

OGC CONTRACT NO. ___/F19

SC NO.:
ABC CODE:

AGREEMENT FOR SERVICES

Project:
*Request For Proposals
To Provide Façade Inspection Services*

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 _____ (corporation or limited liability company or partnership) (the "Contractor" or "_____"), located at _____, have executed and delivered this Agreement for Services (the "Contract") as of _____, 201_.

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" – the Contractor's Statement of Work; (b) Exhibit "A-2" – School District Request for Proposals to Provide Façade Inspection Services; and (c) the attached Exhibit "A-3", the Contractor's Proposal submitted in response to Request for Proposals to Provide Façade Inspection Services (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. *Action Item.* The Board of Education authorized this Contract by its Action Item number A-__, dated _____, 2019. The Parties have attached the Action Item to this Contract as Exhibit "D" for reference but have not made the Action Item a part of this Contract. The School District has no power to contract for the Work outside the scope of the Action Item.

3. *Contract Term.* The term of the Contract shall be for a period commencing on _____, 2019 through completion of all façade inspections (the “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.

a. *Option to Extend the Term.* The School District shall have the right to extend the Term of this Contract for up to one (1) additional year after completion of all façade inspections. The School District shall exercise the option by giving notice to the Contractor not later than sixty (60) days before the scheduled completion of all façade inspections. Exercise of the one year (1) option requires approval hereafter by the Board of Education or a successor entity.

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 Exhibits “A-1” or “A-3”, 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 Exhibits “A-1” or “A-3”, 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 Exhibits “A-1” or “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.

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:	Leigh Clark	_____
Title:	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:	lclark@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"	The Contractor's Statement of Work
"A-2"	Request for Proposals to Provide Façade Inspection Services
"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. *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 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.”

b. *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.”

c. *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.”

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

e. *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.”

f. *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.”

g. *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 School Reform Commission members, Board of Education 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).”

h. *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 \$25,000 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 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.: Jesse Jones, 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 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 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 Risk Management. In the event such approval is granted, it is understood and agreed that the School District, its School Reform Commission members, Board of Education 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 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 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."

i. *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."

j. *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."

k. *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."

l. *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."

m. *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."

n. *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."

o. *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."

p. *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."

q. *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.”

r. *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.

s. *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.”

t. *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.”

u. *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.”

v. *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
Director, Capital Programs	Principal in Charge	15 days

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

w. *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.”

x. *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 “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.”

y. *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.”

z. *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.”

aa. *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.”

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"

The Contractor's Statement of Work

Background

The City of Philadelphia Ordinance Bill No. 090568-AAA (hereafter called "Philadelphia Façade Ordinance") was originally enacted in 2010 as Section PM-304.10 of the Philadelphia Property Maintenance Code entitled "Periodic Inspection of Exterior Walls and Appurtenances of Buildings". The Philadelphia Façade Ordinance was revised in 2014 and its requirements were moved to Section 315 of the Philadelphia Property Maintenance Code ("Section PM-315") entitled "Periodic Inspection of Exterior Walls and Appurtenances of Buildings". Copies of the Philadelphia Façade Ordinance and Section PM-315 are attached hereto as part of Exhibit "A-1" and are hereby incorporated by reference into this Contract.

Section PM-315 requires owners of all buildings six (6) or more stories in height and all buildings with any appurtenances in excess of 60 feet in height ("affected buildings") to be responsible for retaining a Professional to conduct periodic inspections of the exterior walls and appurtenances of the buildings (hereafter called "façade inspection") and to prepare and file a report on such façade inspection (hereafter called "Façade Inspection Report"). Following the initial façade inspections, affected buildings must be reinspected by the Professional, and the required façade inspection reports must be filed on a five (5)-year cycle based on the original schedule. 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 façades.

The School District's Office of Capital Programs has identified a total of eleven (11) buildings that require façade inspections under Section PM-315. Façade inspections will be conducted on a total of eleven (11) buildings under the two (2) Groups of schools listed below:

GROUP 1

<u>Building ID</u>	<u>Name</u>	<u>Address</u>
4130	Shoemaker High School	5301 Media Street
2110	Barratt Middle School	1599 Wharton Street
4110	Fitzsimons High School	2601 West Cumberland Street
4400	Stanton Elementary School	1700 Christian Street
5120	Stetson Middle School	3200 B Street
5510	Kensington High School	2051 East Cumberland Street

GROUP 2

<u>Building ID</u>	<u>Name</u>	<u>Address</u>
1130	Tilden Middle School	6601 Elmwood Avenue
1010	Bartram High School	2401 South 67 th Street
7010	Frankford High School	5000 Oxford Avenue
5560	Spring Garden Elementary School	1146 Melon Street
5250	Dunbar Elementary School	1750 North 12 th Street

On September __, 2018, the School District advertised a Request for Proposals to Provide Façade Inspection Services (“the RFP”) to obtain public competitive proposals from qualified professional firms to perform façade inspections of selected School District buildings to assist the School District’s Office of Capital Programs in the implementation and completion of the required façade inspections.

_____ responded to the RFP with a Proposal.

On _____, 2018, the Board of Education, by Action Item A-__, authorized the School District to execute, deliver and perform a contract with _____ to provide façade inspections of the Group 1 or Group 2 buildings listed above and to provide façade inspection reports for these Group 1 or Group 2 buildings, pursuant to Section PM-304.10 of the Philadelphia Property Maintenance Code entitled “Periodic Inspection of Exterior Walls and Appurtenances of Buildings” (now Section PM-315 entitled “Periodic Inspection of Exterior Walls and Appurtenances of Buildings” of the Philadelphia Property Maintenance Code).

The School District engages _____ (referred to herein as “the Contractor” or “the Professional” or “_____”) 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.

1. **Incorporation of Background and Definitions.**

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, 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 Section 9,

Contractor's Additional Services, herein.

(b) **Additional Term** – means the optional additional one (1)-year term described in Section 3.a, *Option to Extend*, page 2 of the Agreement for Services.

(c) **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 Contractor and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

(d) **Basic Services** – has the meaning attributed thereto in Paragraph 2.1, *Basic Services*, herein.

(e) **Board or Board of Education** – means the School District's Board of Education appointed pursuant to 24 P.S. §21-2101 and §3-301, or any successor body.

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

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

(h) **Contract Administrator** – means the person designated by a party pursuant to Section 7, *Notices*, page 3 of the Agreement for Services.

(i) **Contract Modification** – has the meaning attributed thereto in Section 11, *Changes*, herein.

(j) **Contractor** – means the qualified professional services firm performing façade inspections and reporting services pursuant to this Contract.

(k) **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 Contractor at regular review points and at the completion of the work as expressly noted herein or as may be required by the Contractor.

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

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

(n) **Force Majeure Condition** – means a force majeure event or condition

described in Section 12, *Force Majeure*, herein.

(o) Initial Term – means the Initial Term specified in Section 3, *Contract Term*, pages 1-2 of the Agreement for Services.

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

(q) Project – means façade inspection and reporting services in selected School District buildings.

(r) Proposal – means the Proposal submitted by the Contractor in response to the RFP, together with all subsequent modifications and supporting materials submitted by the Contractor to the School District in response to the RFP.

(s) Request for Proposals or RFP – means the Request for Proposals to Provide Façade Inspection Services issued by the School District, including all Addenda thereto issued, if any.

(t) Safe condition – means a condition of building wall or any appurtenance thereto that is neither an “Unsafe” condition nor a “Safe with a Repair and Maintenance Program” condition.

(u) Safe with a Repair and Maintenance Program condition – means a condition of a building’s exterior wall or any appurtenance thereto or any part thereof that the Professional does not consider Unsafe at the time of inspection, but requires repairs or maintenance within a time period designated by the Professional in order to prevent its deterioration into an Unsafe condition

(v) School District or Owner – means the School District of Philadelphia.

(w) Services or Work – mean, collectively, those functions or tasks necessary to complete the work covered under this Contract, including without limitation those basic services, and such additional services as may be directed by the School District, to be provided by the Contractor in accordance with the terms and conditions of this Contract.

(x) SRC or School Reform Commission – means the predecessor governing body of the School District appointed pursuant to 24 P.S. §6-696.

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

(z) Subcontractor – 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 Contractor to perform any Work covered by this Contract.

(aa) Subcontract – means a contract or consulting agreement entered into by the Contractor with a Subcontractor in order to perform, directly or indirectly, its Work under this Contract.

(bb) Term – means the Term specified in Section 3, *Contract Term*, pages 1-2 of the Agreement for Services.

(cc) 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 Paragraph 20.a. of the Standard Terms and Conditions (Exhibit “C”).

(dd) Unsafe condition – means a condition of a building’s exterior wall or any appurtenance thereto or part thereof that is dangerous to persons or property and requires prompt remedial action.

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

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

2. General Description of the Scope of Contractor’s Services.

2.1 Basic Services. All services that the Contractor is required to perform for the Project under this Contract shall constitute Basic Services for which compensation will be paid under Section 4, *Compensation*, pages 2-3 of the Agreement for Services.

2.2 The School District is required to comply with the City of Philadelphia Ordinance Bill No. 090568-AAA (called “Philadelphia Façade Ordinance”), at Section 315 of the Philadelphia Property Maintenance Code (“Section PM-315”) entitled “Periodic Inspection of Exterior Walls and Appurtenances of Buildings”.

2.3 The Contractor shall provide the following services for the Group 1 or Group 2 buildings listed in the **Background** section above to assist the School District in complying with the Philadelphia Façade Ordinance and Section PM-315:

2.3.1 Code Compliance. Façade inspections and reporting shall be conducted in conformance with the requirements of Section PM-315 entitled “Periodic Inspection of Exterior Walls and Appurtenances of Buildings” of the Philadelphia Property Maintenance Code.

2.3.2 List of Buildings. The Contractor shall conduct façade inspections and prepare and submit façade inspection reports for the buildings listed below.

GROUP 1

<u>Building ID</u>	<u>Name</u>	<u>Address</u>
4130	Shoemaker High School	5301 Media Street
2110	Barratt Middle School	1599 Wharton Street
4110	Fitzsimons High School	2601 West Cumberland Street
4400	Stanton Elementary School	1700 Christian Street
5120	Stetson Middle School	3200 B Street
5510	Kensington High School	2051 East Cumberland Street

or

GROUP 2

<u>Building ID</u>	<u>Name</u>	<u>Address</u>
1130	Tilden Middle School	6601 Elmwood Avenue
1010	Bartram High School	2401 South 67 th Street
7010	Frankford High School	5000 Oxford Avenue
5560	Spring Garden Elementary School	1146 Melon Street
5250	Dunbar Elementary School	1750 North 12 th Street

2.3.3. Façade Inspection.

a. Façade inspections shall be conducted by a Commonwealth of Pennsylvania licensed professional engineer of the Contractor who is experienced in the practice of structural engineering or a licensed registered architect of the Contractor who is knowledgeable in the design, construction, and inspection of building façades. The façade inspection shall be conducted and witnessed by or under the supervision of the Contractor’s licensed professional engineer or licensed registered architect.

b. Prior to on-site façade inspections, the Contractor shall submit an Inspection Procedure Plan detailing façade inspection sequence, methods employed in the façade inspection, and determination of “a representative sample of the exterior wall” required by the Philadelphia Façade Ordinance.

c. The methods used to inspect a façade shall permit a physical, hands-on inspection of the building. A physical inspection of the façade shall be performed from

a scaffold or other observation platform at “a representative sample of the exterior wall”. The Contractor shall determine what constitutes “a representative sample of the exterior wall” based upon the known history of the building, the nature of the materials used, and the conditions observed.

d. Location of scaffolding or high reach equipment for façade inspection must be pre-approved by the School District. Façade inspection outside of classrooms during testing periods may be limited.

e. The Contractor shall review all previous documents for each building prior to on-site façade inspection, including previous reports, inspections, and evidences of repairs made in the past five (5) year period. The Contractor shall also confirm that all areas previously determined to require remediation in less than five (5) years as noted in any previous report have been addressed.

f. The Contractor shall employ the appropriate professional standard of care to detect a distressed condition such as delaminating, separating, splitting or fracturing of material or components, as well as movement or displacement indicative of unsound façade materials or loss of structural support. If a distressed condition is identified, the Contractor shall promptly notify the School District’s Office of Capital Programs and shall recommend other inspections and/or tests that may be required to determine the significance and probable cause of the observed distress.

g. During the course of the façade inspection, the Contractor shall take photographs and/or make sketches to properly document the location of all conditions observed that are either Unsafe or Safe with a Repair and Maintenance Program.

h. The Contractor shall develop a Condition Standards document defining what existing conditions of the façade will be classified as Safe, Safe with a Repair and Maintenance Program, or Unsafe. The Contractor shall classify the condition of the façade as Safe, Safe with a Repair and Maintenance Program, or Unsafe. Each condition of the façade shall be described in detail with supporting photographs if available.

i. Upon discovery of any Unsafe condition of the façade, the Contractor shall immediately notify the School District’s Office of Capital Programs, by electronic mail or by fax, with recommended actions to protect public safety. The Contractor shall also notify the City of Philadelphia Department of Licenses and Inspections (“City L&I Department”) by telephone (215-686-2480) within twelve (12) hours of discovery of any Unsafe condition of the façade.

j. The Contractor shall comply with all façade inspection requirements of Section PM-315 of the Philadelphia Property Maintenance Code.

2.3.4. Façade Inspection Report

a. The Contractor shall submit a full Façade Inspection Report of

each building after completion of the on-site façade inspection of the building to the School District's Office of Capital Programs, certifying that the inspection was performed and completed in accordance with Section PM-315 of the Philadelphia Property Maintenance Code, and detailing all conditions not classified as Safe.

b. The façade inspection and report submission for each building shall be completed within two (2) months after completion of the on-site façade inspection of the building.

c. The Façade Inspection Report submitted by the Contractor shall include, on the front page, the name and license number of the Contractor and shall be signed, sealed and dated by the Contractor in accordance with the professional registration laws of the Commonwealth of Pennsylvania (*i.e.*, the Pennsylvania Architect Licensure Law, 63 P.S. §34.12, and the Pennsylvania Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. §§152 & 154). The Façade Inspection Report submitted by the Contractor shall include the seventeen (17) items of specific information, as described in the Philadelphia Façade Ordinance, that are listed below:

- (1) The address and the location from the nearest intersection;
- (2) The name, mailing address, and telephone number of the School District and of the School District's agent or person in charge, possession or control of the building, if any;
- (3) A description of the building, including number of stories, height, plan dimensions, usage, age and type of exterior wall construction, and system of water management;
- (4) A brief history of any settlements, repairs, revisions to exterior enclosures, if available;
- (5) The date of the start and completion of the inspection, a detailed description of the procedures used in making the inspection, and the extent and location of all physical inspections performed;
- (6) A report of all conditions, including but not limited to significant deterioration and movement observed, as well as a statement concerning the apparent water-tightness of the exterior surfaces, and the deleterious effect of exterior appurtenances, including exterior fixtures, flagpoles, signs, parapets, copings, guard rails, window frames (including hardware and lights), window guards, window air conditioners, flower boxes, and similar items. The report shall classify each such condition as Safe, Unsafe, or Safe with a Repair and Maintenance Program;
- (7) The probable causes of the reported conditions;
- (8) The status of the exterior maintenance;
- (9) For any conditions listed in the previously filed report (if any), whether such conditions have been repaired and/or maintained as recommended in that report;

(10) Recommendations for repairs or maintenance, if appropriate, including the recommended time frame for the repairs or maintenance to be performed;

(11) The classification of the building according to the following scheme: (a) Unsafe, if there is at least one (1) unsafe condition; (b) Safe with a Repair and Maintenance Program, if there is a condition that is Safe with Repair and Maintenance Program and there are no Unsafe conditions; (c) Safe, in all cases other than (a) or (b);

(12) Photographs and/or sketches documenting the locations of any conditions that are either Unsafe or Safe with a Repair and Maintenance Program;

(13) A statement by the Contractor indicating which repairs and/or maintenance require the obtaining of work permits prior to their commencement;

(14) A statement signed by the School District or the School District's agent of the building, acknowledging receipt of a copy of the report and acknowledging all required repairs and/or maintenance (if any) and the recommended time frame for performing such repairs and/or maintenance;

(15) The Contractor's certification that the physical inspection was performed in accordance with applicable rules and regulations and within the appropriate professional standard of care;

(16) The Contractor's seal and signature; and

(17) Such other matters as the City of Philadelphia Department of Licenses and Inspections may by regulation require.

d. The Contractor may submit an amended Façade Inspection Report to the School District's Office of Capital Programs, within thirty (30) days of the initial submission, if necessary or required. The amended Façade Inspection Report shall clearly indicate any change from the initial report and all reasons for such changes.

e. After the façade inspection of the building, the Contractor shall also prepare and submit a summary report of the façade inspection of the building for the City L&I Department, using the form entitled "Summary Inspection Report of Exterior Walls and Appurtenances" found on the L&I Department website. The Contractor shall submit a completed "Summary Inspection Report of Exterior Walls and Appurtenances" form to the School District's Office of Capital Programs, for review, prior to its electronic submission of this completed form, by email, to the City L&I Department. A copy of the "Summary Inspection Report of Exterior Walls and Appurtenances" form is attached hereto as part of Exhibit "A-1" and is hereby incorporated by reference into this Contract.

f. If the full Façade Inspection Report identifies an "Unsafe" condition, the Contractor shall file the full Façade Inspection Report with the City L&I

Department within twenty-four (24) hours of its completion of the full Façade Inspection Report.

g. The Contractor shall comply with all façade inspection report requirements of Section PM-315 of the Philadelphia Property Maintenance Code. A copy of the City L&I Department Façade Inspection Reporting Frequently Asked Questions is attached hereto as part of Exhibit "A-1" and is hereby incorporated by reference into this Contract.

2.3.5. Unsafe Condition

a. The School District may request that the Contractor design corrective measures to address Unsafe conditions of the façade as an Additional Service. The design fee for this Additional Service shall be based on the Contractor's hourly rates set forth in the Contractor's Fee Proposal, which is attached as part of Exhibit "B".

b. The Contractor who identifies an Unsafe condition of the façade of a building shall reinspect the building within two (2) weeks after the Unsafe condition has been corrected by the School District, and shall submit a detailed amended report stating the condition of the building to the City L&I Department.

c. The Contractor shall comply with all Unsafe condition requirements of Section PM-315 of the Philadelphia Property Maintenance Code.

2.4. Key Personnel

2.4.1. The following Key Personnel of the Contractor, all of whose resumes have been provided, shall perform those façade inspections and reporting services of the Contractor required under this Contract:

- (a) Principal in Charge – _____;
- (b) Project Manager – _____;
- (c) Licensed Structural Engineer – _____;
- (d) Licensed Architect - _____;
- (e) Inspector - _____;
- (f) Cost Estimator - _____;
- (g) Clerical - _____.

These persons shall devote their time as necessary to the Project to ensure the Contractor's full and timely performance of this Contract, on-time and on-budget. The Contractor 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 Project, the Contractor shall obtain the School District's prior approval of any selected substitute personnel, which approval shall not be unreasonably withheld.

2.4.2. The Contractor will identify and obtain prior School District approval of Subcontractors and Key Personnel of Subcontractors for the Project on a per site basis. The

Contractor anticipates that it will use Subcontractors for equipment rental and equipment support.

2.5. Materials, Supplies and Equipment

2.5.1. The Contractor shall furnish all materials, supplies and equipment necessary for the proper provision of the Work described in this Contract, on-time and on-budget, including but not limited to scaffolding, observation platforms, and high reach equipment.

3. Contractor's Responsibilities.

3.1 Reporting. The Contractor shall report directly to the School District's Interim Director of Capital Programs or her designee. The School District's Office of Capital Programs will evaluate and monitor the work of the Contractor, emphasizing on-time and on-budget performance.

3.2 Schedule. Time is of the essence on the Project. The Contractor shall commence its Work promptly upon receipt of a Notice to Proceed (or a Notice of Contract Award) from the School District. The Contractor shall perform and complete its Work, on-time and on-budget, in accordance with the time deadlines set forth in the agreed-upon Project Schedule for the Work.

3.2.1. The Contractor shall perform the Work during regular hours and during weekdays only.

3.2.2. The School District shall provide Project Schedule milestone dates to the Contractor. The Contractor shall perform the Work in a timely manner in accordance with the Project Schedule milestone dates.

3.2.3. The School District requires façade inspection and report submission of one (1) school every two (2) months.

3.2.4. The Contractor has submitted an Expanded Project Schedule with its Proposal to the School District, a copy of which is attached hereto as part of Exhibit "A-1" and is incorporated by reference into this Contract. The Contractor shall provide a Revised Expanded Project Schedule to the School District's Office of Capital Programs, for review and approval, promptly upon receipt of the School District's Notice to Proceed (or Notice of Contract Award).

3.3 Deliverables. The Contractor shall provide the Deliverables identified in the RFP and the Contract on-time and on-budget, in strict conformity with the Contract requirements. 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 in the Contract. Partial or incomplete Deliverables shall in no way relieve the Contractor of its schedule or cost commitments under the Contract.

3.4 Electronic Media Copies. The Contractor shall promptly provide to the School District all necessary and required Deliverables as referenced within the RFP for all Work requested as part of the Contract. The Contractor shall submit all required Deliverables on electronic media on a CD-ROM computer disk, and as a scanned copy on electronic media in “PDF” format, to the School District, at the completion of the required Work for each building.

4. **Contractor’s Additional Services.**

4.1. The Contractor may be required to perform services in addition to the Basic Services described in the RFP and the Contract (“Additional Services”). See Paragraph 2.3.5.a. above.

4.2 Minor changes or necessary corrections to the Contractor’s Work or Deliverables shall not constitute Additional Services. Changes or corrections to the Contractor’s Work or Deliverables, requested by the School District and made after the School District’s previous final approval of such Work or Deliverables, shall constitute Additional Services. The Contractor shall not be compensated as Additional Services if delay, disruption, interference or hindrance on the Project are due to (1) the fault, negligence, failure to act, error, omission or breach of contract of the Contractor, or (2) a Force Majeure Condition as provided in Paragraph 7, **Force Majeure.**

4.3 All Additional Services of the Contractor must be approved in advance by the School District’s designated representative.

4.4 The School District agrees to pay the Contractor for its identified and approved Additional Services in accordance with the hourly billable wage rates for its Key Personnel that are set forth in the Contractor’s Fee Proposal, which is attached hereto as part of Exhibit “B” and is hereby incorporated by reference into this Contract. The School District also agrees to pay the Contractor for Additional Services performed by persons not listed on the Contractor’s Fee Proposal 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.

5. **School District Rights, Services and Responsibilities.**

5.1. Inspection. The School District has the right to inspect the Work of the Contractor and its Subcontractors in progress at any reasonable location and at any reasonable time.

5.2. Review and Changes to Documents and Information. The School District shall review all Work and Deliverables prepared and submitted by the Contractor to the School District under the Contract, and shall advise the Contractor of any suggested changes, comments or recommendations thereto in a timely manner so as to cause no delay to the Contractor. Neither the School District’s review, approval or acceptance of, nor payment for, any of the Work required under the Contract shall be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the performance of the Contract. Notwithstanding anything to the contrary contained in the Contract, the School District’s review and approval of any and all Work

or Deliverable or other matters required under the Contract shall be for the purpose of providing the Contractor with information as to the School District's objectives, goals and requirements with respect to the Work or the Project and not for the purpose of determining the accuracy and completeness of such Work or Deliverables.

6. **Changes.**

6.1. At any time during the term of this Contract, the School District or the Contractor may, without invalidating this Contract, make changes in any of the services required under this Contract, within the general scope of this Contract. including, without limitation, requiring additional or different services, and changes in the time of performance; provided, however, as follows:

(1) All such changes shall be made in accordance with the terms and conditions 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 Contractor, as evidenced by the signatures of both the School District's Contract Administrator and the Contractor's Contract Administrator.

(2) 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 Contractor 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 Contractor 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 Contractor 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 of the Contractor must be approved in writing by the School District's Interim Director of Capital Programs to become effective.

6.2. All changes in the services of the Contractor shall be performed, on-time and on-budget, under applicable provisions of this Contract, and the Contractor 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.

7. **Force Majeure.**

7.1 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 work or necessary

entry onto adjoining property to perform required work, or delay or failure of governmental or regulatory authorities having jurisdiction over the project to give necessary or required approvals or documents for site access, 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. Neither party shall be in default of this Contract, 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 that party. Neither party shall be liable to the other party 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.

8. M/WBE Participation.

8.1. M/WBE Participation. The Contractor 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 Contractor represents and certifies that it is a minority-owned business enterprise (MBE) firm or a woman-owned business enterprise (WBE) firm.] The Contractor [further] represents and certifies that it will include a minimum of 15% to 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 Contractor [further] represents and certifies that it is a minority-owned business enterprise (MBE) firm or a woman-owned business enterprise (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 Contractor’s Proposal, M/W/BE Participation Plan, is attached hereto as Exhibit E and is hereby incorporated by reference into this Contract. The Contractor’s Proposal, M/WBE Participation Plan, shall be enforceable as any other contractual term or condition of this Contract. Sanction for breach of the Contractor’s Proposal, M/WBE Participation Plan, may include suspension, cancellation of this Contract and/or debarment from future contracting opportunities with the School District.

9. Exhibit Attachments.

9.1 The documents listed below are attached hereto as part of Exhibit “A-1” and are hereby incorporated by reference into this Contract:

1. The City of Philadelphia Ordinance Bill No. 090568-AAA (called “Philadelphia Façade Ordinance”).

2. Section 315 of the Philadelphia Property Maintenance Code (“Section PM-315”) entitled “Periodic Inspection of Exterior Walls and Appurtenances of Buildings”.

3. City of Philadelphia Licenses and Inspections Department (“City L&I Department”) form entitled “Summary Inspection Report of Exterior Walls and Appurtenances”.

Questions.

4. City L&I Department Façade Inspection Reporting Frequently Asked
5. Contractor's Proposal, Expanded Project Schedule.

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PM-304.10.2.1. The owner of each Affected Building shall be responsible for retaining a Professional to conduct periodic inspections of exterior walls and any appurtenances thereto, except for those parts of any exterior wall which are less than twelve inches from the exterior wall of an adjacent building, and to prepare and file a report on such inspection as required by this Section.

PM-304.10.2.2. For Affected Buildings, the first inspection required by this Section shall be conducted as shown in the following schedule:

<i>Construction Date</i>	<i>Report to be completed no later than:</i>
<i>Prior to and including 1950</i>	<i>June 30, 2011</i>
<i>1951 - 1970</i>	<i>June 30, 2012</i>
<i>1971 - 1980</i>	<i>June 30, 2013</i>
<i>1981 - 1990</i>	<i>June 30, 2014</i>
<i>1991 - 2005</i>	<i>June 30, 2015</i>

If the date of construction cannot be determined by the owner, the first inspection must be performed by June 30, 2011. For all other buildings, the first inspection shall be conducted, and required report shall be filed, within ten years after the certificate of occupancy was issued.

PM-304.10.2.3. Following the Initial Inspection, an Affected Building shall be re-inspected, and the required report shall be filed, on a five-year cycle based on the original schedule.

PM-304.10.2.4. If all facades of an Affected Building have been substantially restored during the five years immediately preceding the date of any required inspection, the owner may apply to the Department for a waiver of the required inspection. The owner shall submit with such application such information as the Department determines is necessary to enable it to evaluate the request. The Department shall grant the waiver if it determines that the recent facade restoration obviates the need for an inspection until the next inspection cycle.

PM-304.10.3. Inspection Procedures.

PM-304.10.3.1. Before inspecting an Affected Building, the retained Professional shall review previous reports, inspections, and evidence of repairs made in the past 5 year period, including confirmation that all areas previously determined to require remediation in less than 5 years (as noted in any previous report) have been addressed.

PM-304.10.3.2. The inspection shall be conducted by or under the supervision of the Professional, and performed to the best of his/her knowledge and belief. The Professional shall determine the extent of the inspection required, based upon

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the known history of the building, the nature of the materials used, and the conditions observed. The Professional shall determine methods employed in the inspection, but need not be physically present at the location where the inspection is made.

PM-304.10.3.3. The methods used to inspect a building shall permit a physical, hands-on inspection of the building. The Professional may use other methods of inspection as deemed appropriate, except that a physical inspection from a scaffold or other observation platform is required for a representative sample of the exterior wall. The Professional shall determine what constitutes a representative sample.

PM-304.10.3.4. The Professional shall employ the appropriate professional standard of care to detect distressed conditions such as delaminating, separating, splitting or fracturing of material or components as well as movement or displacement indicative of unsound façade materials or loss of structural support. If a distressed condition is identified, the Professional shall order any other inspections and/or tests that may be required to determine the significance and probable cause of the observed distress.

PM-304.10.3.5. During the course of the inspection, photographs shall be taken and/or sketches made to properly document the location of all conditions observed that are either Unsafe or Safe with a Repair and Maintenance Program.

PM-304.10.3.6. Upon discovery of any Unsafe condition the Professional shall immediately notify the owner of the building by electronic mail or by fax; and shall, within 12 hours of discovery, notify the Department in writing and in an electronic format determined by the Department.

PM-304.10.4. Report Requirements.

PM-304.10.4.1. The Professional shall submit to the owner of the building a written report as to the result of each inspection, certifying that the inspection was performed and completed in accordance with this Code, and detailing all conditions not classified as Safe. The Professional shall also submit a summary of the written report to the Department in a form determined by the Department. The Department may by regulation impose a processing fee, not to exceed one hundred dollars (\$100), that must be paid upon submission of the summary of the written report. If the report identifies an Unsafe condition, then the Professional, within 24 hours of completion of the report, shall file the full report with the Department in writing and in an electronic format determined by the Department. The owner or its agent shall retain all written reports submitted pursuant to this Section and keep them readily available for inspection by the Department.

PM-304.10.4.2. The report shall include, on the front page, the name and license number of the Professional and shall be signed, sealed and dated by the

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Professional in accordance with the professional registration laws of the Commonwealth of Pennsylvania, and shall include:

1. *The address and the location from the nearest intersection.*
2. *The name, mailing address, and telephone number of the owner of the building and of the owner's agent or person in charge, possession or control of the building, if any.*
3. *A description of the building, including number of stories, height, plan dimensions, usage, age and type of exterior wall construction, and system of water management.*
4. *A brief history of any settlements, repairs, revisions to exterior enclosures, if available.*
5. *The date of the start and completion of the inspection, a detailed description of the procedures used in making the inspection, and the extent and location of all physical inspections performed.*
6. *A report of all conditions including but not limited to significant deterioration and movement observed as well as a statement concerning the apparent water-tightness of the exterior surfaces, and the deleterious effect of exterior appurtenances, including exterior fixtures, flagpoles, signs, parapets, copings, guard rails, window frames (including hardware and lights), window guards, window air conditioners, flower boxes, and similar items. The report shall classify each such condition as Safe, Unsafe, or Safe with a Repair and Maintenance Program.*
7. *The probable causes of the reported conditions.*
8. *The status of the exterior maintenance.*
9. *For any conditions listed in the previously filed report (if any), whether such conditions have been repaired and/or maintained as recommended in that report.*
10. *Recommendations for repairs or maintenance, if appropriate, including the recommended time frame for the repairs or maintenance to be performed.*
11. *The classification of the building according to the following scheme:*
 - a. *"Unsafe," if there is at least one unsafe condition.*

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b. "Safe with a Repair and Maintenance Program," if there is a condition that is "Safe with Repair and Maintenance Program" and there are no Unsafe conditions.

c. "Safe," in all cases other than (a) or (b).

12. Photographs and/or sketches documenting the locations of any conditions that are either Unsafe or Safe with a Repair and Maintenance Program.

13. A statement by the Professional indicating which repairs and/or maintenance require the obtaining of work permits prior to their commencement.

14. A statement signed by the owner or agent of the building, acknowledging receipt of a copy of the report and acknowledging all required repairs and/or maintenance (if any) and the recommended time frame for performing such repairs and/or maintenance.

15. The Professional's certification that the physical inspection was performed in accordance with applicable rules and regulations and within the appropriate professional standard of care.

16. The Professional's seal and signature.

17. Such other matters as the Department may by regulation require.

PM-304.10.4.3. The Professional may submit an amended report within thirty (30) days of the initial submission. The amended report shall clearly indicate any change from the initial report and all reasons for such changes.

PM-304.10.5. Unsafe Conditions.

PM-304.10.5.1. Within twenty-four (24) hours of being notified of an Unsafe condition by a Professional, the owner of a building shall take any actions necessary to protect public safety, such as erecting sidewalk sheds, fences, and/or safety netting. Such actions shall be considered as an effort to remedy an emergency situation and appropriate permit applications shall be submitted within the next three (3) days to the Department.

PM-304.10.5.2. Within ten (10) days of the receipt or filing of a report identifying an Unsafe condition, the owner of a building shall commence work to correct the condition and work shall continue without interruption until the Unsafe condition has been corrected, unless there has been an unforeseen delay (e.g. weather,

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labor strike). Within two weeks after the Unsafe condition has been corrected, the Professional shall reinspect the building and file with the Department a detailed amended report stating the condition of the building.

PM-304.10.6. Conditions that are Safe with a Repair and Maintenance Program.

PM-304.10.6.1. The owner of the building is responsible for ensuring that the conditions described in the report as "Safe with a Repair and Maintenance Program" are repaired and the actions identified by the Professional are completed within the time frame designated by the Professional or by such time necessary to prevent a condition from becoming an Unsafe condition, whichever is sooner.

PM-304.10.7. Extensions.

PM-304.10.7.1. The Department may grant an extension of time of up to ninety (90) days to begin the repairs required to remove an Unsafe condition or to repair a Safe with a Repair and Maintenance Program condition, after receipt and review of an initial extension application submitted by the Professional which includes:

- 1. Proof that the premises have been made safe by means of a shed, fence, or other appropriate measures.*
- 2. A copy of the contract indicating the scope of work necessary to remedy the Unsafe condition(s).*
- 3. The Professional's estimate of the length of time required for repairs, and a notarized affidavit by the owner of the building or its agent that work will be completed within such time.*

PM-304.10.7.2. A further extension of time will be considered by the Department only upon receipt and review of a further extension application which details that one of the following is met:

- 1. The work has been substantially completed, but there has been an unforeseen delay (e.g. weather, labor strike).*
- 2. Unforeseen circumstances (e.g., fire, building collapse).*
- 3. The nature of hazard requires more than 90 days to remove (e.g., new wall to be built).*

PM-304.10.8. Appeals.

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PM-304.10.8.1. The owner of the building may appeal the findings set forth in the Professional's initial report or amended report to the Board of Building Standards. Such appeal must be filed within thirty (30) days of the receipt or filing of the report, and must include a second Professional's report. The filing and pendency of such an appeal shall stay the requirement for making repairs as set forth in PM-304.10.5.2, but not the requirement for taking actions necessary to protect public safety as set forth in PM-304.10.5.1.

PM-304.10.8.1.1. Upon consideration of any such appeal, the Board shall issue a recommendation to the Commissioner either to grant the appeal; deny the appeal; or grant the appeal with such proposed modifications to the Professional's findings as the Board deems consistent with the intent of this Section. The Commissioner thereafter shall make the final determination on the appeal.

Explanation:

Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on February 4, 2010. The Bill was Signed by the Mayor on February 17, 2010.



Michael A. Decker
Chief Clerk of the City Council

4. **Recommendations** - The report shall contain:

- 4.1 Recommendations for repairs or replacement including timeframe for completion.
- 4.2 Restrictions of use, and required posting(s) of live load certificate(s).

PM-314.5 Posting, repairs and restricted occupancy: Based upon the recommendations of the Project Engineer, as detailed in the structural assessment report, the following shall occur:

1. **Required Repairs (Fair Rating)** - Repairs identified by the Project Engineer as necessary to accommodate the structure's current use shall be completed within nine months of the report date.
2. **Post Maximum Permitted Live Load Certification (Poor Rating)** - Live load certification signs, approved by the code official, shall be conspicuously posted.
3. **Barriers (Serious Rating)** - Install barriers and post approved signage to prevent access to specific areas identified by the Project Engineer.
4. **Restrict Occupancy (Critical Rating)** - Immediately cease operation of any pier or other waterfront structure determined by the Project Engineer to be in critical condition. Post "Danger - No Trespassing" signs on all sides including the on-shore and out-shore sides. Install a barrier to prevent access to the pier or other waterfront structure from all points of access from the on-shore side.
5. **Rating Upgrade** - Once repairs have been completed to a pier or other waterfront structure, the Project Engineer may submit an addendum to the structural assessment report to upgrade the load limitations, use, and structural assessment rating.

PM-314.6 Submission Schedule: Notification of poor, serious or critical conditions and submission of reports shall be in accordance with the following schedule:

1. Should a condition warrant a poor, serious or critical designation, the Project Engineer shall notify the owner, current occupant, and the code official immediately. The immediate notice may be oral, but shall in all cases be submitted in writing via certified letter within 24 hours of discovery to the owner, current occupant and the code official.
2. Structural assessment reports shall be submitted to the code official within sixty days of physical inspection.

SECTION PM-315 PERIODIC INSPECTION OF EXTERIOR WALLS AND APPURTENANCES OF BUILDINGS

PM-315.1 Definitions. The following definitions shall apply to this Section PM-315:

1. **Affected Buildings.** All buildings six or more stories in height; all buildings with any appurtenance in excess of 60 feet in height; and any building located in the following areas, other than one- or two-family dwellings, greater than two stories.
2. **Professional.** 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.

3. **Safe.** A condition of a building wall or any appurtenance thereto that is neither an Unsafe condition nor Safe with a Repair and Maintenance Program.

4. **Safe with a Repair and Maintenance Program.** A condition of a building's exterior wall or any appurtenance thereto or any part thereof that the Professional does not consider Unsafe at the time of inspection, but requires repairs or maintenance within a time period designated by the Professional in order to prevent its deterioration into an Unsafe condition.

5. **Unsafe condition.** A condition of a building's exterior wall or any appurtenance thereto or part thereof that is dangerous to persons or property and requires prompt remedial action.

PM-315.2 Inspections Required.

1. The owner of each Affected Building shall be responsible for retaining a Professional to conduct periodic inspections of exterior walls and any appurtenances thereto, except for those parts of any exterior wall which are less than twelve inches from the exterior wall of an adjacent building, and to prepare and file a report on such inspection as required by this Section.

2. For Affected Buildings, the first inspection required by this Section shall be conducted as shown in the following schedule:

Construction Date	Report to be completed no later than:
Prior to and including 1950	June 30, 2011
1951 - 1970	June 30, 2012
1971 - 1980	June 30, 2013
1981 - 1990	June 30, 2014
1991 - 2005	June 30, 2015

If the date of construction cannot be determined by the owner, the first inspection must be performed by June 30, 2011. For all other buildings, the first inspection shall be conducted, and required report shall be filed, within ten years after the certificate of occupancy was issued.

3. Following the Initial Inspection, an Affected Building shall be re-inspected, and the required report shall be filed, on a five-year cycle based on the original schedule.

4. If all facades of an Affected Building have been substantially restored during the five years immediately preceding the date of any required inspection, the owner may apply to the code official for a waiver of the required inspection. The owner shall submit with such application such information as the code official determines is necessary to enable it to evaluate the request. The code official shall grant the waiver if it determines that the recent facade restoration obviates the need for an inspection until the next inspection cycle.

PM-315.3 Inspection Procedures.

1. Before inspecting an Affected Building, the retained Professional shall review previous reports, inspections, and evidence of repairs made in the past 5 year period, including confirmation

that all areas previously determined to require remediation in less than 5 years (as noted in any previous report) have been addressed.

2. The inspection shall be conducted by or under the supervision of the Professional, and performed to the best of his/her knowledge and belief. The Professional shall determine the extent of the inspection required, based upon the known history of the building, the nature of the materials used, and the conditions observed. The Professional shall determine methods employed in the inspection, but need not be physically present at the location where the inspection is made.

3. The methods used to inspect a building shall permit a physical, hands-on inspection of the building. The Professional may use other methods of inspection as deemed appropriate, except that a physical inspection from a scaffold or other observation platform is required for a representative sample of the exterior wall. The Professional shall determine what constitutes a representative sample.

4. The Professional shall employ the appropriate professional standard of care to detect distressed conditions such as delaminating, separating, splitting or fracturing of material or components as well as movement or displacement indicative of unsound facade materials or loss of structural support. If a distressed condition is identified, the Professional shall order any other inspections and/or tests that may be required to determine the significance and probable cause of the observed distress.

5. During the course of the inspection, photographs shall be taken and/or sketches made to properly document the location of all conditions observed that are either Unsafe or Safe with a Repair and Maintenance Program.

6. Upon discovery of any Unsafe condition the Professional shall immediately notify the owner of the building by electronic mail or by fax; and shall, within 12 hours of discovery, notify the code official in writing and in an electronic format determined by the code official.

PM-315.4 Report Requirements.

1. The Professional shall submit to the owner of the building a written report as to the result of each inspection, certifying that the inspection was performed and completed in accordance with this Code, and detailing all conditions not classified as Safe. The Professional shall also submit a summary of the written report to the code official in a form determined by the code official. The code official may by regulation impose a processing fee, not to exceed one hundred dollars (\$100), that must be paid upon submission of the summary of the written report. If the report identifies an Unsafe condition, then the Professional, within 24 hours of completion of the report, shall file the full report with the code official in writing and in an electronic format determined by the code official. The owner or its agent shall retain all written reports submitted pursuant to this Section and keep them readily available for inspection by the code official.

2. The report shall include, on the front page, the name and license number of the Professional and shall be signed, sealed and dated by the Professional in accordance with the professional registration laws of the Commonwealth of Pennsylvania, and shall include:

2.1 The address and the location from the nearest intersection.

2.2 The name, mailing address, and telephone number of the owner of the building and of the

owner's agent or person in charge, possession or control of the building, if any.

2.3 A description of the building, including number of stories, height, plan dimensions, usage, age and type of exterior wall construction, and system of water management.

2.4 A brief history of any settlements, repairs, revisions to exterior enclosures, if available.

2.5 The date of the start and completion of the inspection, a detailed description of the procedures used in making the inspection, and the extent and location of all physical inspections performed.

2.6 A report of all conditions including but not limited to significant deterioration and movement observed as well as a statement concerning the apparent water-tightness of the exterior surfaces, and the deleterious effect of exterior appurtenances, including exterior fixtures, flagpoles, signs, parapets, copings, guard rails, window frames (including hardware and lights), window guards, window air conditioners, flower boxes, and similar items. The report shall classify each such condition as Safe, Unsafe, or Safe with a Repair and Maintenance Program.

2.7 The probable causes of the reported conditions.

2.8 The status of the exterior maintenance.

2.9 For any conditions listed in the previously filed report (if any), whether such conditions have been repaired and/or maintained as recommended in that report.

2.10 Recommendations for repairs or maintenance, if appropriate, including the recommended time frame for the repairs or maintenance to be performed.

2.11 The classification of the building according to the following scheme:

- a. "Unsafe," if there is at least one unsafe condition.
- b. "Safe with a Repair and Maintenance Program," if there is a condition that is "Safe with Repair and Maintenance Program" and there are no Unsafe conditions.
- c. "Safe", in all cases other than a or b.

2.12 Photographs and/or sketches documenting the locations of any conditions that are either Unsafe or Safe with a Repair and Maintenance Program.

2.13 A statement by the Professional indicating which repairs and/or maintenance require the obtaining of work permits prior to their commencement.

2.14 A statement signed by the owner or agent of the building, acknowledging receipt of a copy of the report and acknowledging all required repairs and/or maintenance (if any) and the recommended time frame for performing such repairs and/or maintenance.

2.15 The Professional's certification that the physical inspection was performed in accordance with applicable rules and regulations and within the appropriate professional standard of care.

2.16 The Professional's seal and signature.

2.17 Such other matters as the code official may by regulation require.

3. The Professional may submit an amended report within thirty (30) days of the initial submission. The amended report shall clearly indicate any change from the initial report and all reasons for such changes.

PM-315.5 Unsafe Conditions.

1. Within twenty-four (24) hours of being notified of an Unsafe condition by a Professional, the owner of a building shall take any actions necessary to protect public safety, such as erecting sidewalk sheds, fences, and/or safety netting. Such actions shall be considered as an effort to remedy an emergency situation and appropriate permit applications shall be submitted within the next three (3) days to the code official.

2. Within ten (10) days of the receipt or filing of a report identifying an Unsafe condition, the owner of a building shall commence work to correct the condition and work shall continue without interruption until the Unsafe condition has been corrected, unless there has been an unforeseen delay (e.g. weather, labor strike). Within two weeks after the Unsafe condition has been corrected, the Professional shall reinspect the building and file with the code official a detailed amended report stating the condition of the building.

PM-315.6 Conditions That Are Safe with a Repair and Maintenance Program.

1. The owner of the building is responsible for ensuring that the conditions described in the report as "Safe with a Repair and Maintenance Program" are repaired and the actions identified by the Professional are completed within the time frame designated by the Professional or by such time necessary to prevent a condition from becoming an Unsafe condition, whichever is sooner

PM-315.7 Extensions.

1. The code official may grant an extension of time of up to ninety (90) days to begin the repairs required to remove an Unsafe condition or to repair a Safe with Repair and Maintenance Program condition, after receipt and review of an initial extension application submitted by the Professional which includes:

1.1 Proof that the premises have been made safe by means of a shed, fence, or other appropriate measures.

1.2 A copy of the contract indicating the scope of work necessary to remedy the Unsafe condition(s).

1.3 The Professional's estimate of the length of time required for repairs, and a notarized affidavit by the owner of the building or its agent that work will be completed within such time.

2. A further extension of time will be considered by the code official only upon receipt and review of a further extension application which details that one of the following is met:

2.1 The work has been substantially completed, but there has been an unforeseen delay (e.g. weather, labor strike).

2.2 Unforeseen circumstances (e.g., fire, building collapse).

2.3 The nature of hazard requires more than 90 days to remove (e.g., new wall to be built).

PM-315.8 Appeals. The owner of the building may appeal the findings set forth in the Professional's initial report or amended report to the Board of Building Standards. Such appeal must be filed within thirty (30) days of the receipt or filing of the report, and must include a second Professional's report. The filing and pendency of such an appeal shall stay the requirement for making repairs as set forth in Section PM-315.5.2, but not the requirement for taking actions necessary to protect public safety as set forth in Section PM-315.5.1. 364

1. Upon consideration of any such appeal, the Board shall issue a recommendation to the code official either to grant the appeal; deny the appeal; or grant the appeal with such proposed modifications to the Professional's findings as the Board deems consistent with the intent of this Section. The code official thereafter shall make the final determination on the appeal.

2. The owner of the building may appeal the determination of the code official to the Board of License and Inspection Review, pursuant to the procedures set forth in Section A-803.2 of The Administrative Code.

SECTION PM-316 PERIODIC INSPECTION OF PRIVATE BRIDGES 364.1

PM-316.1 Definitions. The following definitions shall apply to this Section PM-316:

1. **Private Bridge.** An elevated structure that crosses over any part of a public right-of-way or publicly-owned pedestrian, bicycle or equestrian trail that typically allows for pedestrian passage between buildings or supports building systems and processing equipment or allows for vehicular access to private property, and often is referred to as a skyway, catwalk, skybridge or skywalk. A private bridge does not include a structure inspected as required by a federal authority such as the Federal Highway Administration or the Federal Railroad Administration.

2. **Professional.** A Commonwealth of Pennsylvania licensed Professional Engineer experienced in the practice of structural engineering.

3. **Safe.** A condition of a private bridge or any appurtenance thereto that is neither an Unsafe condition nor Safe with a Repair and Maintenance Program.

4. **Safe with a Repair and Maintenance Program.** A condition of a private bridge or any appurtenance thereto or any part thereof that the Professional does not consider Unsafe at the time of inspection, but requires repairs or maintenance in order to prevent its deterioration into an Unsafe condition.

5. **Unsafe Condition.** A condition of a private bridge or any appurtenance thereto or part thereof that is dangerous to persons or property and in need of prompt remedial action.

PM-316.2 Inspections Required.

1. The owner of a private bridge shall be responsible for retaining a Professional to conduct periodic inspections of the structure and any appurtenances thereto, and to prepare and file a report on such inspection as required by this Section.

2. The initial inspection required by this Section shall be conducted, and the required report shall be filed, on or before July 1, 2017. If the construction of the private bridge was completed after July 1, 2007, the first inspection shall be conducted within ten years after the certificate of



CITY OF PHILADELPHIA
DEPARTMENT OF LICENSES & INSPECTIONS
 Municipal Services Building
 1401 John F. Kennedy Boulevard
 Philadelphia, PA 19102

Complete all sections; type or neatly print:

**Summary Inspection Report of
 Exterior Walls and Appurtenances**
 (Philadelphia Code, Title 4, Section PM-304.10)
 THIS FORM TO BE SUBMITTED TO:
facadereports@phila.gov

1 Filing Information

Date of Report: _____ Amended Filing Date: _____

2 Location Information - Must use the address assigned by the City's Board of Revision of Taxes

Building Address: _____
 Owner/Agent/Site Contact: _____ Phone Number: _____

3 Building Characteristics

Principal Occupancy: _____ Number of Stories: _____ Height: _____
 Year Constructed: _____ Exterior Wall Type: _____ Historic Designation (if any): _____

4 Inspection Status Information

Wall(s) Inspected: _____ Inspection Method: _____ Inspection Date: _____

- SAFE CONDITION**
- SAFE WITH REPAIR & MAINTENANCE PROGRAM** Recommended start date: _____
- UNSAFE / IMMINENT DANGER** Submit copy of full report along with form.

NOTE: The Department of Licenses & Inspections' Emergency Services & Abatement Unit must be notified by phone (215-686-2480) within 12 hours of discovery, and a report containing details of the condition and recommended temporary safety measures must be delivered within 24 hours to that unit at the address above.

Person Contacted: _____ Date Contacted: _____
 Description (probable cause of condition; nature/extent of corrective action necessary; time frame for remediation): _____

5 Professional Responsible for Inspection

Name: _____ Company: _____ License #: _____
 Company Address: _____
 Company Phone/Fax/E-mail: _____

6 Owner of Record Information (NOT Agent, Site Contact, or Business Manager)

Name: _____ Company: _____
 Address: _____
 Company Phone/Fax/E-mail: _____

7 Signature Statements

FOR OWNER / OWNER REPRESENTATIVE:

I hereby state that I am the owner/owner's representative of the premises referenced in the inspection report. Furthermore, I have received and read a copy of the report and am aware of the required repairs and/or maintenance, if any, and the recommended time frame for same. I certify that all items noted for action in the previous cycle's report have been corrected/repared.

NAME: _____

SIGNATURE: _____

FOR PROFESSIONAL:

I hereby state that the owner/owner's representative has authorized me to submit this report. Furthermore, I hereby state that all reporting and inspection requirements have been met and that all statements are correct and complete to the best of my knowledge. A copy of this report has been given to the owner/owner's representative.

SIGNATURE: _____

Interpreter services available. | خدمات الترجمة الشفهية متوفرة لدينا | англоамериканский переводчик | 提供口译服务 | Services d'interprétation disponibles. | 통역이 제공됩니다. | Предоставляются услуги устного перевода. | Se brindan servicios de interpretación. | Có sẵn dịch vụ thông dịch.

Exhibit "A-2"

*School District
Request for Proposals
To Provide Façade Inspection Services*

The Request for Proposals (the "RFP") consist of:

1. The School District of Philadelphia Request for Proposals to Provide Façade Inspection Services; and
2. [Addendum No. 1 to the RFP].

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*

1. **Method of Compensation.** The method of Compensation for this Contract shall be a negotiated not-to-exceed fixed fee for Group 1 or Group 2 buildings. The School District agrees to pay the Contractor, on a monthly basis, in proportion to the actual services performed on the Project based upon the hourly billable wage rates for its Key Personnel that are set forth in the Contractor's Fee Proposal, which is attached hereto as part of Exhibit "B" and is hereby incorporated by reference into this Contract.

a. The hourly billable wage rates set forth in the Contractor's Fee Proposal 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 billable wage rates shall be all-inclusive wage rates for all personnel listed as Key Personnel on the Contractor's Fee Proposal. If ranges are used for hourly billable wage rates for listed Key Personnel, the lower rate shall be the contract rate for the listed Key Personnel.

b. The Contractor's invoices for payment for services shall be limited to the listed Key Personnel, and at the hourly billable wage rates indicated on the Contractor's Fee Proposal. Any revisions to the Key Personnel or additional Key Personnel added to the Services and their hourly billable wage rates must be approved by the School District before the Contractor's submission of invoices for payment for their time expended on the Services. The School District shall not make payment to the Contractor for Services performed by persons not listed as Key Personnel on the Contractor's Fee Proposal, 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 Contractor for Services performed by persons or additional key personnel whose hourly billable wage rates have not been approved in advance by the School District.

2. **Payment Schedule.** Payments shall be made by the School District, after its receipt and approval of the Contractor's invoice for payment and required Deliverables, and upon satisfactory completion of façade inspection and façade inspection report at each School District building property.

3. **Reimbursable Expenses.** The School District agrees to pay the Contractor, as Reimbursable Expenses, at 100% of their actual costs, only for scaffolding or high reach equipment rental required to conduct physical, hands-on inspections of buildings pursuant to the Philadelphia Façade Ordinance. The Contractor shall submit a proposal for Reimbursable Expenses to the School District, for prior approval, before its commencement of façade inspections at School District buildings. The Contractor shall not be entitled to any other Reimbursable Expenses, except with the prior written consent of the School District. Home

office management and support services are deemed to be overhead costs and shall not be separately compensated. Printing of façade inspection reports, travel expenses, and meals shall not be paid as Reimbursable Expenses. Normal printing of documents for the School District's approvals, or the Contractor's use, or the review and approval of the City L&I Department, shall not be paid as Reimbursable Expenses.

Exhibit "C"

School District Standard Terms and Conditions

The School District's Standard Terms and Conditions are attached hereto as Exhibit "C" and are hereby incorporated by reference into this Contract.

Exhibit "C"

School District Standard Terms and Conditions

1. *General Conditions of the Work.*

a. *Standard of Performance.* In carrying out the Work, the Contractor shall exercise the highest degree of competence and diligence exercised by providers in the Contractor's field. The Contractor shall cooperate with the School District and all other Persons contracting with the School District whose work affects the Contractor's Work, or whose work the Contractor's Work affects. The Contractor shall perform all Work under this Contract to the satisfaction of the School District.

b. *Compliance with Applicable Law.* The Contractor shall comply with all Applicable Law in connection with this Contract.

c. *Warranty.* To the extent that the Work includes the sale or the furnishing of Materials, the Contractor warrants that the Materials shall be good, free of defects, merchantable and fit for the particular purposes for which the School District intends to use them.

d. *Contractor Responsibility for Quality of the Work.* Payment by the School District or acceptance of the Work, including any Materials, shall not relieve the Contractor of responsibility for the substance and quality of all Materials and Work. Without any additional compensation, the Contractor shall diligently and expeditiously correct any errors, deficiencies or omissions in the Work, including any Materials, and shall remain liable in accordance with this Contract and Applicable Law for all damages to the School District caused by the Contractor or the Work, including any Materials.

e. *Contractor Staff.* The Contractor shall not assign any Person dismissed from School District employment to perform any Work under this Contract. The Contractor shall within seven (7) days reassign from any Work any employee if the Responsible Official notifies the Contractor that, in the reasonable opinion of the Responsible Official, the employee is incompetent or incapable of carrying out any part of the Work assigned to that Person.

f. *Meetings.* Upon seventy-two (72) hours prior notice from the School District, the Contractor shall attend any meetings requested by the School District, at a location to be determined by the School District.

g. *Site License(s).* To the extent that the Contractor's Statement of Work, Exhibit "A" to this Contract, requires the Contractor to carry out any portion of the Work on premises of the School District, the School District, subject to the terms, covenants and conditions set forth in this Contract, hereby grants the Contractor a limited, revocable license to use such School District premises, and only such School District premises, as are expressly provided or by necessary implication required in order for the Contractor to complete the Work in conformity with the requirements of this Contract. The School District shall have the right at any time and for any reason to terminate the foregoing license. The Contractor covenants and agrees to comply with all rules and regulations concerning the use of School District premises imposed by the School District, including but not limited to rules and regulations set by a principal concerning his or her school. The Contractor shall promptly repair any and all damage to School District premises caused by the Contractor or any of the Contractor's officers, agents, employees or Subcontractors.

h. *Contract Reporting.* The Contractor shall comply promptly with the School District's reporting requirements for contracts, including electronic or other reporting of Contractor and contract data.

2. ***Background Checks.*** In accordance with 24 P.S. § 1-111, as amended, and 23 Pa. C.S.A. §§ 6354-6358, as amended, before starting any Work, the Contractor shall submit to the School District the originals of a current (*i.e.*, processed by the Commonwealth of Pennsylvania within one (1) year prior to the Contractor's starting Work) criminal history record information report and child abuse history official clearance statement for the Contractor, if the Contractor is an individual, and for each of the Contractor's and any of its Subcontractor's employees, officers, agents, servants, volunteers or Subcontractors who will have direct contact with children while performing any of the Work. Before starting any Work, the Contractor shall submit to the School District the original of a current report of the Federal Bureau of Investigation federal criminal history record information for the Contractor, if the Contractor is an individual, and for each of the Contractor's and any of its Subcontractor's employees, officers, agents, servants, volunteers or Subcontractors who will have direct contact with children while performing any of the

Work. Commonwealth Board of Education regulations define “direct contact”; *see* 22 Pa. Code § 8.1.

a. *Arrests; Convictions.* The Contractor shall comply and shall ensure that its officers, employees, agents and Subcontractors who carry out any of the Work 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 Contractor or of any Subcontractor of an arrest or conviction for an offense listed in 24 P.S. § 1-111(e). The Contractor shall report to the School District, in a prompt and timely manner, all notices and reports required, and all checks conducted, under § 1-111(j).

3. *Compensation; Invoices.*

a. *Invoices Exclusive of Taxes.* 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 Tax ID Number is 23-6004102; and its Federal Excise Tax Number is 23-63-0021-K.

b. *Support for Invoices.* If the Contractor, after a request by the School District, does not provide evidence satisfactory to the School District to support any item or items set forth on an invoice, the School District shall have no liability to make any payment with respect to that item or items. If the School District has already made payment for that item or items, the School District may by notice to the Contractor require the Contractor to refund to the School District the amount of any such overpayment, or the School District, at its option, may set off such overpayment against any payments accruing thereafter to the Contractor under this Contract or any other contract between the Parties.

4. *The Contractor’s Duties Concerning Taxes and Other Obligations.* The School Reform Commission (the “Commission”) by its Resolution SRC-2, dated February 21, 2013, adopted its Tax Compliance of Vendors Policy (the “Tax Policy”) for School District vendors, including the Contractor. The Tax Policy provides that in general the Commission will not permit the School District to contract with Persons delinquent in payments of any City taxes or other indebtedness, at the execution and delivery of the Contract and at any time during the Term of the Contract.

a. *Contractor’s Covenants.* In compliance with the requirements of the Tax Policy, the Contractor covenants and agrees that throughout the Term of this Contract, for itself and any Person controlling, controlled by or under common control with the Contractor, the Contractor shall comply with the following requirements.

i. At any time during the Term of this Contract upon notice from the School District the Contractor shall deliver to the School District proof of its tax compliance in the form of a “Certificate of Tax Clearance” from the City’s Department of Revenue.

ii. At any time during the Term of this Contract upon notice from the School District the Contractor shall deliver to the School District proof in writing of its execution and delivery of a settlement agreement, payment plan or other necessary and appropriate documentation in satisfaction of any indebtedness to (A) the City for or on account of any City tax, including any tax collected by the City on behalf of the School District, or in satisfaction of any other indebtedness or obligation owed by the Contractor to the City; and (B) the Commonwealth of Pennsylvania for or on account of any Commonwealth tax, or in satisfaction of any other indebtedness or obligation owed by the Contractor to the Commonwealth .

iii. The Contractor shall promptly pay and otherwise promptly and diligently comply with and carry out its duties and obligations under any such settlement agreement, payment plan or other documentation with the City or the Commonwealth of Pennsylvania, until it has discharged its obligation to the City or the Commonwealth of Pennsylvania by satisfying any such tax or other indebtedness or obligation.

iv. The Contractor may in good faith, diligently and expeditiously, pursue any bona fide claim, contest or appeal with the Commonwealth, or the City, as the case may be, of its liability for, or the amount of, any indebtedness or obligation to the Commonwealth of Pennsylvania, or the City for or on account of any tax, including but not limited to any tax collected by the City on behalf of the School District, or other indebtedness or obligation, to the final appeal, adjudication, resolution or compromise thereof with the Commonwealth of Pennsylvania or the City. The Contractor shall promptly pay all uncontested taxes and other indebtedness or obligations to the Commonwealth of Pennsylvania and the City.

b. *The Contractor’s Taxes, etc. – School District Set-Off.* The Contractor agrees that the School District shall have the right to set off against, or to withhold payment of, or both, any and all Compensation accruing and payable to the Contractor under this Contract and any other contract, in order to provide for and assure the payment by or on behalf of the Contractor of any and

all sums of taxes or other indebtedness or obligations then lawfully due and owing by the Contractor or any Person controlling, controlled by or under common control with the Contractor, to either the City or the Commonwealth. Each Party shall have the right to rely on certificates and other official documents provided by either the City or the Commonwealth in proceeding to withhold or set off under this subsection 4.b.

5. **Best Pricing.** The Contractor shall perform the Work at the lowest price the Contractor charges to other school districts or other governmental entities for like work. If the School District pays a price for the Work in excess of the lowest price the Contractor charges or has recently charged to a governmental entity, in addition to all other remedies, the School District shall have a right, as damages, to a refund equal to the difference between the price charged to the School District and the lowest price the Contractor charges or has recently charged to another governmental entity, together with interest at a rate equal to the prime rate of interest as published from time to time by the *Wall Street Journal*, plus five percent (5.0%).

6. **Unavailability of Funds; Crossing Fiscal Years.**

a. **Unavailability of Funds.** In the event the School District, in its sole determination, 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 Work, the School District may exercise one of the following alternatives: (1) terminate this Contract effective upon a date specified in a Termination Notice; or (2) continue this Contract by reducing, through written notice to the Contractor, the amount of this Contract and the scope of the Work, consistent with the nature, amount and circumstances of the loss of funding. Any termination or reduction of this Contract pursuant to this subsection shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction. The School District shall not face any liability or penalty as a result of such termination or reduction of this Contract.

b. **Crossing Fiscal Years.** If the School District will pay any portion of the Compensation in any School District fiscal year subsequent to the current fiscal year (the School District's fiscal year runs July 1 – June 30), the portion of the Compensation that may accrue hereunder in a subsequent fiscal year remains subject to legally mandated budget authorization by the School Reform Commission, or the Board of Education, as the case may be, 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 for which the School Reform Commission or the Board of Education, as the case may be, authorized funds.

7. **Grant-Funded Contracts; Trust-Funded Contracts.**

a. **Compliance with Grant.** If the School District pays for all or any portion of the Work with funds received by the School District as grants or under other terms and conditions from any source, including the United States of America, the Commonwealth of Pennsylvania, The City of Philadelphia (the "City"), or any department or agency of said governments, or from any public or private charitable trust fund, then the Contractor shall comply with the terms of the applicable grant agreement, contract or trust indenture, as the case may be, in carrying out the Work, and the School District shall comply with the terms of said grant agreement, contract or trust indenture, as the case may be, in making any payment or payments hereunder to the Contractor. The Contractor shall not take any action, or omit to act, if such act or omission would cause a breach or default under any such grant agreement, contract or trust indenture.

b. **Timely Submission of Invoices.** If the School District pays any of the Compensation from federal government or Commonwealth of Pennsylvania grant funds, the Contractor shall bill the School District for any outstanding compensation owed to the Contractor within thirty (30) days after the end of the Term (*see* Section 3 of the Agreement for Services). In the event the Contractor does not bill the School District for the balance of any compensation within said thirty (30) day period, the School District reserves the right to withhold payment of the balance of the Compensation to the Contractor based upon the unavailability of federal government or Commonwealth of Pennsylvania funds, in which event the School District shall have no liability to the Contractor for said balance of the Compensation.

8. **Independent Contractor.** The School District has engaged the Contractor as an independent contractor to carry out the Work, and neither the Contractor nor any of the Contractor's agents, employees or Subcontractors shall in any way or for any purpose whatsoever be deemed an agent or employee of the School District. Neither the Contractor nor any of its agents, employees or Subcontractors 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. Neither the Contractor nor its agents, employees or Subcontractors shall represent themselves in any way as agents or employees of the School District, and none

of the Contractor, its agents, employees or Subcontractors has any power to bind legally the School District to any third party.

9. **Non-Discrimination.** The Contractor, for itself, its officers, agents, employees and Subcontractors, covenants and agrees that it shall not discriminate against or intimidate any employee or other Person on account of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin or Vietnam-era or any other veteran status. The School District is an equal opportunity employer under Applicable Law, and requires the same of the Contractor. The School District shall not do business with any Person that unlawfully discriminates on the basis of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin or Vietnam-era or any other veteran status, or any other impermissible ground in hiring, promotion, subcontracting or procurement practices. The Contractor shall include the first three sentences of this Section 9, with appropriate adjustments for the identity of the parties, in any Subcontracts that it executes and delivers. If the School District has selected the Contractor pursuant to a public solicitation or through a request for proposals ("RFP") or comparable process and the Contractor submitted a plan describing the participation of minority-, women-owned or disadvantaged businesses as part of the solicitation or the RFP, then the Contractor shall comply with its participation plan.

10. **Subcontracts.**

a. **School District Consent Required.** The Contractor shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, including any portion of the Work, in whole or in part, without in each instance first giving notice to and obtaining the written consent of the School District, which consent the School District may grant, withhold, condition or delay in its sole discretion. The School District hereby consents to any Subcontract entered into by the Contractor specifically referenced in Exhibit "A", the Contractor's Statement of Work, to this Contract. Any subcontract made in violation of this Section shall be null and void. The School District shall have no obligation to any Subcontractor. Each Subcontract shall contain clauses to the effect that (i) the Subcontractor shall have no recourse to the School District for any payment, or for performance under, such Subcontract; (ii) the Subcontractor consents to any assignment of the Subcontract by the Contractor to the School District, at the School District's sole option; and (iii) the Contractor shall make payment to any Subcontractor within five (5) business days after receipt of payment from the School District with respect to work properly invoiced by a Subcontractor to the Contractor and reflected in the payment by the School District to the Contractor.

b. **No Change in the Contractor's Obligations.** The existence of any Subcontract shall not alter or limit the obligations of the Contractor to the School District under this Contract. The Contractor shall at all times remain fully responsible for its Subcontractors, and shall ensure that it legally binds all Subcontractors to the same terms and conditions as the Contractor under this Contract, including without limitation, non-discrimination, warranties, confidentiality, maintenance and preservation of records and audit by government representatives.

11. **Non-Assignment.** The Contractor acknowledges that the Work constitutes personal or professional services, or both, of the Contractor. Except through a Subcontract subject to Section 10 above, the Contractor shall not assign this Contract, or any part of this Contract, nor delegate performance of any part of this Contract, without the prior written consent of the School District, which consent the School District may grant, withhold, condition or delay in its sole discretion. This Contract legally binds the Parties and their respective successors and assigns. Any purported assignment in violation of this provision shall be void and of no effect. The School District's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. 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. Consent by the School District to any assignment shall not constitute a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 11, an assignment includes the acquisition of the Contractor, 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 Contractor, and the transfer of this Contract or the Contractor in any bankruptcy or other insolvency-related proceeding. A receiver or trustee of or for the Contractor in any federal or state bankruptcy, insolvency or other proceeding concerning the Contractor shall comply with the requirements set forth in this Contract, including but not limited to this Section.

12. **Audits; Records and Payments.**

a. **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, 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 Section, an "Auditor") may audit any and all aspects of the Contractor's performance under this Contract, including but not limited to its billings and invoices and payments received. If

requested by an Auditor or the School District, the Contractor shall submit to the Auditor and the School District for review or inspection, all invoices presented for payment pursuant to this Contract, all cancelled checks, Materials, invoices, vouchers, reports, work product, work papers, books, records and accounts upon which the invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract.

b. *Inspection.* The Contractor acknowledges and agrees that any Auditor may inspect or review all of its Work and Materials, 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 Contractor in the City, or in another location with the Auditor's consent. The Contractor 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, and 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 Contractor'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.

c. *Availability of Records.* The Contractor shall make available, in the City at reasonable times during the Term of this Contract and for the period set forth in subsection 12.d. below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any Auditor. The Contractor shall provide such records without unreasonable delay when requested by an Auditor.

d. *Retention of Records.* The Contractor shall retain all records, books of account and documentation pertaining to this Contract for the greater of the period required by Applicable Law or six (6) years following expiration or termination of this Contract; if, however, any litigation, claim or audit commences prior to expiration of said six (6) year period, then the Contractor shall retain the records until all litigation, claims or audit findings have been completely terminated or resolved without right of further appeal.

13. *Indemnification; Litigation Cooperation; Notice of Claims.*

a. *Indemnification.* The Contractor shall indemnify, defend and hold harmless the School District, its officers, employees, agents and the members of the School Reform Commission and the Board of Education, from and against any and all losses, expenses, including, but not limited to, litigation and settlement costs and attorneys' fees and costs, claims, suits, actions, damages, and liability for or on account of actual or alleged loss of life, bodily injury, personal injury, damage to property, or the use of facilities or equipment furnished to the Contractor, that arise out of or are related to the performance or non-performance of the Work by the Contractor or the Contractor's agents, Subcontractors, assignees, independent contractors, employees or servants. The Contractor shall indemnify, defend and hold harmless the School District, its officers, employees, agents and the members of the School Reform Commission and the Board of Education, from and against any and all losses, expenses, including, but not limited to, litigation and settlement costs and attorneys' fees and costs, claims, suits, actions, damages and liability for or on account of actual or alleged violation of any third party's copyright, trademark, patent, trade secret or other valid proprietary right, employment discrimination, contamination of or adverse effects on the environment, intentional acts or omissions, failure to pay any Subcontractors or suppliers, any Event of Default under this Contract, and breach, if any, of any Subcontract, that arise out of or are related to the performance or non-performance of the Work by the Contractor or the Contractor's agents, Subcontractors, assignees, independent contractors, employees or servants.

b. *Indemnification; Contractor's Employees.* This Section 13 protects the School District, its officers, employees, agents and the members of the School Reform Commission and the Board of Education from all claims arising during the Term of this Contract asserted by employees, agents or workers of the Contractor or any Subcontractor who are injured on or by School District real or personal property, or who assert an employment claim of any kind, including but not limited to any claim or claims relating to the termination of employment, regardless of when the claimant makes the claim. Except as expressly set forth below in this subsection 13.b., the Parties shall not construe this Section 13 to alter, limit, negate, abridge or otherwise reduce any other right or obligation that would otherwise exist as to any Party or Person described in this Contract. This Section 13 functions independently of the Contractor's or its Subcontractors insurance or lack thereof, and the Parties do not intend that rights set forth in this Section 13 be deemed limited by the Pennsylvania's Worker's Compensation Act. This Section 13 shall apply, particularly, but not exclusively, to the claims of the Contractor and all of its Subcontractors, and all of their respective officers, agents, representatives and employees, against the School District, its officers, employees and agents, and the members of the School Reform Commission and the Board of Education. The Contractor and all of its Subcontractors, and all of their respective officers, agents, representatives and employees, shall have no claim against the School District, its officers, employees and agents and the members of the School Reform Commission and the Board of Education for the acts, failures to act or negligence of the School

District, or its officers, employees and members of the School Reform Commission or Board of Education.

c. *Litigation Cooperation.* If at any time, including after the expiration or earlier termination of the Term of this Contract, the School District becomes involved in a dispute or receives notice of a claim, or is involved in litigation concerning the Work and Materials provided under this Contract, the resolution of which requires the services or cooperation of the Contractor, and the Contractor does not otherwise have a duty to indemnify and defend the School District pursuant to the provisions of subsection 13.a. above, the Contractor shall provide such services and shall cooperate with the School District in resolving such claim or litigation as part of the Work and Materials under this Contract.

d. *Notice of Claims.* If the Contractor receives notice of a legal claim against it in connection with or in any way related to this Contract, the Contractor shall (1) 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, (2) within five (5) business days of receipt of notice of the claim, give notice of such claim to the School District.

14. ***School District Statutory Immunity.*** Any other term, covenant or condition of this Contract to the contrary notwithstanding, the School District, its officers, employees and agents and the members of the School Reform Commission and the Board of Education, retain their statutory governmental, official and any other immunity 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 School District 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, any other defenses or immunities available to it or any of them.

15. ***Insurance.*** The Contractor shall, at its own expense, procure and maintain the types and minimum limits of insurance specified below covering the Contractor and the performance of the Work. The Contractor shall procure all insurance solely from insurers 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. The Contractor shall procure all insurance 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 herein, except the professional liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall the Contractor commence performing any part of the Work until the Contractor has delivered to the School District the required proof of insurance. The insurer shall provide for at least thirty (30) days prior written notice to the School District in the event the Contractor and its insurer or insurers materially change, cancel or non-renews any insurance policy. The Contractor shall name The School District of Philadelphia and its officers, employees and agents as additional insureds on the general liability insurance policy, and the Contractor shall ensure that its insurer so endorses this policy. The Contractor shall procure and maintain an endorsement or endorsements stating that (i) the coverage afforded the School District and its 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 or its officers, employees and agents shall invalidate the coverage, other than an act or omission that constitutes willful misconduct or gross negligence.

a. ***Workers' Compensation and Employer's Liability.*** Workers' Compensation limits shall be the statutory limits, and employers' liability insurance, with limits of (1) \$100,000 Each Accident-Bodily Injury by Accident; (2) \$100,000 Each Employee-Bodily Injury by Disease; and (3) \$500,000 Policy Limit-Bodily Injury by Disease. Any other states' insurance under this subsection shall include Pennsylvania.

b. ***General Liability Insurance.*** Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury, including death, and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate, and \$2,000,000 aggregate for products and completed operations. The general liability insurance shall cover: 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. The School District may require higher liability limits or aggregate coverages at any time during the Term if in the School District's sole discretion, the risk warrants.

c. ***Automobile Liability Insurance.*** Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury, including death, and property damage liability, arising from owned, non-owned, and hired vehicles when any motor vehicle is used in connection with the Work.

d. ***Professional Liability Insurance.*** Limit of Liability: \$1,000,000 with a deductible not to exceed \$100,000. The professional liability insurance shall cover errors and omissions, including liability assumed under this Contract. The Contractor may permit its insurer to write this coverage on a claims-made basis, provided that the Contractor shall maintain coverage for

occurrences arising out of the performance of the Work required under the Contract in full force and effect under the policy or “tail” coverage for a period of at least three (3) years after completion of the Work, or shall provide for an extended reporting period of at least three (3) years after cancellation of the policy.

i. *Educator’s Legal Liability Insurance.* If the Contractor, including its officers, employees or agents, will or may have direct contact with children, the Contractor shall procure and maintain educator’s legal liability coverage of \$1,000,000 per occurrence combined single limit / \$2,000,000 general aggregate coverage. Educator’s Legal Liability Insurance coverage must include coverage for wrongful physical or sexual contact. If the Contractor provides educational services, the Educator’s Legal Liability coverage shall also include educational wrongful acts, employment practices wrongful acts and directors and executive officers wrongful acts.

Certificates of Insurance evidencing the required coverages and endorsements providing proof of insurance must specifically reference the School District contract number set forth on the first page of the Agreement for Services (please type this contract number in the ‘Description’ section of the certificate). The Contractor shall deliver the original certificate and endorsements providing proof of insurance to:

The School District of Philadelphia
Office of Risk Management
440 North Broad Street, Third Floor
Philadelphia, PA 19130-4015
(215) 400-4590

The Contractor shall deliver the certificate of insurance and endorsements providing proof of insurance to the School District at least ten (10) days before any Work or any extension of the Term begins. Under no circumstances shall the Contractor actually begin Work, or continue Work, in the case of an extension of the Term, without providing the evidence of insurance. The Contractor shall not self-insure any of the coverages required under this Contract without the prior written consent of the School District’s Office of Risk Management. 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) days written notice to the Contractor.

16. Confidentiality; Student Records; Data Ownership.

a. *Confidential Information.* The Contractor shall keep in strict confidence all information acquired in connection with or as a result of this Contract that is not generally known to others (“Confidential Information”). During the Term of this Contract and at any time thereafter, without the prior written consent of the School District, the Contractor shall not disclose or use to its advantage, profit or gain any Confidential Information or any other information subject to a third party’s proprietary right, such as a copyrighted or trademarked work.

b. *Student Records.* The Contractor shall keep in strict confidence as required and to the fullest extent required by any Applicable Law, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), any and all records and information, in whatever form or format received, pertaining to the School District’s individual students and children, including but not limited to any academic or grade information, attendance, truancy, discipline, receipt of special education services or supplementary educational services, social security or public benefits, or information as to race, ethnicity or disability. The Contractor acknowledges and agrees that FERPA limits the transfer and re-transfer of education records and personally identifiable information in education records. The School District shall transmit information or records, or both, protected by FERPA solely to the individual named in Section 7 of the Agreement for Services, and such other duly authorized individuals as the Contractor may specify by notice to the School District (*see* Section 7 of the Agreement for Services and Section 21 of these Standard Terms and Conditions).

c. *Publication Rights.* With regard to any reports, studies or other works developed in the course of this Contract, or as a result thereof, the Contractor shall not publish Confidential Information or any other information which identifies students, employees or officers of the School District by name without first obtaining written consent from such individuals, or in the case of a student, his or her parent or legal guardian. The Contractor shall provide to the School District for its review any proposed publication, brochure or advertisement that names the School District not less than thirty (30) calendar days prior to submission for publication, and the Contractor shall remove the School District’s name and any information identifying the School District from the publication if the School District requests removal. The Contractor shall not issue, publish or divulge any Materials developed or used in the performance of this Contract or make any statement to the media relating to the Contract without the prior consent of the School District.

d. *Data Ownership.* The School District retains and reserves its ownership of, and all right, title and interest in, any and all data provided by the School District to the Contractor under or in connection with this Contract. The Contractor acknowledges and agrees that the School District grants to the Contractor a limited, revocable, nonexclusive right and license to use any such School District data, which may include personally identifiable information subject to FERPA, solely for the Contractor's use in carrying out the Work set forth in this Contract and solely in conformity with FERPA and other Applicable Law. At any time during and after the expiration or earlier termination of the Term of this Contract, the School District may request that the Contractor deliver to the School District all or any portion of any data provided by the School District; promptly upon receipt of any such request the Contractor shall, without any charge to the School District, deliver to the School District the requested data in a usable format reasonably specified by the School District. School District data includes any information and data developed by the Contractor, e.g., by populating a database, as part of or associated with the Work set forth in this Contract. The Contractor shall not destroy nor permit the destruction of any School District data, except upon the prior express written consent of the School District. Upon the expiration or earlier termination of the Term of this Contract, the Contractor shall promptly and in any event not later than ten (10) business days after request by the School District, return to the School District all School District data then in the possession or control of the Contractor. Once the Contractor has returned all School District data, it shall promptly destroy and dispose of any remaining copies of the data in its possession or in the possession of any Subcontractor.

17. *Materials; Intellectual Property.*

a. *Computer Programs.* The Contractor shall ensure that all of its computer programs, tapes and software developed under this Contract comply with any pertinent specifications or requirements set by the School District.

b. *License.* For the duration of the Term, as the Parties may agree to extend it, the Contractor hereby grants, and shall require its Subcontractors, if any, to grant, to the School District the irrevocable, royalty-free right to reproduce, distribute copies of, adapt, display, perform, translate, and publish, throughout the universe, in any medium now known or hereafter invented, all Materials and works of authorship, including without limitation studies, media, curricula, and other things of any nature, developed pursuant to this Contract.

18. *Conflict of Interest.*

a. *Disclosure of Conflict of Interest.* The Contractor 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 Subcontractors, has or shall during the Term acquire, directly or indirectly, any such interest. The Contractor shall promptly and fully disclose to the School District's Responsible Official all interests which constitute or may constitute such a conflict.

b. *Improper Gift; Improper Relationship.* The Contractor 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 Contractor 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 Contractor, has a direct or indirect investment worth \$1,000 or more in the Contractor or is a director, officer, partner, trustee or employee of the Contractor.

c. *School District Employees Not to Benefit.* The Contractor 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 Contractor shall comply with the School District's 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 Contractor shall disclose to the School District the name of each School District official or employee who receives payment from the Contractor, the amount such official or employee receives and the services rendered by the official or employee in consideration of the payment.

19. *Default; Notice and Cure; Remedies.*

a. *Event of Default.* Each of the following constitutes an Event of Default by the Contractor under this Contract:

i. Failure by the Contractor or any Subcontractor to comply with any term, covenant or condition set forth in this Contract.

ii. The Contractor's (a) filing for bankruptcy, (b) making any assignment for the benefit of creditors, (c) consent to the appointment of a trustee or receiver (d) insolvency, as defined by Applicable Law, or (e) the filing of an involuntary petition against the Contractor under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days.

iii. Default by the Contractor under any other agreement the Contractor may have with the School District.

iv. Any material misrepresentation by the Contractor in (A) this Contract, (B) any other document submitted to the School District by the Contractor, or (C) otherwise by the Contractor directly or indirectly to the School District in connection with the School District's decision to execute, deliver and perform this Contract.

v. Failure of the Contractor 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 Contractor will not be able to perform the Work; and (2) the School District demands in writing assurance of the Contractor's performance.

vi. Misappropriation by the Contractor of any funds provided under this Contract or failure by the Contractor to notify the School District upon discovery of any misappropriation.

vii. Indictment of or other issuance of formal criminal charges against the Contractor, or any of its directors, employees, agents or Subcontractors or any of the directors, employees or agents of a Subcontractor or any criminal offense or any other violation of Applicable Law directly relating to this Contract, the Work or the Materials, or which adversely affects the Contractor'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.

viii. Debarment or suspension of the Contractor or any director, agent, employee or Subcontractor of the Contractor, or any Person controlling, under common control with, or controlled by, the Contractor under a federal, state or local law, rule or regulation.

ix. Failure by the Contractor to comply with any term, covenant or condition set forth in Section 4, **Contractor's Duties Concerning Taxes, etc.**, above in these Standard Terms and Conditions, or the breach of any of the Contractor's representations and warranties set forth in subsection 22.f., below.

b. *Notice and Cure.* If the Contractor commits or permits an Event of Default, the School District shall notify the Contractor in writing of its determination that an Event of Default has occurred. The Contractor shall have ten (10) business days from receipt of that notice, or such additional cure period as the School District may authorize in its sole discretion, to correct the Event of Default; provided, however, that no such notice from the School District or period of cure shall be required before invoking the remedies described in subsection 19.c. if: (1) the Contractor 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 Contractor 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 subsection 19.a. vi., vii., or viii. above; or (5) the Contractor breaches any of its obligations under Sections 2 or 9 of these Standard Terms and Conditions. Nothing set forth in this subsection 19.b. shall limit the School District's rights under subsection 19.c.

c. *Remedies.* If the Contractor does not cure the Event of Default within the period allowed by the School District, or if the Contractor commits or permits an Event of Default for which subsection 19.b. above provides no notice or period of cure, then the School District may, without further notice or demand to the Contractor, and without waiving or releasing the Contractor from any of its obligations under this Contract, invoke and pursue any or all of the following remedies:

i. terminate this Contract by giving the Contractor a Termination Notice.

ii. perform, or cause a third party to perform, this Contract, in whole or in part. The Contractor shall be liable to the School District, as damages, for all expenses incurred by the School District or a third party pursuant to this subsection 19.c.ii., together with interest at the prime rate of interest as published from time to time by the *Wall Street Journal*, plus five percentage points (5.0%). The School District shall not in any event be liable for inconvenience, expense, loss of profits or other

damage incurred by the Contractor by reason of the School District's performance or paying such costs or expenses.

- iii. withhold payment of, or offset against, any funds payable to or for the benefit of the Contractor.
- iv. collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of the Contractor.
- v. any other legal or equitable remedy available to the School District, including but not limited to a legal action for breach and damages against the Contractor.

d. *Specific Performance.* The Contractor's Work and Materials represent unique services and things, not otherwise readily available to the School District. Accordingly, the Contractor 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 of this Contract.

e. *Concurrent Pursuit of Remedies.* The School District may exercise any or all of the remedies set forth in this Section 19, each of which the School District may pursue separately or in conjunction with any other remedy or remedies, as the School District shall determine. The School District may in its sole discretion elect not to exercise any of the above remedies and may permit the Contractor to continue to perform the Work. No extension or indulgence granted by the School District to the Contractor shall operate as a waiver of any of the School District's rights in connection with this Contract.

20. *Termination for Convenience.* The School District may terminate this Contract for its convenience, that is, for any reason or for no reason at all, at any time, in its sole discretion, upon fourteen (14) days prior written notice to the Contractor of the School District's termination of this Contract (a "Termination Notice"), without penalty, cost or liability to the School District. If the School District terminates this Contract, the School District shall pay the Contractor for any Work satisfactorily completed before the effective date of termination, but in no event shall the Contractor have any right to receive costs caused by or related to loss of profits for Work that the Contractor did not perform because of the early termination, or for loss of profits for services the Contractor could have performed for other Persons absent its engagement under this Contract.

a. *Contractor Actions upon Termination.* Upon receipt of a Termination Notice from the School District under Sections 6., 19., or 20 above, the Contractor shall take immediate action to effect the orderly discontinuance of the Work. The Contractor shall collect, assemble and transmit to the School District, at the Contractor's sole expense, all Materials developed under this Contract. The Contractor shall clearly label and index to the satisfaction of the School District all such Materials, and shall deliver all such Materials to the School District within thirty calendar (30) days after receipt of a Termination Notice, or in such shorter period as the School District may specify in its Termination Notice.

21. *Notices.* Except as expressly provided to the contrary in any other Section of this Contract, the Parties shall give all notices, waivers, consents and approvals required under this Contract in writing. The Parties shall deem any notices, waivers, consents and approvals duly given (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (e.g., Federal Express, United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile, provided that any notice by facsimile shall be promptly confirmed by one of the other methods set forth in this section; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case the Parties shall send notices to the other Party's representative as set forth in and at the addresses set forth in Section 7 of the Agreement for Services. The Parties shall not transmit notices required under or in connection with this Contract by electronic mail.

22. *Representations and Warranties.* Effective as of the execution and delivery of this Contract and throughout the Term of this Contract, the Contractor makes the following representations, warranties and covenants to the School District.

a. It has all necessary power and authority to execute, deliver and perform this Contract and has completed all actions necessary in order to duly authorize the execution, delivery and performance of this Contract, including duly authorizing the Person who signs this Contract to do so on its behalf.

b. This Contract, when executed and delivered, shall constitute a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms.

c. The Contractor is financially solvent, can and shall pay all its debts as they mature, and possesses working

capital sufficient to carry out the Work.

d. The Contractor owns or has duly and validly licensed from a third party the Materials and any other materials used by the Contractor in carrying out the Work; the Contractor's use or delivery thereof to the School District in connection with this Contract, and any use thereof by the School District as contemplated by this Contract, does not and shall not violate any third party's copyright, patent, trade secret or other proprietary right.

e. The Contractor is and shall be, at all times during the Term of this Contract, duly qualified to transact business in the Commonwealth of Pennsylvania, professionally competent and duly licensed to carry out the Work, if the performance of the Work requires any license or licenses.

f. 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 any taxes imposed, levied, authorized or assessed by the Commonwealth or the City, including any tax imposed, levied, authorized or assessed for or 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.

g. Neither the Contractor nor any of its principals or Subcontractors, nor any other Person controlling, controlled by, or under common control with, the Contractor, are under suspension or debarment, have received official notice of commencement of proceedings for debarment or have been declared ineligible for contracts, bids, RFPs or contract awards by the Commonwealth of Pennsylvania, the City, any Federal agency or any school district.

The Contractor shall provide immediate written notice to the Responsible Official if at any time during the Term of this Contract the Contractor learns that any of these representations, warranties or covenants was or has become erroneous.

23. **Definitions.** Except as expressly provided to the contrary elsewhere in these Standard Terms or Conditions or in the Agreement for Services, capitalized terms shall have the meanings specified in this Section. In the event of a conflict between a definition in these Standard Terms and Conditions and the Agreement for Services, the definition in the Agreement for Services shall apply. In the event of a conflict between a definition in any exhibit, addendum or attachment to the Agreement for Services and a definition in these Standard Terms and Conditions, the definition in these Standard Terms and Conditions shall apply.

a. *Agreement for Services.* "Agreement for Services" means the instrument headed "Agreement for Services", which forms a part of this Contract and which contains the signatures of the School District and the Contractor, and sets forth certain of the terms, covenants and conditions specific to the Contractor's engagement.

b. *Applicable Law.* "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 Contractor and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

c. *City.* "City" has the definition set forth above in subsection 7.a.

d. *Contract.* "Contract" means the agreement of the Parties evidenced by the instruments integrated into and forming a part of this Contract, *i.e.*, the Agreement for Services, Exhibit "A", Exhibit "B", if any, these Standard Terms and Conditions and any other Exhibit incorporated into this Contract as set forth in the Agreement for Services.

e. *Event of Default.* "Event of Default" means those events defined and identified in subsection 19.a. of these Standard Terms and Conditions.

f. *FERPA.* "FERPA" has the definition set forth above in subsection 16.b.

g. *Materials.* "Materials" means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics and other data, computer tapes, computer software, and other tangible work product, materials or goods prepared, supplied or developed by the Contractor as part of or in connection with the Work, or for the Contractor by a Subcontractor in connection with the Work, and deliverable or delivered to the School District by the Contractor or its Subcontractor pursuant to this Contract.

h. *Party; Parties.* A "Party" means either the School District or the Contractor; the "Parties" means the School District and the Contractor.

i. *Person.* "Person" means any individual, association, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

j. *Responsible Official.* "Responsible Official" means the School District official named in Section 7 of the Agreement for Services.

k. *Subcontract; Subcontractor.* "Subcontract" means a contract made between the Contractor and a Subcontractor providing for the completion of some part or parts of the Work or Materials by a Subcontractor. "Subcontractor" means a Person performing under a contract with the Contractor a part of the Work or Materials that the Contractor has agreed to carry out pursuant to this Contract.

l. *Termination Notice.* "Termination Notice" means a notice given by the School District of its intent to terminate the Contract and its termination of the Contract as referenced in Sections 6, 19 and 20. Such notice shall specify an effective date.

m. *Work.* "Work" means the work, including any Materials, that the Contractor has agreed to complete under this Contract, as described in Section 1 of the Agreement for Services, Exhibit "A" to this Contract, and any relevant exhibits or addenda forming part of this Contract.

Unless otherwise expressly defined in this Contract, words that have well-established technical meanings or definitions in the field of public primary and secondary education have the same well-established meanings or definitions when used in this Contract.

24. *Miscellaneous.*

a. *Applicable Law; Venue.* The Parties, and any court or other tribunal, shall construe and enforce this Contract under the laws of the Commonwealth of Pennsylvania, regardless of its conflict of laws provisions, and without the aid of any canon, custom or rule of law requiring construction against the draftsman. In the event that the Parties cannot amicably resolve any dispute and a Party resorts to legal action, that Party shall file suit only in the state or federal courts sitting in Philadelphia, Pennsylvania.

b. *Headings.* Section headings in this Contract serve for reference only and shall not in any way affect the meaning or interpretation of this Contract.

c. *Order of Precedence.* In the event of conflict or variation between the Standard Terms and Conditions or the Agreement for Services and any other exhibit, addendum or attachment, the Standard Terms and Conditions or the Agreement for Services, as the case may be, shall govern. In the case of conflict or variation between the Standard Terms and Conditions and the Agreement for Services, the Agreement for Services shall govern.

d. *Severability.* If a court holds any term, covenant or condition of this Contract invalid, such holding shall not affect or impair the validity of any other terms, covenants or conditions of this Contract, which the Parties hereby deem severable and which shall remain in full force and effect.

e. *Survival.* Any and all provisions of this Contract which contemplate performance by a Party after the expiration or earlier termination of this Contract shall survive and be enforceable after such expiration or termination, including without limitation provisions relating to ownership of Materials and indemnification.

f. *Waiver.* No one shall or may find, hold or determine that a Party has waived any term, covenant or condition set forth in this Contract, any Event of Default, or any remedy set forth in this Contract, unless that Party has set forth its waiver in a writing signed by that Party.

g. *No Partnership or Agency.* Anything in this Contract to the contrary notwithstanding, including but not limited to any references in Exhibits "A", "B" or "D" to a "partnership" or "partner" relationship, the Parties have not created, do not intend to create, and no Party, nor any other Person, including any court or other tribunal, shall construe anything set forth in this Contract as creating, a joint venture or partnership between the School District and the Contractor with respect to the Work. Neither the

Contractor nor the School District shall have any power to bind the other Party in any manner whatsoever to any third party. The Contractor does not function as an agent of the School District in any dealings with any third party.

h. *No Third Party Beneficiaries.* The Parties do not intend to create, and no Party, court, tribunal or Person shall construe anything set forth in this Contract to create, any contractual relationship with, or to give a claim, right, cause of action or remedy in favor of, any third party against either the School District or the Contractor. The Parties do not intend that anything in this Contract benefit any third party.

i. *Entire Agreement; Amendment.* This Contract includes all exhibits and addenda, if any, referred to herein, all of which the Parties hereby incorporate by reference. This Contract constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous oral and written agreements and statements, all of which the Parties have fully integrated herein. This Contract supersedes any prior or contemporaneous course of conduct, performance or dealing between the Parties. No amendment or modification changing this Contract's scope or terms shall have any force or effect unless executed and delivered in writing and signed by both Parties.

j. *Counterparts.* The Parties may execute and deliver this Contract in any number of counterparts, each of which the Parties shall deem an original, and all of which shall constitute, together, one and the same agreement.

k. *Interpretation; Number, Gender.* The words "herein" "hereof" and "hereunder" and other words of similar import refer to this Contract as a whole, and not to any particular Section, subsection or clause in this Contract. Whenever the context requires, the Parties shall construe words used in the singular to include the plural and vice versa, and pronouns of any gender to include the masculine, feminine and neuter genders.

l. *Time.* Time is of the essence of the Contractor's performance of the Work, including the delivery of any Materials to the School District, under this Contract.

Exhibit "D"

The Board of Education Action Item

The Board of Education Action Item A-__ dated _____, 2018 is attached hereto as Exhibit "D".

Exhibit "E"

M/WBE Participation Plan

The Contractor's M/WBE Participation Plan submitted with its Proposal is attached hereto as Exhibit "E".