

OGC Contract Number ____/F22
Funding Source: Capital Fund

Oracle Contract Number

AGREEMENT FOR SERVICES

Project:

***Request For Quotation (RFQ) for
Professional Moving Services On A
As-Needed Basis
Throughout the District***

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 partnership) (the "Contractor" or "_____"), located at _____, have executed and delivered this Agreement for Services (the "Contract") as of _____, 2021.

Background

The School District currently serves about 142,300 students enrolled in School District schools, which include pre-kindergarten, elementary, middle, high school and alternative schools. Various management structures are used to manage the education program in School District schools, including for-profit and non-profit organizations in addition to School District staff. The Board of Education ("Board") is the governing body of the School District pursuant to P.S. 24 P.S. §21-2102 and §3-301.

On May 21, 2021, the Board of Education ("Board") of the School District approved a six (6)-year amended Capital Improvement Program ("CIP") for FY21 through FY26 totaling over \$2.015 billion and a proposed 6-year Capital Improvement Program (CIP) for FY22 through FY27 totaling over \$2.01 billion. The CIP priorities include constructing new facilities and additions, renovation of existing facilities, maintaining the physical integrity of existing facilities and upgrading existing facilities to meet code requirements and educational programming needs, and replacing systems that have exceeded their lifecycle.

The School District's Office of Capital Programs ("OCP") is responsible for identifying and prioritizing capital work within the School District, including maintaining the physical integrity of existing facilities, constructing new buildings, and renovating existing facilities to accommodate the educational needs of the School District. The OCP shares responsibility for

the long term upkeep and replacement of critical building systems over 25.6 million square feet, including 494 buildings, annexes, administrative buildings and athletic fields, and other School District offices. The OCP works closely to coordinate its OCP work with staff from the Office of Facilities and Maintenance, Office of Environmental Management and Services, Office of Real Property Management, and Office of General Counsel.

The basis for the budget for the OCP is the sale of bonds, usually repayable with interest over 30 years. The Capital Budget is also the basis for the multi-year Capital Improvement Program (CIP). Projects are selected for inclusion in the CIP using building condition assessment reports, work orders and deferred maintenance data, field maintenance employee input and the priorities identified in the School District Superintendent's Strategic Action Plan.

The OCP seeks talented individuals with extensive knowledge of the design and construction industry to join its OCP team. In its Request for Quotation (RFQ) to Provide Professional Moving Services On An As-Needed Basis ("RFP"), the OCP requested proposals from qualified professional firms to provide the OCP with professional moving services to support the OCP management team, on an as-needed basis, for the Capital Improvement Program (CIP).

The professional firm's general role will be to provide the OCP with professional moving services as required by the OCP on an as-needed basis.

_____ responded to the RFQ with a Proposal.

1. *Incorporation of Background; General Rules of Construction.* The above Background is incorporated by reference into this Contract. All references to "days" in this Contract mean calendar days unless otherwise stated. The term "business day" means Monday through Friday, excluding holidays observed by the School District.

2. *The Engagement, the Work, the Standard Terms and Conditions.* Subject to the terms and conditions set forth in this Contract, the School District engages the Contractor to carry out the work (the "Work") set forth in (a) the attached Exhibit "A-1" – the School District's Request for Quotation (RFQ) to Provide Professional Moving Services On An As-Needed Basis (hereinafter referred to as "RFQ for Professional Moving Services" or "RFQ"); and (b) the attached Exhibit "A-2" – the Contractor's Proposal submitted in response to the School District's RFQ (only parts of the Contractor's Proposal is attached hereto; however, the entire Contractor's Proposal is incorporated by reference into this Contract) (each of which includes any sub-exhibits, attachments or addenda incorporated therein); and Exhibit "B" – the Contractor's Fee Proposal (the "Fee Proposal"). The Work includes all Materials the Contractor has agreed to provide, the time frames in which the Contractor has agreed to complete the Work, and all other requirements the Contractor must satisfy in order to complete the Work during the Term (defined in Section 4 below). The terms and conditions of this Contract include the School District Standard Terms and Conditions (the "Standard Terms and Conditions") attached hereto as Exhibit "C".

a. *Assignment of Specific Work.* The School District's Office of Capital Programs will use professional moving companies to provide professional moving services to

support its management team, on an as-needed basis, for the Capital Improvement Program. The School District's Office of Capital Programs will issue specific Work assignments under this Contract when the need for professional moving services arises on a particular School District project. Prior to issuing Work assignments, the School District's Office of Capital Programs will provide a description of required services for the specific Work assignment for a particular School District project to selected companies awarded contracts for professional moving services and request that all companies visit the specific Work assignment site, review the scope of work of the specific Work assignment for the particular School District project and provide a not-to-exceed amount for the specific Work assignment for the particular School District project. The School District's Office of Capital Programs will select the professional moving company that is the best fit for performing the specific Work assignment for the particular School District project. The final costs for the specific Work assignment for the particular School District project will be based either on the hourly rates set forth in the Contractor's Fee Proposal or a negotiated fixed fee for the specific Work assignment for the particular School District project. The Contractor acknowledges and agrees that the School District is under no obligation to order any particular number of professional moving services Work assignments from the Contractor.

b. *Scope of Services.* The Contractor shall provide the School District's Office of Capital Programs with the professional moving services described in the RFQ, **Scope of Services** section (Exhibit "A-1"), on an as-needed basis. Moving services may be required for standard classrooms, kitchens, computer labs, science labs, libraries, administrative offices, music rooms, etc. The services to be provided by the Contractor under this Contract shall include, but not be limited to, the following services:

- (1) Moving heavy equipment.
- (2) Quick response moving or small jobs on an as-needed basis.
- (3) Packing/unpacking, and/or moving classrooms, and/or administrative offices from permanent buildings to interim or temporary housing and back to permanent buildings after construction is complete or as construction is completed.
- (4) Packing/unpacking, moving, and/or set up of technology equipment, including, but not limited to, computers, monitors, scanners, copiers, telephones, IT switching equipment, servers, racks and computer desks/stations.

c. *Description of Professional Moving Services.* The Contractor's professional moving services shall include the following services:

- (1) Pre-Move Consultation and Planning.
- (2) Pre-Move Walk Through and Briefing.
- (3) Pre-Move Activities.
- (4) Kickoff Meeting.

- (5) Physical Move.
- (6) Technology.
- (7) Tracking, Updating and Perfecting Inventories of Items.
- (8) Disposal of Residual Items.
- (9) Security and Safety Planning.
- (10) Interview with Building Engineers.
- (11) Comprehensive Project Management.
- (12) On-Site Move Management.
- (13) Actual Moves at Each School.
- (14) Post-Move Management.
- (15) Moving Specialty Items.

d. *Pre-Move Consultation and Planning.* The Contractor, together with the School District, specifically the Office of Capital Programs (OCP), shall develop a comprehensive Master Relocation Plan and Schedule in unison with the schools, administrative offices, and departments, to pack, relocate and unpack the school departmental offices within the school and appurtenant offices. Pre-Move Requirements should include, but are not limited to:

- (1) Schedule of move (specific days and times of activity).
- (2) Packing and unpacking will be required as needed. Personal employee items will be packed by School District personnel.
- (3) Packing materials (corrugated boxes or rental crates, bubble wrap tape, etc.).
- (4) Itemized inventory of classroom furniture, office furniture, athletic equipment, etc. to be moved and management of items added to/subtracted from the inventory list.
- (5) PC's disconnections and moving (Must coordinate with the School District's IT Department).
- (6) Plan for post move fine tuning staff needed for set up and clean up.

(7) Egress out and to buildings, parking and lay down areas should be reviewed, along with loading dock schedules and building management requirements.

(8) Development and implementation of tagging system and procedures. For move tools, provide a move packet to each school principal that includes signs, room layouts and other tools needed to ensure efficiency.

e. *Pre-Move Walk Through and Briefing.* The Contractor shall conduct pre-move inspections of the schools and offices to receive relocated material during the move and the origin sites being vacated or relocated to ensure there are no obstacles that could affect the relocation. The Contractor shall conduct a walk through and briefing prior to the move to view all spaces involved and review move flow strategies. The Contractor shall modify move specific plans and schedules or develop contingency plans as required. The Contractor shall develop an itemized inventory of furniture, books, equipment, artwork, memorabilia, etc. to be moved.

f. *Pre-Move Activities.* The Contractor shall be responsible for coordination of task assignment follow ups and instructions to all parties involved in the move. The Contractor's services shall include, but not be limited to, the following:

- (1) Move sequencing, formal plan development.
- (2) Management of matter "to/from" list.
- (3) Develop a tagging system (all items must have an identifying and tracking tag preferably bar codes).
- (4) Schedule coordination implementation and tagging procedures.
- (5) Provide pre-move damage photographs of faculties, furniture, or equipment to verify any existing damage prior to move. Identify special moving requirements.
- (6) Transportation coordination.
- (7) Loading dock schedule (if applicable).
- (8) Elevator schedule (if applicable).
- (9) Coordination of protection of building services.
- (10) Development of directional signage for move.
- (11) Placement of move placard and signage.
- (12) Damage recording procedures.
- (13) Identifying equipment requiring specialized personnel for hookup.

- (14) Identification and resolution of obstacles.
- (15) Identify elements requiring an early move schedule.
- (16) Temporary signage.

g. *Kickoff Meeting.* The Contractor shall conduct a Kickoff Meeting with the key personnel of the schools and impacted departments, the Contractor's team, and other major stakeholders to be determined. The objective of the meeting will be to ensure that the entire team (The School District, Schools, Principals, department heads, the Contractor, and others) all has the same Project expectations. The meeting will be held at the School District's Education Center located at 440 North Broad Street and may be broken into the following phases:

- (1) Review the Scope of Work.
- (2) Outline project goals and objectives.
- (3) Review the Physical Move Schedule and coordinate key milestone dates and sequencing requirements to complete the move in order and on schedule.
- (4) Provide a schedule with an estimated completion date for all moves.
- (5) Develop a schedule for progress meetings monthly, bi-weekly, weekly, daily or as needed.
- (6) Establish communication channels (School District will provide a contact list of all impacted departments) and approval process.
- (7) Identify the project role for all School District and Contractor team members and decision makers.
- (8) Develop a project directory to include company affiliation, titles, telephone numbers and electronic mail addresses, document correspondence and deliverable distribution (including inventory and damage reports).
- (9) Document who will receive Meeting Minutes and who will send them.
- (10) Identify data requirements formats and schedule of delivery.
- (11) Document how changes in the scope of work, if any, will be processed.
- (12) Review confidentiality requirements.

(13) Review moving requirements. The Contractor must submit a sample invoice.

h. *Physical Move.* The Contractor shall be responsible for any packing, protection, preparation and transport of, unpacking and placement of all covered items as directed by the School District's Project Manager to designated locations (schools, administrative offices) as directed by the School District's Project Manager or his/her designee.

(1) Elevators, loading docks and air conditioning may not be available at the schools, and, therefore, the Contractor must plan accordingly. If the elevator in a building listed as having an elevator is not operating, the Contractor must find an alternate method of continuing the move in that building at the contracted cost.

(2) The services shall also include disassembly and assembly of noted items as directed by the School District's Project Manager or his/her designee. This could include athletic equipment, special education equipment, etc.

(3) Special equipment, such as athletic, fitness, workstations, etc., that needs disassemble and reassemble should be identified and handled by the original provider when possible.

(4) The Contractor shall provide sufficient identification labels, boxes. Tape, and appurtenant moving supplies as required.

(5) Items to be relocated include, but are not limited to, all school administrative and operational equipment, principal suites, teacher, student and classroom furniture, books, school and office supplies, effects and stores, together with all spare parts, maintenance, repair and operating supplies and inventory within each school (facility), so designated by School District personnel as being relocated to another site or sites, except for those items or materials designated for discard, salvage or auction.

(6) All personal property will be removed by School District personnel prior to the move.

(7) Any shelving, cabinets, and counters that are affixed to walls or floor shall not be relocated by the Contractor, unless specified by the School District's Project Manager. The Contractor shall ensure that all floors, walls, door jambs and furniture that require protection will be appropriately protected before movement commences. The Contractor shall be responsible for notifying the School District's Project Manager of any damages made to any School District property or School District facility during the relocation. This notification must be in writing, and the inventory list should reflect any damaged items that should be removed from the master inventory list.

i. *Technology.*

(1) Pre-Move Interviews shall also be conducted, specifically with

Information Technology (IT) representatives, to address technology move requirements for each School District school, department or impacted group.

(2) The Contractor shall be responsible only for the relocation of technology items, such as computers, laptops, printers and related equipment (keyboards, mouse, servers, etc.).

(3) An inventory list from The Office of Information Technology (IT) will be provided to the Contractor and reviewed at the origin location and the destination location(s).

(4) IT will disconnect and pack all PC's and laptops to be relocated by the Contractor. Servers, racks, computer carts and other special items will be identified and prepared by IT for relocation by the Contractor.

j. *School District Department Contact List.*

(1) Each School District Department must provide a contact list of the personnel who will be present at the origin and destination site(s) to direct the placement of relocated items. The School District's Project Manager will use this School District Department contact list to coordinate moves with the Contractor.

(2) Tracking. In consultation with the School District, the Contractor must update and perfect the School District's existing inventories of items at the affected sites (departing and receiving) so as to allow for a common and continuous accounting of all relocation items, packed and non-packed in and out of transit, or interim storage, as well as residual items not subject to relocation (Items for disposal salvage or auction).

k. *Disposal of Residual Items*. In close consultation with the School District, the Contractor must identify all salvageable items and fixtures not relocated. The Contractor must also discard and haul unsalvageable items approved by the School District, and see to the clearing of all vacated spaces. The school/portion of school should be left empty and broom swept.

l. *Security and Safety Planning*. The Contractor must be fully Bonded and Insured, and shall also be responsible for the security of all materials while in transit. If materials are to be stored in non-School District facilities, the Contractor must provide security for the materials during these periods. In addition, the School District must be advised at the end of each business day (5:00 p.m.), whenever any of its property enters into this status, and must be provided a complete inventory of the items involved and the location of interim storage. This list must be submitted to the School District's Project Manager.

m. *Interview with Building Engineers*. The Contractor should conduct interviews with the Building Engineer at the impacted school prior to commencement of the move. The Contractor shall perform a building analysis and conduct interviews with building engineer and security personnel at the impacted school to identify:

- (1) Requirements for protecting the facility during moves.
- (2) Requirements for scheduling and use of loading dock.

The Contractor shall be responsible for securing all points of access or egress being utilized during any phase or activity of relocation.

n. *Comprehensive Project Management.* The Contractor shall oversee all phases of the relocation project, consider all practical aspects and plan for any reasonably foreseeable contingencies, qualify subcontractors and other vendors, provide regular and ad hoc reports, action item list alerts, etc., as required by the School District, in whatever format the School District might prescribe. The Contractor shall be bound by all lawful customary and contingent obligations not specifically mentioned in the RFQ or this Contract.

o. *On-Site Move Management.* The Contractor shall provide overall management and coordination of all move activities. The Contractor's site supervisors shall be present during move activities. The Contractor shall ensure all boxes, equipment, and furniture is handled according to the established procedures and plans. The Contractor shall coordinate continuously with the School District, Building Engineers, Security, etc., to ensure compliance with the Project schedule and move procedures.

p. *Actual Moves at Each School.*

- (1) Provide a schedule.
- (2) Provide inventory list.
- (3) Provide number of days to complete the move.

q. *Post-Move Management.*

- (1) Provide Substantial Completion and Final Completion dates.
- (2) Provide Punchlist Schedule. Identify completion problems remaining on Punchlist.
- (3) Provide Post-move cleanup schedule.
- (4) Provide delivery of final inventory list to School District's Project Manager.

r. *Specialty Items.* Specialty items include, but are not limited to:

- (1) Universal gym and appurtenant gym equipment (exercise equipment, athletic equipment, weight machines, weights, mats, etc.).
- (2) ADA Equipment (wheel chairs, lifts, etc.).

- (3) Kitchen/Cafeteria Equipment (Refrigerators, ovens, stoves, food warmers, freezers, etc.).
- (4) Technology/Technological Equipment (Smart boards, laptop carts, servers, etc.).
- (5) Libraries (Shelving, catalogs, etc.).
- (6) Pianos and other musical instruments.

s. *Performance Standards.* For all work performed under this Contract, the Contractor must meet the following performance specifications:

(1) The Contractor must have the ability to provide, through its own means or through Subcontractors, all equipment, materials, supplies, vehicles and related services necessary to provide full and complete moving services. This includes, but is not limited to, bins/crates boxes tape labels, handcarts padding bubble wrap computer bags, and protection materials.

(2) The Contractor and/or any Subcontractors performing work in connection with this Contract and the Contractor's Fee Proposal must certify in their submission that personnel are paid in accordance with the Pennsylvania Prevailing Wage Act requirements.

(3) The Contractor must be capable of disassembly and reassembly of office desks cabinets, office tables and bookcases.

(4) When disassembly and reassembly of furniture is required, the Contractor must properly label and track all parts and reassemble furniture in its original condition and assure no parts are lost or damaged by vendor personnel.

(5) The Contractor must take necessary precautions to prevent damage to equipment, supplies and property. All items must be properly protected from inclement weather during the preparation of the move and while being moved.

(6) In addition to the Contractor's general responsibility to protect property from damage, the Contractor shall be responsible for the protection of finished surfaces such as, but not limited to, columns, doors, door frames and walls. Wall corners shall be protected by Styrofoam corner brackets or similar material. Wall surfaces shall be protected by corrugated wall board or similar materials where required for adequate protection. The Contractor shall be responsible for protecting all elevator floors and walls. The Contractor shall assure that weight capacities of elevators used by personnel during the moving process will not be exceeded. Carpeting and floors shall be protected by Masonite (or similar) floor boards cardboard or similar protective covering.

(7) Any items or finishes damaged, marred or lost by the Contractor shall be completely repaired, replaced or refinished by the Contractor to the satisfaction of the

School District within thirty (30) calendar days of the incident.

(8) At all times during the move, local ordinances shall be observed by the Contractor, including but not limited to, preservation of adequate access to fire exits and extinguishers.

(9) The Contractor must provide adequate security measures during the move operation to ensure all items are accounted for.

(10) The Contractor shall be responsible for removal and disposal of any debris, *i.e.*, packing material, resulting from the move. The Contractor shall be responsible for the removal and proper disposal of all trash and containers that may occur during the move. Trash that exceeds the capacity of the waste receptacles at the locations must be removed from the property and discarded with an appropriate recycling center or waste center at the Contractor's expense.

(11) The Contractor's personnel shall provide for the physical transportation of all furniture, equipment and material from existing locations to new locations within the established time schedule for each project.

(12) The Contractor shall provide adequate truck size(s) and types of trucks to meet the individual moving requirements.

(13) The Contractor shall properly train and alert all employees who will perform work on site with regard to appropriate conduct and the consequences of employee misconduct on School District facilities, with particular attention to misconduct involving discrimination and sexual harassment of students, employees and others on School District properties.

The Contractor shall require its Subcontractor(s) to comply with the performance standards set forth in this Contract.

t. *Contractor Duties and Obligations.*

(1) The Contractor shall provide all labor, including supervision, tools, materials, equipment, licenses, permits and incidentals, required and/or implied for the complete and satisfactory performance of professional moving services in accordance with the School District's specifications.

(2) The Contractor shall supply all supervision, vehicles, drivers, packers, packing materials and other supplies as needed to execute the moves at the School District locations.

(3) The Contractor shall work in close coordination with the School District's Project Manager from the Office of Capital Programs and any designee(s) that the School District's Project Manager may assign.

(4) The Contractor shall conduct in depth interviews with each school or relocating department to identify all move requirements prior to the commencement of the move.

(5) The Contractor shall attend progress meetings that will occur every other week, or weekly if necessary, while the physical move is active, to minimize the disruption of School District Operations, offices and departments being relocated.

(6) The Contractor's professional moving services shall include, but not be limited to, providing traceable packaging for individual workers' current work, certain records and reference materials or inventory systems.

(7) Each School District department must provide personnel to be present at the origin and destination site(s) of the move to direct the placement of relocated items for the Contractor. The School District's Project Manager will use this list to coordinate moves with the Contractor.

(8) The Contractor shall manage its resources in order to minimize any costs that may occur due to excess material usage man hours for waiting and detained truck or staffing resources. There shall be no charges by the Contractor to the School District for the employees of the Contractor or its Subcontractor(s) to and from the move site at the School District location.

(9) After each schedule move at the School District location, the Contractor's representative shall conduct a punch list walkthrough with the School District's Project Manager to close out the specific School District project.

(10) The School District's normal working hours of operation are 7:30 a.m. through 3:30 p.m. The Contractor shall perform its professional moving services during the School District's normal working hours of operation. However, it is anticipated that moves may be required of the Contractor during swing shifts or on Saturdays and Sundays in order to have classrooms moved and not disrupt the educational programs. The Contractor shall not be entitled to overtime rates in excess of the rates bid unless the School District requires that work be performed on a legal holiday. If additional hours will be required of the Contractor, the Contractor must submit the request for additional hours at the specified school or office, to the School District's Project Manager, in writing at least three (3) business days prior to the date when the additional hours will be required. Any work performed by the Contractor other than during the School District's normal working hours of operation must be approved in advance by the School District's Project Manager.

(11) All work of the Contractor must comply with the School District's Partnership Agreement with the Philadelphia Building and Construction Trades Council dated June 7, 2006, which is incorporated by reference into this Contract.

u. *Contractor Personnel Qualifications and Responsibilities.*

(1) The Contractor must be engaged full-time in the business of

providing the services required under this Contract. The Contractor must have a minimum of five (5) years of experience in the moving business with experience handling large and complex projects in excess of \$50,000 in moving business.

(2) The Contractor shall designate a representative to serve as the project lead (hereafter referred to as the "Project Leader") for each assigned School District project. The Contractor's Project Leader must have a minimum of five (5) years of experience in the moving business.

(3) The Contractor shall assign a person (hereafter referred to as "the Coordinator") who will manage all communications, scheduling and coordination of the Contractor's professional moving services for the School District's assigned projects. The Contractor's Coordinator must have a minimum of five (5) years of experience in the moving business. The Contractor's Coordinator shall review the existing School District location for a specific work assignment to evaluate the scope of the move at that location.

(4) The Contractor shall assign a person to serve as the Supervisor for the School District's assigned projects. The Contractor's Supervisor must have a minimum of five (5) years of experience in the moving business and two (2) years of experience as a Supervisor or equivalent. The Contractor's Supervisor must be experienced with the coordination of moves similar to the assigned School District projects. The Contractor's Supervisor shall be on-site during all moves at School District locations. The Contractor's Supervisor shall be available as needed and requested for on-site pre-move planning meetings. At no time shall School District personnel be deemed as supervisors of the Contractor.

(5) The Contractor shall assign persons to serve as General Labor personnel. The Contractor's General Labor personnel must have a minimum of one (1) year moving experience. The Contractor's General Labor personnel must be capable of performing all the activities requested in the execution of the professional moving services. The Contractor's General Labor personnel must be trained moving personnel who are direct employees of the Contractor or the Contractor's Subcontractors.

(6) When tasks requiring special trades such as carpentry are performed, the Contractor shall supply personnel with the appropriate trade qualifications and experience, and shall pay such personnel in accordance with the applicable prevailing wage requirements.

(7) When on School District property, all personnel of the Contractor and its Subcontractor(s) shall observe all rules and regulations in effect as the School District's governing safety and personal conduct. When on School District property, the employees of the Contractor and its Subcontractor(s) shall be subject to the control of the School District, but under no circumstances shall the employees of the Contractor and its Subcontractor(s) be deemed to be employees of the School District while they are performing moving services under this Contract.

(8) The Contractor and its Subcontractor(s) shall comply with the mandatory criminal background checks requirements set forth in Section 2 of the School

District's Standard Terms and Conditions. Failure to comply with the mandatory background checks requirements may result in immediate termination of this Contract.

(9) While they are on School District premises, all employees of the Contractor and its Subcontractor(s) must wear appropriate attire that identifies them as employees of the Contractor or its Subcontractor(s) and this identification must be visible from both the front and the back.

(10) The School District reserves the right to direct the Contractor, orally or in writing, to remove from any School District jobsite any employee of the Contractor or its Subcontractor(s) who is found to be unacceptable to perform moving services by the School District under the circumstances under this Contract, in its sole discretion. Upon receipt of such direction from the School District, the Contractor shall immediately remove such employee from the School District's jobsite. Any cost of such removal shall be borne by the Contractor or its Subcontractor(s).

v. MBE/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 will employ the services of Subcontractors as necessary to achieve 10% to 15% Subcontractor participation of the total amount of services provided in the performance of this School District Contract with either a minority-owned business enterprise (MBE) firm and/or with a woman-owned business enterprise (WBE) firm. The Contractor further represents and certifies that it will use the following MBE firm and/or WBE firm as a Subcontractor(s) under this Contract in the percentage(s) listed as set forth in the Proposal, M/WBE Participation Plan: (1) _____ (MBE) – ___%; and (2) _____ (WBE) – ___%. The Contractor's Proposal, M/WBE Participation Plan, is attached hereto as Exhibit "E" and 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.

(1) The Contractor shall not replace or substitute the MBE/WBE firm(s) identified in the above subsection i. and the Contractor's Proposal, M/WBE Participation Plan, without the prior written notice to and approval of the School District. The Contractor shall not increase or decrease the contract MBE/WBE percentages, or change the scope(s) of work, or increase or decrease the dollar amount(s), if applicable, for the MBE/WBE firm(s) identified in the above subsection i. and the Contractor's Proposal, M/WBE Participation Plan, without the prior written notice to and approval of the School District. The Contractor shall promptly submit a revised M/WBE Participation Plan, for School District approval, before the Contractor: (a) replaces or substitutes the MBE/WBE firm(s) identified in the above subsection i and the Contractor's Proposal, M/WBE Participation Plan; or (b) increases or decreases the contract MBE/WBE percentages for the MBE/WBE firm(s) identified in the above subsection i. and the Contractor's Proposal, M/WBE Participation Plan; or (c) changes the scope(s) of work for the MBE/WBE firm(s) identified in the above subsection i. and the Contractor's Proposal, M/WBE

Participation Plan; or (d) increases or decreases the dollar amount(s), if applicable, for the MBE/WBE firm(s) identified in the above subsection i. and the Contractor's Proposal, M/WBE Participation Plan.

3. *Action Item.* The Board of Education authorized this Contract by its Action Item number __, dated _____, 2021. 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.

4. *Contract Term.* The term of the Contract shall be for two (2) years from _____, 2021 through _____, 2023 (the "Initial Term"), unless terminated sooner by the School District as provided in this Contract. The Contractor shall commence the Work promptly on the date indicated on the Notice to Proceed issued to the Contractor for a specific Work assignment and complete the Work not later than the designated completion date provided by the School District to the Contractor for a specific Work assignment, up to the last day of the Term, except for those matters which contemplate performance after the expiration or termination of this Contract.

a. *Option to Renew.* The School District may, at its sole discretion, renew this Contract for up to one (1) additional successive one (1)-year period ("Additional Term"). Pricing shall be subject to renegotiation between the Parties at the time the School District exercises its option to renew. The Contractor only guarantees the quoted pricing for the Initial Term. Except as expressly stated otherwise in an Amendment, the terms and conditions of this Contract shall apply throughout the Additional Term. At least sixty (60) calendar days prior to the expiration of the Initial Term, the School District, at its sole discretion, may notify the Contractor, in writing, of its intention to recommend renewal of this Contract for up to an additional one (1)-year period to the Board of Education ("Board"). Within ten (10) calendar days of the Contractor's receipt of the School District's notice of its intention to recommend renewal of this Contract, the Contractor shall supply a written price quote to the School District. Renewal shall be effective only upon formal approval by Action Item of the Board. The total authorized contract term under this Contract may be for a maximum time period of three (3) years up to _____, 2024, unless the Board or a successor entity authorizes a further renewal of this Contract by Action Item.

5. *Compensation.* Pursuant to Action Item No. __ dated _____, 2021, the School District has established a **"general pool" of shared funds in the aggregate amount not to exceed _____ Dollars (\$_____)** out of the authorized Capital Fund from which Compensation for professional moving services will be paid during the Initial Term of the Contracts for Professional Moving Services. It is the intent of the School District to pay for professional moving services out of the \$_____ "general pool" of shared funds of the Capital Fund. As compensation for the satisfactory performance of the Work carried out by the Contractor hereunder, the School District shall pay the Contractor, in arrears, out of a "general pool" of shared funds, a maximum total fee not to exceed the aggregate amount of _____ Dollars (\$_____), **conditioned, however, upon the continued availability of funds, as set forth in Section 6 of the Standard Terms and Conditions** (the "Compensation"). The School District reserves the right to limit the amount of the Contract award. The School District does not guarantee the

assignment of the complete program of Work to any one single firm. The School District reserves the right to award a Contract for a lesser amount to more than one firm as may be in the best interests of the School District. The School District reserves the right to cancel this Contract for lack of performance or complete satisfaction of intent. No minimum amount of work is guaranteed under this Contract.

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

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

- flat fee, pro-rated and billed monthly, or otherwise, as provided in Section 6 below;
- at the hourly rate or rates per hour of labor specified in Exhibit "B" or Exhibits "A-1" or "A-2", and billed monthly, or otherwise, as provided in Section 6 below; or
- on such other basis as the Parties have specified, if any, in Exhibit "B" or Exhibits "A-1" or "A-2", and billed monthly, or otherwise, as provided in Section 6 below.

c. *Overtime.* The Contractor shall not be entitled to overtime rates in excess of the rates listed in its Fee Proposal unless the School District requires that work be performed on a legal holiday.

d. *Method of Compensation.* The method of compensation for each individual School District project shall be determined by the School District, at its sole option, as hourly rates or a negotiated fixed fee per Work assignment.

(1) Future School District projects may be awarded to Contractor firms in order of the ranked first Contractor firm based on the availability of the Contractor firm to complete the School District project by required deadlines, or, at the discretion of the School District, to the Contractor firm providing the lowest price quote for the specific Work assignment.

(2) Service Costs. The Contractor shall identify the true cost for all of the items indicated in the Rate Schedule set forth in the RFQ (Exhibit "A-1"). Separately, the Contractor shall identify any and all services that it can provide that are not listed on the Rate Schedule set forth in the RFQ (Exhibit "A-1"). All of the cost information provided by the Contractor in its Fee Proposal (Exhibit "B") shall become a part of this Contract. The stringent requirement for cost visibility and predictability requires that costs not identified in the Contractor's Fee Proposal shall be deemed to be at no cost to the School District.

(3) Rate Schedule. Hourly rates for all services shall commence at the time of arrival at the School District jobsite and end at the time of the School District site departure. No time shall be charged by the Contractor to the School District for the travel of the employees of the Contractor or its Subcontractor(s) to or from the School District jobsite.

(4) Service Description. Compensation for the following job categories and items shall be made to the Contractor by the School District based on the (i) regular hourly rate, (ii) overtime hourly rate, (iii) holiday hourly rate, and (iv) all-inclusive rate (including all miscellaneous material necessary for project completion, *i.e.*, boxes, carts, etc.) set forth in the Contractor's Fee Proposal (Exhibit "B"):

- (a) Project Manager.
- (b) Supervisor.
- (c) Foreman.
- (d) Helper/Crewman.
- (e) Packers/Installers.
- (f) Truck w/lift gate (includes driver).
- (g) Van (includes driver).

(5) Items. Compensation for the following items shall be made to the Contractor by the School District based on the unit cost of the item set forth in the Contractor's Fee Proposal (Exhibit "B"):

- (a) Boxes/Each.
- (b) Carts/Rental/Day.
- (c) Bins/Week.
- (d) Shrink Wrap/Roll.
- (e) Tape/Roll.
- (f) Gondolas.
- (g) Book carts.
- (h) Speed Packs.
- (i) Dollies.
- (j) Bubble Wrap.
- (k) Moving Labels.

e. *Payments*.

(1) The School District retains the right to contract with one or more Contractors for professional moving services. Payments to the Contractor shall be made by the School District based on the number of actual hours performed per working category.

(2) The moving cost per school may not exceed the proposed estimated cost provided by the Contractor on the Excel Pricing Spreadsheet submitted with the Contractor's Fee Proposal. The Contractor must submit a timesheet that includes the name and signature of each employee and actual invoices from material suppliers, subcontractors, equipment rentals, etc., as supporting documentation.

(3) All of the Contractor's costs for each item and job category shall be included in the rates and unit costs listed in the Contractor's Fee Proposal. Any costs of the Contractor that are not identified in the Contractor's Fee Proposal shall be deemed to be at no cost to the School District.

(4) The hourly rates listed in the Contractor's Fee Proposal for services shall be all-inclusive rates and shall include regular hourly rates, overtime hourly rates, holiday hourly rates, and miscellaneous material necessary for project completion. The unit costs included for materials, supplies and equipment listed in the Contractor's Fee Proposal shall be all-inclusive costs.

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

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

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

School District	Contractor	Time After Dispute Notice
Project Designer or Project Manager	Project Manager	15 days
Contracts Manager	Project Manager	15 days
Director or Operations Manager, Capital Programs	Principal in Charge	15 days

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

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

School District Responsible Official: *Contractor:*

Name:	Ahmed Sultan	_____
Title:	Director of Capital Programs	_____
Party:	The School District of Philadelphia	_____
Address:	The Education Center	_____
	440 North Broad Street, Suite 371	_____
	Philadelphia, PA 19130-4015	_____
Telephone:	(215) 400-4730	_____
Fax:	(215) 400-4731	_____
Email address:	asultan@philasd.org	_____
Program Office	Capital Programs	_____
(School District):		

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

<i>Exhibit</i>	<i>Exhibit Name</i>
"A-1"	RFQ for Professional Moving Services
"A-2"	The Contractor's Proposal (only parts of the Contractor's Proposal are attached; entire Contractor's Proposal is incorporated by reference into this Contract)
"B"	The Contractor's Fee Proposal
"C"	School District Standard Terms and Conditions
"D"	Board Action Item
"E"	The Contractor's M/WBE Participation Plan

In the event of a conflict between any Exhibit and another Exhibit, or this Agreement for

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

11. *Covid-19 Protocols.* The Contractor shall comply with the School District's School year 2020-2021 Advancing Education Safety Protocols, as well as any revision to this publication, or any and all future safety and health protocols adopted by the School District related to COVID-19, including but not limited to: (i) all School District Consultants and Contractors and their Subconsultants and Subcontractors entering a School District facility must complete the health screener each day no more than three (3) hours prior to entry, which can be found on the School District's website at the following webpage: <https://www.philasd.org/employeehealth/covid-19-pre-entry-screening-form/>; and (ii) all School District Consultants and Contractors and their Subconsultants and Subcontractors entering a School District facility must wear masks at all times and must abide by social distancing guidelines. Failure to comply with the COVID-19 Protocols shall be an automatic Event of Default under Section 19, *Default; Notice and Cure; Remedies*, Subsection a. *Event of Default*, of the School District Standard Terms and Conditions (Exhibit "C"). All School District Consultants and Contractors and their Subconsultants and Subcontractors must also comply with all applicable Commonwealth of Pennsylvania, Pennsylvania Department of Health, City of Philadelphia, and Philadelphia Department of Public Health COVID-19 orders, regulations, guidances, and restrictions while performing Services under this Contract.

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

a. The Parties modify and supplement Section 1, **General Conditions of the Work**, page 1, Exhibit "C", the Standard Terms and Conditions, by inserting new Paragraph n., *The Work*, below at the end of this Section:

"n. *The Work.* The Contractor shall carry out all of the Work in conformity with the requirements set forth in this Contract. The Contractor shall carry out all of the Work in a skillful and workmanlike manner. All materials, supplies and equipment furnished and used shall be new unless otherwise specified, of good quality, free from defects, and in conformance with the Contract requirements. All materials, supplies and equipment shall be merchantable and fit for the general purpose for which they were intended on the Project. All materials, supplies and equipment shall also be fit for the particular purpose for which they are intended on the Project. All Work, materials, supplies or equipment which do not conform to the Contract requirements shall be deemed defective, and shall be repaired or removed and replaced, to the School District's satisfaction, together with any Work disarranged by such repair, removal or replacement, at the Contractor's sole expense. The Contractor shall provide

warranties and guarantees, acceptable to the School District, for all materials, supplies, equipment and services provided or performed under the Contract. The warranties and guarantees shall survive final payment and termination of the Contract.”

b. The Parties modify and supplement Section 1, **General Conditions of the Work**, page 1, Exhibit “C”, the Standard Terms and Conditions, by inserting new Paragraph o., *Supervision of The Work*, below at the end of this Section:

“o. *Supervision of the Work.* The Contractor shall supervise and direct the Work, using its best skill and attention, and shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work on the Project under and in conformity with the terms, covenants and conditions set forth in this Contract. The Contractor shall provide continuous supervision of the Work on the Project by a competent superintendent, foreman or project manager. The Contractor shall employ only competent workers who are thoroughly skilled in their branches of labor and qualified, licensed and certified personnel as required for the Work at all times. The Contractor shall, at all times, observe and comply with any and all Applicable Law, that is, all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes, actions, orders, and permits during performance of the Work, including but not limited to School District rules, policies and procedures and School District safety and health programs, guidelines, procedures, requirements, rules and regulations. The Contractor shall perform the Work with due regard to the safety of persons and property. The Contractor shall at all times keep the School District’s school buildings and all Work and storage areas neat, clean, and free from accumulations of waste materials, discarded materials and rubbish caused by their operations.”

c. The Parties modify and supplement Section 1, **General Conditions of the Work**, page 1, Exhibit “C”, the Standard Terms and Conditions, by inserting new Paragraph p., *Best Efforts*, below at the end of this Section:

“p. *Best Efforts.* The Contractor shall use its best efforts to perform and complete the Work in accordance with agreed-upon time deadlines.”

d. The Parties modify and supplement Section 1, **General Conditions of the Work**, page 1, Exhibit “C”, the Standard Terms and Conditions, by inserting new Paragraph q., *Inspections*, below at the end of this Section:

“q. *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. The School District shall have the right to order the Contractor to suspend, delay, interrupt or stop the Work for such period of time as it may deem appropriate for the convenience of the School District. If the Contractor fails to correct defective Work or fails to carry out the Work in accordance with the Project or Contract requirements, the School District also has the right to order the Contractor to stop the Work until the cause of the order has been eliminated.”

e. The Parties modify and supplement Section 1, **General Conditions of the**

Work, page 1, Exhibit "C", the Standard Terms and Conditions, by inserting new Paragraph r., *Pennsylvania Bond Law Remedy*, below at the end of this Section:

"r. *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."

f. The Parties modify and supplement Section 1, **General Conditions of the Work**, page 1, Exhibit "C", the Standard Terms and Conditions, by inserting new Paragraph s., *Non-Applicability of Pennsylvania Prompt Payment Acts*, below at the end of this Section:

"s. *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.”

g. The Parties modify and supplement Section 1, **General Conditions of the Work**, page 1, Exhibit “C”, the Standard Terms and Conditions, by inserting new Paragraph t., *Compliance with Pennsylvania Prevailing Wage Act and Prevailing Regulations*”, below at the end of this Section:

“t. *Compliance with Pennsylvania Prevailing Wage Act and Prevailing 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.”

h. The Parties modify and supplement Section 1, **General Conditions of the Work**, page 1, Exhibit “C”, the Standard Terms and Conditions, by inserting new Paragraph u., *Statutes of Limitation and Statute of Repose*”, below at the end of this Section:

“u. *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.”

i. The Parties modify and supplement Section 1, **General Conditions of the Work**, page 1, Exhibit “C”, the Standard Terms and Conditions, by inserting new Paragraph v., *Public Works Employment Verification*”, below at the end of this Section:

“v. *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.”

j. *Standard of Performance.* The Parties strike subsection 1.a., *Standard of Performance*, page 1, Exhibit “C”, the Standard Terms and Conditions, and substitute new subsection 1.a. below:

“a. *Standard of Performance.* The Contractor shall exercise a high degree of professional skill,

care, diligence and competence in the rendition of its Services under this Contract in accordance with the professional standards prevailing in the metropolitan Philadelphia area for the provision of services such as those provided in this Contract. The Contractor's attention is directed to the fact that the Services are urgently needed by the School District. The Contractor's Services under this Contract shall be performed as expeditiously as is consistent with said professional standards and sound professional practices. The Contractor shall use its best efforts to assure timely and satisfactory completion of its Services in accordance with the School District's project or work schedules. The Contractor shall at all times act in the best interest of the School District, consistent with the professional obligations assumed by it in entering into this Contract. The Contractor shall perform all Services under this Contract in accordance with the terms and conditions of this Contract and to the reasonable satisfaction of the School District. All Services to be performed by the Contractor that require the exercise of professional skills or judgment shall be accomplished by professionals licensed or certified to practice in the applicable professional discipline in the Commonwealth of Pennsylvania. The Contractor shall remain responsible for the professional and technical accuracy of all Services furnished under this Contract. All Services of the Contractor and its Subcontractors shall be done in consultation with, or under the direction of, a representative of the School District's Director of Capital Programs."

k. *Meetings.* The Parties strike subsection 1.f., *Meetings*, page 1, Exhibit "C", the Standard Terms and Conditions, and substitute new subsection 1.f. below:

"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."

l. *Best Pricing.* The Parties strike Section 5., *Best Pricing*, page 4, Exhibit "C", the Standard Terms and Conditions.

m. *Independent Contractor.* The Parties strike Section 8., *Independent Contractor; No Partnership or Agency*, page 5, Exhibit "C", the Standard Terms and Conditions, and substitute new Section 8 below:

"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."

n. The Parties modify and supplement Section 10, *Subcontracts*, page 6, Exhibit "C", the Standard Terms and Conditions, by inserting new Paragraph c., *Subcontract Duties and Responsibilities*, below at the end of this Section:

"c. *Subcontract Duties and Responsibilities.* If the Contractor employs any subcontractors or suppliers to perform any of the Work, all terms and conditions under the Contract applying to the Contractor apply equally to its Subcontractors and suppliers. The Contractor shall be as fully responsible for the acts and omissions of its Subcontractors and suppliers, 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 and suppliers, 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."

o. *Indemnification.* The Parties strike subsection 13.a., *Indemnification*, page 8, Exhibit "C", the Standard Terms and Conditions, and substitute new subsection 13.a. below:

"a. *Indemnification.* The Contractor agrees to assume liability for and does specifically agree to indemnify, save, protect, and hold harmless the School District, its officers, employees, agents and members of the Board of Education and the School Reform Commission, 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)."

p. *Insurance.* The Parties add the following sentence to Section 15., **Insurance**, subsection e, page 10, Exhibit "C", the Standard Terms and Conditions, after the sentence, "The Contractor shall send all certificates of insurance to ...":

"The Contractor shall also deliver copies of the certificate(s) of insurance and endorsements to:

The School District of Philadelphia
Office of Capital Programs
440 North Broad Street, Suite 371
Philadelphia, PA 19130-4015
Attn.: Steven Yarnall, Assistant Contracts Manager
E-mail: syarnall@philasd.org

The Parties also add the following sentences at the end of Section 15., **Insurance**, subsection e, page 10, Exhibit "C", the Standard Terms and Conditions:

"The Contractor shall advise the School District in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon its services, omission or breach, that it will abide fully by Section 13., **Indemnification; Litigation Cooperation; Notice and Defense 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 and Defense 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 and Defense of Claims**, and Section 15., **Insurance**, of this Contract because some other contractor or consultant may, in whole or in part, be responsible for the occurrence, death, damage, or loss to persons or property, or economic loss, damage, or expense, or because the School District may be a co-insured or an additional insured on some other contractor's or consultant's policy of insurance. The Contractor agrees that any violation of this paragraph of Section 15., **Insurance**, shall be deemed a material breach of this Contract."

q. *Insurance – Excess/Umbrella Liability.* The Parties supplement Section 15., **Insurance**, pages 9-12, of Exhibit "C", the Standard Terms and Conditions, by adding a new subsection vi., after subsection v., as follows:

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

r. *Stoppage or Abandonment.* The Parties add the following subsection 20.b., *Stoppage or Abandonment*, to Section 20., **Termination for Convenience**, page 16, 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."

s. *Suspension for Convenience.* The Parties add the following subsection 20.c., *Suspension for Convenience*, to Section 20., **Termination for Convenience**, page 16, Exhibit "C", the Standard Terms and Conditions:

"c. *Suspension for Convenience.* The School District shall have the right, at any time during the term of this Contract, to suspend all or any part of the services, for the convenience of the School District, for the period of time that the School District, in its sole discretion, determines to be in the best interest of the School District, upon fourteen (14) days' prior written notice to the Contractor (except that in the event of a public emergency, as determined by the School District, no such period of notice shall be required). If a suspension of the services pursuant to this subsection is for greater than thirty (30) days, the Contractor shall have the right to submit a claim to the School District for the payment of costs for all services or work performed in accordance with the provisions of this Contract prior to the effective date of the suspension. The Contractor shall be entitled to a one-day extension of the time of performance provided in this Contract for each day that it is suspended pursuant to this subsection. The School District shall have the right, during the period of any suspension pursuant to this subsection, to terminate this Contract as provided in this Contract."

REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

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

CONTRACTOR

By: _____
Name:
Title:

THE SCHOOL DISTRICT OF PHILADELPHIA

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

Approved as to Form:

Dawn Renee Chism
Attorney for
The School District of Philadelphia

Pre-Audit Approval

Exhibit "A-1"

***School District Request For Quotation (RFQ)
To Provide Professional Moving Services On An As-Needed Basis***

The RFQ is attached as Exhibit "A-1", and is incorporated into this Contract.

Exhibit "A-2"

The Contractor's Proposal

(redacted and relevant parts)

Parts of the Contractor's Proposal are attached as Exhibit "A-2". The Contractor's Proposal, as modified by this Contract, is incorporated by reference into this Contract.

Exhibit "B"

The Contractor's Fee Proposal

The Contractor's Fee Proposal is attached as Exhibit "B", and is incorporated into this Contract.

Exhibit "C"

The School District Standard Terms and Conditions

The School District Standard Terms and Conditions are attached as Exhibit "C".

Exhibit "C"

School District Standard Terms and Conditions Agreement for Services

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, defined in subsection 23.b. below, in connection with this Contract, including but not limited to the Pennsylvania Right-to-Know Law ("RTKL"), 65 Pa. Stat. §§ 67.101 to 67.3104, and 24 Pa. Stat. § 1-111.1, Employment History Review, as amended.
- 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 of notice by the Responsible Official to the Contractor that, in the reasonable opinion of the Responsible Official, any employee is incompetent or incapable of carrying out any part of the Work assigned to that Person, reassign that employee from any Work.
- f. *Meetings.* Upon reasonable prior notice from the School District, the Contractor shall attend any meetings requested by the School District, at a location reasonably determined by the School District.
- g. *Site License(s).* To the extent that the 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, regulations and directives concerning the use of School District premises imposed by the School District, including but not limited to rules, regulations and directives set by a principal concerning his or her school. The Contractor shall promptly and fully reimburse the School District for the actual costs of repairing 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.
- i. *Whistleblower Protection.* Anything set forth elsewhere in this Contract to the contrary notwithstanding, neither Party shall construe this Contract or any term, covenant or condition in this Contract to prohibit either Party or any of its employees, Subcontractors, grantees, or subgrantees from filing a charge with, reporting possible violations to, or participating or cooperating with any governmental agency or entity having jurisdiction, including but not limited to a member or committee of Congress, an Inspector General, the Government Accountability Office, a federal employee responsible for contract or grant oversight, a law enforcement agency, a court or grand jury, or a management official or other employee who has responsibility to

investigate, discover, or address misconduct, or making other disclosures protected under the whistleblower, anti-discrimination, or anti-retaliation provisions of Applicable Law, including but not limited to 41 U.S.C. § 4712, for the purpose of reporting or investigating a suspected violation of law.

j. *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.

k. *Act 126 Child Abuse Recognition, etc., Training.* Before starting any Work, the Contractor shall submit to the School District for the Contractor, if the Contractor is an individual, and for each of the Contractor's employees, officers, agents, servants, volunteers and Subcontractors, if any, who may have Direct Contact or Direct Volunteer Contact with children, as defined by 23 Pa. Cons. Stat. Ann. § 6303(a), as amended, while performing any of the Work, a copy of the certificate of completion of Mandated Reporter Training as required by Act 126 of 2012, codified at 24 Pa. Stat. § 12-1205.6.

l. *Right-to-Know Requests.* The Contractor acknowledges and agrees that this Contract and records related to or arising out of this Contract remain subject to requests made pursuant to the RTKL. If the Commonwealth of Pennsylvania (the "Commonwealth") or the School District need the Contractor's assistance in any matter arising out of the RTKL related to this Contract, the Commonwealth or the School District shall notify the Contractor using the contact information provided in the Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior notice to the Commonwealth and the School District.

m. *Disaster Recovery; Business Continuity.* The Contractor shall maintain appropriate disaster recovery/business continuity and contingency plans providing for continued operation in the event of an adverse event or circumstance affecting the Contractor's business operations so as to minimize any interruption of the Work to the School District.

2. **Background Checks.**

a. *Required Background Checks.* In accordance with Applicable Law, including 24 Pa. Stat. § 1-111, as amended, and 23 Pa. Cons. Stat. Ann. §§ 6344, 6344.2., as amended, before starting any Work, the Contractor shall submit to the School District for the Contractor, if the Contractor is an individual, and for each of the Contractor's employees, officers, agents, servants, volunteers and Subcontractors, if any, who may have Direct Contact or Direct Volunteer Contact with children, as defined by 23 Pa. Cons. Stat. Ann. § 6303(a), as amended, while performing any of the Work, copies, true, correct, complete and current, of all of the following:

- i. the Pennsylvania State Police criminal history record information report;
- ii. the child abuse history official certification;
- iii. the report of the Federal Bureau of Investigation federal criminal history record information; and
- iv. a sexual misconduct/abuse disclosure release required by Act 168 of 2014 (24 Pa. Stat. § 1-111.1) and all relevant matters and materials disclosed.

b. *Current; Direct Contact; Failure to Provide.* For purposes of subsection 2.a., "current" means processed by the issuing agency or organization within (i) one (1) year for paid individuals (including employees, officers, agents, servants, and Subcontractors) prior to the later of the individual's hiring or engagement by the Contractor or Subcontractor, or the commencement of the Term, and (ii) five (5) years for unpaid volunteers prior to the later of the individual's engagement by the Contractor or Subcontractor, or the commencement of the Term, in both cases unless the School District has in the preceding five (5) years received and properly reviewed the individual's checks, in which case the Parties may rely on the individual's prior submission provided that all individuals relying on prior submitted checks must submit an arrest or conviction report and certification form in a form acceptable to the School District. For an individual who has Direct Contact or Direct Volunteer Contact with children the School District shall have the right, at any time and in its sole discretion, to require the Contractor to deliver new reports, certifications, clearances or certificates as required by the more restrictive of School District policies, or Applicable Law, and the Contractor shall comply promptly with any such request. If the Contractor fails to deliver any such report, clearance certification or certificate on behalf of the Contractor, if an individual, or on behalf of any individual officer, employee, director or Subcontractor, then each such individual may not and shall not carry out any of the Work unless and until the Contractor delivers that individual's report, clearance, certification or certificate to the School District.

c. *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 Pa. Stat. § 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 Pa. Stat. § 1-111(e). The Contractor shall provide notice to the School District, in a prompt and timely manner, of 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 promptly 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.*

a. *Tax Policy.* 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 of Philadelphia (the "City") or Commonwealth taxes or other indebtedness or obligation, at the execution and delivery of the Contract and at any time during the Term.

b. *Contractor's Covenants.* In compliance with the requirements of the Tax Policy, the Contractor covenants and agrees that throughout the Term, 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 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 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 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, until it has discharged its obligation to the City or the Commonwealth 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, 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 or the City. The Contractor shall promptly pay all uncontested taxes and other indebtedness or obligations to the Commonwealth and the City.

c. *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.c.

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 school district or 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: (i) terminate this Contract effective upon a date specified in a Termination Notice; or (ii) 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 6.a. 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 Board of Education, 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 Board of Education 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, the City, or any department or agency of one of these governments, or from any public or private charitable trust or corporation, 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 grant funds, the Contractor shall bill the School District for any outstanding Compensation owed to the Contractor within ten (10) business 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 ten (10) day period, the School District reserves the right to withhold payment of the balance of the Compensation to the Contractor based upon the loss of federal government or Commonwealth funds caused by the Contractor's delay, in which event the School District shall have no liability to the Contractor for said balance of the Compensation.

8. **Independent Contractor; No Partnership or Agency.**

a. 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.

b. Anything set forth elsewhere in this Contract to the contrary notwithstanding, including but not limited to any references in any exhibits 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.

9. **Non-Discrimination.** The Contractor, for itself, its directors, 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, gender identity, marital status, genetic information, or Vietnam-era or any other veteran status. The School District operates as an equal opportunity employer under Applicable Law; the Contractor shall likewise operate in all respects as an equal opportunity employer under Applicable Law. 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, gender identity, marital status, genetic information, 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 subsection 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 or comparable process and the Contractor submitted a plan describing the participation of minority-owned, 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 or assignment made in violation of this Section 10 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; Inspectors General.

a. *Audits.* From time to time during the Term, and for a period of six (6) years after the expiration or termination of this Contract (*see*, 24 Pa. Stat. § 5-518), the School District, the Controller of the City, the Commonwealth, 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.

b. *Inspection.* 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. 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 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. *Retention and Availability of Records.* The Contractor shall retain all records, books of account and documentation pertaining to this Contract for the greater of (i) the period required by Applicable Law, or (ii) six (6) years following expiration or termination of this Contract; provided that 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. The Contractor shall make available, at the Contractor’s office in the City or another Contractor office in reasonable proximity to the City, at reasonable times during the Term and for the period set forth in this Section 12, 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. *Inspector General; Inspectors General.* The School District’s Inspector General shall enjoy all the rights, powers and privileges of an Auditor under this Contract, and any and all additional rights, powers and privileges as provided by Applicable Law and by delegation from the Board of Education or other duly constituted authority having jurisdiction, *e.g.*, a commission. The Contractor shall cooperate and comply with any audit or investigation by the School District’s Inspector General, or by any City, Commonwealth or federal inspector general having jurisdiction, and any joint investigation. The Contractor and its partners, members, shareholders, directors, officers, employees, agents, contractors and Subcontractors shall cooperate fully with the School District’s Inspector General by providing true, correct and complete information and records, as well as all necessary or appropriate assistance in any matter investigated by the Inspector General. In any investigation the School District’s Inspector General shall have and enjoy complete and unimpeded access to all papers, workpapers, books, records, documents, information, personnel, processes, *e.g.*, meetings, data, computer hard drives and networks, e-mail, text or instant messages, facilities and other assets owned, leased, licensed or used by or for the School District, including but not limited to information regarding the Contractor or other School District contractors, or any other Person involved in any way with the School District, as deemed necessary in performing investigative or audit activities pertaining in any way to the business, operations or public functions of the School District or the Board of Education, and in the custody of the Contractor or any Subcontractor.

13. Indemnification; Litigation Cooperation; Notice and Defense of Claims.

a. *Indemnification.* The Contractor shall indemnify, defend and hold harmless the School District, its officers, employees, agents and the members of the Board of Education and the Commission, from and against any and all losses and 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 Board of Education and the Commission, from and against any and all losses and 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.* Except as set forth below in this subsection 13.b., this Section 13 does not require the Contractor to indemnify the School District to the extent of the School District's own negligent act or omission. This Section 13 protects the School District, its officers, employees, agents and the members of the Board of Education and the Commission from all claims arising during the Term 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 against the School District, 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 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 Board of Education and the Commission. 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 Board of Education or the Commission, for the acts, failures to act or negligence of the School District, or its officers, employees and members of the Board of Education or the Commission.

c. *Defense of Claims.* The Contractor shall defend all claims described in subsections 13.a. or 13.b. above with competent and experienced counsel acceptable to the School District. If the Contractor fails to assume the defense of any and all claims described in subsections 13.a. or 13.b. above within fifteen (15) days of notice from the School District, or if within such fifteen (15)-day period actual prejudice may occur if action is not taken, then at the Contractor's cost and expense, the School District may undertake the defense, compromise or settlement of any such claims or consent to the entry of a judgment with respect to such claims, on behalf of and for the account and risk of the Contractor, and the Contractor shall thereafter have no right to challenge the defense, compromise, settlement or consent to judgment of such claims by the School District.

d. *Litigation Cooperation.* If at any time, including after the expiration or earlier termination of the Term, 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.

e. *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 (i) 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, (ii) within five (5) business days of receipt of notice of the claim, give notice of the 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 Board of Education and the Commission, retain their statutory governmental, official and any other immunity provided pursuant to Applicable Law, including 42 Pa. Cons. Stat. Ann. §§ 8501 and 8541 *et seq.*, as amended. The Contractor acknowledges and agrees that the School District (a) is a Local Agency, as defined in 42 Pa. Const. State. Ann. §§ 8501 and 8541; and (b) does not waive, nor have the power to waive, for itself or for its officers, employees, or for the members of the Board of Education or the Commission, by way of indemnity or otherwise, the defenses of governmental, official or any other immunity derived from said statutes or provided by Applicable Law.

15. ***Insurance.*** Prior to the commencement of any of the Work and until the latest of completion of the Work, final payment by the School District, or final acceptance of the Work, the Contractor shall provide and maintain the following minimum levels of

insurance at the Contractor's own expense. The Contractor shall include in its bid, proposal, or quote its cost of the required insurance; the Parties shall make no adjustment to the Compensation on account of these insurance costs. The term "Contractor" shall include Subcontractors and Sub-Subcontractors at every tier. The Contractor shall deliver to the School District a certificate or certificates of insurance evidencing and reflecting the effective date of coverage, as set forth below in subsection 15.e. In no event shall the Contractor commence or permit commencement of any of the Work unless and until the Contractor delivers and the School District has approved the required evidence of insurance in conformity with this Contract. If the School District finds the Contractor's evidence of insurance non-compliant, the School District shall have the right, but not the duty, at its discretion, to purchase the required insurance coverage or coverages, at the sole cost and expense of the Contractor, by set-off against Compensation accrued or accruing, or through the Contractor's direct payment or reimbursement to the School District. The School District by notice or other communication may require additional coverage or coverages, or higher coverage limits, aggregate limits or sub-limits, at any time during the Term if in the School District's sole judgment a risk or risks warrant such additional coverage or limits.

a. *Rating.* The Contractor shall procure all insurance from insurers permitted to do business in the State in which the Work takes place, having an A.M. Best Rating of at least "A-, Class VIII".

b. *Self-Insured Retention.* The Contractor shall not have a Self-Insured Retention ("SIR") on any policy greater than \$50,000; any and all SIRs shall remain the Contractor's responsibility. In the event any policy includes an SIR, the Contractor shall provide the additional insured requirements specified herein within the SIR.

c. *Occurrence Basis.* The Contractor shall ensure that its insurer or insurers write all insurance required hereunder, with the exception of the Professional Liability Insurance, on an "occurrence" basis. Claims-Made coverage must include:

i. a retroactive date on or prior to the start of Work under this Contract; and

ii. "tail coverage/an extended reporting period" or coverage for a period of three (3) years subsequent to the later of completion of the Work or final payment.

d. *Notice of Cancellation or Non-Renewal.* The Contractor's insurance carrier or carriers each shall agree to provide at least thirty (30) days prior written notice to the School District in the event of any cancellation or non-renewal of any coverage. In the event of cancellation or non-renewal of any coverage or coverages, the Contractor shall replace any such coverage or coverages so as to comply with the insurance requirements set forth in this Contract, with no lapse of coverage for any time period. In the event the Contractor's insurance carrier or carriers do not issue or endorse their policy or policies to comply with this subsection 15.d, above, the Contractor shall give notice to the School District of its receipt of any notice of cancellation or non-renewal at least thirty (30) days prior to the effective date of the proposed cancellation or non-renewal.

e. *Certificates.* The Contractor shall deliver to the School District the required certificate or certificates of insurance, evidencing the insurance coverages required under this Contract, at least ten (10) days prior to the start of the Work and thereafter promptly before or on renewal or replacement of each coverage. The Contractor shall not begin any Work until the School District has reviewed and in its discretion approved the certificate of insurance. The required insurance shall not contain any exclusions or endorsements unacceptable to the School District. The Contractor shall send all certificates of insurance to:

The School District of Philadelphia
Office of Risk Management
440 North Broad Street, Suite 325
Philadelphia, PA 19130-4015
Attn.: Riccardo Zucaro, Director of Insurance Risk Management
E-mail: rzucaro@philasd.org and crollins@philasd.org

Failure of the School District to demand these certificates or other evidence of full compliance with these insurance requirements or failure of the School District to identify a deficiency from evidence that is provided shall not constitute a waiver of the Contractor's obligation to maintain such insurance.

With respect to insurance maintained after final payment in compliance with a requirement below, an additional certificate(s) evidencing such coverage shall be provided to the School District with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.

f. *Additional Insured.* The Contractor shall add the School District, and such other public entities as the School District may require, as additional insureds on all liability policies, except Workers' Compensation and Professional Liability Policy, where applicable, for ongoing operations and completed operations, using ISO Endorsements CG 2010 and CG 2037, or their equivalents, on a primary noncontributory basis. Coverage shall include ongoing and completed operations. Each of the additional insured's respective directors, officers, board members, employees, agents and representatives shall also constitute covered additional insureds. The Contractor and its insurer or insurers shall provide coverage for a period of three (3) years subsequent to the later of completion of Work or final payment. The School District reserves the right to require the Contractor to name other parties as additional insureds. There shall be no "Insured versus Insured Exclusion" on any policies (other than "Named Insured versus Named Insured"); all policies will provide for "cross liability coverage", per standard ISO policy forms.

g. *Waiver of Rights of Subrogation.* The Contractor shall waive all rights of recovery against the School District and all the additional insureds for loss or damage covered by any of the insurance maintained by the Contractor.

h. *No Limitation of Liability.* Neither the Parties nor any tribunal or adjudicatory body shall or may construe the amount of insurance set forth in the insurance coverages required in this Section 15, as a limitation of the liability of the Contractor. The carrying of insurance as set forth in this Section 15 shall not relieve the Contractor of any duty or liability under the Contract, except to the extent of insurance proceeds paid. Any type of insurance, or any increase in limits of liability, not described above, which the Contractor requires for its own protection or on account of statute shall be its own expense.

i. *Notice of Accidents, Claims and Suits.* The Contractor shall promptly notify the School District and the appropriate insurance company(ies) in writing of any accident(s) as well as any claim, suit or process received by the Contractor arising in the course of operations under the Contract. The Contractor shall forward such documents received to its insurance company(ies), as soon as practicable, or as required by their insurance policy(ies).

j. *Required Coverages.* The following may be provided through a combination of primary and excess policies in order to meet the minimum limits set forth below:

i. Workers' Compensation and Employer's Liability: Provided in the State in which the Contractor performs the Work and elsewhere as required, and shall include:

A. Workers' Compensation Coverage: Statutory Requirements

B. Employers' Liability Limits not less than:

- (1) Bodily Injury by Accident: \$100,000 Each Accident
- (2) Bodily Injury by Disease: \$100,000 Each Employee
- (3) Bodily Injury by Disease: \$500,000 Policy Limit

C. Includes coverage for sole proprietors, partners, members or officers who will be performing the Work.

ii. Commercial General Liability: Provided on ISO form CG 00 01 04 13 or an equivalent form including Premises - Operations, Independent Contractors, Products/Completed Operations, Broad Form Property Damage, Contractual Liability, and Personal Injury and Advertising Injury.

A. Occurrence Form with the following limits:

- (1) General Aggregate: \$2,000,000
- (2) Products/Completed Operations Aggregate: \$2,000,000
- (3) Each Occurrence: \$1,000,000
- (4) Personal and Advertising Injury: \$1,000,000

B. Products/Completed Operations Coverage must be maintained for a period of at least three (3) years after final payment/completion of the Work, including coverage for the additional insureds as set forth in this Section 15.

C. The General Aggregate Limit must apply on a Per Project basis.

- D. Coverage for “Resulting Damage”.
- E. No sexual abuse or molestation exclusion.
- F. No amendment to the definition of an “Insured Contract”.

iii. Automobile Liability:

A. Coverage to include All Owned, Hired and Non-Owned Vehicles, or “Any Auto”. If the Contractor does not have any Owned Vehicles the Contractor shall nevertheless maintain coverage for Hired and Non-Owned Vehicles as either a stand-alone policy or endorsed onto the Commercial General Liability policy above.

- B. Per Accident Combined Single Limit: \$1,000,000

iv. Professional Liability Insurance, including Technology E&O:

- A. Minimum Limits of Liability:
- B.
 - (1) Per Claim: \$2,000,000
 - (2) Aggregate: \$2,000,000

C. The Definition of “Covered Works” shall include the Works required in the scope of this Contract which shall include but not be limited to software development.

D. Coverage includes but is not limited to loss or disclosure of electronic data, media and contents rights software copyright infringement and network security failure.

E. The professional liability insurance shall cover errors and omissions, including liability assumed under this Contract. If the Contractor provides educational services, the professional liability insurance coverage shall also include educational wrongful acts, employment practices wrongful acts and directors and executive officers wrongful acts.

v. Privacy/Cyber Liability, Including Cyber Extortion & Cyber Crime:

A. The Contractor shall maintain coverage for third party liability arising out of breach of privacy, inclusive of confidential and proprietary business information, HIPAA violations and other breaches of personally identifiable information, or protected health information, or both, that may arise from their Work with this Contract.

- B. Minimum Limits of Liability:
 - (1) Per Claim: \$1,000,000
 - (2) Aggregate: \$1,000,000

C. Privacy Breach Notification and Credit Monitoring: \$5,000,000 per Occurrence.

16. Confidentiality; Student Records; Publication Rights; 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 and at any time thereafter, without the prior written consent of the School District, the Contractor shall not disclose or use to its own or any other Person’s 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, that the School District makes available to Contractor in connection with this

Contract.

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 (“FERPA”), 20 U.S.C. § 1232g, 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. Unless and until agreed otherwise by the Parties, the School District shall transmit information or records, or both, protected by FERPA solely to the individual named in Section 6 of the Agreement for Services, and such other duly authorized individuals as the Contractor may specify by notice to the School District (*see*, Section 6 of the Agreement for Services and Section 21, below, 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 have no right to use the name of the School District, or its seal, logos or marks, except upon the prior consent of the School District. The Contractor shall provide to the School District for its review any proposed report, study, publication, brochure or advertisement that names the School District or uses its seal, logos or marks, not less than thirty (30) calendar days prior to submission for publication, and the Contractor shall remove the School District’s name, seal, logos or marks, and any other information identifying the School District from the publication if the School District does not expressly consent to the Contractor’s requested use. 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, 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 during the Term, except upon the prior express written consent of the School District. Upon the expiration or earlier termination of the Term, 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.

e. *Security.* The Contractor shall establish and maintain physical, administrative, technical, electronic and operational security measures to protect the privacy, confidentiality, integrity and availability of Confidential Information or any other information which identifies students, employees or officers of the School District, and systems, consistent with best practices and industry standards and with Applicable Law applicable to the Contractor and the Work. The School District may conduct, at the School District’s expense, vulnerability scanning against networks, systems, and Internet Protocol addresses where the School District data reside.

f. *Data Breach.* The Contractor shall promptly and timely, within twenty-four (24) hours of becoming aware, disclose to the School District any suspected or known occurrence of any misuse or wrongful disclosure of Confidential Information or any other information which identifies students, employees or officers of the School District, including but not limited to system breaches that may adversely affect the School District or the School District’s students, employees or officers.

17. *Materials; Intellectual Property.*

a. *Computer Applications, Software, Programs, etc.* The Contractor shall ensure that all of its computer

applications, programs, and software developed under this Contract comply with any pertinent specifications or requirements set by the School District and with all Applicable Law, including but not limited to FERPA and the Americans with Disabilities Act.

b. *License; Preexisting and Independently Developed Materials.* 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 or delivered to the School District pursuant to this Contract. For avoidance of doubt, subject to the license granted in this subsection 17.b., each Party otherwise retains ownership of all of its pre-existing and independently developed intellectual property.

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 disclose promptly and fully 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 any other thing of more than nominal 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 (a) the School District has a reasonable basis to believe at any time during the Term that the Contractor will not be able to perform the Work, and (b) 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 charge or 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 or offenses.

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 by any federal, state or local governmental entity, including but not limited to the School District.

ix. Failure by the Contractor to comply with any term, covenant or condition set forth in Section 4 above, 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 any Event of Default, the School District shall notify the Contractor 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. below if: (i) the Contractor has temporarily or permanently ceased performing the Work; (ii) 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; (iii) 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; (iv) an Event of Default occurs as described in subsection 19.a. vi., vii., or viii. above; or (v) the Contractor breaches any of its obligations under Sections 2 or 9 above. 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 due to 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, without the necessity of posting bond or other security or of proving the inadequacy of money damages.

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, without penalty, cost or liability to the School District, by delivering a Termination Notice upon fourteen (14) days prior notice to the Contractor of the School District's termination of this Contract. 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 (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), or refused upon courier's attempt to deliver; or (c) 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 6 of the Agreement for Services. The Parties shall not transmit notices required under or in connection with this Contract by electronic mail, unless the transmission clearly and prominently states in bold-faced text set off for immediate visibility, "this is a legal notice under Contract". Each Party may change its designee for receipt of notice in Section 6 of the Agreement for Services, by giving notice thereof to the other Party in conformity with this Section 21.

22. **Representations and Warranties.** Effective as of the execution and delivery of this Contract and throughout the Term, 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 duly to 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, trademark, trade secret or other proprietary right.

e. The Contractor is and shall be, at all times during the Term, duly qualified to transact business in the Commonwealth and 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 for or on account of any delinquent taxes, or other indebtedness or obligations, 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, 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, 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 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 and Conditions or in the Agreement for Services, capitalized terms shall have the meanings specified in this Section 23. 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 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 4.a.

d. *Commission.* “Commission” has the definition set forth above in subsection 4.a.

e. *Commonwealth.* “Commonwealth” has the definition set forth above in subsection 1.1.

f. *Compensation.* “Compensation” has the definition set forth in Section 4 of the Agreement for Services.

g. *Contract.* “Contract” has the definition set forth in the preamble of the Agreement for Services, which includes 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.

h. *Event of Default.* “Event of Default” means those events defined and identified above in subsection 19.a.

i. *FERPA.* “FERPA” has the definition set forth above in subsection 16.b.

j. *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 programs, 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.

k. *Party; Parties.* A “Party” means either the School District or the Contractor; the “Parties” means the School District and the Contractor.

l. *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.

m. *Responsible Official.* “Responsible Official” means the School District official named in Section 6 of the Agreement for Services.

n. *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.

- o. *Tax Policy.* "Tax Policy" has the definition set forth above in subsection 4.a.
- p. *Term.* "Term" has the definition set forth in Section 3 of the Agreement for Services.

q. *Termination Notice.* "Termination Notice" means a notice given to the Contractor by the School District of its intent to terminate the Contract under the terms of Sections 6, 19 or 20 and specifying the effective date of the termination of the Contract.

r. *Work.* "Work" has the definition set forth in Section 1 of the Agreement for Services and includes 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, 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. The Parties irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have, including any claim of *forum non conveniens* or similar doctrine or theory, to venue in the state or federal courts sitting in Philadelphia, Pennsylvania and each of the Parties consents to the personal jurisdiction of such courts, and of the appropriate appellate courts therefrom, and to service of process upon them in accordance with the rules and statutes governing service of process in any such suit, action or proceeding.

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 term, covenant or condition 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 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 Party. The Parties do not intend that anything in this Contract benefit any third party.

h. *Entire Agreement; Amendment.* This Contract includes all exhibits, schedules and addenda, if any, referred to herein, all of which the Parties hereby incorporate by reference, unless otherwise specified herein. This Contract constitutes the

entire agreement between the Parties and supersedes all prior and contemporaneous oral and written agreements and statements concerning the subject matter of this Contract, all of which the Parties have fully integrated herein. The Parties acknowledge and agree that no metadata, which includes any agreements, offers, promises, negotiations, or representations occurring solely in metadata, form any part whatsoever of this Contract, and shall not, as between the Parties, form any part of the evidence when interpreting the terms and conditions of this Contract. This Contract supersedes any prior or contemporaneous course of conduct, performance or dealing between the Parties. The Contractor has not, does not and shall not rely on any statement or representation of the School District other than those expressly set forth in this Contract. 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.

i. *Counterparts; Electronic Signatures.* 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. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall have the same legal effect as delivery of an original signed copy of this Contract. This Contract and any true, correct, and complete counterpart thereof may be executed either (a) on paper with an ink signature or (b) by due, secure electronic method, and any true, correct, and complete counterpart may be transmitted by e-mail or other electronic means. For avoidance of doubt, any true, correct, and complete counterpart may be converted from paper to electronic form, or from electronic form to paper, and such converted true, correct, and complete counterpart shall be deemed an original for transmission, execution, delivery and retention under the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 *et seq.*

j. *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.

Exhibit "D"

The Board of Education Action Item

The Board of Education Action Item is attached as Exhibit "D".