

CONTRACT NO. ___/F17
E-DOC NO.:

**CONTRACT FOR PROFESSIONAL STRUCTURAL ANALYSIS
AND DESIGN SERVICES**

ON AN AS-NEEDED BASIS

FOR THE CAPITAL IMPROVEMENT PROGRAM

BETWEEN

SCHOOL DISTRICT OF PHILADELPHIA

AND

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Exhibits:

Exhibit A	School Reform Commission Resolution dated _____, 2016
Exhibit B	Request for Proposals and Qualifications (RFP/RFQ) to Provide Professional Structural Design Services On An As-Needed Basis and Addendum #_
Exhibit C	Structural Designer Proposal (as modified hereby) to Provide Professional Structural Design Services On An As-Needed Basis dated _____, 2016 (incorporated by reference into this Contract)
Exhibit D	Letters of Understanding, Scopes of Work and Work Orders for individual Projects (collectively incorporated by reference in their entirety into this Contract)
Exhibit E	Structural Designer Fee Proposal, Form Cover Sheet and Key Team Members (Hourly Rates) and Subconsultants Personnel (Hourly Rates)
Exhibit F	Structural Designer Proposal, M/WBE Participation Plan

Professional Structural Analysis
and Design Services Contract
Contract No. ___/F17

Approved by SRC Resolution #A-_
Dated: _____, 2016

SCHOOL DISTRICT OF PHILADELPHIA

SCHOOL REFORM COMMISSION

This Contract for Professional Structural Analysis and Design Services (the “Contract”) is made as of this ___ day of _____, 2016 by and between the SCHOOL DISTRICT OF PHILADELPHIA (hereinafter called “the School District”), acting through its School Reform Commission, located at 440 North Broad Street, Philadelphia, Pennsylvania 19130-4015 and _____ (hereinafter called “Structural Designer”) 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 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.

The School District’s Office of Capital Programs (“OCP”) is responsible for identifying and prioritizing capital work within the School District, including maintaining the physical integrity of existing facilities, constructing new buildings, and renovating existing facilities to accommodate the educational needs of the School District. The OCP shares responsibility for the long term upkeep and replacement of critical building systems over 25.6 million square feet, including 494 buildings, annexes, administrative buildings and athletic fields, and other School District offices. The OCP works closely to coordinate its OCP work with staff from the Office of Facilities and Maintenance, the Office of Environmental Management and Services, the Office of Real Property Management and the Office of General Counsel.,

The basis for the budget for the OCP is the sale of bonds, usually repayable with

interest over 10 years. The capital budget is also the basis for the multi-year Capital Improvement Program (CIP). Projects are selected for inclusion in the CIP using building condition assessment reports, work order and deferred maintenance data, field maintenance employee input and the priorities identified in the School District Superintendent's strategic Action Plan.

On May 15, 2013, April 16, 2015 and February 18, 2016, the SRC, by Resolutions #A-5 and #A-8 and #A-9, authorized the School District to negotiate, develop, and enter into Indefinite Delivery/Indefinite Quantity contracts and contract amendments for the performance of professional supplemental construction management services with four (4) pre-qualified professional construction management firms (hereafter referred to as "Supplemental Construction Managers").

On December 15, 2004, April 20, 2005, August 17, 2005, January 18, 2006, April 19, 2006, March 1, 2007, May 16, 2007, January 16, 2008, June 18, 2008, December 17, 2008, February 18, 2009, August 19, 2009, March 17, 2010, September 22, 2010, March 16, 2011, October 5, 2011, March 15, 2012, September 27, 2012, March 21, 2013, September 23, 2013, and March 20, 2014, respectively, the SRC, by Resolutions #A-14, #A-5, #A-21, #A-14, #A-4, #A-4, #A-7, #A-4, #A-3, #A-4, #A-7, #A-4, #A-4, #A-4, #A-11, #A-1, #A-2, #A-2, #A-1, #A-2 and #A-2, respectively, approved the classifications and pre-qualifications of a current total pool of 164 Prime Construction Contractors that have been pre-qualified prior to bidding by the School District through the Prime Construction Contractor's Classification and Pre-Qualification Application (RFQ) process, and authorized the School District to accept bids from, award contracts to, and enter into contracts with the current total pool of 164 pre-qualified Prime Construction Contractors. The Prime Construction Contractor's Classification and Pre-Qualification Application RFP process is now open enrollment. As of January 15, 2016, the current total pool of Prime Construction Contractors is 130.

In its Request for Proposals and Qualifications to Provide Professional Structural Design Services On An As-Needed Basis (hereinafter referred to as "RFP for Structural Analysis and Design Services"), the School District requested proposals from professional engineering firms to perform professional structural analysis and design services, on an as-needed basis, to assist in the implementation and execution of the CIP, including projects for exterior façade preservation.

_____ responded to the RFP for Structural Analysis and Design Services with a Proposal.

On _____, 2016, the SRC, by Resolution #A-_, authorized the School District to negotiate, develop, and enter into Indefinite Delivery/Indefinite Quantity ("IDIQ") Contracts for Structural Analysis and Design Services with _____ () qualified professional structural engineering firms ("Structural Designers"), including _____, for the contract period commencing on _____, 2016 and ending on _____, 201. A copy of the SRC Resolution, with list of firms, is attached as Exhibit A, and incorporated by reference into this Contract.

The School District and the Structural Designer desire that the Structural Designer perform, on time and on-budget, professional structural analysis and design services, on an as-

needed basis, for assigned projects that are identified and addressed in the School District Master Plan and are under the Capital Improvement Program (CIP), at various facility locations, under the direction and management of the School District. The Structural Designer will perform, on-time and on-budget, the professional structural analysis and design services work assignments that are assigned by the School District Director of Capital Programs, and will assume the responsibilities, duties and liabilities provided herein, and will work in concert with the School District and others in connection with the CIP and the School District Master Plan, in strict accordance with the attached SRC Resolution; and the School District's Request for Proposals and Qualifications to Provide Professional Structural Design Services On An As-Needed Basis (referred to as "RFP for Structural Analysis and Design Services") and Addendum #_, attached collectively as Exhibit B and incorporated by reference into this Contract; and the Structural Designer's Proposal (as modified hereby) to Provide Professional Structural Design Services (referred to as "Structural Analysis and Design Services") On An As-Needed Basis dated _____, 2016, referred to as Exhibit C and incorporated by reference into this Contract; and the Letters of Understanding, written Scopes or Scopes of Work and Work Orders for individual Projects assigned by the School District, referred to as Exhibit D and collectively incorporated by reference in their entirety into this Contract; and on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION of the foregoing Background and the mutual covenants, promises, and agreements set forth herein, the School District and the Structural Designer, intending to be legally bound, 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 Structural Designer and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

(c) **Additional Term** – means the optional additional one (1)-year or twelve (12)-months term described in Paragraph 2.2, *Option to Renew*.

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

(e) **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.

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

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

(h) **Contract or Professional Structural Design Services Contract or Professional Structural Analysis and Design Services Contract** – means this professional services contract for professional structural analysis and design services for the Capital Improvement Program, 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.

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

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

(k) **Contract Modification** – has the meaning attributed thereto in Paragraph 3.14, *Changes*.

(l) **Contractor or Prime Contractor or Construction Contractor** – means the construction contractor performing construction work, including general construction work, heating, ventilating and air conditioning (HVAC) work, plumbing work, and electrical work, for the project that is identified and addressed in the School District Master Plan and is under the School District's Capital Improvement Program, pursuant to a single construction contract or separate multiple construction contracts with the School District, under the bidding and contracts requirements of the Public School Code, 24 P.S. §7-751(a.2).

(m) **Deliverables** – means all required submittals, work product, materials, documents, drawings, magnetic media and reports, including all underlying information, data and research, to be provided to the Structural Designer at regular review points and at the completion of the work as expressly noted herein or as may be required by the Structural Designer.

(n) **Effective Date** – means the date first written above.

(o) **Federal** – means the United States of America and its legislative,

executive, and administrative branches of government.

(p) **Force Majeure Condition** – means a force majeure event or condition described in Paragraph 3.15, *Force Majeure*.

(q) **Initial Term** – means the Initial Term specified in Paragraph 2.1, *Initial Term*.

(r) **Key Personnel** – means those job titles and the persons assigned to those positions in accordance with the provisions of Paragraph 3.2.13 and Paragraph 8.1, *Key Personnel* of this Contract and any persons that the Structural Designer shall invoice the School District for in performance of required services.

(s) **Letter of Understanding** – means the written agreement signed by the School District and the Structural Designer that describes, attaches, incorporates, or explains the Scope or Scope of Work, the Work Order, the Project Schedule or Work Schedule, the basis of the applicable Fee method, and other requirements for individual Projects assigned by the School District.

(t) **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, or certified by any other certifying agency designated by the School District in its discretion.

(u) **Notice to Proceed** – means written authorization by the Contract Administrator for the School District to commence its respective services.

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

(w) **PDE** – means the Department of Education of the Commonwealth of Pennsylvania or the Pennsylvania Department of Education.

(x) **Phase Submission Review Document** – means the document prepared by the School District and distributed to the Structural Designer along with the Letter of Understanding, Scope or Work Order for the Project, and as possibly modified by modifications, and is incorporated by reference as part of the Contract.

(y) **Project(s)** – means the individual project(s) that is (are) identified and addressed in the School District Master Plan and is (are) under the School District’s Capital Improvement Program.

(z) **Project Schedule** – means the schedule developed and included in the approved Scope for each project that is identified and addressed in the School District Master Plan and is under the School District’s Capital Improvement Program, together with all modifications.

(aa) **Proposal** – means the Proposal dated _____, 2016 submitted by the Structural Designer in response to the RFP, together with all subsequent modifications and supporting materials submitted by the Structural Designer to the School District in response to the RFP.

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

(cc) **Request for Proposal or RFP or RFP/RFQ** – means the Request for Proposals and Qualifications (“RFP/RFQ”) to Provide Professional Structural Design Services On An As-Needed Basis (referred to herein as “RFP for Structural Analysis and Design Services”) issued by the School District, including all Addenda thereto issued, if any.

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

(ee) **Scope or Scope of Work or SOW** – means the overall plan, including scope or scope of work, schedule, phase submission review document, and budget, for a project that is identified and addressed in the School District Master Plan and is under the School District’s Capital Improvement Program, together with all modifications, provided by the School District and agreed to by the School District, or determined and provided by the School District as “on-call” miscellaneous services.

(ff) **Services or Structural Analysis and Design Services** – mean, collectively, those 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 Structural Designer 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.

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

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

(ii) **Structural Designer** – means the qualified professional consulting services firm performing professional structural analysis and design services for projects that are identified and addressed in the School District Master Plan and are under the School District’s Capital Improvement Program pursuant to this Contract.

(jj) **Subcontractor or 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 contract or consulting agreement with the Structural Designer to perform any Services covered by this Contract.

(kk) **Subcontract** – means a contract or consulting agreement entered into by the Structural Designer with a Subcontractor or Subconsultant in order to perform, directly or

indirectly, its Services under this Contract.

(ll) **Supplemental Construction Manager** – means the pre-qualified professional consulting services firm performing professional supplemental construction management services under the School District’s Capital Improvement Program pursuant to this Contract.

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

(nn) **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*.

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

(pp) **Work Order** – means a written list or itemization of repair or maintenance work to be performed for an individual school facility assigned by the School District.

(qq) **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.

*(rr) _____ – means _____, a corporation duly organized and existing under the laws of the [State/Commonwealth] of _____, and licensed and authorized to do business under the laws of the Commonwealth of Pennsylvania, with offices at _____. ***[Since definition list is alphabetical, clause must be moved and put in alphabetical order.]***

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” means Monday through Friday, excluding holidays observed by the School District.

Section 2. Term of Contract.

2.1 **Initial Term.** The Initial Term of this Contract shall commence on August 18, 2016, and, unless sooner terminated by the School District pursuant to the terms of this Contract, shall continue in full force and effect for a contract period of three (3) years through August 18, 2019.

2.2 **Option to Renew.** The School District may, at its sole discretion, renew this Contract for up to one (1) additional successive one (1)-year (12 months) period (“Additional Term”). Pricing shall be subject to renegotiation between the parties at the time the School District exercises its option to renew. The Structural Designer only guarantees the quoted pricing for the Initial Term. Except as expressly stated otherwise in an Amendment, the terms and conditions of this Contract shall apply throughout the Additional Term. At least sixty (60) calendar days prior to the expiration of the then current contract term, the School District, at its sole discretion, may notify the Structural Designer, in writing, of its intention to recommend renewal of this Contract for up to an additional one (1)-year (12 months) period to the SRC. Within ten (10) days of the Structural Designer’s receipt of the School District’s notice of its intention to recommend renewal of this Contract, the Structural Designer shall supply a written price quote to the School District. Renewal shall be effective only upon formal approval by resolution of the SRC. The total authorized contract term under this Contract may be for a maximum time period of four (4) years through August 18, 2020, unless the SRC or a successor entity authorizes a further renewal or extension by Resolution.

Section 3. Structural Designer’s Services and Responsibilities.

3.1 **Status of Structural Designer.** The Structural Designer is an authorized representative of the School District on the assigned Project(s), and shall have the powers, duties and responsibilities that are delegated by the School District to the Structural Designer under this Contract. Neither the Structural Designer 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 **Structural Designer’s Representations, Warranties and Commitments.** The Structural Designer 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 Structural Designer 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 Structural Designer enforceable in accordance with its terms.

3.2.3 The Structural Designer 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 taxes and other indebtedness to the City of Philadelphia and the Commonwealth of Pennsylvania.

3.2.4 The Structural Designer 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 Structural Designer 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, and the projects that are part of the CIP.

3.2.6 The Structural Designer is a firm experienced and skilled in performing structural analysis and design services for school projects of comparable size and complexity to the School District's capital projects and utilizing a variety of different types of design and delivery methods.

3.2.7 The Structural Designer has the necessary skills, experience, expertise and ability to deliver multiple projects and to utilize various delivery methods in a fast paced urban school construction environment, and to deliver projects on time and within the budget, and to meet schedules and budgets in a fast paced construction environment.

3.2.8 The Structural Designer has the necessary skills, experience, expertise, ability and available qualified, licensed or registered staff to facilitate rapid structural analysis and design services for assigned school projects, and to provide, on time and within the budget, structural analysis and design services on a number of assigned school projects at the same time, and to complete design and documentation on assigned school projects within required time deadlines, and to perform construction administration for assigned school projects.

3.2.9 The Structural Designer will visit the site(s) of the assigned Project(s) and familiarize itself with the local conditions under which the services required hereunder are to be performed.

3.2.10 The architectural, engineering, and other disciplines and features of the Structural Designer's structural analysis and design work shall be reviewed and approved by architects or engineers licensed or registered to practice in the particular professional field involved in the Commonwealth of Pennsylvania.

3.2.11 The Structural Designer shall provide and maintain sufficient organization, personnel and management to carry out the requirements of this Contract, on-time and on-budget. The Structural Designer 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 Structural Designer to remove any personnel from the Services provided under this Contract upon material reason therefore given in writing. If removal of personnel is for cause, any costs of such removal shall be borne by the Structural Designer.

3.2.12 The Structural Designer shall provide teams of qualified design or engineering personnel with experience related to architectural and engineering requirements on educational institutional projects of similar scope and size as the assigned Project(s), and the qualifications of the design or engineering personnel shall include the appropriate education, training, licenses, and registrations required in order to provide comprehensive structural analysis and design services.

3.2.13 **Structural Designer's and its Subconsultants' Key Personnel.** The

following Key Personnel of the Structural Designer and its Subconsultants, all of whose resumes have been provided, shall perform those structural analysis and design, contract preparation and construction administration services of the Structural Designer required under this Contract:

Structural Designer's Key Personnel:

- (a) Structural Designer's Principal in Charge – _____
_____;
- (b) Registered or Licensed Structural Engineer(s) – _____
_____;
- (c) Drafter/CADD Operator – _____;
- (d) Clerical – _____; and
- (e) Other persons who will be used to perform the required Services by
job title or classification and name – _____

_____.

Structural Designer's Subconsultants' Key Personnel:

Architectural:

- (a) Architectural Designer's Principal in Charge – _____
_____;
- (b) Project Manager – _____;
- (c) Registered or Licensed Architect(s) – _____
_____;
- (d) Construction Administrator – _____
_____;
- (e) Drafter/CADD Operator – _____;
- (f) Clerical – _____; and
- (g) Other persons who will be used to perform the required Services by
job title or classification and name – _____

_____.

Mechanical Engineering:

- (a) MEP Engineer's Principal in Charge – _____
_____;
- (b) Registered or Licensed HVAC Engineer(s) – _____
_____;
- (c) Registered or Licensed Electrical Engineer(s) – _____
_____;
- (d) Registered or Licensed Plumbing Engineer(s) – _____
_____;
- (e) Drafter/CADD Operator – _____;
- (f) Clerical – _____; and
- (g) Other persons who will be used to perform the required Services by
job title or classification and name – _____

_____.

Civil Engineering:

- (a) Civil Engineer's Principal in Charge – _____
_____;
- (b) Registered or Licensed Civil Engineer(s) – _____
_____;
- (c) Drafter/CADD Operator – _____;
- (d) Clerical – _____; and
- (e) Other persons who will be used to perform the required Services by
job title or classification and name – _____

_____.

Cost Estimating/Analysis:

- (a) Estimator – _____;
- and
- (b) Other persons who will be used to perform the required Services by
job title or classification and name – _____

These persons shall devote their time as necessary to the CIP and the assigned Project(s) to ensure the Structural Designer's full and timely performance of this Contract, on-time and on-budget. The Structural Designer shall not remove, reassign, replace, or substitute any listed 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 assigned Project(s), the Structural Designer shall obtain the School District's prior approval of any selected substitute personnel, which approval shall not be unreasonably withheld.

3.2.14 **Structural Designer's Subconsultants.** The Structural Designer shall engage the Subconsultants, which have been approved by the School District, to perform structural analysis and design and other services required of the Structural Designer under this Contract, on-time and on-budget, and shall require each of its Subconsultants to place his licensed architect or design professional seal, name, stamp and signature on any drawings, specifications and other design and construction documents prepared by his licensed or registered design professionals in accordance with the Pennsylvania Architect Licensure Law, 63 P.S. §§34.12, or his licensed engineering stamp (with name, seal, and dated signature) on any plans, plats, specifications and reports prepared by his licensed engineers in accordance with the Pennsylvania Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. §§152 & 154. The Structural Designer 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.

3.2.15 The Structural Designer shall coordinate the activities of all its consultants and all other members of its structural analysis and design team. The Structural Designer 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 3.11, *Subletting and Assignment*, of this Contract.

3.2.16 Any written commitment, warranty or representation by the Structural Designer within the scope of this Contract shall be binding upon the Structural Designer, whether or not incorporated into this Contract. Failure of the Structural Designer 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 Structural Designer within the meaning of this Paragraph 3.2.16 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 Structural Designer in a proposal as to the Services to be performed under this Contract, the qualifications, licenses, registrations, credentials, training, experience, and capabilities of the Structural Designer and its personnel, and the licenses, registrations, capabilities, and experience of its Subconsultants;

(c) any representation or warranty made by the Structural Designer concerning the characteristics of items of services described in this Paragraph 3.2.16 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 3.2.16 which is made by the Structural Designer 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 Structural Designer 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 Structural Designer under this Contract. The Structural Designer shall furnish all other services that are necessary or required to fulfill the objectives of this Contract, for which Additional Services the Structural Designer will be compensated under Paragraph 6.7 of this Contract. The services and responsibilities delineated in this Contract are intended to substantively define the role of the Structural Designer, but may not include all of the services required of the Structural Designer under this Contract.

3.4 **Standard of Performance.** The Structural Designer 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 structural analysis and design consulting services such as those provided in this Contract. The Structural Designer's attention is directed to the fact that the Services are urgently needed by the School District. The Structural Designer's Services under this Contract shall be performed as expeditiously as is consistent with said professional standards and sound professional practices. The Structural Designer shall use its best efforts to assure timely and satisfactory completion of its Services in accordance with the Project Schedule and Project Budget. The Structural Designer 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 Structural Designer 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. The Structural Designer shall design to cost when performing its Services under this Contract.

3.4.1 All Services to be performed by the Structural Designer 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. The Structural Designer shall remain responsible for the professional and technical accuracy of all Services or Deliverables furnished under this Contract.

3.4.2 Nothing in the Pennsylvania Architects Licensure Law, 63 P.S. §§34.1-34.22, nor the Pennsylvania Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. §§148-158.2, shall prohibit the Structural Designer from performing architectural design services as may be incidental to its structural analysis and design services under this Contract.

3.4.3 The Structural Designer and its Subconsultants shall follow the School District's standard specification and drawing formats during the preparation of Project Construction Documents. All structural analysis and design work of the Structural Designer and its Subconsultants shall be done in consultation with, or under the direction of, representatives of the School District's Director of Capital Programs. In accordance with the Pennsylvania Architects Licensure Law, 63 P.S. §§34.12, all drawings, specifications, design and construction documents issued as Project Construction Documents shall contain the seal, stamp, name, and signature of a licensed or registered architect or design professional who is licensed in Pennsylvania and who is a principal owner or partner in the Structural Designer's firm. In accordance with the Pennsylvania Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. §§148-158.2, all plans, specifications, plats and reports issued as Project Construction Documents shall be stamped (with the name, seal, and dated signature) by a licensed engineer who is licensed in Pennsylvania and who is a principal owner or partner in the Structural Designer's firm.

3.4.4 When the Scope of Services of this Contract requires the Structural Designer to prepare designs, plans, specifications, plats, drawings, documents, reports, procedures, manuals or other assigned Project(s)-related items of a similar nature, the Structural Designer understands that such items must receive the School District's review and approval prior to their use in the assigned Project(s). 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.

3.4.5 In the event the Structural Designer fails to comply with the standards specified in Paragraph 3.4 of this Contract, the Structural Designer 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 Structural Designer shall remain responsible for the professional and technical accuracy of all of the Services and Deliverables, as defined herein and furnished under this Contract. This provision shall in no way be considered as limiting the rights of the School District against the Structural Designer either under this Contract, in law or in equity.

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

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

3.5 **Labor, Materials, Supplies and Equipment.** The Structural Designer 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, including but not limited to, telephone, fax machine, and similar items, at its facility. The Structural Designer 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 Structural Designer shall be responsible for the means, methods, techniques, sequences, and procedures to perform the Services required under this Contract. The Structural Designer 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 Structural Designer shall perform the Services required under this Contract using qualified, licensed, or registered personnel at all times.

3.6 **Revisions to Work and Documents.** The Structural Designer shall make revisions in designs, plans, plats, drawings, specifications, reports, or other documents produced for assigned Project(s), at no additional cost to the School District, at the following milestones: (1) at 100% Schematic Design Phase; (2) at 100% Design Development Phase; and (3) at 90% Construction Documents Phase. The Structural Designer shall also make revisions in designs, plans, plats, drawings, specifications, reports, or other documents produced for assigned Project(s), at no additional cost to the School District, whenever such revisions are required by reason of the documents for the assigned Project(s) 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 Structural Designer. The School District has the right to inspect the Work of the Structural Designer and its Subconsultants in progress at any reasonable location and at any reasonable time. The Structural Designer 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. The Structural Designer shall revise the Construction Documents for the assigned Project(s), at no additional cost to the School District, if the bids for the Prime Contract of the assigned Project(s) exceed the Construction Budget for the assigned Project(s) by more than eight percent (8%).

3.7 **Cooperation with Other School District Consultants.** The Structural Designer shall perform its Services on the assigned Project(s) in full cooperation with the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)) and other School District Consultants. The School District shall require the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)) and other School District Consultants to perform their services in full cooperation with the Structural Designer. The Structural Designer shall send to the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)) and other School District Consultants copies of all notices and communications sent to the School District or received by the Structural Designer from parties other than the School District and the Supplemental Construction Manager or other School District Consultants relating to the assigned Project(s). The School District shall require the

Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)) and other School District Consultants to send to the Structural Designer copies of all notices and communications sent to the School District or received by the Supplemental Construction Manager or other School District Consultants from parties other than the School District and the Structural Designer relating to the assigned Project(s).

3.8 **Project Meetings.** The Structural Designer shall prepare for and conduct twice a month progress meetings on the assigned Project(s) with School District representatives from the Office of Capital Programs, in addition to other meetings specifically referred to herein. The Structural Designer shall participate in community meetings and present design deliverables to the community. The Structural Designer must also attend school planning team (“SPT”) meetings. School planning team meetings will occur once a month during the Design Phase.

3.9 **Project Minutes, Reports, Correspondence and Communications.** Prior to the Construction Period on the assigned Project(s), the Structural Designer shall prepare and distribute minutes of meetings, progress reports, and any other reports, correspondence and communications on the assigned Project(s) to School District representatives of the Office of Capital Programs, in an electronic format designated by the School District. The Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)) shall prepare and distribute the foregoing minutes, reports, correspondence and communications to the School District and the Structural Designer during the Construction Period on the assigned Project(s). Upon request or as required by this Contract, the Structural Designer shall provide the School District with oral or written reports of its activities, on a monthly basis or more often as needed or required.

3.10 **Coordination and Safety of Onsite Activities.** The Structural Designer 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 Structural Designer’s Services, or requires them to perform activities in support of or in conjunction with the Structural Designer’s Services; and the Structural Designer 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 Structural Designer and other School District consultants, contractors, or vendors, or between the Structural Designer and School District personnel or consultants, shall be decided solely by the School District. If requested by the School District in writing, the Structural Designer shall suspend any part of its Services, or modify its Services, if necessary to facilitate the services of other School District consultants, contractors, or vendors or School District personnel or consultants. In the event of such suspension or modification, the Structural Designer shall have the right to submit a claim for an extension of time equivalent to the period of any delay caused by compliance with the School District’s request. Any such claim(s) of the Structural Designer shall be submitted and resolved in accordance with Paragraph 3.14 (*Changes*). While on the premises of the School District or of any governmental or other entity other than the School District, the Structural Designer shall comply with all rules and regulations of the School District or such other entity, including all safety and security requirements.

3.11 **Subletting and Assignment.**

3.11.1 The Structural Designer 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 3.2.14 herein, nor permit any of its Subconsultants to do so. If the Structural Designer 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.

3.11.2 All Subcontracts between the Structural Designer and its Subconsultants 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 Structural Designer shall be responsible to perform these Services, on-time and on-budget. All terms and conditions under this Contract applying to the Structural Designer shall apply equally to its Subconsultants. The Structural Designer 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 Structural Designer shall ensure that it legally binds all Subconsultants to the same terms and conditions as the Structural Designer under this Contract.

3.11.3 The Structural Designer shall submit to the School District copies of all Subcontracts prior to execution by the Structural Designer with the Structural Designer's written request for the School District's consent. The Structural Designer shall not enter into any Subcontract without first obtaining the School District's written consent to the proposed subconsultant and the proposed subcontract, which consent the School District may grant, withhold, condition or deny in its sole discretion. In the event the School District does not consent to a proposed subconsultant, the Structural Designer shall immediately replace the proposed subconsultant with one to which the School District does consent; and if the School District does not consent to a proposed subcontract, the Structural Designer 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 3.11.3. 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 Structural Designer of its responsibility for the performance of Subconsultants and their consultants.

3.11.4 The Structural Designer 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 Structural Designer's own personnel, by Subconsultants of the Structural Designer, or by consultants of the Subconsultants.

3.11.5 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 Structural Designer, 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 Structural Designer for the performance of any of the Services. The Structural Designer shall incorporate this requirement in all Subcontracts with Subconsultants.

3.11.6 The Structural Designer 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; 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.

3.11.7 In no event shall the School District's consent to any assignment or transfer by the Structural Designer of any rights, duties or obligations under this Contract relieve the Structural Designer from its obligations hereunder or change the terms of this Contract. The Structural Designer accepts full responsibility for and guarantees the performance of any and all assignees and transferees (including Subconsultants) of the Structural Designer. The Structural Designer 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. The attempted transfer or assignment of any contract funds or monies which are due or which become due to the Structural Designer, in whole or in part, or any interest therein, without such prior written approval, shall have no effect upon the School District.

3.11.8 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 3.11 (*Subletting and Assignment*), an assignment includes the acquisition of the Structural Designer, 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 Structural Designer, and the transfer of this Contract or the Structural Designer in any bankruptcy or other insolvency-related proceeding. A receiver or trustee of or for the Structural Designer in any federal or state bankruptcy, insolvency or other proceeding concerning the Structural Designer shall comply with the requirements set forth in this Contract, including but not limited to this Paragraph 3.11 (*Subletting and Assignment*).

3.12 **Legal Costs.** The Structural Designer shall be responsible for all legal costs that must be incurred for it to properly perform the requirements of this Contract, on-time and on-budget, including but not limited to, legal costs necessitated to obtain all its own governmental approvals (City, State and Federal) and all its own zoning approvals, and 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 or the Structural Designer by any governmental entity or any third party as a result of any act, failure to act, error, or omission by the Structural Designer or its Subconsultants in connection with this Contract according to the indemnity in Section 9, *Indemnification*, of this Contract.

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

3.13.1 During the duration of the Project, the Structural Designer 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 Project, so long as the Structural Designer is qualified to provide such

interpretation and it relates to aspects of the Project for which the Structural Designer is responsible. Such services shall be rendered by the Structural Designer, on-time and on-budget, without additional fee or compensation, unless they require participation or involvement in litigation or arbitration to which the Structural Designer is not a party. The Structural Designer 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 Structural Designer is not a party. During the duration of the Project, at no additional cost to the School District, except where the Structural Designer is not a party, the Structural Designer shall assist the School District in the investigation and defense of any claims which arise from the designs, plans, plats, drawings, specifications, reports, or other documents prepared by the Structural Designer or its Subconsultants or which result solely from the breach of contract, errors, omissions or negligence of the Structural Designer or its Subconsultants. At no additional cost to the School District, except where the Structural Designer is not a party, the Structural Designer 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 Structural Designer's breach of contract, errors, omissions or negligence.

3.13.2 **Notice of Claims.** If the Structural Designer receives notice of a legal claim against it in connection with or in any way related to this Contract, the Structural Designer 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.

3.14 **Changes.**

3.14.1 At any time during the term of this Contract, the School District or the Structural Designer 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 (*Structural Designer'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 3.14 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 Structural Designer, as evidenced by the signatures of both the School District's Contract Administrator and the Structural Designer's Contract Administrator. (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 Structural Designer 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 condition: In no event shall the School District be liable to the Structural Designer 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 Structural Designer 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. Any Contract Modification that increases

the Compensation set forth in Paragraph 6.1.1 must be approved in writing by the School District's Director of Capital Programs to become effective.

3.14.2 All changes in the Services pursuant to this Paragraph 3.14 shall be performed, on-time and on-budget, under applicable provisions of this Contract, and the Structural Designer 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.

3.14.3 **Assignment of School District's Right to File Direct Claims against the Prime Contractor for Structural Designer's Damages.** The Structural Designer agrees that in no event shall the School District be liable to the Structural Designer for payment of additional compensation for any direct, indirect or impact damages, including but not limited to costs of acceleration or for loss of revenue, overhead or profit, or for any delay damages, costs or expenses, including but not limited to attorneys' fees, court costs and legal expenses of whatever kind or nature, arising from any changes in any of the Structural Designer's Services required under this Contract, including, without limitation, additional or different services, or changes in the time of performance, that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the Project, or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the Project. Instead, as its sole right and remedy with respect to such fault, negligence, breach of contract, willful act or omission, or such delay, disruption, interference or hindrance, of the Prime Contractor or any of its subcontractors or consultants, the Structural Designer shall be entitled to make, assert, file or bring a direct claim, action, cause of action or lawsuit against the Prime Contractor or any of its subcontractors or consultants, as an assignee of the School District, pursuant to this Paragraph 3.14.3. For **the sole and only purposes** of making, asserting, filing or bringing direct claims, actions, causes of actions or lawsuits against the Prime Contractor or any of its subcontractors or consultants, the School District hereby assigns to the Structural Designer the School District's right under the Prime Contract to make, assert, file or bring direct claims, actions, causes of action or lawsuits against the Prime Contractor or any of its subcontractors or consultants for any additional compensation, damages, losses, costs and expenses of the Structural Designer that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the Project, or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the Project.

3.15 **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 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 Structural Designer 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 Structural Designer. The School District shall not be liable to the Structural Designer 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.

3.16 **Print and Electronic Media Copies.**

3.16.1 **Design Phase Submissions:** The Structural Designer 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 four (4) sets of prints to the School District for all Design Phase submissions.

3.16.2 **Advertisement for Bid:** In addition to an electronic media copy of the approved Construction Documents, the Structural Designer shall submit:

- (a) A full set of prints of the Drawings in PDF format; and
- (b) 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.

3.16.3 **Project Completion:** The Structural Designer shall submit:

- (a) A scanned copy on electronic media in PDF Format of the “as-built” Drawings submitted by the Contractor(s); and
- (b) 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 Structural Designer.

3.17 **Ownership and Use of Documents.** Paragraphs 3.17.1, 3.17.2, 3.17.3 and 3.17.4 **only** apply if the Structural Designer is performing architectural design services as may be incidental to its structural analysis and design services. Paragraph 3.17.5 does **not** apply if the Structural Designer is performing architectural design services as may be incidental to its structural analysis and design services. Paragraphs 3.17.6, 3.17.7 and 3.17.8 apply to **all** Structural Designers.

3.17.1 **Structural Designer’s Reserved Rights and School District’s Granted Rights.** The Designs, Drawings, Specifications and other documents prepared by the Structural Designer for the assigned Project(s) are instruments of the Structural Designer’s service for use solely with respect to the assigned Project(s) and shall remain the property of the Structural

Designer, whether the assigned Project(s) for which they are made is executed or not. Unless otherwise provided, the Structural Designer 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 Structural Designer's Designs, Drawings, Specifications and other documents for information and reference in connection with the School District's use and occupancy of the assigned Project(s). The Structural Designer'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 Structural Designer. If the Structural Designer is in default of this Contract, title to and exclusive use of the Structural Designer's Designs, Drawings, Specifications and all related documents shall vest in the School District, but the School District shall indemnify and hold harmless the Structural Designer and its officers and employees from any liability arising from the use or reuse of such documents without the assistance of the Structural Designer, including costs of litigation, reasonable attorneys' fees and time spent by the Structural Designer and its Subconsultants attending depositions and court proceedings.

3.17.2 **School District's Rights to Use for Assigned Project(s).** It is expressly understood and agreed that the School District shall have the right to utilize the Structural Designer's Designs, Drawings, Specifications and other documents in the event the School District extends or makes an addition to the assigned Project(s), corrects any deficiencies, makes any renovations or repairs to the assigned Project(s), completes the assigned Project(s) after any prior termination thereof due to the Structural Designer's default of this Contract, or for future assigned Project(s) 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 Structural Designer and its officers and employees from any liability arising from the use or reuse of such documents without the assistance of the Structural Designer, including costs of litigation, reasonable attorneys' fees and time spent by the Structural Designer and its Subconsultants attending depositions and court proceedings.

3.17.3 **Restrictions on Structural Designer's Use.** Except as provided in Paragraph 3.19 of this Contract, the Structural Designer 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 assigned Project(s) pursuant to this Contract, or any documents, drawings or specifications substantially similar thereto for any project other than the assigned Project(s).

3.17.4 **No Publication by Submission or Distribution.** Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the assigned Project(s) is not to be construed as publication in derogation of the Structural Designer's reserved rights.

3.17.5 **Ownership of Documents, Data and Files.** All documents in any form, data studies, computer files of any type, database records, and reports that are produced by the Structural Designer under this Contract are to be the property of the School District, and shall remain the property of the School District, except as otherwise delineated in Paragraph 3.17.1.

3.17.6 **Risk of Loss.** During the performance of the Services herein provided for, the Structural Designer shall be responsible for any loss or damage to the documents, data, records, reports, and files that are produced by the Structural Designer 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 Structural Designer.

3.17.7 **Review and Access.** Full access to the Work during the Structural Designer'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 upon reasonable notice. For additional requirements pertaining to review and access to records, reports, and documents, see Paragraph 6.13, *Audits; Records and Payments*, Paragraph 16.8, *General Publication Rights*, and Paragraph 16.15, *Examination of Records*.

3.17.8 **Termination or Expiration.** Upon termination or expiration of this Contract, the Structural Designer 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.

3.18 **Findings Confidential.** Information developed and obtained by the Structural Designer is considered confidential by the School District. The Structural Designer agrees to refer all inquiries by outside parties to the School District. The Structural Designer 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 assigned Project(s), or any information developed or obtained during the performance of Services for the assigned Project(s), without the express written approval of the School District. Employee newsletters and professional experience statements are not subject to this Paragraph 3.18. For additional requirements pertaining to confidentiality, publicity, and publication, see Paragraph 3.19, *Special Publication Rights*, Section 11, *Confidentiality*, Paragraph 16.7, *Publicity*, and Paragraph 16.8, *General Publication Rights*.

3.19 **Special Publication Rights.** Paragraph 3.19 **only** applies if the Structural Designer is performing architectural design services as may be incidental to its structural analysis and design services. The Structural Designer shall have the right to include representations of the design of the assigned Project(s), including photographs of the exterior and interior, among its promotional and professional materials and for publication and teaching purposes. The Structural Designer's promotional and professional materials, as well as its 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. The School District shall provide professional credit for the Structural Designer on the construction sign and in the promotional materials for the assigned Project(s). For additional requirements pertaining to publication, see Paragraph 16.8, *General Publication Rights*.

3.20 **No Responsibility for Hazardous Materials.** Unless otherwise provided in this Contract, the Structural Designer 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(s) site(s), including but not limited to asbestos, asbestos products,

polychlorinated biphenyl (“PCB”) or other toxic substances; provided, however, the Structural Designer shall report to the School District the presence and location of any hazardous material that it notices or that an Structural Designer of similar skill and expertise should have noticed. Nothing in this Contract shall impose liability on the Structural Designer 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.

3.21 **Deliverables.** The Structural Designer shall provide the Deliverables identified in Section 4, *Scope of Services*, of this Contract, on-time and on-budget, in strict conformity with the Scope for the Project and all modifications thereto, and 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 Structural Designer of its schedule or cost commitments hereunder.

3.22 **Safety Responsibilities.** Although the Structural Designer does not have direct safety responsibilities on the Project, 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 Structural Designer’s work. The Structural Designer shall perform its work with due regard to the safety of persons and property. It is a condition of this Contract, and the Structural Designer agrees, that the Structural Designer 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 any applicable OSHA regulations. Applicable safety laws, rules and regulations, and codes shall be observed by the Structural Designer and its Subconsultants. It is the responsibility of the Structural Designer to ensure that the work of its employees and Subconsultants required hereunder is performed in a safe and workmanlike manner and in compliance with general safety standards for the performance of such work. The Structural Designer must ensure that all its personnel are able to adhere to applicable safety laws, rules and regulations, and codes. Safety deficiencies shall be brought to the attention of the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project).

3.22.1 The Structural Designer’s personnel 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. All School District Projects shall have a 100% physical fall protection requirement for working at heights of six feet or more above a lower level. The Structural Designer is expected to fully comply with the Project physical fall protection requirement. The Structural Designer’s personnel shall complete a Project Safety Orientation. The Structural Designer’s personnel shall comply with identification badge requirements. The Structural Designer’s personnel are prohibited from use and possession of alcoholic beverages, drugs (other than prescription), carrying weapons or ammunition onto the Project jobsite. The School District’s Project Manager and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) shall be notified in writing within 24 hours of occurrence if any Structural Designer personnel are injured on the Project.

3.23 **Stormwater Management Fees and Charges.** The Structural Designer shall pay the Miscellaneous Stormwater Management fees and charges, **effective November 1, 2008**, set forth in the Philadelphia Water Department Regulations, Chapter 3 Rates and Charges, Section 308.0 Miscellaneous Stormwater Management Charges. The Structural Designer shall pay the following Stormwater Plan Review Fees for all development or redevelopment plans submitted to the Philadelphia Water Department under Chapter 6 Stormwater of the Philadelphia Water Department Regulations for stormwater management approvals:

(i) A fee of \$500 shall be due upon submission of conceptual plans for review.

(ii) A fee of \$500 shall be due upon submission of a post construction stormwater management plan, including a technical site plan, for review. An additional fee of \$75 per hour of review time shall be due prior to issuance of plan approval.

3.23.1 Review time shall be based on the City of Philadelphia's tabulation of actual hours expended by the Philadelphia Water Department employees or consultants reviewing the plans associated with a particular development or redevelopment project for compliance with Chapter 6 Stormwater of the Philadelphia Water Department Regulations.

3.23.2 The Philadelphia Water Department shall refund any fees specified in this Paragraph if a plan submittal is not approved or denied within 21 days for conceptual site plans and within 45 days for technical site plans.

3.23.3 The words "development", "redevelopment" and "new development" shall have the following meanings as specified in Chapter 6 Stormwater of the Philadelphia Water Department.

(a) Development means any human-induced change to improved or unimproved real estate, whether public or private, including but not limited to land development, construction, installation, or expansion of a building or other structure, land division, street construction, and site alteration such as embankments, dredging, grubbing, grading, paving, parking or storage facilities, excavation, filling, stockpiling, or clearing. Development encompasses both new development and redevelopment. Development includes the entire development site, even when the project is performed in stages.

(b) Redevelopment means any development on a site that requires demolition or removal of existing structures or impervious surfaces and replacement with new impervious surfaces. Redevelopment includes replacement of impervious surfaces that have been removed on or after January 1, 1970, with new impervious surfaces. Maintenance activities such as top-layer grinding and re-paving are not considered redevelopment. Interior remodeling projects are not considered redevelopment.

(c) New Development means any development project that does not meet the definition of redevelopment or any development project at a site where structures or impervious surfaces were removed before January 1, 1970.

Section 4. Scope of Services.

4.1 Schedule.

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

4.1.2 **Work Schedule.** Schedule information for the Structural Designer's Services will be described in the Work Schedule and the Project Schedule of the Scope and all modifications thereto for each assigned Project as appropriate. The Structural Designer's Services must be provided within the time schedule provided in the Scope and all modifications thereto for each assigned Project. The School District is utilizing the Prolog project management software and Primavera P6 scheduling software to track and monitor the CIP program. The Structural Designer shall refine schedules for the assigned Project(s) utilizing Primavera P6 scheduling software. Microsoft Project convertible to P6 is acceptable.

4.1.2.1 The Project Schedule shall be developed for each Project and shall be included in the Scope and all modifications thereto for each assigned Project. The Project Schedule shall include conceptual milestone dates for all activities described in the Project scope of work.

4.1.2.2 The Structural Designer shall submit an updated Project Schedule to the School District on a monthly basis for updating of the program and master schedule. The monthly Project Schedule submission shall include any reports, graphic, or electronic copies as required by the School District.

4.1.2.3 In order to facilitate overall planning and scheduling of the CIP program, certain standardized requirements, including activity WBS and codes, will be utilized in preparing CMP schedules. These codes will be provided prior to beginning work on the schedule.

4.1.2.4 Design schedules shall be prepared using Primavera P6. Schedules shall be cost loaded to reflect the approved schedule of values. All Project reporting and control functions shall be performed using the database required by the School District.

4.1.3 **Time is of the Essence.** Time is of the essence in the CIP and on the assigned Project(s). The Structural Designer shall commence its Services immediately upon Notice to Proceed and shall diligently prosecute the Work to completion. The Structural Designer shall use its best efforts to complete the Work on or ahead of the Work Schedule and the schedule described in the Scope and all modifications thereto for each assigned Project.

4.2 **Statement of Services.** The Structural Designer shall perform various structural analysis and design services, and work assignments that are assigned by the School District Director of Capital Programs or her designee on the School District's projects under the CIP, in strict accordance with the Scope of Work or Scope of Services sections of the RFP, which are attached collectively as Exhibit B and incorporated by reference into this Contract; and the Letters of Understanding, written Scopes or Scopes of Work and Work Orders, which are

attached collectively as Exhibit D and incorporated by reference into this Contract; and the Proposal as outlined in the approved Scope incorporated by reference into this Contract; and on the terms and conditions set forth in this Contract, within the time deadlines set forth in Paragraph 4.1, *Schedule*, of this Contract and within budget requirements. The Structural Designer shall provide these structural analysis and design services through design, construction administration and post-construction activities. The Structural Designer shall place strict emphasis on design quality, schedule, and budget. The Structural Designer shall employ competent personnel as required to properly perform these structural analysis and design services in a timely and professionally competent manner as per the RFP and in accordance with Paragraph 3.4, *Standard of Performance*.

4.2.1 The Structural Designer shall report directly to the assigned School District representative. The School District's Office of Capital Programs shall directly administer the work of the Structural Designer, emphasizing on-time and on-budget performance. The assigned School District representative shall directly supervise the work of the Project Construction Contractors, also emphasizing on-time and on-budget performance.

4.2.2 The Structural Designer shall submit, for review by the School District's Office of Capital Programs, work as designated on the Scope (furnished to the Structural Designer at the time of assignment of the Project(s)) at the completion of Pre-Construction Services, Schematic Design Services, and Design Development Services, and at 90% completion of Construction Document Services.

4.2.3 Individual Project assignments made under this Contract shall be ratified by a written Letter of Understanding for each Project (hereinafter called "Project Letter of Understanding"). The Project Letter of Understanding must describe, attach, incorporate, or explain the Scope or Scope of Work, the Project Schedule or Work Schedule, the basis of the applicable Fee method not to exceed the total Fee, if applicable, the Work Order, if applicable, and any other requirements for the Project assignment. Upon its receipt of the Project assignment, the Structural Designer shall promptly execute the Project Letter of Understanding and shall submit the executed Project Letter of Understanding to the Director of Capital Programs for the School District's execution. All fully executed Project Letters of Understanding, together with accompanying written documents, for Project assignments shall be attached as exhibits to this Contract or subsequent amendments to this Contract, and shall be incorporated by reference into this Contract or subsequent amendments to this Contract.

4.2.4 **Types of Projects and Design Services Disciplines.** The services of the Structural Designer shall be predominately Structural Engineering and Design in nature. The scope of design is anticipated to include analysis of existing structural conditions and remedial designs of structural systems of facilities owned by the School District. These improvements will normally address elements of the facilities that have been identified as an immediate or critical need by the School District. A substantial part of these services are expected to focus on masonry conditions, deteriorated reinforced concrete and corroded steel elements. Rehabilitation of deteriorated wood framing is also part of Structural Design Services. In addition to Structural Design Services, the type of design services may include, but not necessarily be limited to, the other related disciplines of design services such as the following: (a) Architectural; (b) Civil Engineering; (c) HVAC Engineering; (d) Plumbing Engineering; (e) Electrical Engineering; (f)

Technology Infrastructure Design; (g) Security Design; (h) Cost Estimating; (i) Landscape Architecture; and (j) Planner. The Structural Designer shall need to have staff available to facilitate rapid services associated with assigned projects. Although it is anticipated that most assigned projects will be small to medium in construction scope (construction cost under \$1,000,000), there is a potential that some will exceed this amount. There is also a potential that the Structural Designer will be called on to provide design services on a number of these assigned projects at the same time. It is expected that design and documentation of each of these assigned projects shall be completed according to the design schedule requested by the Office of Capital Programs. It is also expected that the Structural Designer shall provide basic Construction Administration for the bulk of these assigned projects. Construction Administration Services shall include (as dictated by the needs of the individual assigned projects), but may not be limited to, submittal review and approvals by the City of Philadelphia governing authorities, construction site observation, response to Requests for Information, issuance of Proposal Requests, review of Proposals and providing recommendations for modifications. In general, for assigned projects constructed by Contractors, the Structural Designer will be expected to provide Construction Administration consistent with industry standards. Construction Administration on any assigned projects constructed by School District staff will generally be abbreviated.

4.2.5 **Standards for Services.** Services provided by the Structural Designer shall meet the standards established by the School District. These standards shall include the Structural Designer's submittals of phase submissions to the School District for its review. The Structural Designer shall include a mandatory electronic filing with the School District of the Phase Review Check List with each phase submission. The website address for obtaining a hard copy of the Phase Review Check List has been included in the RFP for Structural Analysis and Design Services. All relevant elements of the Phase Review Check List must be completed by the Structural Designer. Models and renderings shall not be required for this Work of the Structural Designer as a Basic Service.

4.2.6 **Summary of Design Services.** A summary of the structural analysis and design services that may be required for the assigned Project(s) are as follows:

- (1) Attend design and public meetings with the School District's Office of Capital Programs staff, community development teams, and other School District personnel, including the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) and other School District Consultants.
- (2) Make presentations at completion of Schematic Design Phase.
- (3) Prepare initial design schedule and update schedule monthly.
- (4) If Project includes work to an existing building, confirm Building Assessment, preliminary Design Concept and Program of Requirements.
- (5) Prepare final Program of Requirements.
- (6) Provide confirmation of initial estimate.

(7) Submit to the School District's Office of Capital Programs progress drawings, specifications, Submittal Review Form and supporting documentation at various stages throughout the design process; Program and Concept Confirmation Phase, Schematic Design Phase, Design Development Phase, and Construction Documents Phase. Minimum submittal requirements at each phase shall be as enumerated in the Phase Submission Review Document included with the Scope.

(8) Prepare detailed cost estimates at Schematic Design Phase, Design Development Phase, and Construction Documents Phase. Each phase will include a meeting to reconcile the estimates prepared by the School District's Office of Capital Programs and the Structural Designer.

(9) Perform detailed building energy model at the Schematic Design Phase and the Design Development Phase. The model shall support an analysis of alternative energy conservation measures.

(10) Participate in Value Engineering (scope to budget analysis).

(11) Prepare monthly design status reports using a format specified by the School District.

(12) Participate in constructability and value engineering meetings at each phase.

(13) Research and initiate the effort in obtaining all required approvals.

(14) Determine all required permits for construction, utilities, soils conservation, etc.

(15) Apply for preliminary building permits and attend hearings if required.

(16) Prepare Project phasing plans.

(17) Attend Construction Contractor pre-bid meetings, answer bid RFIs and issue addenda.

(18) Assist the assigned School District representative and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) in Construction Contractor bid evaluations.

(19) Attend Pre-Construction meetings.

(20) Review and take appropriate action on all submittals and shop drawings.

- (21) Review and take appropriate action on Applications for Payment.
- (22) Monitor and document Change Management process (including RFIs, Design Bulletins, Field Instructions, Requests for Change, Change Orders and Construction Change Directives) using a format specified by the School District.
- (23) Monitor and review the Construction Contractor submittal process using a format specified by the School District.
- (24) Assist in the development of Quality Assurance plans for the Project.
- (25) Attend bi-weekly Construction Progress meetings with the School District's Office of Capital Programs, school staff representative, Construction Contractors, and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project).
- (26) Attend monthly Project Core Meetings. These meetings shall include the Structural Designer, Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), 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.
- (27) Assist in the coordination of overall site logistics.
- (28) Enter Project correspondence into a format specified by the School District.
- (29) Review final as-builts.
- (30) Conduct substantial completion and punch-list inspections with the representatives of the School District's Office of Capital Programs and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project). Participate in final inspections with the representatives of the School District's Office of Capital Programs.
- (31) Participate in O&M training sessions with the representatives of the School District's Office of Capital Programs and the Construction Contractors.
- (32) Attend Turnover meeting with the School District and the Construction Contractors.
- (33) Commissioning to assure the school operates in accordance with design intent, test, verify and fine tune the performance of key building systems.
- (34) Perform Construction Administration Services. Construction Administration Services shall include (as dictated by the needs of the individual projects)

submittal review and approvals, construction site observation, response to Requests for Information (RFIs), issuance of Proposal Requests, review of Proposals and providing recommendations for modifications. In general, for projects constructed by Contractors, the Structural Designer shall be expected to provide Construction Administration consistent with industry standards. Construction Administration on any projects constructed by School District staff will generally be abbreviated.

4.2.7 The Structural Designer shall perform the detailed design services set forth below on the Project as identified in the approved Scope and all modifications thereto, on-time and on-budget:

I. **Background/Operations.**

The School District may assign a Supplemental Construction Manager on an individual Project. The Supplemental Construction Manager may act as the assigned School District representative on an individual Project. The Supplemental Construction Manager may act as one of the representatives of the School District's Office of Capital Programs on an individual Project. The following describes the Supplemental Construction Manager's services and responsibilities on an individual Project.

1. The Supplemental Construction Manager's services, duties and responsibilities during the Pre-Construction Phases of the Project will include, but not be limited to, the following: (a) performing and preparing detailed constructability reviews at completion of Schematic Design Phase drawings, completion of the Design Development Phase drawings, and 90% Construction Documents Phase drawings; (b) preparing construction cost (pre-bid) estimates at completion of 50% Design Development Phase drawings, and 90% Construction Documents Phase drawings; (c) reviewing and providing a final construction cost (pre-bid) estimate at the completion of 100% Construction Documents Phase drawings; (d) supporting the Design Consultant's efforts in obtaining required approvals; (e) determining required permits and ensuring the Contractor obtains appropriate permits; (f) developing the Project specific front end construction specifications to be included with the School District standard front end construction specifications; and (g) providing procurement support services including assisting in the issuance of addenda, and assisting the School District Project Manager in contractor bid evaluations

2. The School District shall provide site inspection, coordination and contract administration services for the Project during the Construction Period through the Supplemental Construction Manager. The Supplemental Construction Manager's services, duties and responsibilities during the Construction Period of the Project will include, but not be limited to, the following: (a) performing field oversight and coordination services on the Project; (b) safety monitoring services; and (c) building commissioning services, all as set forth in the Supplemental Construction Manager's contract with the School District. The School District shall furnish the Structural Designer with a copy of any written agreement between the School District and the Supplemental Construction Manager.

II. Pre-Design Services Phase.

A. Structural Designer's Services at Scope Receipt.

1. The Structural Designer shall meet and consult with the School District's Office of Capital Programs on a regular basis as needed during the Scope Assessment/Validation Phase.

2. The Structural Designer shall visit the Project site and shall review the Scope with the representative of the School District's Office of Capital Programs, and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project).

3. The Structural Designer shall review in detail the Scope developed by the representative of the School District's Office of Capital Programs and incorporated into the RFP, School District standards and Department of Education of the Commonwealth of Pennsylvania (PDE) standards. The Structural Designer shall validate the Project drawings and sketches, included in the Scope, offer suggested changes, and formulate a final concept for design.

4. The Structural Designer, together with representative of the School District's Office of Capital Programs and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), shall meet with officials of the City Department of Licenses and Inspections (L&I Department) or any other governmental agency, if necessary, regarding the applicability of pertinent zoning, handicapped, School District and PDE standards and building codes and regulations to the Project.

5. PLAN-CON. The Structural Designer shall assist the School District in developing sections of the PLAN-CON Workbook appropriate to the Project and required for submission to the PDE. PLAN-CON pertains to the justification, educational planning, site selection process and design analysis of the Project. Based upon the Scope for the Project and the Project drawings and sketches developed and prepared by the School District's Office of Capital Programs, the Structural Designer shall develop and compile the following information relative to the planned Project construction work: (a) educational activities: goals, planned usage, number of users, grouping of users, relationships to other activities and special requirements; (b) space and capacity calculations relative to the new building; and (c) conceptual design documents of selected design. The School District will develop all additional information necessary for the PLAN-CON submission. The Structural Designer shall prepare the PLAN-CON documents for submission to the PDE.

6. The Structural Designer shall consult with the School District regarding School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, and not-in-contract (NIC) materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work. The Structural Designer shall coordinate its design activities in the event there are School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, and NIC materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work.

7. The Structural Designer shall submit required documents to the School District's Office of Capital Programs for review at completion of this Phase. Included with this submission shall be a filled out copy (in electronic format) of the Phase Submission Review Document provided by the School District's Office of Capital Programs.

B. Structural Designer's Services During Schematic Design Phase.

1. The Structural Designer shall meet and consult with the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), on a regular basis as needed during the Schematic Design Phase.

2. Based upon the approved (by School District's Office of Capital Programs) Phase Submission Review Document submitted by the Structural Designer at the completion of the Pre-Design Services Phase, the Structural Designer shall prepare, for the School District's approval, the Schematic Design Documents consisting of drawings, outline specifications and other documents, including color-rendered elevations, site and floor plans, building sections, sketches, models and perspectives, illustrating the scale and relationship of the Project components. The Structural Designer shall design to cost in the Schematic Design Documents. The Schematic Design Documents shall include the maintenance of life safety systems and conditions in the existing school buildings. The Schematic Design Documents shall include all School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, and not-in-contract (NIC) materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work. The Schematic Design Documents shall follow the School District's standard specification and drawing formats. The Schematic Design Documents shall comply with the Design Guidelines, the Scope and all modifications thereto, and all applicable federal, state and local laws, statutes, ordinances, codes, orders, rules and regulations, except those related to the educational aspects of the Project, in effect at the time of the development of the design of the Project.

3. The Structural Designer shall review the School District's and the Supplemental Construction Manager's (if the Supplemental Construction Manager is assigned to the Project) recommendations regarding the design aspects of the Project, and shall resolve any design issues, to the satisfaction of the School District's Office of Capital Programs.

4. The Structural Designer, together with the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) and the School District's Office of Capital Programs, shall meet with representatives of the State and City building and educational departments as required for the purpose of reviewing the Schematic Design. If variances are required, the Structural Designer shall assist the School District by preparation and filing of documents required for the variances.

5. The Structural Designer shall make presentations on the Project for any required public or private group or agency that is necessary for the orderly progress of the work.

6. The Structural Designer shall provide material and color selections of all work incorporated into the building as part of the construction cost and furniture and equipment

layouts as required to confirm the spatial configuration of the Schematic Design. Services required in connection with the selection, procurement or installation of moveable furniture, furnishings and related equipment for the Project shall only be provided as an additional service for which the Structural Designer, if authorized, shall be compensated under Paragraph 6.7 of the Contract.

7. The Structural Designer shall develop the Schematic Design Documents within the limits of the established Project Construction Budget. At no additional cost to the School District, the Structural Designer shall revise the Project Schematic Design and the Schematic Design Documents as necessary to keep the Project costs within the approved budgetary limits.

8. The Structural Designer shall assist the School District's Office of Subsidies in maximizing potential PDE subsidies.

9. The Structural Designer shall review the Capital Program's Project preliminary cost estimate, and shall prepare and submit a detailed Construction Cost Estimate to the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) for their review and recommendations at 100% Schematic Design Phase. The Structural Designer shall revise this cost estimate based upon the School District's recommendations for corrective actions. It is expressly understood that this cost estimate is solely for the purpose of aiding the School District in making feasibility decisions, and is not to be interpreted in any way as a guarantee of costs by the Structural Designer. The Structural Designer shall provide a detailed cost estimate for its own work at the Schematic Design Phase to ensure that its own work at the Schematic Design Phase is within the Project Construction Budget, and shall be able to and willing to participate, and shall participate in value engineering sessions as required by the School District in order to ensure that its Contract work stays within the Project Construction Budget. The Structural Designer shall revise the Schematic Design if it is over the Project Construction Budget (not including the Owner's contingency), at its sole cost and expense.

10. The Structural Designer shall coordinate its design activities in the event there are School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, and NIC materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work.

11. The Structural Designer shall submit required documents to the School District's Office of Capital Programs for review at the completion of this Phase. Included with this submission shall be a filled out copy (in electronic format) of the Phase Submission Review Document provided by the School District's Office of Capital Programs.

C. Structural Designer's Services During Design Development Phase.

1. The Structural Designer shall meet and consult with the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) on a regular basis as needed during the Design Development Phase.

2. Based on the approved Schematic Design Documents, and any adjustments authorized by the School District in the program or Project Construction Budget, the Structural

Designer shall prepare, for the School District's approval, the Design Development Documents for the Project. The Design Development Phase shall include the completion of all design for the Project. The Design Development Documents shall include evidence that every component of the Project has been designed into the Project and sized.

3. The Structural Designer shall review the School District's and the Supplemental Construction Manager's (if the Supplemental Construction Manager is assigned to the Project) recommendations regarding the design aspects of the Project, and shall resolve any design issues, to the satisfaction of the School District's Office of Capital Programs.

4. The Structural Designer, the School District's representatives, and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) shall meet with representatives of the appropriate State and City departments, including building and education departments, for the purposes of reviewing the Design Development Documents and obtaining their necessary approvals of the Project. The Structural Designer shall prepare and submit any documents as may be required to obtain approvals.

5. The Structural Designer, together with the School District's representatives and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), shall make presentations on the Project to any public or private group or agency that is necessary for the orderly progress of the work. The Structural Designer shall file the necessary documents and secure the necessary variances and/or approvals of the governmental authorities having jurisdiction over the Project. The Structural Designer shall attend a reasonable number of hearings as required by the School District.

6. The Structural Designer shall consult with the School District regarding the technology systems, food services systems, telecommunications systems, and other special systems that are required for the Project, including requirements and monetary costs. The Structural Designer shall include all documentation for all technology systems, food services systems, telecommunications systems, and other special systems that are required for the Project, including requirements and monetary costs, in the Design Development Documents.

7. The Structural Designer shall provide a detailed cost estimate for its own work at the Design Development Phase to ensure that its own work at the Design Development Phase is within the Project Construction Budget, and shall be able to and willing to participate, and shall participate in value engineering sessions as required by the School District in order to ensure that its Contract work stays within the Project Construction Budget. If the Design Development Documents exceed the Project Construction Budget, it shall be the responsibility of the Structural Designer to redesign, at its sole cost and expense.

8. The Structural Designer shall coordinate its work during the Design Development Phase with the School District's Office of Subsidies.

9. The Structural Designer shall submit the approved Design Development Documents to the PDE.

10. The Structural Designer shall coordinate its design activities in the event

there are School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, and NIC materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work.

11. All of the Structural Designer's Project structural analysis and design work shall be complete at the conclusion of the Design Development Phase. The Construction Documents Phase shall be for documentation only.

12. The Structural Designer shall submit required documents to the School District's Office of Capital Programs for review at the completion of this Phase. Included with this submission shall be a filled out copy (in electronic format) of the Phase Submission Review Document provided by the School District's Office of Capital Programs.

D. Structural Designer's Services During Construction Documents Phase.

1. The Structural Designer shall meet and consult with the the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) on a regular basis as needed during the Construction Documents Phase.

2. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project Construction Budget authorized by the School District, the Structural Designer shall prepare, for the School District's approval, the Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project. The Construction Documents, as may be supplemented from time to time, shall include all drawings and specifications required to construct the Project in its entirety and to obtain all local permits and approvals normally necessary to complete the construction of the Project. The Structural Designer shall design to cost in the Construction Documents. The Construction Documents shall include the maintenance of life safety systems and conditions in the existing school buildings. The Construction Documents shall include all School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, and not-in-contract (NIC) materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work. The Construction Documents shall follow the School District's standard specification and drawing formats. The Construction Documents shall comply with the Design Guidelines the Scope and all modifications thereto, and all applicable federal, state and local laws, statutes, ordinances, codes, orders, rules and regulations.

3. The Structural Designer shall review the School District's and the Supplemental Construction Manager's (if the Supplemental Construction Manager is assigned to the Project) recommendations regarding the Drawings and Specifications, and shall resolve any issues, to the satisfaction of the School District's Office of Capital Programs.

4. The Structural Designer shall keep the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) informed of any changes in requirements or in construction materials, systems and equipment as the Construction Documents are being developed, so that the Construction Cost Estimate and Project Construction Budget can be adjusted accordingly. The Structural Designer shall also review

projected costs, and shall consider, among other factors, the general availability of local construction services in all trades, materials and equipment and any other factors which could adversely impact the Project.

5. The Structural Designer shall assist the School District in the development of the Prime Contract, and shall review and make recommendations upon matters for which it is qualified and upon those aspects of the Project for which it has responsibility under this Contract.

6. The School District shall obtain the necessary approvals of the PDE for the Project. The Structural Designer shall file the necessary documents and secure the necessary approvals of other governmental authorities having jurisdiction over the Project. The Structural Designer shall attend a reasonable number of hearings as required by the School District. The School District or the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) shall determine the required permits and ensure that the appropriate permits are obtained, with assistance from the Structural Designer. The City has approved a waiver of the construction permit fees imposed under the City Administrative Code and levied by the City L&I Department for School District capital projects. The Structural Designer shall assist the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) in completing and filing the required Waiver of Permit Fees applications with the City L&I Department, Permit Services Division, in order to obtain the City's waivers of the building permit fees and the zoning permit fees for the Project.

7. The Structural Designer shall provide a detailed cost estimate for its own work at the Construction Documents Phase to ensure that its own work at the Construction Documents Phase is within the Project Construction Budget, and shall be able to and willing to participate, and shall participate in value engineering sessions as required by the School District in order to ensure that its Contract work stays within the Project Construction Budget. If the Construction Documents exceed the Project Construction Budget, it shall be the responsibility of the Structural Designer to redesign, at its sole cost and expense.

8. The Structural Designer shall coordinate its work during the Construction Documents Phase with the School District's Office of Subsidies.

9. The Structural Designer shall submit the approved Construction Documents to the PDE, to the Art Commission, and any other agency required to maintain the orderly progress of the work.

10. The Structural Designer shall coordinate its design activities in the event there are School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, and NIC materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work.

11. The Structural Designer shall submit required documents to the School District's Office of Capital Programs for review once documents reach 90% completion. Included with this submission shall be a filled out copy (in electronic format) of the Phase Submission Review Document provided by the School District's Office of Capital Programs.

E. **Structural Designer's Services During Pre-Bid, Bid and Post-Bid Periods.**

1. The Structural Designer shall assist the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) in the preparation of the Bid Documents for the construction of the Project.

2. The Structural Designer shall assist the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) in preparing lists of qualified and interested bidders on the Project.

3. The Structural Designer shall review the Project Schedule and the Prime Contract's primary network schedule with the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), and shall comment on the schedule accordingly.

4. The Structural Designer shall promptly obtain and examine questions received from prospective bidders, confer with the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) regarding appropriate responses to prospective bidders' questions, answer all prospective bidders' questions in the form of an addendum, and send all responses to prospective bidders' questions, in the form of an addendum, to all potential bidders on the Project by way of UPS Next Day Air mail, Federal Express mail, Express Mail, or similar overnight, receipt mail. The Structural Designer, upon request, shall render to the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) written interpretations and clarifications of those Bid Documents and Construction Documents for which it has responsibility.

5. The Structural Designer shall prepare necessary addenda to the Construction Documents, and shall submit the addenda to the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) for their review and recommendations. The results of these reviews shall be provided by the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) to the Structural Designer as notations on the addenda. The Structural Designer shall revise the addenda based on these recommendations. The Structural Designer shall distribute the addenda to all potential bidders on the Project. The Structural Designer shall advise the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) of the estimated costs for all addenda and of the effect of the addenda on the Project Construction Budget and Project Master Schedule. The Structural Designer shall revise or correct the Drawings and Specifications, if necessary, to comply with the issued addenda after the receipt of bids.

6. The Structural Designer shall attend and participate in pre-bid conferences with potential bidders on the Project. The Structural Designer shall assist the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) in responding to questions raised by prospective bidders at the pre-bid conferences. The Structural Designer shall point out to potential bidders the materials, supplies, and equipment that should not be included in the bids for the Prime Contract, i.e., the School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the

Project, not-in-contract (NIC) materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work.

7. Following the School District's approval of the Construction Documents, the final Construction Cost Estimate, and final Construction Schedule, the Structural Designer shall assist the School District in obtaining bids on the Project and in preparing the Prime Contract. The Structural Designer shall assist the School District in receiving bids on the Project.

8. The Structural Designer shall attend bid evaluation meetings and bid openings on the Project.

9. The Structural Designer shall attend and participate in post-award conferences with successful bidders on the Project, as required.

10. The Structural Designer shall review the School District's Office of Subsidies' application to the PDE for the Project, and shall make recommendations as necessary to the School District.

III. **Construction and Post-Construction Period Services.**

A. **Construction Period.**

1. The Construction Period of the Project will commence with the execution of the Prime Contract by the School District and end thirty (30) calendar days after Construction Completion, except as otherwise provided herein.

B. **Structural Designer's Services During Construction Period.**

1. The Structural Designer shall be considered a representative of the School District in dealing with the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), the Project Construction Contractors and all consultants and subcontractors, with regard to construction activities at the Project site during the Construction Period. The Structural Designer shall have the authority to act on behalf of the School District only to the extent provided in this Contract, unless otherwise modified by written instrument.

2. The Structural Designer shall advise and consult with the the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), on an as-needed basis, during the Construction Period. The Structural Designer shall cooperate with and shall assist the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) whenever necessary to reach conclusions or decisions pertaining to the construction activities on the Project. However, by providing this assistance, the Structural Designer is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project construction.

3. The Structural Designer shall attend and participate in pre-construction, construction, and Project meetings scheduled by the School District at the Project site during the

Construction Period and any other meetings scheduled during the Construction Period.

4. The Structural Designer shall consult with the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), on an as-needed basis, regarding any proposed substitutions of materials and equipment specified in the Construction Documents made during the Construction Period, and shall provide recommendations to the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) regarding these proposed substitutions. The School District shall require the Prime Contractor to pay for the Structural Designer's exhaustive investigations into their proposed substitutions of materials or equipment.

5. The Structural Designer shall at all times have access to the work at the Project site whenever it is in preparation or progress. The Structural Designer shall have the right to review the Project records and documents, upon request to the School District, and at all reasonable times and places, for the duration of the Project.

6. The Structural Designer shall review and evaluate the the Prime Contractor's detailed construction schedules, including schedules of shop drawing submittals, and shall make recommendations as necessary to the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project).

7. The Structural Designer shall point out to the Project participants the School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, not-in-contract (NIC) materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work. The Structural Designer shall coordinate its activities in the event there are School District provided materials, supplies, and equipment (including but not limited to bulk procurements) for the Project, and NIC materials, supplies, and equipment, and materials, supplies and equipment that are being provided by others and are not in the Project work.

8. The Structural Designer shall visit the Project site, on a weekly basis or as otherwise agreed by the School District and the Structural Designer in writing, to become generally familiar with the progress and quality of the work completed on the Project and to determine in general if the work on the Project is being performed in a manner indicating that such work when completed will be in accordance with the Construction Documents. However, the Structural Designer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work on the Project. The Structural Designer shall promptly advise the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) in writing whenever it observes any work not being performed in accordance with the Construction Documents during its Project site visits. On the basis of its on-site observations as a Structural Designer, the Structural Designer shall keep the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) informed of the progress and quality of the work on the Project. The Structural Designer shall exercise reasonable care and diligence in discovering and reporting to the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) any apparent defects or deficiencies in the work on the Project about which the Structural Designer reasonably is aware. The Structural Designer shall not have control over or

charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work on the Project, since these are the Prime Contractor's responsibility under the Prime Contract. The Structural Designer shall not be responsible for the performance by the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) of the services required by the Supplemental Construction Manager's agreement with the School District. The Structural Designer shall not have control over or charge of acts or omissions of the Prime Contractor, its subcontractors, or their agents or employees, or of any other persons performing services or portions of the work, other than the Structural Designer's agents, employees or consultants.

9. The Structural Designer shall have the authority, after notification to the School District, to reject work which does not conform to the Construction Documents. Whenever the Structural Designer considers it necessary or advisable for the implementation of the intent of the Construction Documents, the Structural Designer shall have the authority, upon written authorization from the School District, to require additional inspections or testings of the work in accordance with the provisions of the Construction Documents, whether or not such work has been fabricated, installed or completed. However, neither this authority of the Structural Designer nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the Structural Designer to the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), Prime Contractor, its subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the work.

10. Upon written request of the School District, the Project Structural Designer shall render written interpretations and clarifications of the Construction Documents as are necessary for the proper execution or progress of the work. All the Structural Designer's interpretations and clarifications shall be consistent with the intent of and reasonably inferable from the Construction Documents, and shall be in writing or in the form of drawings. The Structural Designer shall answer all RFIs concerning the meaning of the Construction Documents and the performance thereunder by the participants on the Project, orally or in writing, within a reasonable time period based on the professional standards prevailing in the metropolitan Philadelphia area for the provision of such services. The Structural Designer shall provide this information with reasonable promptness (within seven (7) days) so as not to delay the progress of the work on the Project. The Structural Designer shall forward this information to the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) for distribution to all participants on the Project.

11. During the Construction Period, the Structural Designer's decision on matters relating to artistic effect shall be final if consistent with the intent of the Construction Documents, subject to the reasonable approval of the School District.

12. The Structural Designer shall review, comment upon, approve or take other appropriate action upon the Prime Contractor's shop drawings, product data, samples and similar submittals within fourteen (14) working days after their receipt from the School District or the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project). The Structural Designer shall review these submittals to determine their compliance with the requirements of the Construction Documents. The Structural Designer is not reviewing these

submittals to determine the accuracy and completeness of details, such as dimensions and quantities, or to substantiate instructions or installation or performance of equipment or systems provided by the Prime Contractor. The Structural Designer's review of these submittals does not constitute review or approval of safety precautions or, unless otherwise specifically stated by the Structural Designer, of construction means, methods, techniques, sequences or procedures. The Structural Designer's review or approval of a specific item or a particular submittal does not indicate that the Structural Designer has reviewed the entire assembly of which the item is a component or other portions of the Project of which the product depicted forms only a part. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Documents, the Structural Designer is entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Documents, unless the Structural Designer knows such certification is inaccurate.

13. The Structural Designer shall assist the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) to identify necessary or desirable changes in the work on the Project. The Structural Designer shall evaluate requests for changes proposed by the Prime Contractor, and shall make recommendations regarding these proposed changes to the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project). The Structural Designer shall review and state its concurrence or non-concurrence with requests for proposals submitted by the Prime Contractor or the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project). The School District shall require the Prime Contractor to pay for the Structural Designer's exhaustive investigations, as determined by the School District under the circumstances, into their proposed requests for changes.

14. The Structural Designer shall assist the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) in obtaining supporting documentation and data for proposed change orders on the Project. The Structural Designer shall review proposed change orders and the recommendations thereto of the School District, and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) and shall approve and execute or take other appropriate action on these proposed change orders.

15. The Structural Designer shall review the pay requests of the Prime Contractor with the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) and based on its observations of the work at the Project site, shall, to the best of the knowledge, information and belief of the Structural Designer, advise the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) whether payment is appropriate based upon the quality of the work and its conformity with the Construction Documents.

16. The Structural Designer shall review the School District's Office of Subsidies' application to the PDE for the Project and shall make recommendations as necessary to the School District.

17. Substantial Completion. The Structural Designer shall consult with the

School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) to determine when the Project or a designated portion has reached the point of Substantial Completion. Substantial Completion is the stage in the progress of the construction and services required by the Construction Documents when the Project or a designated portion thereof is sufficiently complete in accordance with the Construction Documents so that the School District can occupy or utilize the Project for its intended use. The Structural Designer, the School District, and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) shall jointly inspect the work and prepare appropriate punchlists of incomplete, defective or unsatisfactory work items, and shall develop a schedule for completion or correction by the Prime Contractor. The Structural Designer shall certify the date of Substantial Completion of the Project or a designated portion thereof and shall prepare and issue the appropriate Certificate of Substantial Completion.

18. The Structural Designer shall assist the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), and the School District's representative during the Prime Contractor's checkout of utilities, mechanical systems, laboratory systems and equipment for readiness and their initial start-up and testing by the Prime Contractor. The Structural Designer shall forward to the School District warranties and similar submittals required by the Prime Contract.

19. Construction Completion. Following correction of all items listed on the punchlists developed at the time of Substantial Completion, the Structural Designer, the School District, and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) shall jointly inspect the entire Project or a designated portion thereof. The Structural Designer and the School District shall corroborate that all items of unsatisfactory construction have been satisfactorily corrected. The Structural Designer shall certify the date of Construction Completion of the entire Project and shall prepare and issue the appropriate Certificate of Construction Completion. Construction Completion is the stage in the progress of the Project when the Project has been finally completed in accordance with the terms and conditions of the Construction Documents.

20. The Structural Designer shall review the School District's recommendations for final payment to the Prime Contractor and shall approve such final payments or take other appropriate action. Upon approval of such final payment, the Structural Designer shall prepare and issue the appropriate Certificate of Final Payment. Thereafter, the School District shall make such final payment to the Prime Contractor.

21. The Prime Contractor will maintain at the Project site a separate set of record drawings and specifications for its Prime Contract, upon which a continuing and current record will be made of all necessary field modifications made to its work. These drawings will accurately reflect a record of the conditions in the field, including all modifications required by either field changes or approved change orders, and the Structural Designer shall be entitled to rely upon the accuracy and completeness of said drawings in the preparation of record drawings. The Structural Designer shall review the record drawings of the Prime Contractor, and shall make the necessary corrections to its set of mylars. The Structural Designer shall prepare and deliver a complete set of 4 mil. mylar reproducible as-built record drawings to the School District upon Project completion. The Structural Designer shall also deliver the as-built record drawings on a

CD-ROM computer disk to the School District. The School District shall require the Prime Contractor to indemnify and hold harmless the Structural Designer and its officers and employees from any liability arising from any deficiencies in the Prime Contractor's record drawings.

C. **Structural Designer's Services During Post-Construction Period.**

1. The Structural Designer shall make post-completion warranty site visits to review Project conditions over a one (1)-year period, and shall prepare and submit to the School District a written report concerning observed Project conditions for each site visit.

2. The Structural Designer shall assist the School District and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) in the "commissioning" program; "commissioning" defined as "the process of ensuring that systems are installed, functionally tested, and capable of being operated and maintained to perform in conformity with their design, the specifications in the construction contract documents, and for the purpose intended". The Structural Designer shall coordinate its services with the School District's Commissioning/Quality Assurance Quality Control (QAQC) Unit.

4.2.7 **Limits On Authority and Responsibility.**

(1) The Structural Designer is not authorized to change, enlarge, relax, alter or release any requirement of any of the Construction Documents or the Prime Contract, 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 Structural Designer assumes any of the contractual construction management duties, responsibilities, or liabilities of the Supplemental Construction Managers (if Supplemental Construction Managers are assigned to the Projects) in their contracts for construction management services with the School District, or any of the customary construction management duties, responsibilities, or liabilities of a construction manager on a construction project.

(3) Nothing contained in this Contract shall be construed to mean that the Structural Designer 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.

(4) Notwithstanding the provisions of Paragraph 3.22, *Safety Responsibilities*, and any other provisions contained in this Contract, the Structural Designer 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(s), 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 shall be construed to mean that the Structural Designer 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 Safety Manual established for the School District of Philadelphia shall be construed to mean that the School District or the Structural Designer are responsible for the jobsite safety of the construction means, methods, techniques, sequences, or procedures utilized by the Construction Contractors and their subcontractors in connection with construction work on School District construction projects. The Construction Contractors and their subcontractors are fully and solely responsible for the jobsite safety of 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(s). The Construction Contractors and their subcontractors are responsible for maintaining and supervising all safety precautions and programs in connection with construction work on School District construction projects, and for any violations of the safety precautions and programs in connection with construction work on School District construction projects. 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 School District construction projects, and for taking all necessary precautions to protect the safety and health of their employees and others on the jobsites of School District construction projects, 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 School District of Philadelphia.

IV. **Standards of Design.** All design work shall comply with the standards as established by the School District. These include "Educational Standards" and "Building Design Criteria and Technical Standards". Any deviations required a written variance by the School District.

Section 5. School District's Services and Responsibilities.

The School District, at its sole discretion, may elect to furnish, or direct and authorize the Structural Designer to provide as Reimbursable Services (with no additional markup), the following analyses, investigations, surveys and reports:

5.1 **Land Surveys and Site Legal Information.** The School District may furnish, or authorize the Structural Designer to provide a certified land survey of the assigned Project(s) site(s) describing physical characteristics, legal limitations and utility locations for the site(s) and a written legal description of the site(s). 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(s); 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 Structural Designer documentation pertinent to the assigned Project(s), including site plans and soil analyses.

5.2 **Site Surface and Subsurface Information.** The School District may furnish, or direct and authorize the Structural Designer to retain, the services of geotechnical consultants, soil consultants or other consultants when such services are reasonably required by the scope of the assigned Project(s). 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 Structural Designer shall review and confirm the sufficiency of the tests and information furnished to the Structural Designer, by or on behalf of the School District pursuant to this Paragraph 5.2, based upon conditions then known to exist, but such review shall not constitute confirmation of their accuracy.

5.3 **Site Laboratory and Environmental Test Information.** The School District may furnish, or direct and authorize the Structural Designer to provide structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by the Construction Documents and/or recommended by the Structural Designer.

5.4 **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, if required for the assigned Project.

5.5 **Other Services Required for Design.** The School District will reimburse the Structural Designer for the cost of other services approved in advance that are necessary to perform required design services, such as equipment lifts, roofing cores, chimney inspections, selective demolition, invasive investigations or destructive testing

5.6 **Time for Furnishing Information and Reliance on Information.** The services, information, and documents 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 Structural Designer shall be entitled to rely upon the accuracy and completeness thereof.

5.7 **Information Required by Governmental Authorities.** The School District may furnish, or direct and authorize the Structural Designer to provide, any 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 Structural Designer, 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 Structural Designing Designs, Project Drawings, Specifications, Bid Documents, Construction Documents and other information prepared and submitted by the Structural Designer to the School District under this Contract, and shall advise the Structural Designer of any suggested changes, comments or recommendations thereto in a timely manner so as to cause no delay to the Structural Designer.

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 Structural Designer 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.** The School District has established a “general pool” of shared funds in the amount of _____ Dollars (\$_____) out of the authorized Capital Fund from which professional structural analysis and design services will be expended. The total of awards for professional structural analysis and design services contracts shall be for a maximum-not-to-exceed _____ Dollars (\$_____). Pursuant to the attached RFP for Structural Analysis and Design Services, the School District reserves its option to award a Contract for Structural Analysis and Design Services to more than one (1) professional design consulting firm (Structural Designer) for the Capital Improvement Program. It is the intent of the School District to make work assignments as the needs of the Capital Improvement Program and the availability and capability of specified firms dictate, without guarantee of any particular number or dollar value of work assignments to any specific professional consulting services firm, and to pay for all work out of the \$_____ “general pool” of shared funds of the Capital Fund. The Structural Designer acknowledges and agrees that the School District does not promise the Structural Designer _____ Dollars worth of work assignments, and that the School District reserves the right to limit the number of work assignments to the Structural Designer under this Contract and the amount of the Contract award. The School District does not guarantee the assignment of the complete

scheduled Capital Improvement Program, or any of the complete scheduled annual Capital Budget programs, or the complete program of structural analysis and design services to the Structural Designer.

6.1.1 **Project Compensation.** The School District agrees to pay the Structural Designer Project Compensation out of a “general pool” of shared funds up to a total amount not to exceed _____ Dollars (\$_____) as compensation for the Services performed and Reimbursable Expenses incurred by the Structural Designer under this Contract during the Initial Term of this Contract. No funds have currently been authorized for an Additional Term of this Contract. The School District reserves the option, at its sole discretion, of requesting that Structural Designer’s work on each individual project be performed based on the percentage of construction cost method provided herein, or an hourly rates method provided herein, or a negotiated fixed fee method provided herein. The School District’s payment of Project compensation to the Structural Designer on each individual project shall be determined by the School District, at its sole option, on one of the following compensation methods: (1) the percentage of construction cost method set forth in Paragraph 6.1.2 herein; (2) the hourly rates method set forth in Paragraph 6.1.3 herein; or (3) the negotiated fixed fee method set forth in Paragraph 6.1.4 herein. The Structural Designer shall not have the right to decline the compensation method determined by the School District.

6.1.2 **Percentage of Construction Cost Method.** The rate of the percentage of construction cost on an individual project shall be determined as follows:

<u>Project Construction Value</u>	<u>Projects constructed by School District Staff</u>	<u>Projects constructed by Contractors</u>
Up to \$25,000	_____%	_____%
\$25,001 to \$50,000	_____%	_____%
\$50,001 to \$100,000		_____%
\$100,001 to \$200,000		_____%
\$200,001 to \$400,000		_____%
\$400,001 to \$1,000,000		_____%
Over \$1,000,000		_____%

The Structural Designer’s percentage of construction cost on an individual project shall be all-inclusive. The Structural Designer shall be entitled to payment on an individual project for the authorized Reimbursable Expenses provided in Paragraph 6.8 herein under the percentage of construction cost method.

6.1.3 **Hourly Rates Method.** The hourly rates on an individual project shall be determined by using the hourly billable wage rates of the Key Personnel of the Structural Designer and its Subconsultants that are listed in the Structural Designer’s Proposal and attached collectively as Exhibit E to this Contract and incorporated by reference into this Contract, and shall not exceed the hourly billable wage rates listed below.

Key Personnel of Structural Designer

<u>Position</u>	<u>Hourly Rate</u>
Structural Designer Principal-in-Charge	\$ _____
Registered or Licensed Structural Engineer	\$ _____
Drafter/CADD Operator	\$ _____
Clerical	\$ _____
Other persons by job title or classification:	
_____	\$ _____
_____	\$ _____

Key Personnel of Structural Designer's Subconsultants

<u>Position</u>	<u>Hourly Rate</u>
Architectural:	
Architectural Designer, Principal-in-Charge	\$ _____
Project Manager	\$ _____
Registered or Licensed Architect	\$ _____
Construction Administrator	\$ _____
Drafter/CADD Operator	\$ _____
Clerical	\$ _____
Other persons by job title or classification:	
_____	\$ _____
_____	\$ _____
_____	\$ _____

MEP Engineering:

MEP Engineer, Principal-in-Charge	\$ _____
Registered or Licensed HVAC Engineer	\$ _____
Registered or Licensed Electrical Engineer	\$ _____
Registered or Licensed Plumbing Engineer	\$ _____
Drafter/CADD Operator	\$ _____
Clerical	\$ _____
Other persons by job title or classification:	
_____	\$ _____
_____	\$ _____
_____	\$ _____

Civil Engineering:

Civil Engineer, Principal-in-Charge	\$ _____
Registered or Licensed Civil Engineer	\$ _____
Drafter/CADD Operator	\$ _____

Clerical	\$ _____
Other persons by job title or classification:	
_____	\$ _____
_____	\$ _____
_____	\$ _____

Cost Estimating/Analysis:

Estimator	\$ _____
Other persons by job title or classification:	
_____	\$ _____
_____	\$ _____
_____	\$ _____

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 firm and fixed priced for the entire duration of this Contract. Because the Contract has a potential to remain active for three (3) years, the annual percentage increase that shall be applied to the hourly rates shall be _____ percent (___%). These hourly billable wage rates shall be all-inclusive wage rates for all personnel listed as Key Personnel on the Structural Designer’s Key Personnel Team List and all personnel of its Subconsultants listed on the Subconsultants Personnel Lists. Charges for Principals of the Structural Designer and its Subconsultants shall be for minimal hours only. The Structural Designer shall be entitled to payment on an individual project for the authorized Reimbursable Expenses provided in Paragraph 6.8 herein under the hourly rates method.

6.1.4 **Negotiated Fixed Fee Method.** The negotiated fixed fee on an individual project shall be determined by the parties’ agreement to a mutually negotiated amount which shall include all costs, including labor, overhead, profit, and other charges, for performance of work on the project. The Structural Designer shall be entitled to payment on an individual project for the authorized Reimbursable Expenses provided in Paragraph 6.8 herein under the negotiated fixed fee method.

6.2 **Payment.** Payments for Basic Services on an individual project shall be made as outlined below:

6.2.1 **Percentage of Construction Cost Method.** The School District agrees to pay the Structural Designer for Services actually performed on the assigned Project(s) according to the following Project phase time schedule:

<u>Project Phase</u>	<u>Payment Amount</u>
<u>Phase I:</u> through to preparation of Project bid documents	40% of fee based on detailed cost estimate of Project; estimated cost shall be reviewed and certified by the School District before billing can be processed

<u>Phase II</u> : at Project bid opening bid (total to 70%)	30% of fee based on the lowest responsible bid
<u>Phase III</u> : at completion of all Project shop drawings and submittals	15% of fee based on the lowest responsible bid (total to 85%)
<u>Phase IV</u> : at Project construction completion through to Project commissioning program completion and resolution of all project change orders	15% of balance of agreed-to fee

(1) Payment for Termination of Project Upon Phase Completion. The School District reserves the right, at its sole discretion, to terminate the assigned Project(s) upon completion of a Project phase. The School District shall pay the Structural Designer for its Services in accordance with the percentages and agreed-to rates as established in Paragraph 6.2.1 herein.

6.2.2 Hourly Rates Method. The School District agrees to pay the Structural Designer its staffing related costs for Services actually performed on the assigned Project(s), on a monthly basis, up to the lump sum fee that is set forth in Paragraph 6.1.1, in accordance with the hourly billable wage rates for its Key Personnel that are set forth on the Structural Designer’s Key Personnel Team List and its Subconsultants’ personnel that are set forth on the Subconsultants Personnel Lists, which are attached collectively as Exhibit E and incorporated by reference into this Contract.

6.2.3 Negotiated Fixed Fee Method. The School District agrees to pay the Structural Designer, on a monthly basis, in proportion to the actual services performed on the assigned Project(s) based upon the hourly billable wage rates for its Key Personnel that are set forth on the Structural Designer’s Key Personnel Team List and its Subconsultants’ personnel that are set forth on the Subconsultants Personnel Lists, which are attached collectively as Exhibit E and incorporated by reference into this Contract.

6.3 Applications for Payment and Subconsultant Payment Confirmation.

6.3.1 The Structural Designer shall submit monthly Applications for Payment or Professional Services 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, *Contract Administrators*, of this Contract.

6.3.2 Applications for Payment or Professional Services Invoices for Services shall be limited to the persons listed on the Structural Designer’s Key Personnel Team List and the Subconsultants Personnel Lists, and at the hourly billable wage rates indicated on the Structural Designer’s Key Personnel Team List and the Subconsultants Personnel Lists. Any additional key personnel added to the Services and their hourly billable wage rate must be approved by the School District before the Structural Designer’s submission of Applications for Payment or Professional Services Invoices for their time expended on the Services. The School District shall not make payment to the Structural Designer for Services performed by persons not listed on the Structural Designer’s Key Personnel Team List and the Subconsultants Personnel

Lists, or additional key 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 Structural Designer for Services performed by persons or additional key personnel whose hourly billable wage rates have not been approved in advance by the School District.

6.3.3 All Applications for Payment or Professional Services 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) if payment is determined by the percentage of construction cost method, the description of all Services actually performed for which payment is sought and the rate of the percentage of construction cost; (3) if payment is determined by the hourly rates method or the negotiated fixed fee method, an itemized description of all Services actually performed during the previous calendar month for which payment is sought and their associated costs and total charges based upon the hourly billable wage rates of the Structural Designer's Key Team Members and its Subconsultants Personnel, attached as Exhibit E and incorporated by reference into this Contract; (4) the total charges; (5) whether the Services performed were Basic or Additional Services; and (6) School District SCS number (where applicable) and Contract number, and shall attach such supporting evidentiary documents as the School District may require.

6.3.4 The Structural Designer shall submit one (1) monthly Application for Payment or Professional Services Invoice for each Project assignment and one (1) monthly written summary of Project activities.

6.3.5 Applications for Payment or Professional Services 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.

6.3.6 Payment shall be made by the School District within thirty (30) working days after its receipt and approval of the Structural Designer's Application for Payment or Professional Services Invoice for the Project assignment and written summary of Project activities.

6.3.7 No payment shall be due to the Structural Designer before the School District's receipt of a properly itemized Application for Payment or Professional Services Invoice for the Project assignment, together with written summary of Project activities, from the Structural Designer.

6.3.8 The Structural Designer's Federal Tax Identification Number is _____.

6.3.9 All amounts paid shall be subject to audit by the School District pursuant to Paragraph 6.13, and all Applications for Payment or Professional Services Invoices must be approved by the School District's Accounting Services or Audit Services Department as a condition of payment.

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

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 Structural Designer's substantial failure to perform as agreed. However, before withholding payment under this Contract, the School District shall notify the Structural Designer in writing of such failure and grant the Structural Designer 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 Structural Designer's good faith effort to remedy the failure. The School District will pay pro rata for the Structural Designer's partial performance, provided such performance is acceptable to the School District and is rendered satisfactorily.

6.5 **Final Payment.** Final payment, including any unpaid balances and unpaid Reimbursable Expenses to date, shall be due and payable upon the satisfactory completion by the Structural Designer of all Services on the assigned Project(s), 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.

6.6 **Basic Services.** All services that the Structural Designer is required to perform for the assigned Project(s) under this Contract shall constitute Basic Services for which compensation will be paid under Section 6.1, *Compensation*, herein.

6.7 **Additional Services.** The Structural Designer shall not be compensated as Additional Services if the delay, disruption, interference or hindrance in construction on the assigned Project(s) is (are) due (1) to the fault, negligence, failure to act, error, omission or breach of contract of the Structural Designer, or (2) to a Force Majeure Condition as provided in Paragraph 3.15, *Force Majeure*, or (3) to actions, inactions, errors, omissions, negligence, breach of contract, or willful act or omission caused by or attributed to the Prime Contractor(s) or any of its (their) subcontractors or consultants.

6.7.1 Minor changes or necessary corrections to the Structural Designer's Work shall not constitute Additional Services. Changes or corrections to the Structural Designer's Work, requested by the School District and made after the School District's previous final approval of such Work, shall constitute Additional Services.

6.7.2 All Additional Services of the Structural Designer must be approved in advance by the School District's designated representative.

6.7.3 The School District agrees to pay the Structural Designer 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 Structural Designer's Key Personnel Team List and its Subconsultants' personnel that are set forth on the Subconsultants Personnel Lists, which are attached collectively as Exhibit E and incorporated by reference into this Contract. The School District also agrees to pay the Structural Designer for Additional Services performed by persons not listed on the Structural Designer's Key Personnel Team List and the Subconsultants Personnel Lists or additional key personnel added to the Services, provided the persons not listed or the additional key 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 for the Structural Designer's Additional Services.** The Structural Designer agrees that in no event shall the School District be liable to the Structural Designer for payment of compensation for Additional Services for any of the Structural Designer's Services that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the assigned Project(s), or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the assigned Project(s). Instead, as its sole right and remedy with respect to such fault, negligence, breach of contract, willful act or omission, or such delay, disruption, interference or hindrance, of the Prime Contractor or any of its subcontractors or consultants, the Structural Designer shall be entitled to make, assert, file or bring a direct claim, action, cause of action or lawsuit against the Prime Contractor or any of its subcontractors or consultants, as an assignee of the School District, pursuant to this Paragraph 6.7.4. For **the sole and only purposes** of making, asserting, filing or bringing direct claims, actions, causes of actions or lawsuits against the Prime Contractor or any of its subcontractors or consultants, the School District hereby assigns to the Structural Designer the School District's right under the Prime Contract to make, assert, file or bring direct claims, actions, causes of action or lawsuits against the Prime Contractor or any of its subcontractors or consultants for additional compensation due to the Structural Designer for the Structural Designer's Services that is caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the assigned Project(s), or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the assigned Project(s).

6.8 **Reimbursable Expenses.** The School District agrees to pay the Structural Designer, as Reimbursable Expenses on an individual project, at 100% of their 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 (such as zoning board), and testing services. The Structural Designer 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 School District Consultant's(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 Structural Designer shall furnish to the School District a release of all claims against the School District.

6.10 **Non-Authorization of Funds.** The Structural Designer 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. During the Initial Term and an Additional Term of 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 Structural Designer 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 Structural Designer, 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 Structural Designer 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 Structural Designer 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 Additional Term of this Contract commences (in either case, "Commencement FY"), the Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer shall have the rights and obligations set forth in Paragraph 13.2, *Suspension for Convenience* and Paragraph 14.1, *Termination for Convenience*.

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 Structural Designer'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 Structural Designer 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 Structural Designer 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 Structural Designer in the City, or in another location with the Auditor's consent. The Structural Designer 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 Structural Designer'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 Structural Designer shall make available, within the School District or in the City or at the Structural Designer'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 Structural Designer shall provide such records without unreasonable delay when requested by an Auditor.

6.13.4. **Retention of Records.** The Structural Designer 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 Structural Designer shall retain the records until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal. The Structural Designer shall include this Paragraph 6.13 in all Subcontracts for Services required by this Contract.

Section 7. Contract Management.

7.1 **Contract Administrators.** The Structural Designer and the School District shall each designate a qualified Contract Administrator prior to the Structural Designer'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 Structural Designer'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 Structural Designer and its Subconsultants shall assign the following Key Personnel to perform the design, contract preparation and construction administration services of the Structural Designer required under this Contract:

List of Key Personnel of Structural Designer

<u>Name</u>	<u>Position</u>	<u>Company</u>
_____	Principal in Charge	_____
_____	Registered or Licensed Structural Engineer	_____
_____	Drafter/CADD Operator	_____
_____	Clerical	_____
	Other persons who will be used to perform the required Services by name and job title or classification:	
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

List of Key Personnel of Subconsultants

Architectural:

_____	Architectural Designer, Principal in Charge	_____
_____	Project Manager	_____
_____	Registered or Licensed Architect	_____
_____	Construction Administrator	_____
_____	Drafter/CADD Operator	_____
_____	Clerical	_____
	Other persons who will be used to perform the required Services by name and job title or classification:	
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

MEP Engineering:

_____	MEP Engineer, Principal in Charge	_____
_____	Registered or Licensed HVAC Engineer	_____
_____	Registered or Licensed Electrical Engineer	_____
_____	Registered or Licensed Plumbing Engineer	_____
_____	Drafter/CADD Operator	_____
_____	Clerical	_____
	Other persons who will be used to perform the required Services by name and job title or classification:	
_____	_____	_____
_____	_____	_____
_____	_____	_____

Civil Engineering:

_____	Civil Engineer, Principal in Charge	_____
_____	Registered or Licensed Civil Engineer	_____
_____	Drafter/CADD Operator	_____
_____	Clerical	_____
	Other persons who will be used to perform the required Services by name and job title or classification:	
_____	_____	_____
_____	_____	_____
_____	_____	_____

Cost Estimating/Analysis:

_____	Estimator	_____
	Other persons who will be used to perform the required Services by name and job title or classification:	
_____	_____	_____
_____	_____	_____
_____	_____	_____

() — _____	() — _____
() — _____	() — _____
() — _____	() — _____

The Structural Designer and its Subconsultants shall not reassign or replace any Key Personnel listed above, without the School District’s prior written consent, which shall not be unreasonably withheld. All Key Personnel must participate in the assigned Project(s) 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

Structural Designer 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 Structural Designer.

8.2 **Subconsultants.** Subconsultants of the Structural Designer shall look only to the Structural Designer 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 Structural Designer. The School District shall have no obligation to pay nor to see to the payment of any monies to any Subconsultant of the Structural Designer, 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 Structural Designer. 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 Structural Designer 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 Structural Designer 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.

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 Structural Designer 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 Structural Designer 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 Structural Designer or its agents, employees, representatives, or Subconsultants, shall have the right, at its sole discretion, to terminate this Contract. The Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer to comply with this anti-discrimination provision, the Structural Designer may be removed from the list of approved bidders of the School District. The Structural Designer 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 Structural Designer 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. [The Structural Designer represents and certifies that it is a minority-owned business enterprise (MBE) firm or a woman-owned business enterprise (WBE) firm or a dual minority-owned and woman-owned business enterprise (MWBE) firm.] The Structural Designer [further] represents and certifies that it will include a minimum of 15% - 20% participation with either a minority-owned business enterprise(s) (MBE) and/or a woman-owned business enterprise(s) (WBE) based on the total contract award in the performance of this School District Contract. [The MEP Engineer [further] represents and certifies that it is a minority-owned business enterprise (MBE) or a woman-owned business enterprise (WBE) or a dual minority-owned and woman-owned business owned enterprise (M/WBE) firm and that it will perform 100% of the total amount of services provided in the performance of this School District Contract, as set forth in the Proposal, M/WBE Participation Plan.] The Structural Designer [further] represents and certifies that it will use the following MBE and WBE firms as Subcontractors under this Contract in the percentages listed as set forth in the Proposal, M/WBE Participation Plan: (1) _____ (___BE) – ___%; (2) _____ (___BE) – ___%; and (3) _____ (___BE) – ___%. The Structural Designer’s Proposal, M/WBE Participation Plan, is attached as Exhibit F and incorporated by reference into this Contract.

8.4 **Non-Discrimination.**

8.4.1 **Non-Discrimination in Hiring.** The Structural Designer 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 Structural Designer, 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 Structural Designer, the Structural Designer 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 Structural Designer will notify each labor union or workers' representative from whom it seeks workers of the Structural Designer'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 Structural Designer 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 Structural Designer 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.

(v) The Structural Designer 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 Structural Designer'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 Structural Designer’s employment records to assure compliance with this subsection.

(3) That it will maintain on forms to be supplied by the School District, 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 Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer from future School District work as non-responsible.

8.4.3 **Liability of Subcontractors.** Any Subconsultant of the Structural Designer shall have the same responsibilities and obligations as the Structural Designer 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.

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 Structural Designer 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 Structural Designer or any Subconsultant pursuant to Board Policy No. 621.

(3) The Structural Designer 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 Structural Designer the sums due.

Section 9. Indemnification.

9.1 Indemnification.

9.1.1 The Structural Designer agrees to assume liability for and does specifically agree to indemnify, save, protect, and hold harmless the School District, its SRC members, board directors, officers, employees and agents, 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 Structural Designer'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 or employment discrimination of the Structural Designer, 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 Structural Designer 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 Structural Designer is or may become responsible. The Structural Designer agrees that in the event that any employee of the Structural Designer 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 Structural Designer under this Contract that the Structural Designer 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 Structural Designer 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 Structural Designer in the event that the School District is sued by an employee of the Structural Designer. 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).

9.1.2 This indemnity provision is intended, *inter alia*, to protect the School District, 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, by 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 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 Structural Designer has insurance.

9.1.3 In the event the School District receives notice of a claim based upon the Structural Designer's services, omission or breach, the School District will promptly notify the Structural Designer in writing of such claim and will require and permit the Structural Designer 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 Structural Designer shall require all insurance policies in any way related to the work and secured and maintained by the Structural Designer 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.

9.1.4 This Paragraph 9.1 (*Indemnification*) shall apply, particularly, but not exclusively, to the claims of the Structural Designer and its officers, agents, representatives and employees against the School District. Any violation of any of the provisions of this Paragraph 9.1 (*Indemnification*) by the Structural Designer shall be deemed a material breach of this Contract. The Structural Designer and its officers, agents, representatives and employees, shall have no claim against the School District, its officers, agents, representatives and employees for the acts, failures to act or negligence of the School District, directly or indirectly, or its officers and employees; and should this exculpatory clause be declared invalid by law, such invalidity shall in no manner affect or invalidate any or all other foregoing provisions in this Paragraph 9.1 (*Indemnification*).

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 Structural Designer (including but not limited to Architects or Engineers) 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 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 STRUCTURAL DESIGNER 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 Structural Designer or its insurer or insurers materially change, cancel, or non-renew any insurance policy. The Structural Designer shall advise the School District immediately upon receiving any notice of cancellation or nonrenewal of the required insurance. The Structural Designer shall ensure 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 Structural Designer shall ensure that its insurer or insurers so endorse said policy.. The Structural Designer 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 Structural Designer 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) **ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY INSURANCE**

- (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.

(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) **VALUABLE PAPERS AND RECORDS COVERAGE**

- (1) The Structural Designer shall also purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers related to the assigned Project(s).

10.2 **Evidence of Insurance Coverage.** Certificates of Insurance evidencing the required coverages and Endorsements must specifically reference the School District Contract number for which they are being submitted, and the Structural Designer 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.: 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 and again at least ten (10) calendar days before an Additional Term. 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 Structural Designer actually begin Services (or continue Services, in the case of an Additional Term) without providing the required evidence of insurance. The Endorsement adding the School District of Philadelphia as an additional insured must specifically reference the School District Contract number 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 Structural Designer 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 Structural Designer.

10.3 **Notice of Claim or Lawsuit.** The Structural Designer shall advise the School District in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon the Structural Designer'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 Structural Designer 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 Structural Designer 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 Structural Designer may not self-insure any of the coverages required under this Contract without the prior written approval of the School District Director of Insurance Risk Management. In the event that the Structural Designer desires to self-insure any

of the coverages listed above, it shall submit to the School District's Contract Administrator and School District Director of Insurance Risk Management, prior to the commencement of Services hereunder, a certified copy of the Structural Designer'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 Structural Designer'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 Director of Insurance Risk Management. If at the time of commencement of this Contract, the Structural Designer self-insures its professional liability or workers' compensation and employers' liability coverage, the Structural Designer may, in lieu of the foregoing, furnish to the School District 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 Structural Designer to the School District, or to limit the Structural Designer's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by the Structural Designer hereunder.

Section 11. Confidentiality.

11.1 **Confidential and Proprietary Information.** The Structural Designer acknowledges that it will 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 Structural Designer 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 Structural Designer 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 Structural Designer as proprietary or confidential. 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 Structural Designer 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 Structural Designer 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 Structural Designer 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.

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 the assigned Project(s);
and

(b) any Data provided by the School District to the Structural Designer in connection with the Services provided by the Structural Designer; 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 Structural Designer in relation to the Services required under this Contract; and

(d) all records, documents, data, information, programs, and items of Services created by the Structural Designer 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 Structural Designer prior to the commencement of its performance of this Contract, free of any obligation to keep it confidential, or is proprietary to the Structural Designer; or

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

(c) was independently developed by the Structural Designer 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 Structural Designer, 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 Structural Designer would cause the School District injury not compensable in monetary damages alone, and that the remedies provided herein are appropriate and reasonable.

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	Structural Designer	Time After Dispute Notice
Project Designer or Project Manager	Project Structural Designer	15 days
Director of Design Services or Contracts Manager	Project Manager	15 days
Director or Operations Manager of Capital Programs	Principal in Charge	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 Structural Designer, in writing, to stop or abandon all or any part of its Services for the assigned Project(s), for the convenience of the School District, or for work stoppages beyond the control of the School District or the Structural Designer. Any increased costs incurred as a result of the stoppage or

abandonment of the assigned Project(s) shall be an equitable amount determined by the School District and the Structural Designer in view of all the facts and circumstances. If, however, the assigned Project(s) is(are) abandoned, the School District shall pay the Structural Designer 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 Structural Designer (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 Structural Designer 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 Structural Designer shall be entitled to a one-day extension of the time of performance provided in this Contract for each day that it is suspended pursuant to this Paragraph 13.2.

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 Structural Designer. 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 Structural Designer 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 Additional Term, the Structural Designer 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*, Paragraph 6.11, *Unavailability of Funds*, or Paragraph 6.12, *Crossing Fiscal Years*. Without limiting the generality of the foregoing, in no event shall the Structural Designer 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 Structural Designer 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 Structural Designer shall continue to perform this Contract in accordance with its terms with respect to all Services not terminated. The School District shall pay the Structural Designer 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 Structural Designer under this Contract.

(a) The Structural Designer'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 Structural Designer for the benefit of creditors, or any action taken or suffered by the Structural Designer under any federal or state insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, including the Structural Designer's filing for bankruptcy, and the filing of an involuntary petition against the Structural Designer 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 Structural Designer contained in this Contract, or in any other document submitted to the School District by the Structural Designer in relation to the Services, the RFP, or the Proposal, or otherwise by the Structural Designer directly or indirectly to the School District in connection with the School District's decision to execute, deliver and perform this Contract;

(d) failure of the Structural Designer to provide, within five (5) business days, 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 Structural Designer will not be able to perform the Work, and (2) the School District demands in writing assurance of the Structural Designer's performance;

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

(f) indictment of or other issuance of formal criminal charges against the Structural Designer 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 Structural Designer'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 laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the capital project(s) or the Services;

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

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

14.2.2 Notice and Cure. If the Structural Designer commits or permits an Event of Default, the School District shall notify the Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer'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 Structural Designer 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 Structural Designer 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 Structural Designer 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*.

14.3 Termination Duties. Upon receipt of a Termination Notice from the School

District, the Structural Designer shall take immediate action toward the orderly discontinuation of Services under this Contract. The Structural Designer shall exercise due care and caution to protect and secure completed Work. Upon expiration or termination of this Contract, the Structural Designer 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 Structural Designer'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 Structural Designer, within thirty (30) calendar days after receipt of a Termination Notice from the School District.

14.4 Consent to Use of Another Structural Designer upon Termination for Default.

If the Structural Designer is performing architectural design services as may be incidental to its structural analysis and design services, then in the event of termination under this Contract due to the default of the Structural Designer, the Structural Designer consents to the School District's selection of another Structural Designer of the School District's choice to assist the School District in any way in completing the assigned Project(s). The Structural Designer further agrees to cooperate and provide any information requested by the School District in connection with the completion of the assigned Project(s). The Structural Designer authorizes the making of any reasonable changes to the design of the assigned Project(s) by the School District and such other Structural Designer as the School District may desire. In the event that another Structural Designer is selected or changes are made to the design of the assigned Project(s), the School District agrees to indemnify and hold harmless the Structural Designer and its 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 Structural Designer and its Subconsultants attending depositions and court proceedings.

14.5 Additional Remedies of the School District. In the event the Structural Designer 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 Structural Designer 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 Structural Designer 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 14.5, 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 Structural Designer by reason of such performance or paying such costs or expenses, and the obligations of the Structural Designer 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 Structural Designer; or

(d) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of the Structural Designer; 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 Structural Designer 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 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 Structural Designer shall immediately cease working on that portion of the Services specified in the Stop Work Order until the School District notifies the Structural Designer in writing that the cause for the Stop Work Order has been eliminated, and directs the Structural Designer in writing to resume the Services. The Structural Designer shall resume the Services immediately upon receipt of such written notice from the School District.

14.5.1 **Specific Performance.** The Structural Designer's Work represents unique services not otherwise readily available to the School District. Accordingly, the Structural Designer 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.

14.6 **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 Structural Designer 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 Structural Designer, 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 Structural Designer hereby certifies for itself, its principals and including, without limitation, its Subcontractors, if any, that none of them, nor any other person controlling, controlled by, or under common control with, the Structural Designer, are presently debarred, suspended, proposed for debarment, declared ineligible for contracts, bids, requests for proposals or contract awards, or voluntarily excluded from performing the services under this Contract by any Federal government or Commonwealth of Pennsylvania or City department or agency or any school district.

15.2 **Explanation.** In the event the Structural Designer is unable to certify to any of the statements in the above certification, the Structural Designer 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 Structural Designer 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 Structural Designer learns that the above certification was erroneous when the Structural Designer signed this Contract or subsequently became erroneous by reason of changed circumstances.

15.4 **Remedies.** If the Structural Designer 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 Structural Designer, and the Structural Designer 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 or the City concerning the Structural Designer's compliance with the terms and conditions of this Contract that results in the debarment or suspension of the Structural Designer.

15.5 **Compensation.** If the compensation paid to the Structural Designer is derived from Federal government or Commonwealth of Pennsylvania grant funds, the Structural Designer must bill the School District for any outstanding compensation owed to the Structural Designer within thirty (30) days after the ending date of this Contract, as set forth in Section 2 (*Term of Contract*). In the event the Structural Designer 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 Structural Designer because of the unavailability of Federal government or Commonwealth of Pennsylvania funds, in which event the School District shall not be liable to the Structural Designer 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 STRUCTURAL DESIGNER:

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 the following: this Contract, Exhibits A-F to this Contract, and the Proposal (as modified hereby). 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 Structural Designer 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 Structural Designer shall strictly conform to all federal, state, and local laws, statutes, codes, and ordinances 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 Structural Designer 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 Structural Designer, the Structural Designer shall refer all press and public inquiries regarding the assigned Project(s) to the School District's designated representative during the term of this Contract. At any time thereafter, the Structural Designer may respond to press and public inquiries regarding the concept and design of the assigned Project(s) following notice to the School District's designated representative. During the term of this Contract, the Structural Designer 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(s).

16.8 **General Publication Rights.** The Structural Designer 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 Structural Designer 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 Structural Designer as a result of performance of this Contract shall remain with the Structural Designer.

16.9 **Conflict of Interest.**

16.9.1 **Disclosure of Conflict of Interest.** The Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer, has a direct or indirect investment worth \$1,000 or more in the Structural Designer or is a director, officer, partner, trustee or employee of the Structural Designer.

16.10 **School District Officers and Employees Not to Benefit.** The Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer, 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 Structural Designer to the School District officials or employees in violation of School District policy and Applicable Law shall be recoverable from the Structural Designer 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 Structural Designer.

16.12 **Assignment of Structural Designer's Employees.** The Structural Designer agrees not to assign any person dismissed from School District employment to perform services under this Contract. The Structural Designer 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 Structural Designer 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 Structural Designer's starting Services) criminal history record information report and child abuse history official clearance statement for the Structural Designer, if the Structural Designer is an individual, and for each of the Structural Designer'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 Structural Designer 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 Structural Designer, if the Structural Designer is an individual, and for each of the Structural Designer'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 Structural Designer 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 Structural Designer or of any Subconsultant of an arrest or conviction for an offense listed in 24 P.S. §1-111(e). The Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer'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 immediately terminate this Contract with no further obligation or responsibility on the part of the School District.

16.14 **Successors and Assigns.** The School District and the Structural Designer, 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 Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer'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 Structural Designer 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 Structural Designer, 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 Structural Designer 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 Structural Designer 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 Structural Designer 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 Structural Designer authorizes the School District, in its own name or the name of the Structural Designer, 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 Structural Designer all of its right, title and interest in any sales or use tax paid by the Structural Designer 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 Structural Designer'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 Structural Designer's performance under this Contract. In the event, however, that the Structural Designer is assessed or levied any taxes, fees, or similar charges related to this Contract or the Structural Designer's performance hereunder (except income or corporate taxes assessed against or levied on the Structural Designer), the School District agrees to cooperate fully with the Structural Designer, at School District expense, in any administrative actions or legal proceedings with the appropriate taxing authorities. If a final judgment is entered against the Structural Designer relating to the payment of such taxes, fees, or charges, the School District agrees to indemnify the Structural Designer for the amount thereof, including any penalties incurred in such review or contest. In no event shall the Structural Designer 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.**

(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 Pennsylvania 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.

(B) **Termination for Default.** The School District may terminate any School District contract for default by giving the Contractor a Termination Notice provided:

(i) the Contractor 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; 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 School District has requested in writing that the Contractor enter into or execute a 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, and the Contractor has willfully or in bad faith refused or declined to comply with said School District request; or

(iv) the School District has requested in writing that the Contractor cure its 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, and the Contractor has willfully or in bad faith refused or declined to comply with said School District request.

The Contractor shall be liable for all excess costs and other damages resulting from said termination for default.

16.19 **Authority to Execute Contract.** The Structural Designer 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 Structural Designer 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 Structural Designer. Nothing contained in this Contract is intended to benefit any third party. The Structural Designer's Subconsultants, the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project), 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.

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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: _____

By: _____

Name: MARJORIE G. NEFF

Title: Chair, School Reform Commission

Examined and Approved:

Dawn Renee Chism

Attorney for

SCHOOL DISTRICT OF PHILADELPHIA