or other transaction with the Construction Manager. The School District shall have no obligation to pay or to see to the payment of any monies to any Subconsultant of the Construction Manager, except as may otherwise be required by law. Nothing contained in Paragraph 6.3, *Invoices and Subconsultant Payment Confirmation*, shall give rise to any duty on the part of the School District to pay or to see to the payment of any monies to any Subconsultant of the Construction Manager. The School District of Philadelphia is a "distressed School District" under the Public School Code, Act of March 10, 1949, P.L. 30, No. 14 (24 P.S. §6-691) and a "first class School District" under the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (known as "PICA Act"), Act of June 5, 1991, P.L. 9, No. 6 (53 P.S. § 12720.104), and therefore the prompt payment provisions of the Award and Execution of Public Contracts Law, Act of December 12, 1994, P.L. 1042, No. 142 (73 P.S.

§§1626.8(c)(2)&(4)) (repealed), and the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions, Act of May 15, 1998, P.L. 358, No. 57 (62 Pa.C.S.A. §3938(b)(2)&(4)), do not apply to the School District of Philadelphia and its contracts for construction, reconstruction, alteration, repair, improvement, or demolition of its buildings or improvements of any kind to its real properties. Neither the Construction Manager nor its Subconsultants can make, assert or file a claim, cause of action or lawsuit against the School District of Philadelphia for violation of the prompt payment provisions of the Award and Execution of Public Contracts Law (repealed), or the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions. The School District of Philadelphia is also a “School District” and a “political subdivision” of the Commonwealth of Pennsylvania, and therefore the Contractor and Subcontractor Payment Act, Act of February 17, 1994, P.L. 73, No. 7 (73 P.S. §501 et seq.), does not apply to the School District of Philadelphia and its contracts for work or improvements on its real properties. Neither the Construction Manager nor its Subconsultants can make, assert or file a claim, cause of action or lawsuit against the School District of Philadelphia for violation of the Contractor and Subcontractor Payment Act. The conditions set forth in this Paragraph 8.2 shall be set forth in any contract between the Construction Manager and any of its Subconsultants with regard to any of the Services under this Contract.

8.3 **Equal Opportunity.**

8.3.1 The School District is an Equal Opportunity Employer and demands no less of companies with which it does business. The School District will not do business with companies or persons who unlawfully discriminate on the basis of age, race, color, sex, sexual orientation, disability, creed, ancestry, national origin, or any other impermissible ground in their hiring, promotion, subcontracting, or procurement practices. By submitting any proposal to contract or entering into any contract with the School District, the Construction Manager represents and certifies that it is an Equal Opportunity Employer; conducts its business affairs without improper regard to age, race, color, sex, sexual orientation, disability, creed, ancestry, national origin, or other impermissible ground; and has not been debarred, suspended, or declared ineligible to contract by any public or private agency or entity because of its discriminatory practices. The certifications in Paragraph 8.3 herein are material representations of fact upon which reliance was placed when this transaction was entered into. If it is later discovered or determined that the Construction Manager knowingly rendered an erroneous certification, the School District may pursue available remedies, including termination of this contract, suspension or debarment.

8.3.2 All parties hereto agree that in the performance of this Contract there shall be no discrimination against any employee or other person on account of age, race, color, sex, sexual orientation, creed, ancestry or national origin, disabled or Vietnam era veteran status. The School District, upon receipt of evidence of such discrimination by the Construction Manager or its agents, employees, representatives, or Subconsultants, shall have the right, at its sole discretion, to terminate this Contract. The Construction Manager agrees to include this Paragraph 8.3, with appropriate adjustments for the identity of the parties, in any Subcontracts that are entered into for Services to be performed under this Contract.

8.3.3 The Construction Manager shall not discriminate nor permit discrimination against any person because of race, color, religion, age, national origin, ancestry,

creed, handicap, sexual orientation, union membership, disabled or Vietnam era veteran status, or limited English proficiency in the performance of this Contract, including, but not limited to, preparation, manufacture, fabrication, installation, erection and delivery of all supplies and equipment. In the event of receipt of such evidence of such discrimination by the Construction Manager or its agents, employees or representatives, the School District shall have the right to terminate this Contract. In the event of the continued refusal on the part of the Construction Manager to comply with this anti-discrimination provision, the Construction Manager may be removed from the list of approved bidders of the School District. The Construction Manager agrees to include this Paragraph 8.3, with appropriate adjustments for the identity of the parties, in all Subcontracts which are entered into for work to be performed pursuant to this Contract.

8.3.4 The Construction Manager shall ensure that minority-owned business enterprises (“MBEs”), and women-owned business enterprises (“WBEs”) have the maximum opportunity to participate in the performance of this engagement, and shall make a good-faith effort to achieve the goals.

8.4 **Non-Discrimination.**

8.4.1 **Non-Discrimination in Hiring.** The Construction Manager agrees that it will comply with provisions of the Philadelphia Fair Practices Ordinance administered by the Human Relations Commission of the City of Philadelphia, the Pennsylvania Human Relations Act. No. 222, October 27, 1955, as amended, 43 P.S. Section 951 et seq.; Title 7 of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 et seq., and all pertinent regulations adopted pursuant to the foregoing in providing equal employment opportunities in connection with all work performed by it pursuant to this Contract. The Construction Manager, therefore, agrees:

(1) That it will not discriminate nor permit discrimination by its agents, servants or employees against any employee or applicant for employment with regard to hiring, tenure or employment, promotion, or any other terms, conditions or privileges of employment because of race, color, religion, age, national origin, sex, ancestry, handicap or disability and will move aggressively as is hereinafter set forth to prevent same.

(i) In all publications or advertisements for employees to work at the job site covered by this Contract placed by or on behalf of the Construction Manager, the Construction Manager will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, national origin, sex, ancestry, handicap or disability.

(ii) The Construction Manager will notify each labor union or workers’ representative from whom it seeks workers of the Construction Manager’s commitment as set forth in its proposal, and request that each union or workers’ representative include minority group members and women among its referrals.

(iii) The Construction Manager will hire minority and female workers for the skilled and unskilled jobs required to perform this

Contract in proportion to their availability in the relevant labor pools in the Philadelphia Metropolitan Statistical Area, or to their availability in its qualified applicant pool, whichever is greater.

(iv) The Construction Manager will post in conspicuous places available to its employees and to applicants for employment, a notice of fair practices to be provided by the Philadelphia Human Relations Commission and all employment posters required by Applicable Law.

(v) The Construction Manager will maintain a work environment free of harassment, intimidation and coercion, and will ensure that all on-site supervisory personnel are aware of and carry out the Construction Manager's obligation to maintain such a working environment.

(2) That it will identify on each certified payroll form submitted to the School District those of its employees who are minority group members and those who are female. As used here, "minority" means African American, Hispanic, Asian, or Native American. The School District shall at all times have access to work site and to the Construction Manager's employment records to assure compliance with this subsection.

(3) That it will maintain on forms to be supplied by the School District of Philadelphia, the name, race, sex, national origin, skill or craft, address, telephone number, and source of referral of each applicant for employment, which record shall show which applicants were hired.

(4) That in the event apprentices are hired in any skilled craft area, the Construction Manager will endeavor to hire equal numbers of culturally diverse male and female trainees in each skill area.

8.4.2 Non-Discrimination in Contracting. It is the policy of the School District that business concerns owned and controlled by minority group members and women shall have full and fair opportunity to participate in performance of contracts let by the School District. Participation of minority-owned and women-owned business enterprises must be meaningful and substantial in all phases of this Contract. The Construction Manager represents and agrees that it will use the minority-owned and women-owned business enterprises for the services and in the percentages listed in Paragraph 8.3.4 herein. The representations and agreements in Paragraph 8.4 herein are material representations of fact upon which reliance was placed when this transaction was entered into. If it is later discovered or determined that the Construction Manager has not made a good faith effort to comply with the listed M/WBE percentages in Paragraph 8.3.4 herein, within the School District's sole judgment, the School District may pursue available remedies, including suspension or debarment of the Construction Manager from future School District work as non-responsible.

8.4.3 Liability of Subcontractors. Any Subconsultant of the Construction Manager shall have the same responsibilities and obligations as the Construction Manager to comply with the provisions of this Paragraph 8.4 and shall be subject to the same penalties for failure to comply as set forth in Paragraph 8.4.4. The conditions set forth in

Paragraph 8.4 and its subparagraphs¹ shall be set forth in any contract between the Construction Manager and any of its Subconsultants with regard to any of the Services under this Contract.

8.4.4 Penalties for Failure to Comply.

(1) It is hereby agreed that failure to comply and demonstrate a good faith effort to comply with the foregoing requirements shall constitute a substantial breach of this Contract.

(2) In the event that the School District determines, after investigation, that the Construction Manager or any Subconsultant has failed to comply with any provision of this Paragraph 8.4 and to demonstrate a good faith effort to comply, the School District may, in its sole discretion, invoke the termination provisions of this Contract or move to disqualify, suspend, or debar the Construction Manager or any Subconsultant pursuant to Board Policy No. 621.

(3) The Construction Manager or any Subconsultant, as the case may be, shall be given written notice of any determination of non-compliance and opportunity to achieve compliance within a time period to be specified in the notice.

(4) In the event the School District, after a hearing, determines to terminate the Contract, entered into under this Contract, for non-compliance with and failure to demonstrate a good faith effort to comply with the requirements of this Paragraph 8.4, all obligation on the School District's part to perform this Contract shall cease except for the obligation to pay the Construction Manager the sums due.

Section 9. Indemnification.

9.1 Indemnification.

(a) The Construction Manager agrees to assume liability for and does specifically agree to indemnify, save, protect, and hold harmless the School District, its officers, employees, agents and members of the School Reform Commission and the Board of Education, from and against any and all liability, losses, claims, suits, actions, costs, damages and expenses (including, but not limited to, attorneys' fees, court costs and legal expenses of whatever kind or nature) imposed on or asserted against the School District, and arising out of or in any way related to or resulting from the Construction Manager's carrying out the provisions of this Contract, including, but not limited to, any claim for actual or alleged loss of life, bodily injury, personal injury, or damage to property, alleged to have been caused, in whole or in part, by the negligent acts, errors, omissions, breaches of contract, intentional acts or omissions, or employment discrimination of the Construction Manager, its officers, agents, employees, servants, or Subconsultants acting pursuant to this Contract; or arising out of this Contract with the School District and related to any claim whatsoever brought by or against any agent, servant, employee, or Subconsultant of the Construction Manager and, absent gross negligence or willful misconduct, for any alleged negligence or condition caused or contributed to, in whole or in part, by the School District,; and from any claim for license fees or taxes for which the Construction Manager is or may become responsible. The Construction Manager agrees that in the event that

any employee of the Construction Manager makes any claim or files a lawsuit against the School District for any alleged injury on School District property or in connection with services being performed by the Construction Manager under this Contract that the Construction Manager shall fully defend, indemnify and hold harmless the School District for all damages, losses and expenses which may result therefrom (including attorneys' fees, court costs and legal expenses of whatever kind or nature). This indemnity provision is expressly intended to waive the statutory immunity afforded to the Construction Manager as an employer pursuant to §481(b) of the Pennsylvania Workers' Compensation Act, 77 P.S. §481(b), and to permit the School District to seek contribution or indemnity from the Construction Manager in the event that the School District is sued by an employee of the Construction Manager. The parties further intend that this waiver satisfy the judicial requirements applicable to an express waiver as articulated by the Superior Court of Pennsylvania in *Bester v. Essex Crane Rental Corp. v. Russell Construction Co.*, 619 A.2d 304 (Pa.Super. 1993).

(b) This indemnity provision is intended, *inter alia*, to protect the School District, the SRC, its commission members, board directors, officers, agents, representatives and employees from all claims that are asserted by employees, agents, or workers of any contractors or consultants who are injured on ~~or~~ by School District real property, on or as a result of School District personal property, or who assert an employment claim of any kind (including claims relating to the termination of employment) regardless of when the claim is made, from the commencement to the completion of this Contract, whether the death, injury, damage or loss to persons and/or property, or the economic loss, damage or expense, or employment discrimination, is due to School District negligence, in whole or in part -and is not limited to death, injury, damage or loss to persons or property, or economic loss, damage or expense, or employment discrimination, which occur in the actual performance of this Contract, nor is this indemnity provision limited by the Pennsylvania Workers' Compensation Act. This indemnity provision shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this Contract, and is independent of whether or not the Construction Manager has insurance.

(c) In the event the School District receives notice of a claim based upon the Construction Manager's services, omission or breach, the School District will promptly notify the Construction Manager in writing of such claim and will require and permit the Construction Manager to assume the defense of the School District, its commission members, board directors, officers, agents, and employees, whenever and wherever under the circumstances indicated in Paragraph 9.1 herein, claims, suits or actions are brought against the School District, its commission members, board directors, officers, agents, and employees. The Construction Manager shall require all insurance policies in any way related to the work and secured and maintained by the Construction Manager and all tiers of its Subconsultants to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against the School District.

(d) This Paragraph 9.1 (*Indemnification*) shall apply, particularly, but not exclusively, to the claims of the Construction Manager and its officers, agents, representatives and employees, or the claims of any of its Subconsultants and their officers, agents, representatives and employees, against the School District, the SRC, its officers, employees and agents and the members of the School Reform Commission and the Board of Education. Any violation of any of

the provisions of this Paragraph 9.1 (*Indemnification*) by the Construction Manager shall be deemed a material breach of this Contract.

(e) The officers, agents, representatives and employees of the Construction Manager and any of its Subconsultants must sign a legally enforceable waiver and release of any and all claims that the representative, employee, agent, or Subconsultant may have to make a claims, or commence a lawsuit, or recover damages or losses from or against the School District (and the employees, agents and officials of the School District) or from or against any student (and the parents, guardians or custodians of the students) enrolled in any School District program or activity arising from or related to any injuries which are covered under Pennsylvania's Workers' Compensation statute or which would be covered if the representative, officer, agent, or Subconsultant were an employee. Upon request, the Construction Manager shall provide a copy of the waiver and release to the School District.

9.2 **Survival.** This Section 9 shall survive termination of this Contract.

Section 10. Insurance.

10.1 **Insurance.** Unless otherwise approved by the School District's Office of Risk Management in writing, prior to commencing Services under this Contract, the Construction Manager shall, at its sole cost and expense, procure and maintain in full force and effect, covering the performance of the Services required under this Contract, the types and minimum limits of insurance specified below. All insurance shall be procured solely from reputable insurers who are financially responsible and authorized to do business on an admitted basis in the Commonwealth of Pennsylvania or otherwise acceptable to the School District's Office of Risk Management. All insurance must be procured through an insurance carrier or carriers, each of which shall have at least an A- (Excellent)/FSC-XI rating from A.M. Best. All insurance required herein, except the Professional Liability Insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. IN NO EVENT SHALL THE CONSTRUCTION MANAGER COMMENCE PERFORMING ANY PART OF THE SERVICES UNTIL THE REQUIRED PROOF OF INSURANCE HAS BEEN DELIVERED TO THE SCHOOL DISTRICT. The insurance shall provide for at least thirty (30) calendar days' prior written notice to be given to the School District in the event that the Construction Manager or its insurer or insurers materially change, cancel, or non-renew any insurance policy. The Construction Manager shall advise the School District immediately upon receiving any notice of cancellation or nonrenewal of the required insurance. The Construction Manager shall make sure that the School District of Philadelphia, its commission members, board directors, officers, employees and agents shall be named as Additional Insureds on the General Liability Insurance policy and the Construction Manager shall make sure that its insurer or insurers so endorse said policy. The Construction Manager shall procure and maintain an endorsement or endorsements stating that: (i) the coverage afforded the School District and its commission members, board directors, officers, employees and agents, as additional insureds, shall be primary to any other coverage available to them, and (ii) no act or omission of the School District commission members, board directors, officers, employees and agents shall invalidate the coverage, other than an act or omission that would constitute willful misconduct or gross negligence. The Construction Manager shall require its Subconsultants under this Contract to maintain the required levels of insurance.

(a) WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

- (1) Workers' Compensation: Statutory Limits.
- (2) Employers' Liability: \$500,000 Each Accident - Bodily Injury by Accident; \$500,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
- (3) Other states insurance coverage and Pennsylvania endorsement.

(b) COMMERCIAL GENERAL LIABILITY INSURANCE

- (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations. The School District may require higher limits of liability or aggregate coverages at any time during the term of the Contract, if, in the School District's sole discretion, the potential risk so warrants it.
- (2) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).

(c) AUTOMOBILE LIABILITY INSURANCE

- (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (2) Coverage: Owned, non-owned, and hired vehicles when any motor vehicle is used in connection with the Services required under this Contract.

(d) PROFESSIONAL LIABILITY INSURANCE FOR CONSTRUCTION MANAGERS

- (1) Limit of Liability: \$2,000,000 with a deductible not to exceed \$50,000.
- (2) Coverage: Errors and omissions, including liability assumed under this Contract.
- (3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of the performance of the Services required under this Contract shall be maintained in full force and effect for a retroactive date prior to work and an extending reporting period of three (3) years after completion of work.

(e) **EXCESS UMBRELLA INSURANCE**

- (1) Limit of Liability: at least \$3,000,000.00 combined single limit and at least \$3,000,000.00 aggregate limit with an additional insured endorsement for the School District on the liability policy.
- (2) Coverage: Limits in excess of underlying limits in underlying primary insurance policies and broader coverage than combined scope of underlying primary insurance policies and all aspects of this Contract (including general liability, automobile liability, workers' compensation, employer liability, and professional liability).

(f) **POLLUTION LIABILITY INSURANCE**

- (1) Each Claim/Aggregate: \$1,000,000
- (2) Deductible/Self Insured Retention Not to exceed \$50,000
- (3) Occurrence Form – Gradual and Sudden/Accidental Pollution.
- (4) Insurance to be maintained for the duration of the work and for a period of five (5) years thereafter.
- (5) Pay on behalf of in lieu of indemnity.
- (6) Covered operations – all those performed by or on behalf of the Named Insured.
- (7) All disposal facilities must be licensed and maintain pollution liability insurance of not less than \$5,000,000.

10.1.2 In the event that Construction Manager has or obtains coverage in amounts in excess of those listed above, the additional limits will not benefit the additional insured but remain available on the commercial CGL, PPL & umbrella policies to pay on behalf of CONSTRUCTION MANAGER, per policy provisions: "If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "underlying insurance" Additional insured coverage provided by this insurance will not be broader than coverage provided by the "underlying insurance". "No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a named insured."

10.2 **Evidence of Insurance Coverage.** Certificates of Insurance evidencing the required coverages and Endorsements must specifically reference the Project for which they are being submitted, and the Construction Manager shall attach a copy of each insurance certificate and Endorsement to this Contract. The originals of the Certificate(s) of Insurance and Endorsements providing proof of insurance shall be submitted to the School District's Contract Administrator at the following address set forth in Paragraph 16.1, *Notices*:

The School District of Philadelphia

Office of Risk Management
440 North Broad Street, Suite 325
Philadelphia, PA 19130-4015
Attn.: Riccardo Zucaro, Director of Insurance Risk Management
(Fax No.: 215-400-4591)

with a copy to:

The School District of Philadelphia
Office of Capital Programs
440 North Broad Street, Suite 371
Philadelphia, PA 19130-4015
Attn.: Gerald Thompson, Contracts Manager
(Fax No.: 215-400-4731)

Both submissions must be made at least ten (10) calendar days before Services are begun. The ten (10) calendar day requirement for advance documentation of coverage may be waived in situations where such waiver will, in the sole judgment of the School District Director of Insurance Risk Management, benefit the School District; but under no circumstances shall the Construction Manager actually begin Services (or continue Services, in the case of an Extended Term) without providing the required evidence of insurance. The Endorsement adding the School District of Philadelphia as an additional insured must specifically reference the Project and be submitted to the School District Director of Insurance Risk Management and School District's Contract Administrator at the above addresses. The School District reserves the right to require the Construction Manager to furnish certified copies of the original policies of all insurance required under this Contract at any time upon (10) calendar days' written notice to the Construction Manager.

10.3 **Notice of Claim or Lawsuit.** The Construction Manager shall advise the School District in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon the Construction Manager's services, omission or breach, that it will abide fully by Paragraph 9.1 (*Indemnification*) and Section 10 (*Insurance*) of this Contract, and that the applicable insurance carrier(s) has (have) been advised to defend, indemnify, and hold harmless the School District in accordance with the provisions of Paragraph 9.1 (*Indemnification*) and Section 10 (*Insurance*) of this Contract. The Construction Manager shall not decline to provide the School District with full protection and coverage under Paragraph 9.1 (*Indemnification*) and Section 10 (*Insurance*) of this Contract because some other contractor or consultant may, in whole or in part, be responsible for the occurrence, death, injury, damage, or loss to persons or property, or economic loss, damage, or expense, or because the School District may be a co-insured or an additional insured on some other contractor's or consultant's policy of insurance. The Construction Manager agrees that any violation of this Paragraph 10.3 of Section 10 (*Insurance*) shall be deemed a material breach of this Contract.

10.4 **Self-Insurance.** The Construction Manager may not self-insure any of the coverages required under this Contract without the prior written approval of the School District's Director of Insurance Risk Management. In the event that the Construction Manager desires to self-insure any of the coverages listed above, it shall submit to the School District's Contract

Administrator and School District's Director of Insurance Risk Management, prior to the commencement of Services hereunder, a certified copy of the Construction Manager's most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., State approval) as may be requested by the School District's Contract Administrator or School District Director of Insurance Risk Management. In the event such approval is granted, it is understood and agreed that the School District, its Commission members, board directors, officers, employees and agents shall be entitled to receive the same coverages and benefits under the Construction Manager's self-insurance program that they would have received had the insurance requirements been satisfied by a reputable insurance carrier authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the School District's Director of Insurance Risk Management. If at the time of commencement of this Contract, the Construction Manager self-insures its professional liability or workers' compensation and employers' liability coverage, the Construction Manager may, in lieu of the foregoing, furnish to the School District's Director of Insurance Risk Management and School District a current copy of the State certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this Contract by the Construction Manager to the School District, or to limit the Construction Manager's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by the Construction Manager hereunder.

10.5 **Survival.** The protections afforded by this Section 10 to the School District shall survive termination of this Contract.

Section 11. Confidentiality.

11.1 **Confidential and Proprietary Information.** The Construction Manager acknowledges that it may be exposed to confidential and proprietary information of the School District and that such confidential and proprietary information will be contained in papers, records, documents and materials belonging to the School District or stored on equipment owned and operated by the School District. The Construction Manager shall keep in strictest confidence all information relating to this Contract and all information that may be acquired in connection with or as a result of this Contract, which the School District designates as confidential or proprietary. The School District hereby designates the School District Data listed in Paragraph 11.3 as "Confidential and Proprietary Information". During the term of this Contract and at any time thereafter, without the prior written consent of the School District, the Construction Manager shall not publish, disclose or use any such information which has been designated by the School District as proprietary or confidential, or which from the surrounding circumstances in good conscience ought to be treated by the Construction Manager as proprietary or confidential, or any other information subject to a third party's proprietary right, such as a copyrighted or trademarked work. The term "Confidential or Proprietary Information" is not meant to include any information that is in the public domain. Notwithstanding any other terms or conditions to the contrary, the Construction Manager shall return to the School District all of the Confidential and Proprietary Information designated by the School District in Paragraphs 11.1 and 11.3 at the termination or expiration of this Contract.

11.2 **Non-Disclosure.** The Construction Manager and its employees, agents, Subconsultants, and any person or entity acting on its behalf (i) will maintain in strict confidentiality all of the “School District Data,” as defined and set forth in Paragraph 11.3; (ii) will not, without the School District’s written permission, divulge, disclose, communicate, or distribute any of the School District Data to any person or entity except as may be strictly necessary to perform this Contract; (iii) will not, without the School District’s written permission, in any way use any of the School District Data for their businesses or other advantage or gain (except as may be necessary to perform this Contract), including, without limitation, any use of the School District Data in any presentation, demonstration, or proposal to perform services, to the School District or to others, that may be conducted or created as part of their business activities or otherwise; (iv) will use the School District Data solely and exclusively in accordance with the terms of this Contract in order to carry out its obligations and exercise its rights under this Contract; (v) will afford the School District Data at least the same level of protection against unauthorized disclosure or use as the Construction Manager uses to protect its own trade secrets, proprietary information, and other confidential information (but will in no event exercise less than reasonable care and protection); and (vi) will, immediately upon termination or expiration of this Contract, return all School District Data to the School District, destroy any and all copies of any School District Data that are in their possession, whether on paper or in electronic or other form, and if requested by the School District in writing, will certify in writing that there has been full compliance with this Paragraph 11.2. The conditions set forth in this Paragraph 11.2 shall be set forth in any contract between the Construction Manager and any of its Subconsultants with regard to any of the Services under this Contract.

11.3 **School District Data.** Except as provided otherwise in Paragraph 11.4, the School District Data shall include any and all of the following, whether in electronic, microfilm, microfiche, video, paper, or other form, and any copies or reproductions thereof:

- (a) financial data, records, and information related to this Project; and
- (b) any Data provided by the School District to the Construction Manager in connection with the Services provided by the Construction Manager; and
- (c) any and all other records, documents, computer software (whether owned by the School District or licensed or otherwise furnished to the School District by third parties), and data furnished by the School District to the Construction Manager in relation to the Services required under this Contract; and
- (d) all records, documents, data, information, programs, and items of Services created by the Construction Manager for the School District as part of the Services required under this Contract.

11.4 **Exclusions.** School District Data shall not include any information or data which:

- (a) was known to the Construction Manager prior to the commencement of its performance of this Contract, free of any obligation to keep it confidential, or is proprietary to the Construction Manager; or

(b) was generally known to the public at the time of receipt by the Construction Manager, or becomes generally known to the public through no act or omission of the School District; or

(c) was independently developed by the Construction Manager without knowledge or use of any Data of the School District; or

(d) is required to be disclosed by law or judicial process.

11.5 **Remedy for Breach.** In the event of any actual or threatened breach of any of the provisions of this Section 11 by the Construction Manager, and in addition to any other remedies that may be available to the School District in law or equity, the School District shall be entitled to a restraining order, preliminary injunction, permanent injunction, or other appropriate relief to specifically enforce the terms of this Section 11. The parties agree that a breach of the terms of this Section 11 by the Construction Manager would cause the School District injury not compensable in monetary damages alone, and that the remedies provided herein are appropriate and reasonable.

11.6 **Survival.** This Section 11 shall survive termination of this Contract.

Section 12. **Disputes.**

12.1 **Escalation.** The parties agree to exercise every reasonable effort to resolve disputes that may arise under this Contract through informal negotiation and cooperation. If the parties are unable to resolve any dispute arising under this Contract, then a party claiming that a dispute has arisen in connection with this Contract or its subject matter will give prompt notice to the other party describing the dispute in reasonable detail. Promptly after receipt of the Dispute Notice, the parties will negotiate in good faith to resolve the Dispute. Either party may escalate the Dispute negotiations to higher level personnel, by notice to the other party, as specified below:

School District	Construction Manager	Time After Dispute Notice
Project Architect or Project Engineer or Project Manager	Project/Construction Manager	15 days
Contracts Manager	Project/Construction Manager	15 days
Director or Operations Manager, Capital Programs	Managing Member	15 days

12.2 **Tolling.** All limitations periods and the running of laches are tolled during the pendency of dispute resolution.

Section 13. **Project Stoppage, Suspension or Abandonment.**

13.1 **Stoppage or Abandonment.** The School District may order the Construction

Manager, in writing, to stop or abandon all or any part of its Services for the Project, for the convenience of the School District, or for work stoppages beyond the control of the School District or the Construction Manager. Any increased costs incurred as a result of the stoppage or abandonment of the Project shall be an equitable amount determined by the School District and the Construction Manager in view of all the facts and circumstances. If, however, the Project is abandoned, the School District shall pay the Construction Manager for all Services performed and Reimbursable Expenses incurred to the date of abandonment in accordance with Paragraph 14.1, *Termination for Convenience*, of this Contract.

13.2 **Suspension for Convenience.** The School District shall have the right, at any time during the term of this Contract, to suspend all or any part of the Services, for the convenience of the School District, for the period of time that the School District, in its sole discretion, determines to be in the best interest of the School District, upon thirty (30) days' prior written notice to the Construction Manager (except that in the event of a public emergency, as determined by the School District, no such period of notice shall be required.).

13.2.1 If a suspension of the Services pursuant to this Paragraph 13.2 is for greater than thirty (30) days, the Construction Manager shall have the right to submit a claim to the School District for the payment of costs for all Services performed and Reimbursable Expenses incurred in accordance with the provisions of this Contract prior to the effective date of the suspension.

13.2.2 The Construction Manager shall be entitled to an equitable extension of the time of performance provided in this Contract for any suspension that is suspended pursuant to this Paragraph 13.2 for more than thirty (30) days.

13.2.3 The School District shall have the right, during the period of any suspension pursuant to this Paragraph 13.2, to terminate this Contract as provided in this Section 14, in Section 6, and elsewhere in this Contract.

Section 14. Termination.

14.1 **Termination for Convenience.**

14.1.1 **Termination for Convenience.** The School District shall have the right to terminate this Contract, in whole or in part, for the convenience of the School District, at any time, upon thirty (30) calendar days' prior written notice to the Construction Manager. Such termination for convenience shall be, at the School District's sole discretion, and without penalty, cost, or liability to the School District.

14.1.2 **Effect of Termination for Convenience or Similar Grounds.**

(a) The Construction Manager shall be entitled to payment from the School District for any Services satisfactorily performed and Reimbursable Expenses incurred in accordance with the provisions of this Contract prior to the effective date of termination. .

(b) Whether the termination occurs in the Initial Term or an Extended

Term, the Construction Manager shall continue to perform this Contract in accordance with its terms through the effective date of the termination, and shall make diligent efforts to mitigate all costs and losses associated with the termination.

(c) The School District shall incur no liability beyond such stated amount for any Services that are terminated under Paragraph 14.1, *Termination for Convenience*. Without limiting the generality of the foregoing, in no event shall the Construction Manager be entitled to receive, or to submit any claim for, any of the following costs directly or indirectly caused by the termination: (i) field or home office overhead; or (ii) costs caused by or related to loss of productivity or loss of profit related to the Services and this Contract, or to any other Contract or services that the Construction Manager performed or could have performed but was prevented from performing because of the termination or its commitment to the Services.

(d) In the event the School District partially terminates this Contract pursuant to this Paragraph 14.1.1, the Construction Manager shall continue to perform this Contract in accordance with its terms with respect to all Services not terminated. The School District shall pay the Construction Manager in accordance with this Contract for Services that are not terminated.

14.2 **Termination for Default.**

14.2.1 Event of Default. Each of the following constitutes an Event of Default by the Construction Manager under this Contract.

(a) The Construction Manager's failure to comply with any material provision, term, or condition of this Contract;

(b) the appointment of a receiver, trustee or custodian to take possession of all or substantially all the assets of the Construction Manager for the benefit of creditors, or any action taken or suffered by the Construction Manager under any federal or state insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, including the Construction Manager's filing for bankruptcy, and the filing of an involuntary petition against the Construction Manager under the federal bankruptcy code or any similar state or federal law which remains undismissed for a period of forty-five (45) days;

(c) material misrepresentation or material falseness or inaccuracy of any representation or commitment of the Construction Manager contained in this Contract, or in any other document submitted to the School District by the Construction Manager in relation to the Services, the RFP, or the Proposal, or otherwise by the Construction Manager directly to the School District in connection with the School District's decision to execute, deliver and perform this Contract;

(d) failure of the Construction Manager to provide, within five (5) business days, after receipt of written notice and reasonable opportunity to cure, assurance reasonably acceptable to the School District that it can perform the Work in conformity with the terms of the Contract if (1) the School District has a reasonable basis to believe at any time during the term of the Contract that the Construction Manager will not be able to perform the

Work, and (2) the School District demands in writing assurance of the Construction Manager's performance;

(e) misappropriation by the Construction Manager of any funds provided under this Contract or failure by the Construction Manager to notify the School District upon discovery of any misappropriation;

(f) indictment of or other issuance of formal criminal charges against the Construction Manager or any of its directors, employees or agents or any of the directors, employees or agents of a Subcontractor or any criminal offense or any other violation of Applicable Law directly or indirectly relating to this Contract or the Work or Services required under this Contract, or which adversely affects the Construction Manager's performance of this Contract in accordance with its terms, whether or not a court of law or other tribunal ultimately accepts a verdict or plea of guilty or no contest regarding the charged offense;

(g) disregards Applicable Law or orders of any public authority having jurisdiction over the Project;

(h) debarment or suspension of the Construction Manager or any director, agent, or employee or any person controlling, under common control with, or controlled by, the Construction Manager under a federal, state or local law, rule or regulation;

(i) failure by the Construction Manager to comply with any term, covenant or condition set forth in Paragraph 16.18, *Tax Compliance*, or the breach of any of the Construction Manager's representations and warranties set forth in Paragraph 3.2, *Construction Manager's Representations, Warranties and Commitments*;

(j) the Construction Manager is delinquent in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District, the Construction Manager has not contested the amount of the tax, taxes or other indebtedness owed, and the Contractor has not entered into or executed any satisfactory arrangement, settlement agreement or payment plan with the applicable taxing authority to become compliant in the payment of such taxes or indebtedness.

14.2.2 Notice and Cure. If the Construction Manager commits or permits an Event of Default, the School District shall notify the Construction Manager in writing of its determination that an Event of Default has occurred, and shall specify in reasonable detail the nature of the Default. Except for the breaches set forth in subparagraphs (b) through (i) of this Paragraph 14.2, the Construction Manager shall have ten (10) business days from receipt of that notice to correct the Event of Default. If the Event of Default is not cured within that time period, the School District may terminate this Contract by providing the Construction Manager with written notice of Termination for Default. The School District may extend such time period, at its sole discretion, if there is evidence of the Construction Manager's good faith effort to cure the Event of Default within such time period. No notice from the School District or period of cure shall be required before invoking the remedies described in Paragraph 14.5, *Additional Remedies of the School District*, of this Contract if: (1) the Construction Manager has temporarily

or permanently ceased performing the Work; (2) an emergency has occurred relating to the Work, and that emergency requires immediate exercise of the School District's rights or remedies, as determined by the School District in its sole discretion; (3) the School District has previously notified the Construction Manager more than once in the preceding twelve (12) month period of any Event of Default under this Contract; (4) an Event of Default occurs as described in Paragraphs 14.2.1(e), (f), or (h); or (5) the Construction Manager breaches any of its obligations under Paragraphs 16.13, *Background Checks (Criminal, Child Abuse and FBI)*, or 8.4, *Non-Discrimination*. Nothing set forth in this Paragraph shall limit the School District's rights under Paragraph 14.5, *Additional Remedies of the School District*.

14.2.3 Consent to Use of Other Design Consultants upon Design Consultant's Termination for Default. In the event of the Construction Manager's termination under this Contract due to the default of the Design Consultant, or in the event of the termination of the Design Consultant under their contract with the Construction Manager due to the default of the Design Consultant, the Design Consultant's consent to the School District's and the Construction Manager's selection of other Design Consultants of the School District's or the Construction Manager's choice to assist the School District or the Construction Manager in any way in completing the Project. The Design Consultants further agree to cooperate and provide any information requested by the School District or the Construction Manager in connection with the completion of the Project. The Design Consultants authorize the making of any reasonable changes to the design of the Project by the School District or the Construction Manager and such other Design Consultants as the School District or the Construction Manager may desire. In the event that other Design Consultants are selected or changes are made to the design of the Project, the School District agrees to indemnify and hold harmless the Design Consultants and their officers and employees from any liability arising from use and changes to the design and design documents, including costs of litigation, reasonable attorneys' fees and time spent by the Design Consultants and their Subconsultants attending depositions and court proceedings.

14.3 Termination Duties. Upon receipt of a Termination Notice from the School District, the Construction Manager shall take immediate action toward the orderly discontinuation of Services under this Contract. The Construction Manager shall exercise due care and caution to protect and secure completed Work. Upon expiration or termination of this Contract, the Construction Manager shall be responsible for taking all actions necessary to accomplish an orderly discontinuation of performance of Services, and for collecting, assembling, and transmitting to the School District, at the Construction Manager's sole expense, all designs, drawings, specifications, materials, reports, data, and other documentation which were obtained, prepared or developed as part of the Services required under this Contract. Designs, drawings, specifications, materials, reports, data and documentation shall be clearly labeled and indexed, to the satisfaction of the School District, and delivered to the School District by the Construction Manager, within thirty (30) calendar days after receipt of a Termination Notice from the School District.

14.4 Additional Remedies of the School District. In the event the Construction Manager commits or permits an event of default, the School District may, in its sole discretion, exercise one or more of the following remedies in addition to or in lieu of the termination remedy provided in Paragraph 14.1:

(a) terminate this Contract in part only, in which case the Construction Manager shall be obligated to perform this Contract to the extent not terminated; or

(b) perform (or cause a third party to perform) the Services and this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the School District. The Construction Manager shall be liable to the School District for all sums paid by the School District and all expenses incurred by the School District (or a third party) pursuant to this Paragraph 14.4, together with interest at the statutory legal rate of 6% permitted in the Commonwealth of Pennsylvania thereon from the date of the School District's incurring of such costs. The School District shall not in any event be liable for inconvenience, expense, or other damage incurred by the Construction Manager by reason of such performance or paying such costs or expenses, and the obligations of the Construction Manager under this Contract shall not be altered or affected in any manner by the School District's exercise of its rights under this Section 14; or

(c) withhold, or offset against, any funds payable to or for the benefit of the Construction Manager; or

(d) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of the Construction Manager; or

(e) exercise any other right or remedy it has or may have at law, in equity, or under this Contract; and,

(f) in addition to, and not in lieu of, the foregoing remedies, the School District shall have the right to stop the Services or any portion thereof in the event the Construction Manager fails to remedy any defects in any of the Services, or commits or permits any other event of default, following written notice by the School District, or fails to carry out any portion of the Services in accordance with this Contract, by issuing its written Stop Work Order, which shall be signed by the Director or Operations Manager of the Office of Capital Programs. Any Stop Work Order shall state in reasonable detail the cause(s) for its issuance. Upon receiving a stop work order, the Construction Manager shall immediately cease working on that portion of the Services specified in the Stop Work Order until the School District notifies the Construction Manager in writing that the cause for the Stop Work Order has been eliminated, and directs the Construction Manager in writing to resume the Services. The Construction Manager shall resume the Services immediately upon receipt of such written notice from the School District.

14.4.1 Specific Performance. The Construction Manager's Work represents unique services not otherwise readily available to the School District. Accordingly, the Construction Manager acknowledges that, in addition to all other remedies, the School District shall have the right to enforce the terms of this Contract by a decree of specific performance or an injunction, or both, restraining a violation, or attempted or threatened violation, of any term, covenant or condition set forth in this Contract.

14.5 **Concurrent Pursuit of Remedies; No Waiver or Duty to Exercise**. The School District may exercise any or all of the remedies set forth in this Section 14, each of which may be

pursued separately or in connection with such other remedies as the School District, in its sole discretion, shall determine. No extension or indulgence granted to the Construction Manager shall operate as a waiver of any of the School District's rights in connection with this Contract. The rights and remedies of the School District as described in this Section 14 and elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the School District under this Contract, at law, or in equity. Nothing contained in this Section 14 shall create a duty on the part of the School District to exercise any rights granted to it hereby for the benefit of the School District, or for the benefit of the Construction Manager, or any person or entity other than the School District.

Section 15. Certification Regarding Debarment, Suspension and Ineligibility.

15.1 **Certification.** By signing this Contract, in addition to binding itself to the terms and conditions of this Contract, the Construction Manager hereby certifies for itself, its principals and including, without limitation, its Prime Contractors, if any, that none of them are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from performing the services under this Contract by any federal government or Commonwealth of Pennsylvania department or agency.

15.2 **Explanation.** In the event the Construction Manager is unable to certify to any of the statements in the above certification, the Construction Manager shall provide an immediate written explanation to the School District administrator named in Paragraph 7.1, *Contract Administrators*, of this Contract.

15.3 **Notice.** The Construction Manager shall provide immediate written notice to the School District administrator named in Paragraph 7.1, *Contract Administrators*, of this Contract if at any time, during the term of this Contract, the Construction Manager learns that the above certification was erroneous when the Construction Manager signed this Contract or subsequently became erroneous by reason of changed circumstances.

15.4 **Remedies.** If the Construction Manager is unable to certify to any statements in the above certification, or has falsely certified, then in that event the School District, at its sole discretion, may immediately terminate this Contract without any liability or obligation of the School District to the Construction Manager, and the Construction Manager shall reimburse the School District for any and all reasonable costs incurred by the School District as a result of any investigation by the federal government or the Commonwealth of Pennsylvania concerning the Construction Manager's compliance with the terms and conditions of this Contract that results in the debarment or suspension of the Construction Manager.

15.5 **Compensation.** If the compensation paid to the Construction Manager is derived from federal government or Commonwealth of Pennsylvania grant funds, the Construction Manager must bill the School District for any outstanding compensation owed to the Construction Manager within thirty (30) days after the ending date of this Contract, as set forth in Section 2 (*Term of Contract*). In the event the Construction Manager does not bill the School District for the balance of any compensation within said 30-day time period, the School District, in its sole discretion, reserves the right to withhold payment of the balance of the compensation to the Construction Manager because of the unavailability of federal government or

Commonwealth of Pennsylvania funds, in which event the School District shall not be liable to the Construction Manager for the balance of the compensation.

15.6 **Survival.** This Section 15 shall survive termination of this Contract.

Section 16. Miscellaneous Provisions.

16.1 **Notices.** Any notice or communication required or permitted to be given under this Contract shall be given in writing, and shall be personally delivered by hand with receipt obtained, by a national overnight express carrier (e.g., Federal Express, Express Mail), by facsimile (with copy by registered or certified United States mail, return receipt requested, postage prepaid), or by registered or certified United States mail, return receipt requested, postage prepaid, addressed as follows:

IF TO SCHOOL DISTRICT:

Attn.: Danielle Floyd, Director of Capital Programs or
Leigh Clark, Operations Manager of Capital Programs
The School District of Philadelphia
Office of Capital Programs
440 North Broad Street, Suite 371
Philadelphia, PA 19130-4015
Telephone number: (215) 400-4730
Facsimile number: (215) 400-4731

IF TO CONSTRUCTION MANAGER:

Attn.:

Telephone number:
Facsimile number:

If mailed, such notice or communication shall be deemed to have been given on actual receipt by the intended recipient.

16.2 **Governing Law.** This Contract and all disputes arising under this Contract shall be governed, construed, and decided in accordance with the substantive laws of the Commonwealth of Pennsylvania.

16.3 **Forum; Consent to Jurisdiction.** The parties agree that when any dispute between the parties cannot be amicably resolved and resort is made to legal action, any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in a federal or state court of competent jurisdiction in and only in Philadelphia County, Pennsylvania. It is the express intent of the parties that jurisdiction over any lawsuit,

action, claim, or legal proceeding shall lie exclusively in this forum. The parties further agree not to raise any objection, as to forum or venue, to any lawsuit, action, claim, or legal proceeding which is brought in this forum, and the parties expressly consent to the jurisdiction and venue of this forum.

16.4 **Contract Documents; Order of Precedence.** The Contract Documents shall consist of only the following:

- 16.4.1 this Contract;
- 16.4.2 Exhibits A-F to this Contract,
- 16.4.3 the Proposal (as modified hereby);
- 16.4.4 any written amendment to this Contract approved by the SRC;
- 16.4.4 any mutually agreed upon and executed Order as stated in Paragraph 3.13.1; and
- 16.4.5 any written commitment, warranty or representation by the Construction Manager as stated in Paragraph 3.2.17.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Services and work by the Construction Manager. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Construction Manager shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflict or variance between the body of this Contract (Sections 1-16) and any other document comprising the Contract Documents, this Contract shall govern. Conflicts and variances among the documents comprising the Contract Documents shall be resolved by giving precedence in the following order: This Contract, the Exhibits, and the Proposal.

16.5 **School District Liability, Responsibility or Risk of Loss.** Notwithstanding any other provisions of this Contract or any Addenda or Exhibits to the contrary, the School District, its officers, employees and agents and members of the School Reform Commission and the Board of Education retain their statutory governmental, official and any other immunity as provided pursuant to the Applicable Law, including 42 Pa C.S.A. §§8501 and 8541 *et seq.*, and do not waive the defenses of governmental and official immunity derived from such laws. The Construction Manager acknowledges that the School District:

- (a) Is a local agency, as defined in 42 Pa. C.S.A. §8501, §8541, and,
- (b) Does not waive, for itself or for its officers, employees, or agents, or for the members of the School Reform Commission and Board of Education, the defenses of statutory governmental or official immunity or any other defenses or immunities available to it or any of them.

The School District does not waive for itself or for its officers, employees, agents, or for the members of the School Reform Commission and Board of Education, any other defenses or immunities available to it or any of them.

16.6 **Compliance with Laws and Regulations.** All services performed and documents prepared by the Construction Manager shall strictly conform to all Applicable Law and the applicable rules, regulations, policies, methods and procedures of the School District and all governmental bodies, boards, bureaus, offices, commissions, and other agencies.

16.7 **Publicity.** Neither the School District nor the Construction Manager shall publicize this Contract or the Services, or attribute any comments or views about this Contract or the Services to employees or agents or officials of the other party, by press conference, press release, advertising or public relations materials without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that nothing in this Paragraph 16.7 shall be construed to prohibit either party from making any disclosure relating to this Contract or Services that is required under federal or state securities laws or state or local election laws, or to prohibit either party from publicizing, with reasonable prior notice to the other party, the fact that this Contract has been entered into, the subject matter of this Contract, or the amount of this Contract. Except as may be required for its performance of this Contract, or as mutually agreed by the School District and the Construction Manager, the Construction Manager shall refer all press and public inquiries regarding the assigned Project to the School District's designated representative during the term of this Contract. At any time thereafter, the Construction Manager may respond to press and public inquiries regarding the concept and design of the assigned Project following notice to the School District's designated representative. During the term of this Contract, the Construction Manager shall provide reasonable assistance to the School District in public relations activities, and shall prepare appropriate information for, and when requested, attend public meetings regarding the assigned Project.

16.8 **General Publication Rights.** The Construction Manager agrees with regard to publication of reports, studies, or other works developed in the course of this Contract as a result thereof, that the publication will not contain information supplied to the Construction Manager by the School District which is confidential, or which identifies students, employees, or officers of the School District by name without first obtaining their written consent. The School District shall be allowed to review and suggest revisions to any proposed publication in which it is named for thirty (30) calendar days prior to submission for publication. Title to and the right to determine the disposition of any copyrights and copyrightable materials first produced by the Construction Manager as a result of performance of this Contract shall remain with the Construction Manager.

16.9 **Conflict of Interest.**

16.9.1 **Disclosure of Conflict of Interest.** The Construction Manager represents, warrants and covenants that it has no public or private interest which does or may conflict in any manner with the performance of the Work and that neither it, nor any of its directors, officers, members, partners, employees or Subconsultants, has or shall during the Term acquire, directly or indirectly, any such interest. The Construction Manager shall promptly and fully disclose to the School District's Contract Administrator all interests which may constitute such a conflict.

16.9.2 **Improper Gift; Improper Relationship.** The Construction Manager represents, warrants and covenants that it has not directly or indirectly offered or given and shall not directly or indirectly offer or give any payment, loan, subscription, advance, deposit of

money, services or anything of more than nominal or minimal value to any School District employee who participated in the decision to authorize or enter into this Contract. The Construction Manager warrants that, to its knowledge, neither a School District employee or officer who participated in the decision to enter into this Contract, nor any member of the employee's immediate family, receives more than \$1,000 per year from the Construction Manager, has a direct or indirect investment worth \$1,000 or more in the Construction Manager or is a director, officer, partner, trustee or employee of the Construction Manager.

16.10 **School District Officers and Employees Not to Benefit.** The Construction Manager shall not make any payment or give anything of more than nominal value to any School District official or employee except in accordance with Applicable Law and School District policy. The Construction Manager shall comply with the School District Vendor Code of Ethics, and also, to the extent applicable, with the School District's Code of Ethics for School District officers and employees. The Construction Manager shall disclose to the School District, with each invoice submitted, the name(s) of each School District official(s) or employee(s) who receive payment from the Construction Manager, the amount such official or employee receives and the services rendered by the official or employee in consideration of the payment. Any fees or compensation paid by the Construction Manager to the School District officials or employees in violation of School District policy and Applicable Law shall be recoverable from the Construction Manager as damages.

16.11 **Non-Solicitation.** Neither party shall solicit the employment of any employee of the other party who has been assigned responsibilities under this Contract for the period of twelve (12) months following termination of responsibilities of each such employee. The School District agrees that it will not, directly or indirectly, for any reason, either during the term of this Contract or for a period of twelve (12) months after the termination of this Contract, without regard to the reason for termination, engage, utilize, or employ any employee or Subconsultant of the Construction Manager.

16.12 **Assignment of Construction Manager's Employees.** The Construction Manager agrees not to assign any person dismissed from School District employment to perform services under this Contract. The Construction Manager further agrees to reassign immediately any person the School District finds unacceptable or incapable of performing contractual requirements.

16.13 **Background Checks (Criminal, Child Abuse and FBI).**

16.13.1 In accordance with 24 P.S. §1-111, as amended, and 23 Pa. C.S.A. §§6303, 6344 and 6354-6358, as amended, before starting any Services under this Contract, the Construction Manager shall submit to the School District, for inspection and copying, the originals of a current (i.e., processed by the Commonwealth of Pennsylvania within one (1) year prior to the Construction Manager's starting Services) criminal history record information report and child abuse history official clearance statement for the Construction Manager, if the Construction Manager is an individual, and for each of the Construction Manager's and any of its Subconsultant's employees, officers, agents, servants, or Subconsultants who will have direct contact with children while performing any of the Services under this Contract. In accordance with 24 P.S. §1-111, as amended, before starting any Services under this Contract, the

Construction Manager shall also submit to the School District, for inspection and copying, the original of a current report of the Federal Bureau of Investigation federal criminal history record information for the Construction Manager, if the Construction Manager is an individual, and for each of the Construction Manager's and any of its Subconsultant's employees, officers, agents, servants, or Subconsultants who will have direct contact with children while performing any of the Services under this Contract. Commonwealth Board of Education regulations define "direct contact"; *see* 22 Pa. Code § 8.1.

16.13.2 Arrests; Convictions. The Construction Manager shall comply and shall ensure that its officers, employees, agents and Subconsultants comply with the requirements of 24 P.S. §1-111(j), which mandates, among other things, reporting within seventy-two (72) hours by any officer, employee or agent of the Construction Manager or of any Subconsultant of an arrest or conviction for an offense listed in 24 P.S. §1-111(e). The Construction Manager shall report to the School District, in a prompt and timely manner, all notices and reports required, and all checks conducted, under 24 P.S. §1-111(j).

16.13.3 Report of Child Abuse. The Construction Manager shall comply and shall ensure that its officers, employees, agents and Subconsultants comply with the requirements of 62 Pa. C.S.A. §6344.3(g), which mandates, among other things, written notice by any officer, employee or agent of the Construction Manager or of any Subconsultant within seventy-two (72) hours after having received notification of being named as a perpetrator in a founded or indicated report of child abuse. The Construction Manager shall report to the School District, in a prompt and timely manner, all notices required under 62 Pa. C.S.A. §6344.3(g).

16.13.4 The Construction Manager's failure to comply with any requirement of 24 P.S. §1-111, as amended, and 23 Pa. C.S.A. §§6344 and 6354 through-6358 shall be deemed a material breach of this Contract, thereby giving the School District the right, at its sole discretion, to terminate this Contract immediately with no further obligation or responsibility on the part of the School District.

16.14 Successors and Assigns. The School District and the Construction Manager, respectively, bind themselves, their heirs, executors, administrators, successors, permitted assigns and legal representatives to the other party to this Contract, and to the heirs, executors, administrators, successors, permitted assigns and legal representatives of such other party with respect to all covenants of this Contract. The parties hereto bind themselves, their heirs, executors, administrators, successors, permitted assigns and legal representatives for the faithful performance of this Contract.

16.15 Examination of Records. The Construction Manager agrees, upon request and without expense to the School District, to make available its books and records concerning charges, fees and costs under this Contract, in the administrative offices of the School District, for inspection by appropriate School District agents. The Construction Manager agrees that the School District shall, until the expiration of three (3) years after final payment under this Contract or five (5) years after termination of this Contract, whichever is later, have access to and the right to examine and copy directly pertinent books, documents, papers and records of the Construction Manager directly related to this Contract which have not been previously delivered to the School District. The period of access and examination for records shall continue during any litigation

and until the settlement of claims arising out of the performance of this Contract.

16.16 **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination, including, without limitation, the following:

- (a) Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract;
- (b) The Construction Manager's representations and covenants set forth herein;
- (c) Section 6, *Compensation and Payment*;
- (d) Section 9, *Indemnification*;
- (e) Section 11, *Confidentiality*;
- (f) Section 12, *Disputes*;
- (g) Section 14, *Termination*;
- (h) Section 15, *Certification regarding Debarment, Suspension and Ineligibility*;
- (i) Paragraph 16.2, *Governing Law*;
- (j) Paragraph 16.3, *Forum; Consent To Jurisdiction*; and
- (k) Paragraph 16.4, *Contract Documents; Order of Precedence*.

16.17 **Taxes.**

16.17.1 City of Philadelphia Taxes. The Construction Manager may incur liability for payment of one or more of the following taxes levied by the City of Philadelphia; (a) Mercantile License Tax; (b) Net Profits Tax; (c) City Wage Tax; and (d) Business Privilege Tax. The Construction Manager, if not already paying any such taxes, shall promptly apply to the City of Philadelphia, Department of Revenue, for a tax account number and shall file the appropriate business tax returns as provided by law.

16.17.2 Sales and Use Tax. The Construction Manager agrees to execute all documents requested by the School District or its representative, and to provide prompt access to the School District or its representative, to all documents of the Construction Manager and its Subconsultants related to the Services performed on the Project, to assist the School District in making a claim or filing a petition for a refund of sales and/or use tax. The Construction Manager hereby assigns to the School District all of its right, title and interest in any sales or use tax paid or reimbursed by the School District that may be refunded as a result of any documentation, services, labor, supplies, tools, materials, or equipment purchased in connection with this Contract. The Construction Manager authorizes the School District, in its own name or the name of the Construction Manager, to file a claim for a refund of any sales or use tax subject to this assignment. Likewise, the School District hereby assigns to the Construction Manager all of its right, title and interest in any sales or use tax paid by the Construction Manager and not reimbursed by the School District that may be refunded as a result of any documentation, services, labor, supplies, tools, materials, or equipment purchased in connection with this Contract, and agrees to file, or at the School District's option, cooperate in the Construction Manager's filing of, a claim for a refund of any sales or use tax subject to this assignment.

16.17.3 School District Tax Exemption. Notwithstanding any other provision of this Contract or the Exhibits to the contrary, the School District represents that it is a tax-exempt organization and is therefore not subject to taxes arising out of this Contract or the Construction Manager's performance under this Contract. In the event, however, that the Construction Manager is assessed or levied any taxes, fees, or similar charges related to this Contract or the Construction Manager's performance hereunder (except income or corporate taxes assessed against or levied on the Construction Manager), the School District agrees to cooperate fully with the Construction Manager, at School District expense, in any administrative actions or legal proceedings with the appropriate taxing authorities. If a final judgment is entered against the Construction Manager relating to the payment of such taxes, fees, or charges, the School District agrees to indemnify the Construction Manager for the amount thereof, including any penalties incurred in such review or contest. In no event shall the Construction Manager be exposed to any liability for the payment or nonpayment of any such taxes, charges, or fees.

16.18 **Tax Compliance.** It is the policy of the School District to ensure that firms, businesses and other legal entities receiving School District contracts are current in their payment of City of Philadelphia ("City") taxes and School District taxes or other indebtedness owed to the City or the School District, including but not limited to taxes collected by the City on behalf of the School District, at the time of contract award. Pursuant to SRC Resolution SRC-2 dated February 21, 2013, the School District's SRC has adopted a Tax Compliance of Vendors Policy which provides that generally, the SRC will not authorize the award of a School District contract to a firm, business or other legal entity that is delinquent in its payment of City or School District taxes or other indebtedness owed to the City and/or the School District at the time of contract award.

16.18.1 All firms, businesses and other legal entities (hereafter called "Contractor") receiving a School District contract shall comply with all of the terms and conditions of the Tax Compliance of Vendors Policy.

16.18.2 Tax Indebtedness Representation, Warranty and Covenant.

(A) The Contractor represents, warrants and covenants to the School District that the Contractor and any other person controlling, controlled by, or under common control with the Contractor are not currently indebted to the City or the Commonwealth of Pennsylvania for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District) for which no written settlement agreement or payment plan with the City, or the Commonwealth of Pennsylvania, as the case may be, has been executed and delivered.

(B) The Contractor further represents, warrants and covenants to the School District that the Contractor and any other person controlling, controlled by, or under common control with the Contractor will not at any time during the term of this Contract (including any extensions or renewals thereof) be indebted to the City or the Commonwealth of Pennsylvania for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District), liens, judgments, fees or other debts for which no written settlement agreement or payment plan with the City of Philadelphia, or the

Commonwealth of Pennsylvania, as the case may be, has been executed and delivered.

16.18.3 Proof of Tax Compliance.

(A) During the duration of any School District contract, the Contractor shall provide proof of its tax compliance in the form of a “Certificate of Tax Clearance” to the School District, at the School District’s written request, in the sole discretion of the School District.

16.18.4 Satisfactory Arrangement, Settlement Agreement or Payment Plan with City.

(A) The Contractor agrees to provide written proof to the School District of any satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City or the School District.

(B) The Contractor shall continue to comply with said City satisfactory arrangement, settlement agreement or payment plan during the duration of any School District contract.

16.18.5 Agreement to Set off or Offset for Delinquent Tax or other Indebtedness.

(A) The Contractor agrees that the School District may set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or the School District against any School District payment or payments due under any School District contract.

(B) In addition to any other rights or remedies available to the School District at law or in equity, the Contractor acknowledges and agrees that the School District may set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or the School District against any School District payment or payments due under any School District contract if the Contractor breaches the tax indebtedness representation, warranty and covenant, and such breach is not resolved, to the School District’s satisfaction, within a reasonable time frame specified by the School District in writing.

16.18.6 Agreement to Withholding of Contract Payment.

(A) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is delinquent in its payment of City or School District tax or taxes or other indebtedness owed to the City or the School District.

(B) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is delinquent in its payment of City or School District tax or taxes or other indebtedness owed to the

City or the School District, and the Contractor has not entered into a satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District tax or taxes or other indebtedness owed to the City or the School District.

(C) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is in default of any satisfactory arrangement, settlement agreement or payment plan with the City.

(D) In addition to any other rights or remedies available to the School District at law or in equity, the Contractor acknowledges and agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor breaches the tax indebtedness representation, warranty and covenant, and such breach is not resolved, to the School District's satisfaction, within a reasonable time frame specified by the School District in writing.

(E) The Contractor agrees that the School District may continue withholding payment or payments due to the Contractor under any School District contract until the City Revenue Department notifies the School District that the Contractor is tax compliant.

16.18.7 Good Faith Contest.

(A) The Contractor shall be permitted to, in good faith, contest the amount of any Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District.

(B) The Contractor shall diligently and expeditiously proceed to resolve the matter with the City, or the Commonwealth of Pennsylvania, as the case may be, in order to reach a satisfactory settlement agreement or payment plan with the City, or the Commonwealth of Pennsylvania, as the case may be.

(C) The Contractor shall expeditiously pay all uncontested obligations.

16.18.8 Termination of Contract Due to Tax Delinquency or Debt.

(A) Termination for Convenience. The School District, at its sole discretion, may terminate any School District contract for its convenience, at any time, upon fourteen (14) days prior written notice to the Contractor of the School District's intention to terminate said contract ("Termination Notice"), and without penalty, cost or liability to the School District, provided the Contractor is:

(i) delinquent in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(ii) the Contractor has not contested the amount of the Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(iii) the Contractor has not entered into or executed any satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Philadelphia or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District; or

(iv) the Contractor is in default of any satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Philadelphia or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District.

16.19 **Authority to Execute Contract.** The Construction Manager and the School District each represents and warrants that it has caused this Contract to be duly authorized, executed, and delivered by and through persons authorized to execute this Contract on its behalf.

16.20 **No Third Party Beneficiaries.** Nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the Construction Manager and the School District, any rights, remedies, or other benefits under or by reason of this Contract. Nothing contained in this Contract shall be deemed to create any contractual relationship with, or to give a cause of action in favor of, any third party against either the School District or the Construction Manager. Nothing contained in this Contract is intended to benefit any third party. The Construction Manager's Subconsultants and the Prime Contractor and its subcontractors and consultants are not intended third-party beneficiaries of this Contract.

16.21 **No Waiver.**

16.21.1 No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be observed by the other shall not be construed to be a waiver of any succeeding breach thereof, or of any other covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Contract shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity, or otherwise.

16.21.2 No term or provision hereof shall be deemed waived by the parties, unless such waiver or consent shall be in writing signed by both parties. No breach shall be excused, unless the agreement to excuse that breach is in writing signed by the non-breaching party.

16.22 **Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one instrument; provided, that this Contract shall be effective and binding on the parties upon, but only upon, the execution by each party of one copy hereof.

16.23 **Contract Drafted by All Parties.** This Contract is the result of arms-length negotiations between the parties, and shall be deemed to have been drafted by both parties, and any ambiguities in this Contract shall accordingly not be construed against either party.

16.24 **Severability and Partial Invalidity.**

16.24.1 The provisions of this Contract shall be severable. If any provision of this Contract, or the application thereof, for any reason or circumstance, is to any extent held to be invalid or unenforceable, the remaining provisions of this Contract (as well as the application of all provision(s) that were held to be invalid or unenforceable to persons or entities other than those as to which they were held invalid or unenforceable) shall not be affected or impaired thereby; and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

16.24.2 If any of the provisions of this Contract are determined to be invalid, then such invalidity shall not affect or impair the validity of the other remaining provisions, which shall be considered severable, and shall remain in full force and effect.

16.25 **Entire Contract.** This Contract, which includes all Exhibits referred to herein, contains the entire and integrated contract between the parties with respect to the subject matter hereof; supersedes all prior negotiations, representations, contracts, and undertakings, either written or oral, between the parties with respect to such subject matter; and cannot be changed, modified or amended except by contract in writing signed by both parties. No amendment or modification changing its scope or terms shall have any force or effect, unless it is in writing and signed by both parties. This Contract shall not be superseded by any provision of the documents for construction.

16.26 Green Building, LEED Certifications are Not Applicable to this Contract: Construction Manager's agreement does not contemplate incorporation of "green" building design or construction for this project and the School District acknowledges that there are no requirements for the filing of a U.S. Green Building Council LEED certification as part of Construction Manager's basic services. Any subsequent request by the School District for the filing of a LEED Certificate will be treated as an additional service requiring a School District approved change order directive

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Contract as of the Effective Date.

SCHOOL DISTRICT OF PHILADELPHIA

By: _____
Name:
Title: Principal

By: _____
Name: _____
Title: Chair, School Reform Commission

Examined and Approved:

Dawn Renee Chism
Assistant General Counsel
The School District of Philadelphia
Office of General Counsel
440 N. Broad Street, Suite 313
Philadelphia, PA 19130

Attorney for
School District of Philadelphia

Exhibit A

School Reform Commission Resolution dated:

Exhibit B

Request for Proposal (RFP) Proposal for the Development, Design and Construction for Building
Improvements at John L. Kinsey Elementary School
(as modified by this Contract)

Exhibit C

Construction Manager Proposal for the Development, Design and Construction for Building
Improvements at John L. Kinsey Elementary School Project dated _____
(as modified by this Contract)

Exhibit D

Construction Manager Staffing Plan of Key Personnel

Exhibit E

Construction Manager Key Personnel Hourly Rates List

Exhibit F

Construction Manager Proposal, M/WBE Participation Plan

Exhibit G

Construction Manager Certificates of Insurance

Exhibit H

The School District of Philadelphia's Notice to Proceed