

OGC CONTRACT NO. ___/F18

SC NO.:

ABC CODE:

AGREEMENT FOR SERVICES

Project:

*Request For Proposals
To Provide Façade Inspections*

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 _____, 2017.

1. *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" – Statement of Work; (b) Exhibit "A-2" – School District Request for Proposals to Provide Façade Inspections; and (c) the attached Exhibit "A-3", the Contractor's Proposal submitted in response to Request for Proposals to Provide Façade Inspections (each of which includes any sub-exhibits, attachments or addenda incorporated therein), and Exhibit "B" – the Contractor's Budget (the "Budget"). 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 3 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".

2. *Resolution.* The School Reform Commission authorized this Contract by its resolution number A-_, dated _____, 2017. The Parties have attached the resolution to this Contract as Exhibit "D" for reference but have not 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.

3. *Contract Term.* The term of the Contract shall be for a period of up to two (2) years commencing on _____, 2017 through _____ (the "Term" or 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 Term and complete the Work not later than the last day of the Term, except for those matters which contemplate performance after the expiration or termination of this Contract.

4. *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 total fee not to exceed _____ **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”).

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

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 5 below;
- at the hourly rate or rates per hour of labor specified in Exhibit “B” or Exhibit “A”, and billed monthly, or otherwise, as provided in Section 5 below; or
- on such other basis as the Parties have specified, if any, in Exhibit “B” or Exhibit “A”, and billed monthly, or otherwise, as provided in Section 5 below.

5. *Invoices.* The Contractor shall submit timely invoices to the School District Responsible Official named in Section 7 below and, unless the Parties have agreed to a different schedule as set forth in Exhibit “A” 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.

6. *Federal Employer Identification Number.* The Contractor’s federal employer identification number is: _____.

7. *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: Interim Chief Operations Officer/
Director of Capital Programs _____
Party: The School District of Philadelphia _____
Address: 440 Broad Street, Suite 371 _____
Philadelphia, PA 19130-4015 _____
Telephone: (215) 400-4730 _____
Fax: (215) 400-4731 _____
E mail address: dfloyd@philasd.org _____
Program Office Capital Programs _____
(School District):

8. *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"	Statement of Work
"A-2"	Request for Proposals to Provide Façade Inspections
"A-3"	The Contractor's Proposal
"B"	The Contractor's Budget
"C"	School District Standard Terms and Conditions

In the event of 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 "B". The Parties acknowledge and agree that each shall construe the terms, covenants and conditions set forth in this Contract, including each Exhibit hereto, as consistent with one another insofar as possible, so as to give effect to the fullest extent possible to each particular clause; where more than one clause, covenant or term may address the same subject matter the Parties shall comply with the most restrictive of the pertinent clauses, covenants or terms. The Parties shall not construe particular clauses, covenants or terms to conflict with one another if, in light of the terms of the Contract taken as a whole, the Parties can reasonably construe the clauses, covenants or terms in a manner which does not give rise to a conflict.

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

a. *Option to Extend the Term.* The School District shall have the right to extend the Term of this Contract for one (1) additional period of one (1) year each, to June 30 of the following calendar year. The School District shall exercise the option by giving notice to the Contractor not later than May 1 of the calendar year in which the Term of the Contract is then scheduled to expire. Exercise of the one year (1) option requires approval hereafter by the

School Reform Commission.

b. *Standard of Performance.* Strike subsection 1.a., *Standard of Performance*, of Section 1, **General Conditions of the Work**, page 1, Exhibit “C”, the Standard Terms and Conditions, and substitute:

“a. *Standard of Performance.* The Contractor shall exercise a high standard of professional skill, care, diligence and competence in the rendition of its Work 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 Work 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 Work in accordance with the schedules for the Work. 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 Work under this Contract in accordance with the terms and conditions of this Contract and to the reasonable satisfaction of the School District. The Contractor shall remain responsible for the professional quality, technical accuracy, completeness and coordination of all Work and deliverables furnished under this Contract. The Contractor shall be responsible for the means, methods, techniques, sequences, and procedures to perform the Work required under this Contract. All Work shall be done in consultation with or under the direction of a representative of the School District Interim Chief Operations Officer/Director of Capital Programs or her designee.

(1) All Inspection Procedure Plans, Condition Standards documents, Inspection Reports, Design Documents for Corrective Measures, or other documents shall be stamped (with the name, seal and dated signature) by a licensed architect or engineer in accordance with the Pennsylvania Architects Licensure Law, 63 P.S. §§34.1-34.22, and the Pennsylvania Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. §§148-158.2.

(2) The Contractor shall be fully responsible and liable for the performance of all Work, on-time and on-budget, required under this Contract whether performed by the Contractor’s own personnel or by Subcontractors of the Contractor.

(3) All Inspection Procedure Plans, Condition Standards documents, Inspection Reports, Design Documents for Corrective Measures, or other documents furnished by the Contractor or its Subcontractors found to be defective, solely as a result of the errors, omissions or negligence of the Contractor or its Subcontractors, shall be promptly corrected by the Contractor or its Subcontractors, at no additional cost to the School District.

(4) The Contractor shall revise the Work, at no additional 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 Contractor shall also make revisions in Inspection Procedure Plans, Condition Standards documents, Inspection Reports, Design Documents for Corrective Measures, or other documents, at no additional cost to the School District, whenever such revisions are required by reason of any of these documents 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 Contractor or its Subcontractors.”

c. *Meetings.* Strike subsection 1.f., *Meetings*, of Section 1, **General Conditions of the Work**, 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 Programs. 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 Programs, 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.”

d. *Inspections.* Add subsection 1.i., *Inspections*, to Section 1, **General Conditions of the Work**, page 1, Exhibit “C”, the Standard Terms and Conditions:

“i. *Inspections.* The School District shall have the right to inspect the Work of the Contractor at all times and locations. The School District shall at all times have access to the Work whenever it is in preparation or progress.”

e. *Best Pricing.* Strike Section 5., **Best Pricing**, of Section 1, **General Conditions of the Work**, page 3, Exhibit “C”, the Standard Terms and Conditions.

f. *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.”

g. *Subcontracts.* Add subsection 10.c. *Subcontract Duties and Responsibilities*, to Section 10, **Subcontracts**, page 4, Exhibit “C”, the Standard Terms and Conditions:

“c. *Subcontract Duties and Responsibilities.* If the Contractor employs any subcontractors to perform any of the Work, all terms and conditions under the Contract applying

to the Contractor apply equally to its Subcontractors. The Contractor shall be as fully responsible for the acts and omissions of its Subcontractors, and for everyone, either directly or indirectly employed by them, as it shall be for the acts and omissions of persons directly employed by it. Subcontractors, if any, shall look only to the Contractor for payment, satisfaction, or legal redress in the event of any dispute arising out of the Contract Documents, and hereby waive any claim or cause of action against the School District arising out of the Contract or other transaction with the Contractor. The School District shall have no obligation to pay nor to see to the payment of any monies to any Subcontractor of the Contractor, except as may otherwise be required by law.”

h. *Indemnification.* Strike subsection 13.a., *Indemnification*, of Section 13, **Indemnification; Litigation Cooperation; Notice of Claims**, 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).”

i. *Insurance.* Strike Section 15, **Insurance**, pages 6 and 7, Exhibit “C”, the Standard Terms and Conditions, and substitute:

“15. **Insurance.** The Contractor shall, at its own expense, procure and maintain the types and minimum limits of insurance specified below covering the performance of the Work. All insurance shall be procured from reputable insurers who are financially responsible and authorized to do business on an admitted basis in the Commonwealth of Pennsylvania or otherwise acceptable to the School District’s Office of Risk Management. All insurance must be afforded by an insurance carrier with at least an A- (Excellent) rating from a reputable agency (e.g., A.M. Best). All insurance herein, except the professional liability insurance, shall be written on an “occurrence” basis and not a “claims-made” basis. In no event shall work be performed until the required evidence of insurance has been provided. The insurance shall provide for at least thirty (30) days prior written notice to be given to the School District in the event coverage is materially changed, cancelled or non-renewed. The School District of Philadelphia and its officers, employees and agents shall be named as additional insureds on all liability policies (except Workers’ Compensation & Professional Liability), and the policies shall be so endorsed. Endorsements are required stating that the coverage afforded the School District and its officers, employees and agents as additional insureds will be primary to any other coverage available to them, and that no act or omission of the School District or its officers, employees and agents shall invalidate the coverage, other than an act or omission that would constitute willful misconduct or gross negligence. The Contractor will waive all rights of recovery against the School District of Philadelphia (where allowed by law) and all the additional insureds for loss or damage covered by any of the insurance maintained by the Contractor.

(a) **Workers’ Compensation and Employer’s Liability.**

- (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. Products/Completed Operations must be maintained for at least 2 years after final payment (including coverage for Additional Insureds as set forth below. The General Aggregate should apply on a per project basis. The School District may require higher limits of liability if, in the School District’s sole discretion, the potential risk so warrants.
- (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).
- (2A) Policy must be endorsed to include “Resulting Damage”.

- (3) The School District may require higher limits of liability if in the School District's sole discretion, the potential risk so warrants.

(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.
- (3) If transportation of hazardous material is involved, the policy shall include the following endorsements: MCS-90 and ISO-9948.

(d) **Professional Liability Insurance.**

- (1) Limit of Liability: \$2,000,000 with a deductible not to exceed \$100,000.
- (2) Coverage: Errors and omissions, including liability assumed under this Contract.
- (3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of the performance of the Services required under this Contract shall be maintained in full force and effect for a retroactive date prior to work and an extending reporting period of 60 months after the work is completed.

(e) **Excess Umbrella Liability.**

- (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. The General Aggregate must apply on a per project basis.
- (2) Coverage: Limits in excess of underlying limits in underlying primary insurance policies and broader coverage than combined scope of underlying primary insurance policies.

(f) **Crime Insurance:** The Subcontractor shall be responsible for maintaining Crime Insurance, which includes the Employee Theft and Theft, Disappearance and Destruction coverage parts, in an amount not less than \$250,000 Per Occurrence. The Employee Theft Coverage part should include the Clients' Property Endorsement (ISO Form CR 04 01, or its equivalent).

(g) **Owned, Leased, Rented or Borrowed Equipment:** The Contractor shall maintain Property Coverage for their owned, leased, rented or borrowed equipment, tools, trailers, etc.

(h) **Property Coverage:** The Contractor shall provide coverage for damage to their work, materials to be part of the project (on-site and off-site), and in transit.

Based on the scope and size of a School District project, the School District shall have the right to revise the insurance requirements specified above.

Evidence of Insurance Coverage. Certificates of Insurance evidencing the required coverages and Endorsements must specifically reference the School District Contract Number set forth on the first page of the Contract (the Contract Number can be typed in the 'Description' section of the certificate). The original Certificate of Insurance and Endorsement shall be submitted to the address below:

School District of Philadelphia
Office of Risk Management
Attn.: Riccardo Zucaro, Director of Insurance Risk Management
440 North Broad Street, Suite 325
Philadelphia, Pa 19130-4015
Fax: (215) 400-4591
Phone: (215) 400-4590

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.: 215-400-5256)

The Certificate of Insurance and the Endorsement must be submitted to the School District at least ten (10) calendar days before any contractual services or Additional Term or renewal begins. 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. Under no circumstances shall the Contractor actually begin services (or continue services, in the case of renewal or an Additional Term) without providing the evidence of insurance. The School District reserves the right to require the Contractor to provide certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) calendar days written notice to the Contractor.

Notice of Claim or Lawsuit. The Contractor shall advise the School District in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon the Contractor's 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, 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 Contractor agrees that any violation of this Paragraph of Section 15 (*Insurance*) shall be deemed a material breach of this Contract.

Self-Insurance. The Contractor 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 Contractor desires to self-insure any of the coverages listed above, it shall submit to the School District's Director of Insurance Risk Management, prior to the commencement of Services hereunder, a certified copy of the Contractor'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 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 Contractor'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 the Initial Term of this Contract, the Contractor self-insures its professional liability or workers' compensation and employers' liability coverage, the Contractor 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 Contractor to the School District, or to limit the Contractor's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by the Contractor hereunder."

j. *Contractor's Reserved Rights and School District's Rights.* Add subsection 16.e., *Contractor's Reserved Rights and School District's Rights*, to Section 16., ***Confidentiality; Student Records; Data Ownership***, pages 7-8, Exhibit "C", the Standard Terms and Conditions:

"e. *Contractor's Reserved Rights and School District's Rights.* This subsection 16.e. applies if the Contractor is performing architectural design services for the School District's Project. The design documents prepared by the Contractor for the School District Project are instruments of the Contractor's service for use solely with respect to the School District's Project and shall remain the property of the Contractor, whether the School District's Project for which the Contractor's design documents are made is executed or not. Unless otherwise noted, the Contractor shall be deemed the author of these design 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 Contractor's designs, drawings, specifications and other documents for information and reference in connection with the School District's Project for which the Contractor's design documents are made. The Contractor'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

Contractor. If the Contractor is in default of this Contract, title to and exclusive use of the Contractor's designs, drawings, specifications and all related documents shall vest in the School District, but the School District shall indemnify and hold harmless the Contractor and its officers and employees from any liability arising from the use or reuse of such documents without the assistance of the Contractor, including costs of litigation, reasonable attorneys' fees and time spent by the Contractor and its Subcontractors attending depositions and court proceedings. It is expressly understood and agreed that the School District shall have the right to utilize the Contractor's designs, drawings, specifications and other documents in the event the School District executes the Project for which the Contractor's design documents are made, or completes the Contractor's documents for the Project after any prior termination thereof due to the Contractor's default of this Contract. The School District agrees to indemnify and hold harmless the Contractor and its officers and employees from any liability arising from the use or reuse of such documents without the assistance of the Contractor, including costs of litigation, reasonable attorneys' fees and time spent by the Contractor and its Subcontractors attending depositions and court proceedings."

k. *School District's Rights to Use for Project.* Add subsection 16.f., *School District's Rights to Use for Project*, to Section 16., **Confidentiality; Student Records; Data Ownership**, pages 7-8, Exhibit "C", the Standard Terms and Conditions:

"f. *School District's Rights to Use for Project.* This subsection 16.f. applies if the Contractor is performing architectural design services for the School District's Project. It is expressly understood and agreed that the School District shall have the right to utilize the Contractor's designs, drawings, specifications and other documents in the event the School District extends or adds additional schools to the Project, corrects any deficiencies, makes any renovations or repairs to the Project, completes the Project after any prior termination thereof due to the Contractor's default of this Contract, or for future Project design use, at no additional cost to the School District. The School District agrees to indemnify and hold harmless the Contractor and its officers and employees from any liability arising from the use or reuse of such documents without the assistance of the Contractor, including costs of litigation, reasonable attorneys' fees and time spent by the Contractor and its Subcontractors attending depositions and court proceedings."

l. *Restrictions on Contractor's Use.* Add subsection 16.g., *Restrictions on Contractor's Use*, to Section 16., **Confidentiality; Student Records; Data Ownership**, pages 7-8, Exhibit "C", the Standard Terms and Conditions:

"g. *Restrictions on Contractor's Use.* Except as provided in this Section 16., **Confidentiality; Student Records; Data Ownership**, the Contractor shall not, without the prior written consent of the School District, use or allow to be used the designs, drawings, specifications or other documents uniquely developed specifically for the Project pursuant to this Contract, or any documents, drawings or specifications substantially similar thereto for any project other than the Project."

m. *Special Publication Rights of Contractor.* Add subsection 16.h., *Special Publication Rights of Contractor*, to Section 16., **Confidentiality; Student Records; Data**

Ownership, pages 7-8, Exhibit “C”, the Standard Terms and Conditions:

“h. *Special Publication Rights of Contractor.* The Contractor shall have the right to include representations of designs for the Project, including photographs, among its promotional and professional materials and for publication and teaching purposes. The Contractor’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 Contractor on any construction sign and in the promotional materials for the Project.”

n. *No Publication by Submission or Distribution.* Add subsection 16.i., *No Publication by Submission or Distribution*, to Section 16., **Confidentiality; Student Records; Data Ownership**, pages 7-8, Exhibit “C”, the Standard Terms and Conditions:

“i. *No Publication by Submission or Distribution.* Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Contractor’s reserved rights.”

o. *Risk of Loss.* Add subsection 16.j., *Risk of Loss*, to Section 16., **Confidentiality; Student Records; Data Ownership**, pages 7-8, Exhibit “C”, the Standard Terms and Conditions:

“j. *Risk of Loss.* During the performance of the Work, the Contractor shall be responsible for any loss or damage to the documents, data, records, reports, and files that are produced by the Contractor 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 Contractor.”

p. *Review and Access.* Add subsection 16.k., *Review and Access*, to Section 16., **Confidentiality; Student Records; Data Ownership**, pages 7-8, Exhibit “C”, the Standard Terms and Conditions:

“k. *Review and Access.* Full access to the Work during the Contractor’s preparation of documents, data, records, reports, and files shall be available to the School District and other public agencies interested in this Work during normal business hours upon reasonable notice.”

q. *Termination or Expiration.* Add subsection 16.l., *Termination or Expiration*, to Section 16., **Confidentiality; Student Records; Data Ownership**, pages 7-8, Exhibit “C”, the Standard Terms and Conditions:

“l. *Termination or Expiration.* Upon termination or expiration of this Contract, the Contractor 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.”

r. *Publicity.* Add subsection 16.m., *Publicity*, to Section 16., **Confidentiality; Student Records; Data Ownership**, pages 7-8, Exhibit “C”, the Standard Terms and Conditions:

“m. *Publicity.* Neither the School District nor the Contractor shall publicize this Contract or the Work, or attribute any comments or views about this Contract or the Work 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 Section shall be construed to prohibit the Contractor from making any disclosure relating to this Contract or Work 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 Contractor, the Contractor shall refer all press and public inquiries regarding the Project to the School District’s designated representative during the term of this Contract. At any time thereafter, the Contractor may respond to press and public inquiries regarding the concept and design of the Project following notice to the School District’s designated representative. During the term of this Contract, the Contractor 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 Project.”

s. *Data Ownership.* Modify subsection 16.d., *Data Ownership*, of Section 16., **Confidentiality; Student Records; Data Ownership**, page 8, Exhibit “C”, the Standard Terms and Conditions, by adding subsections 16.e., *Contractor’s Reserved Rights and School District’s Rights*, 16.f., *School District’s Rights to Use for Project*, 16.g., *Restrictions on Contractor’s Use*, 16.h., *Special Publication Rights of Contractor*, 16.i., *No Publication by Submission or Distribution*, 16.j., *Risk of Loss*, 16.k., *Review and Access*, 16.l., *Termination or Expiration*, 16.m., *Publicity, above*.

t. *Consent to Use of Another Contractor upon Termination for Default.* Add subsection 19.f., *Consent to Use of Another Contractor upon Termination for Default.* to Section 19., **Default; Notice and Cure; Remedies**, pages 8-9, Exhibit “C”, the Standard Terms and Conditions:

“f. *Consent to Use of Another Contractor upon Termination for Default.* If the Contractor is performing architectural design services, then in the event of termination under this Agreement of Services due to the default of the Contractor, the Contractor consents to the School District’s selection of another contractor of the School District’s choice to assist the School District in any way in completing the Contractor’s documents for the Project and related documents. The Contractor further agrees to cooperate and provide any information requested by the School District in connection with the completion of the Contractor’s documents for the Project and related documents. The Contractor authorizes the making of any reasonable changes to the Contractor’s documents for the Project and related documents by the School District and such other contractor as the School District may desire. In the event that another contractor is selected or changes are made to the Contractor’s documents for the Project and related

documents, the School District agrees to indemnify and hold harmless the Contractor and its officers and employees from any liability arising from use and changes to the Contractor's documents for the Project and related documents, including costs of litigation, reasonable attorneys' fees and time spent by the Contractor and its Subcontractors attending depositions and court proceedings."

u. *Stoppage or Abandonment.* Add 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 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 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 is abandoned, the School District shall pay the Contractor for all Work performed to the date of the abandonment in accordance with Section 20., ***Termination for Convenience***, of this Contract. The School District shall have the right to stop the Work or any part thereof in the event that the Contractor fails to remedy any defects in any of the Work, or commits an Event of Default under Section 19, ***Default; Notice and Cure; Remedies***, of this Contract, following written notice by the School District, or fails to carry out any part of the Work in accordance with this Contract, by issuing a written Stop Work Order, which shall be signed by the School District's Contract Administrator. Any Stop Work Order shall state in reasonable detail the cause(s) for its issuance. Upon receiving a Stop Work Order, the Contractor shall immediately cease working on that part of the Work specified in the Stop Work Order until the School District notifies the Contractor in writing to resume the Work. The Contractor shall resume the Work immediately upon receipt of such written notice from the School District."

v. *Suspension for Convenience.* Add 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 Work, 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 Work 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 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."

w. *Disputes.* Add subsection 24. m., *Disputes*, to Section 24, **Miscellaneous**, pages 12-13, Exhibit “C”, the Standard Terms and Conditions:

“m. *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
Design Manager or Contracts Manager	Project Manager	15 days
Operations Manager or Interim Chief Operations Officer/Director, Capital Programs	Principal in Charge	15 days

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

x. *Pennsylvania Bond Remedy.* Add subsection 24.n., *Pennsylvania Bond Law Remedy*, to Section 24, **Miscellaneous**, pages 12-13, Exhibit “C”, the Standard Terms and Conditions:

“n. *Pennsylvania Bond Law Remedy.* The Mechanics’ Lien Law, Act of August 24, 1963, P.L. 1175, No. 497 (49 P.S. §1101 *et seq.*) prohibits the filing of mechanics’ liens on School District construction projects. The substitute remedy for the Mechanics’ Lien Law is the Public Works Contractors’ Bond Law, Act of December 20, 1967, P.L. 869, No. 385 (8 P.S. §191 *et seq.*). The Contractor shall comply with all terms and conditions of the Pennsylvania Public Works Contractors’ Bond Law, 8 P.S. §191 *et seq.*, if applicable to the Contractor or the Work of the Contractor on the Project.”

y. *Non-Applicability of Pennsylvania Prompt Payment Acts.* Add subsection 24.o., *Non-Applicability of Pennsylvania Prompt Payment Acts*, to Section 24, **Miscellaneous**, pages 12-13, Exhibit “C”, the Standard Terms and Conditions:

“o. *Non-Applicability of Pennsylvania Prompt Payment Acts.* The School District 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)), 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 building, construction, alterations, improvements, demolition, or repair contracts. The School

District has no obligation to make progress payments, final payments, retainage payments, or any other type of payment, within the time periods set forth in the Award and Execution of Public Contracts Law or the Commonwealth Procurement Code, General Procurement Provisions, or to pay any interest, penalties, attorneys' fees, costs, and expenses to the Contractor or any of its Subcontractors under the Award and Execution of Public Contracts Law or the Commonwealth Procurement Code, General Procurement Provisions. Contractors, Subcontractors, and suppliers cannot make, assert or file a claim, cause of action or lawsuit against the School District for violation of the prompt payment provisions of the Award and Execution of Public Contracts Law, or the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions. The School District 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 and its construction contracts. The School District has no obligation to make progress payments, final payments, retainage payments, or any other type of payment, within the time periods set forth in the Contractor and Subcontractor Payment Act, or to pay interest, penalties, attorneys' fees, costs, and expenses to the Contractor or any of its Subcontractors under the Contractor and Subcontractor Payment Act. Contractors, Subcontractors, and suppliers cannot make, assert or file a claim, cause of action or lawsuit against the School District for violation of the Contractor and Subcontractor Payment Act. The Contractor shall comply with all terms and conditions of the Pennsylvania prompt payment acts (Award and Execution of Public Contracts Law, 73 P.S. § 1626 *et seq.*, and the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions, 62 Pa.C.S.A. §3931 *et seq.*, and the Contractor and Subcontractor Payment Act, 73 P.S. §501 *et seq.*) with regard to its own payments to its Subcontractors, if applicable to the Contractor or the Work of the Contractor on the Project."

z. *Compliance with Pennsylvania Prevailing Wage Act and Prevailing Regulations or Davis-Bacon Act and Davis-Bacon Act Regulations.* Add subsection 24.p., *Compliance with Pennsylvania Prevailing Wage Act and Prevailing Regulations or Davis-Bacon Act and Davis-Bacon Act Regulations*, to Section 24, **Miscellaneous**, pages 12-13, Exhibit "C", the Standard Terms and Conditions:

"p. *Compliance with Pennsylvania Prevailing Wage Act and Prevailing Regulations or Davis-Bacon Act and Davis-Bacon Act Regulations.* The Contractor shall comply with all terms and conditions of the Pennsylvania Prevailing Wage Act, 43 P.S. §165-1 *et seq.*, and the Prevailing Regulations, 34 Pa. Code §9.101 *et seq.*, if applicable to the Contractor or the Work of the Contractor on the Project. The Contractor shall comply with all terms and conditions of the Davis-Bacon Act, 40 USCS §3141 *et seq.*, and the Davis-Bacon Act Regulations, 29 CFR Parts 1, 3, and 5, if applicable to the Contractor or the Work of the Contractor on the Project."

aa. *Statutes of Limitation and Statute of Repose.* Add subsection 24.q., *Statutes of Limitation and Statute of Repose*, to Section 24, **Miscellaneous**, pages 12-13, Exhibit "C", the Standard Terms and Conditions:

"q. *Statutes of Limitation and Statute of Repose.* The School District is a "political subdivision" and an "agency of the legislature" of the Commonwealth of Pennsylvania. Pursuant to the Constitution of the Commonwealth of Pennsylvania, Pa. Cons., Art. 3, §14; the

Public School Code, 24 P.S. §7-701, and the Pennsylvania Code, 25 Pa. Admin. Code §171.13, the School District has mandatory duties and obligations to provide necessary grounds and suitable school buildings to accommodate children attending school in the school district, and to construct, furnish, equip, and maintain its school buildings and grounds in a proper, safe and healthful manner. Therefore, the School District has the right to invoke the doctrine of “*nullum tempus occurrit regi*”, and the Pennsylvania statutes of limitation, 42 Pa.C.S.A. §§5523, 5524, 5525 & 5527, and Pennsylvania statute of repose, 42 Pa.C.S.A. §5536, do not apply to the School District of Philadelphia and its contracts for work or services for its school grounds and buildings and its school construction projects.”

bb. *Public Works Employment Verification.* Add subsection 24.r., *Public Works Employment Verification*, to Section 24, **Miscellaneous**, pages 12-13, Exhibit “C”, the Standard Terms and Conditions:

“r. *Public Works Employment Verification.* The Contractor shall comply with all terms and conditions of the Public Works Employment Verification Act, 43 P.S. §167.1, *et seq.*, and the policy guidelines of the Department of General Services of the Commonwealth of Pennsylvania for the scope, administration and enforcement of the Public Works Employment Verification Act, 4 Pa. Code §66.1, *et seq.*, if applicable to the Contractor or the Work of the Contractor on the Project.”

REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

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: _____

Examined and Approved

THE SCHOOL DISTRICT OF PHILADELPHIA

Attorney, The School District
of Philadelphia

By: _____
William R. Hite, Jr., Ed.D.
Superintendent

Exhibit "A-1"

Statement of Work

The City of Philadelphia Ordinance Bill Nos. 090568-AAA, 120647, and 140856 (hereafter called "Philadelphia Façade Ordinance"), enacted in 2010 and revised in 2014, amended Section 315 of the Philadelphia Property Maintenance Code ("Section PM-315"). Section PM-315 of the Philadelphia Property Maintenance Code requires an owner of any building six (6) or more stories in height and any building with any appurtenances in excess of 60 feet in height to be responsible for retaining a Professional to conduct periodic inspections of the exterior walls and appurtenances of said building (hereafter called "façade inspection") and to prepare and file a report on such façade inspection (hereafter called "Façade Inspection Report") with the owner of said building.

The Professional must be a Commonwealth of Pennsylvania licensed Professional Engineer experienced in the practice of structural engineering or a licensed Registered Architect knowledgeable in the design, construction, and inspection of building facades. The Philadelphia Façade Ordinance specifies the method of façade inspection. The façade inspection shall be conducted and witnessed by or under the supervision of the Professional. A physical, hands-on inspection shall be performed from a scaffold or other observation platform at a representative sample of the exterior wall. The Professional shall determine what constitutes a representative sample, based upon the known history of the building, the nature of the materials used, and the conditions observed. The Professional shall determine the methods employed in the façade inspection, but need not be physically present at the location where the façade inspection is performed. The Professional shall classify the façade as Safe, Safe with a Repair and Maintenance Program, or Unsafe. The Façade Inspection Report submitted by the Professional shall include seventeen (17) items of specific information as described in the Philadelphia Façade Ordinance.

After the façade inspection of said building by the Professional, the owner of said building is required to file, by email, a summary of the inspection by the Professional of said building with the City of Philadelphia Department of Licenses and Inspections on a form entitled "Summary Inspection Report of Exterior Walls and Appurtenances".

The School District has issued a Request for Proposals to Provide Façade Inspections ("the RFP") to obtain proposals from professional firms to conduct façade inspections of select School District of Philadelphia buildings and to provide inspection reports in compliance with the Philadelphia Façade Ordinance. The School District intends to select two (2) separate professional firms, each conducting façade inspections of six (6) schools identified in the RFP.

The School District engages the Contractor to carry out the work set forth in this Contract (the “Work”). The Parties have generally described the Work in Exhibits “A-1”, “A-2” and “A-3” to this Contract. References to “Exhibit A” elsewhere in this Contract shall mean Exhibits “A-1”, “A-2” and “A-3”; please refer to Section 8, *Order of Precedence*, page 3, the Agreement for Services.

Exhibit “A-2”

***School District
Request for Proposals
To Provide Façade Inspections***

The Request for Proposals (the “RFP”) consist of:

1. The School District of Philadelphia Request for Proposals to Provide Façade Inspections; and
2. The Addendum to the RFP (if any) or RFP Questions and Answers (if any).

The documents above are attached hereto collectively as Exhibit “A-2” and are referred to as “the RFP” and are hereby incorporated by reference into this Contract.

Exhibit “A-3”

***The Contractor’s
Proposal***

(redacted)

Exhibit “B”

***The Contractor’s
Budget***

Exhibit “C”

School District Standard Terms and Conditions

The School District’s Standard Terms and Conditions are attached hereto as Exhibit “C” and are incorporated by reference into this Contract.

Exhibit “D”

The School Reform Commission Resolution

The School Reform Commission Resolution A-__ dated _____, 2017 is attached hereto as Exhibit “D”.