

OGC CONTRACT NO. ___/F16

SC NO.:

ABC CODE:

AGREEMENT FOR SERVICES

Project:

Professional Supplemental Staffing - Office of Capital Programs

In consideration of the mutual promises set forth below, intending to be legally bound, **THE SCHOOL DISTRICT OF PHILADELPHIA**, a body corporate and political subdivision formed and existing under the laws of the Commonwealth of Pennsylvania (the "School District"), located at the Education Center, 440 North Broad Street, Philadelphia, Pennsylvania 19130-4015, and _____, a _____ (the "Contractor"), located at _____, have executed and delivered this Agreement for Services (the "Contract") as of _____, 2016.

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 billion. 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,

with 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 30 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.

The OCP seeks talented individuals with extensive knowledge of the design and construction industry to join its in-house team. In its Request for Proposals and Qualifications (“RFP”) to Provide Professional Supplemental Staffing On An As-Needed Basis, the OCP requested proposals from professional firms to provide the OCP with professional supplemental staffing resources, on an as-needed basis, for the Capital Improvement Program (“CIP”). The general role of selected firms in performing staffing services will be to provide the OCP with temporary employees to perform professional services as required by the OCP on an as-needed basis.

_____ responded to the RFP with a Proposal.

1. *Incorporation of Background; General Rules of Construction.* The above Background is incorporated by reference into 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.

2. *The Engagement, the Work, the Standard Terms and Conditions.* Subject to the terms and conditions set forth in this Contract, the School District engages the Contractor to carry out the work (the “Work”) set forth in (a) the attached Exhibit “A-1” – the Statement of Work; (b) the attached Exhibit “A-2” – the School District’s Request for Proposals and Qualifications to Provide Professional Supplemental Staffing On An As-Needed Basis (hereinafter referred to as “RFP for Professional Supplemental Staffing”); and (c) the attached Exhibit “A-3”, the Contractor’s Proposal submitted in response to the School District’s RFP for Professional Supplemental Staffing (each of which includes any sub-exhibits, attachments or addenda incorporated therein), and Exhibit “B” – the Contractor’s Fee Proposal (the “Fee Proposal”). The Work includes all Materials the Contractor has agreed to provide, the time frames in which the Contractor has agreed to complete the Work, and all other requirements the Contractor must satisfy in order to complete the Work during the Term (defined in Section 4 below). The terms and conditions of this Contract include the School District Standard Terms and Conditions (the “Standard Terms and Conditions”), attached hereto as Exhibit “C”.

3. *Resolution.* The SRC authorized this Contract by its resolution number A-____, dated _____, 2016. The Parties have attached the resolution to this Contract as Exhibit “D” for reference, and have incorporated by reference and made the resolution a part of this Contract. The School District has no power to contract for the Work outside the scope of the resolution.

4. *Contract Term.* The term of the Contract shall be for three (3) years, beginning on July 1, 2016 and ending through June 30, 2019, or to the date that the maximum amount of the Contractor’s fee has been expired, whichever comes first (the “Initial Term”), unless terminated sooner by the School District as provided in this Contract. The Contractor shall commence the Work promptly on the first day of the Initial Term and complete the Work not later than the last day of the Initial Term, except for those matters which contemplate performance after the expiration or termination of this Contract.

a. *Option to Extend.* The School District may, at its sole discretion, extend this Contract for up to one (1) additional successive one (1)-year (12 months) period (“Extended Term”). Pricing shall be subject to renegotiation between the parties at the time the School District exercises its option to extend. The Contractor 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 Extended Term. At least sixty (60) calendar days prior to the expiration of the Initial Term, the School District, at its sole discretion, may notify the Contractor, in writing, of its intention to recommend extension of this Contract for up to an additional one (1)-year (12 months) period to the School Reform Commission (“SRC”). Within ten (10) days of the Contractor’s receipt of the School District’s notice of its intention to recommend extension of this Contract, the Contractor shall supply a written price quote to the School District. Extension 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 up to _____, 2020, or to the date that the maximum amount of the Contractor’s fee has been expired, whichever occurs first, unless the SRC or a successor entity authorizes a further extension by Resolution.

5. *Compensation.* As compensation for the satisfactory performance of the Work carried out by the Contractor hereunder, the School District shall pay the Contractor, in arrears, a maximum total fee not to exceed the aggregate amount of _____ Dollars (\$_____), **conditioned, however, upon the continued availability of funds, as set forth in Sections 6 and 7 of the Standard Terms and Conditions** (the “Compensation”). The School District reserves the right to limit the amount of the Contract award. The School District does not guarantee the assignment of the complete program of Work to the Contractor.

a. *Budget.* The Contractor shall carry out the Work and bill the School District strictly in conformity with the Contractor’s Fee Proposal attached as Exhibit “B”, and the School District shall pay the Contractor strictly in conformity with the Contractor’s Fee Proposal.

b. *Fee Structure.* The Contractor shall earn the Compensation on the following basis (check one):

flat fee, pro-rated and billed monthly, or otherwise, as provided in Section 6 below;

X

at the hourly rate or rates per hour of labor specified in Exhibit "B", and billed monthly, or otherwise, as provided in Section 6 below; or

on such other basis as the Parties have specified, if any, in Exhibit "B" or Exhibit "A-2" or Exhibit "A-3", and billed monthly, or otherwise, as provided in Section 6 below.

The hourly rates for each position 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. The hourly rates shall be hourly billable all-inclusive wage rates for all persons listed in the Contractor's Fee Proposal. Only one (1) wage rate per position shall be permitted. Ranges for positions shall not be accepted by the School District. Additional positions shall not be added. The hourly wage rates shall be used for all services performed under this Contract.

6. *Invoices.* The Contractor shall submit timely invoices to the School District Responsible Official named in Section 9 below and, unless the Parties have agreed to a different schedule as set forth in Exhibit "A-2" or Exhibit "A-3" or Exhibit "B" hereto, the Contractor shall submit not more than *one invoice per month*. The Contractor shall submit its final invoice not later than ten (10) business days after the last day of the Term. The Contractor shall submit invoices in accordance with Section 3 of the Standard Terms and Conditions. All invoices shall include an itemization of charges and, at a minimum, a detailed description of the Work performed. The School District shall have no obligation to make any payment to the Contractor before receipt of an invoice that conforms to the requirements of this Contract.

7. *Federal Employer Identification Number.* The Contractor's federal employer identification number is: ___-____.

8. *Disputes.* 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 disputes 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	Contractor	Time After Dispute Notice
Project Designer or Project Manager	Project Manager	15 days
Contracts Manager, Capital Programs	Project Manager	15 days
Director or Operations Manager of Capital Programs	Principal in Charge	15 days

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

9. *Notices.* The Parties shall give notices and other communications required under this Contract in conformity with Section 21 of the Standard Terms and Conditions, and shall send all notices to:

School District Responsible Official: Contractor:

Name: Danielle Floyd
Title: Director of Capital Programs
Party: The School District of Philadelphia
Address: The Education Center
440 North Broad Street, Suite 371
Philadelphia, PA 19130-4015
Telephone: (215) 400-4730 () ____-____
Fax: (215) 400-4731 () ____-____
E mail address: dfloyd@philasd.org
Program Office
(School District):

10. *Order of Precedence.* The Parties have attached the following Exhibits to this Contract, each of which the Parties have agreed to incorporate in and make a part of this Contract:

<i>Exhibit</i>	<i>Exhibit Name</i>
“A-1”	The Statement of Work
“A-2”	RFP for Professional Supplemental Staffing
“A-3”	The Contractor’s Proposal
“B”	The Contractor’s Fee Proposal
“C”	School District Standard Terms and Conditions
“D”	SRC Resolution
“E”	The Contractor’s M/W/BE Participation Plan

In the event of a conflict between any Exhibit and another Exhibit, or this Agreement for Services, the following order of precedence shall apply: first, this Agreement for Services; second, Exhibit "C"; third, Exhibit "A-1"; fourth, Exhibit "A-2"; fifth, Exhibit "A-3"; sixth, Exhibit "D"; seventh, Exhibit "B", and eighth, Exhibit "E".

11. *Modifications.* The Parties have agreed to the following modifications to the terms and conditions set forth elsewhere in this Contract.

a. *Standard of Performance.* Strike subsection 1.a., *Standard of Performance*, page 1, Exhibit "C", the Standard Terms and Conditions, and substitute:

a. *Standard of Performance.* The Contractor 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 services such as those provided in this Contract. The Contractor's attention is directed to the fact that the Services are urgently needed by the School District. The Contractor's Services under this Contract shall be performed as expeditiously as is consistent with said professional standards and sound professional practices. The Contractor shall use its best efforts to assure timely and satisfactory completion of its Services in accordance with the School District's project or work schedules. The Contractor 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 Contractor 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. All Services to be performed by the Contractor that require the exercise of professional skills or judgment shall be accomplished by professionals licensed or certified to practice in the applicable professional discipline in the Commonwealth of Pennsylvania. The Contractor shall remain responsible for the professional and technical accuracy of all Services furnished under this Contract. All Services of the Contractor and its Subcontractors shall be done in consultation with, or under the direction of, a representative of the School District's Director of Capital Programs.

b. *Meetings.* Strike subsection 1.f., *Meetings*, page 1, Exhibit "C", the Standard Terms and Conditions, and substitute:

f. *Meetings; Minutes, Reports, Communications and Correspondence.* The Contractor shall prepare for, attend, and participate in meetings with School District representatives of the Office of Capital Program's representatives. Upon request or as required by this Contract, the Contractor shall prepare and distribute minutes of meetings, progress reports, and any other reports, correspondence and communications to School District representatives of the Office of Capital Program's representatives, in an electronic format designated by the School District. Upon request or as required by this Contract, the Contractor shall provide the School District with oral or written reports of its activities, on a monthly basis or more often as needed or required.

c. *Best Pricing.* Strike Section 5., ***Best Pricing***, page 3, Exhibit “C”, the Standard Terms and Conditions.

d. *Independent Contractor.* Strike Section 8., ***Independent Contractor***, page 3, Exhibit “C”, the Standard Terms and Conditions, and substitute”

8. ***Status of Contractor.*** The Contractor is an authorized representative of the School District, and shall have the powers, duties and responsibilities that are delegated by the School District to the Contractor under this Contract. The Contractor is not an employee of the School District and its agents, employees and Subcontractors are not entitled to any benefits or privileges acquired in the ordinary course of employment from the School District.

e. *Non-Discrimination.* Add the following sentences to Section 9., ***Non-Discrimination***, page 4, Exhibit “C”, the Standard Terms and Conditions:

The Contractor’s Proposal, M/W/BE Participation Plan, is attached as Exhibit “E” and incorporated by reference into this Contract. The Contractor shall not replace or substitute the M/WBE firms identified in the Contractor’s Proposal, M/W/BE Participation Plan, or increase or decrease the contract MBE/WBE percentages, or increase or decrease the dollar amounts for the MBE/WBE firms, without the prior written notice to and approval of the School District. The Contractor shall promptly submit any revised M/W/BE Participation Plans to the School District for its prior approval.

f. *Indemnification.* Strike subsection 13.a., ***Indemnification***, page 5, Exhibit “C”, the Standard Terms and Conditions, and substitute:

a. *Indemnification.* The Contractor 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 the Contractor’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 Contractor, its officers, agents, employees, servants, or Subcontractors 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 Subcontractor of the Contractor 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 Contractor is or may become responsible. The Contractor agrees that in the event that any employee of the Contractor 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 Contractor under this Contract that the Contractor 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 Contractor 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 Contractor in the event that the School District is sued by an employee of the Contractor. 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).

g. *Insurance*. Strike the seventh sentence of Section 15., ***Insurance***, page 6, Exhibit "C", the Standard Terms and Conditions, and substitute:

The Contractor 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 Contractor shall ensure that its insurer or insurers so endorse said policy.

Add the following at the end of Section 15., ***Insurance***, page 6, Exhibit "C", the Standard Terms and Conditions, before subsection 15.a., *Workers' Compensation and Employer's Liability*:

The Contractor shall require all insurance policies in any way related to the work secured and maintained by the Contractor and all tiers of its Subcontractors to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against the School District.

Add the following sentence to Section 15., ***Insurance***, page 7, Exhibit "C", the Standard Terms and Conditions, after the sentence, "The Contractor shall deliver the original certificate and endorsements providing proof of insurance to ...":

The Contractor shall deliver copies of the original certificate(s) and endorsements 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
(215) 400-5256

Add the following paragraph at the end of Section 15., ***Insurance***, page 7, Exhibit "C", the Standard Terms and Conditions:

The Contractor shall advise the School District in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon its services, omission or breach, that it will abide fully by Section 13., **Indemnification; Litigation Cooperation; Notice of Claims**, and Section 15., **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 Section 13., **Indemnification; Litigation Cooperation; Notice of Claims**, and Section 15., **Insurance**, of this Contract. The Contractor shall not decline to provide the School District with full protection and coverage under Section 13., **Indemnification; Litigation Cooperation; Notice of Claims**, and Section 15., **Insurance**, of this Contract because some other contractor or consultant may, in whole or in part, be responsible for the occurrence, death, 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 Contractor agrees that any violation of this paragraph of Section 15., **Insurance**, shall be deemed a material breach of this Contract.

h. *Educator's Legal Liability Insurance.* Strike subsection 15.d.i., *Educator's Legal Liability Insurance*, page 7, Exhibit "C", the Standard Terms and Conditions.

i. *Insurance – Excess/Umbrella Liability.* The Parties supplement Section 15., **Insurance**, pages 6-7, of Exhibit "C", the Standard Terms and Conditions, by adding a new subsection e., after subsection d.i., as follows:

e. *Excess/Umbrella Liability.* Limit of Liability: at least \$3,000,000 combined single limit and at least \$3,000,000 aggregate limit with an additional insured endorsement for the School District on the liability policy. 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).

j. *Stoppage or Abandonment.* Add the following subsection 20.b., *Stoppage or Abandonment*, to Section 20., **Termination for Convenience**, page 10, Exhibit "C", the Standard Terms and Conditions:

b. *Stoppage or Abandonment.* The School District may order the Contractor, in writing, to stop or abandon all or any part of its services or work, for the convenience of the School District, or for work stoppages beyond the control of the School District or the Contractor. Any increased costs incurred as a result of the stoppage or abandonment of the services or work shall be an equitable amount determined by the School District and the Contractor in view of all the facts and circumstances. If the work or services is abandoned, the School District shall pay the Contractor for all work or services performed to the date of the abandonment in accordance with Section 20., **Termination for Convenience**, of this Contract.

k. *Suspension for Convenience.* Add the following subsection 20.c.,

Suspension for Convenience, to Section 20., *Termination for Convenience*, page 10, Exhibit “C”, the Standard Terms and Conditions:

c. *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 fourteen (14) days’ prior written notice to the Contractor (except that in the event of a public emergency, as determined by the School District, no such period of notice shall be required). If a suspension of the services pursuant to this subsection is for greater than thirty (30) days, the Contractor shall have the right to submit a claim to the School District for the payment of costs for all services or work performed in accordance with the provisions of this Contract prior to the effective date of the suspension. The Contractor 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 subsection. The School District shall have the right, during the period of any suspension pursuant to this subsection, to terminate this Contract as provided in this Contract.

In witness whereof, the Parties, intending to be legally bound, have executed and delivered this Contract as of the day and year set forth above.

By: _____
_____ [Name]
_____ [Title]

Examined and Approved:

THE SCHOOL DISTRICT OF PHILADELPHIA

Dawn Renee Chism
Attorney, The School District
of Philadelphia

By: _____
MARGORIE G. NEFF
Chair, School Reform Commission