

THE SCHOOL DISTRICT OF PHILADELPHIA

REQUEST FOR PROPOSALS

Material Testing and Special Inspection Services IDIQ

Competitive RFP Number: NG10627

Proposals Due No Later Than:

July 8, 2025 at 11:00 AM EST

MISSION STATEMENT

The Office of Procurement Services assists School District schools, academic and education support offices in procuring the highest quality goods and services at competitive prices. We seek to procure these goods and services from reputable and responsible suppliers in accordance with applicable laws of the Commonwealth of Pennsylvania, and the policies of the Board of Education and The School District of Philadelphia.

The Office of Procurement Services is committed to ensuring that we implement our business practices with the highest degree of professional ethics, integrity and competence. We provide superior customer service, implementing and utilizing procurement best practices. We build solid business relationships with our vendors, utilizing the latest technological advances. We provide continuing education opportunities to our professional staff, networking with other procurement professionals. We engage in continuing advocacy for small business development, by increasing the number of minority and women-owned businesses who are awarded contracts with the School District.

We accomplish our mission by ensuring that employees, suppliers and business associates work together in an ethical, efficient, professional and respectful manner.

ISSUED BY:

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ISSUE DATE: June 12, 2025

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INTRODUCTION

The School District of Philadelphia (the “School District” or the “District” or the “SDP”) issues this Request for Proposals No. NG10662 (the “RFP”) to seek proposals (“Proposals”) from qualified suppliers (Material Testing Consultants) to provide Professional Material Testing and Special Inspection Services, on an as-needed basis, at various schools.

This RFP includes and incorporates Appendices A – P; please review each Appendix carefully.

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

The MWBE participation range for this solicitation is Best Effort. For more information, see Appendix E.

For purposes of this RFP, “Persons” include corporate and other entities receiving this RFP, who may contemplate submitting a Proposal; “Proposers” means Persons who properly and timely submit a Proposal; and “Contractor” means a Proposer who has executed and delivered a definitive Contract to carry out some or all of the work set forth in this RFP and its Proposal.

INTENT

The Material Testing Consultant firm will support the SDP Capital Programs Design and Construction Project Management team. The Material Testing Consultant shall designate a senior person to serve as the Material Testing Coordinator. The Material Testing Coordinator (a Senior Project Manager / Field Supervisor) will act as the day-to-day point of contact for the coordination of all material testing services and inspections and said person shall provide services under the immediate direction of the SDP Capital Programs Construction and Design Project Management team.

Term of Contract and Renewals

The School District anticipates that the definitive Contract or Contracts with one or more successful Proposers will run five years or to the date that the maximum amount of fee has been expended, whichever occurs first. The Parties will set forth conditions for payment of the definitive Contract or Contracts. Subject to Board of Education authorization, the School District may reserve one or more options to extend the term of the contract on such terms as the Board may approve.

BACKGROUND

The School District exists as a body corporate and political subdivision, and a separate and independent home rule school district of the first class, established in Article XII of the Philadelphia Home Rule Charter, 351 Pa. Code, § 12.12-100 *et seq.*, under the authority of the First Class City Public Education Home Rule Act, Act of August 9, 1963, P.L. 643, codified at 53 P.S. § 13201 *et seq.*

A nine (9) member Board of Education (the "Board") governs the School District. The Board exercises all powers and duties of a board of school directors under the Pennsylvania Public School Code, including those applicable to school districts of the first class. The School District functions under the School Code, 24 P.S. § 1-100 *et seq.*, (the "School Code") and provides the full range of education services contemplated by statute. These include general, special and vocational education at the elementary and secondary levels, as well as related supportive services. The School District also provides preschool services in response to the needs of the community. The School District employs approximately 17,000 employees at over 225 locations, including more than 200 schools, and 3 administrative sites.

The School District now enrolls over 125,000 students and serves a total of approximately 200,000 students City-wide, including charter school and nonpublic students.

The Superintendent, Tony B. Watlington, Sr. Ed. D., serves as chief executive of the School District. As such, Dr. Watlington bears the responsibility for the administration and operation of the public school system and the supervision of all of its matters, subject to the policies and direction of the Board.

APPENDICES

Appendices A-O attached to this RFP serve the following purposes.

1. **Appendix A: Scope of Services with Fee Proposal** describes the School District's needs and requirements for services and materials, as outlined by the School District program office requesting Proposals through this RFP.
2. **Appendix B: Submission Instructions** sets forth information about the timeline of the competitive process and the requirements for successfully submitting a Proposal under this RFP.
3. **Appendix C: Proposal Format** describes the required components and formatting of your Proposal.
4. **Appendix D: Evaluation Criteria** sets forth the general methodology for evaluating Proposals under this RFP.
5. **Appendix E: Range of Participation** sets forth the School District's policies for procuring maximum opportunities for participation of minority and women owned business enterprises under this RFP.
6. **Appendix F: Terms of the Competitive Process** sets forth the terms and conditions governing the competitive process for this RFP and your Proposal.
7. **Appendix G: Sample Professional Services Contract** sets forth the basic legal forms for any Contract resulting from this RFP. The Contract will consist of the Professional Services Contract, including any exhibits referenced herein, as well as pertinent sections of this RFP and your Proposal.
8. **Appendix H: Signature Page**, when signed, confirms that the Proposer makes an offer to the School District under this RFP.
9. **Appendix I: Equal Opportunity in Hiring, when** signed, confirms that the Proposer has committed to equal opportunity in its business operations as a condition of its business relationship with the School District.
10. **Appendix J: Non-Collusion Affidavit**, when signed, confirms that the Proposer will not collude with others in submission of Proposal, establishment of its best price, or performance of any ensuing Contract.
11. **Appendix K: Cooperative Purchasing**, when signed, indicates that Proposer will make the economic and other benefits of its Proposal available to other potential government purchasers.
12. **Appendix L: Vendor Code of Ethics, when** signed, confirms that the Proposer agrees to comply with the School District's Code of Ethics as detailed therein.
13. **Appendix M: Vendor Tax Compliance Policy** details compliance requirements associated with the Proposer's responsibility to pay its tax obligations to The City of Philadelphia and Commonwealth of Pennsylvania on a current basis.
14. **Appendix N: Pre-Proposal Form** is an optional notification document to the Procurement buyer of a vendor's intent to respond to this RFP.

15. **Appendix O: Contractor Debarment** when signed, confirms that the Contractor has not been debarred by any local, state, or federal agency.
16. **Appendix P: Technology Specifications** details the District's minimum requirements for technology components as applicable to the scope of work.

APPENDIX A: SCOPE OF SERVICES

Project Intent & Scope of Work

The Material Testing Consultant firm will support the SDP Capital Programs Design and Construction Project Management team. The Material Testing Consultant shall designate a senior person to serve as the Material Testing Coordinator. The Material Testing Coordinator (a Senior Project Manager / Field Supervisor) will act as the day-to-day point of contact for the coordination of all material testing services and inspections and said person shall provide services under the immediate direction of the SDP Capital Programs Construction and Design Project Management team.

The Material Testing Consultant shall have established offices with full-time material testing and inspection staff located within the Philadelphia Metropolitan Area. Upon the engagement of a Material Testing project, the Material Testing Consultant shall employ the appropriate number of professionals to accomplish the required services and must have the ability to perform multiple Material Testing Services simultaneously. In addition, the Material Testing Consultant must have the capabilities to dispatch additional professionals to construction site during peak testing and inspection demand or to provide specific services and to fill in for the absences due to illness, personal leave or vacations.

Original logs, reports, tables, figures, photographs, exhibits and certifications prepared by the Material Testing Consultant shall be provided to SDP within 48 hours.

Services, as further enumerated below, will include, but are not limited to, special inspections and material testing services. The Materials Testing Consultant shall ensure that all testing is in accordance with the specific standards per ASTM and AASTHO standards.

A. SPECIAL INSPECTIONS

- Special inspections shall be provided in conformance with requirements of the City of Philadelphia – Department of Licenses and Inspections.
- Special inspection categories shall include all Verification and Inspection Items listed in the most current “Statement of Special Inspections” published by the City of Philadelphia – Department of Licenses and Inspections.

B. CONSTRUCTION MATERIALS TESTING, including but not limited to:

- Soils testing
- Wood testing
- Concrete testing
- Masonry testing
- Roofing testing
- Fireproofing testing
- Structural steel testing
- Asphalt/macadam testing
- Aggregate testing
- Paint/finishes testing
- Piles testing
- Nuclear density testing

C. GEOTECHNICAL SURFACE/SUBSURFACE TESTING, including but not limited to:

- Borings
- Percolation / infiltration
- Controlled fill testing
- Groundwater monitoring wells testing and observation wells testing
- Foundation and earthwork inspection and testing

D. NON-DESTRUCTIVE TESTING, including but not limited to:

- Radiography testing
- Ultrasonic testing
- Magnetic particle testing
- Liquid penetrant testing
- Radioisotope moisture survey
- Thermographic survey
- Video survey (sanitary/drain)
- Electrical systems testing
- Weld procedure testing and welder performance certification

Amount of the Contract

The maximum Not to Exceed Aggregate amount of the Contract is \$2,500,000.00 to be invoiced over the term of the contract. The SDP reserves the right to limit the amount of the award and shall not guarantee that the selected Prime Proposer(s) will receive project assignments.

Term of Contract:

The term of the contract shall be five years or to the date that the maximum amount of fee has been expended, whichever occurs first.

ATTACHMENT D

FEE PROPOSAL – PAGE 1 OF 4

Please acknowledge the following by signing where indicated below.

Project Design Team Personnel List with Hourly Rates (page 2)

The Proposer shall provide completed Fee Proposal Forms as provided indicating the hourly rates for the Key People team. The hourly rates must be fully loaded (including benefits, overhead and profit), hourly billable, all-inclusive wage rates for the individuals listed as Key people. **Please provide only one wage rate per position - ranges will not be accepted. If ranges are used, the lower wage rate will be utilized for evaluation and, if selected, the contract wage rate. Also, provide a wage rate for all positions listed. Please do not add positions.** Invoicing for services shall be limited to these individuals at the hourly rates indicated. Once the Proposer enters into a contract with the SDP, any additional Key People added to SDP projects and their hourly rates will require approval by the SDP prior to invoicing for their time expended on SDP projects.

(Trade Name of Firm)

(Signature of Owner or Partner)

ATTACHMENT D**FEE PROPOSAL – PAGE 2 OF 4**

Project Key Personnel List with Hourly Rates

Company	Person	Position	Hourly Rate
Key Personnel for Construction Material Testing			
		Senior Project Manager/Field Supervisor	
		Senior Inspector	
		Inspector/Construction Observer	
		Environmental Technician	
		Structural Steel Observer	
		General Construction Observer	
Key Personnel for Geotechnical Testing			
		Geotechnical Engineer	
		Geotechnical Inspector	
		Gradiometer Survey	
		Technician /w Nuclear Density Meter	
		Technician/w Calibrated Organic Vapor Analyzer	
Key Personnel for Non-Destructive Testing			
		Radiology/Ultrasonic/Magnetic Inspector	
		Survey Team (Radioisotope)	
		Electrical Inspector	
		Air Handling/Balancing Inspector	
		Weld Inspector	

ATTACHMENT “D”

Fee Proposal – Page 3 of 4
School District of Philadelphia
Material Testing and Special Inspection Services

Rates for Specific Task	
Concrete	COST/EACH
Review mix designs (includes aggregate grading and specific gravity)	\$ _____
Batch plant inspection (includes aggregate sampling)	\$ _____
ACI tech (cast cylinders)	\$ _____
Cylinder compression tests (includes pick-up)	\$ _____
Torque and pull tests	\$ _____
Drilled anchor inspection	\$ _____
Rebar sampling	\$ _____
Rebar testing	\$ _____
Masonry	COST/EACH
Acceptance testing	\$ _____
Block sampling/tagging	\$ _____
Grout mix design (includes aggregate testing & specific gravity and grading)	\$ _____
Aggregate sampling	\$ _____
Inspect masonry placement	\$ _____
Inspection at batch plant	\$ _____
Cylinder compression tests mortar (includes pick-up)	\$ _____
Cylinder compression tests grout (includes pick-up)	\$ _____
Cylinder compression tests prisms (includes pick-up)	\$ _____
Wall coring	\$ _____
Wall core compression test	\$ _____
Wall core shear test	

ATTACHMENT “D”

Fee Proposal – Page 4 of 4

School District of Philadelphia

Material Testing and Special Inspection Services

Rates for Specific Task

<u>Structural Steel</u>	<u>COST/EACH</u>
Shop welding inspection	\$ _____
Field welding inspection	\$ _____
Field U.T.	\$ _____
Test high strength bolts, nuts, washers	\$ _____
Field inspection bolts	\$ _____
Test metal decking	\$ _____
Fireproofing (Provide fireproofing technician approved by DSA IOR)	\$ _____

APPENDIX B: SUBMISSION INSTRUCTIONS

Submission Address

Online Proposal Submission Address

<https://www.philasd.org/finance/#sdpvendors>

For Physical Copies and Samples (only when specified in this document)

Office of Procurement Services
The School District of Philadelphia
440 N. Broad Street
3rd Floor, Portal A
Philadelphia, Pennsylvania 19130

Proposal Due Date

Proposers must upload Proposals in response to this RFP to the Office of Procurement Services by **July 8, 2025 at 11:00 AM EST** or the School District shall deem the Proposal non-responsive. Failure to meet this deadline may result in rejection of the Proposal.

Proposers must submit responses to this RFP via the online Oracle Supplier Portal in the School District of Philadelphia's Oracle ERP system, unless otherwise specified through this document or in writing by an authorized representative in The Office of Procurement Services.

Registration instructions and information on how to use the portal are available at

<https://www.philasd.org/finance/#sdpvendors>

Online Support for submitting responses into the SDP's Oracle Supplier Portal are available weekly on Tuesdays from 9:30 AM - 10:30 AM and Thursdays from 12:30 PM - 1:30 PM at:

<https://philasd-org.zoom.us/j/86558805623?pwd=AqOSclJrzHPV9WDljaoOMzIFbUbVk3.1>

Contact for Questions Regarding this Solicitation

Proposers may submit questions and request clarifications about this RFP, in writing via email, to the contact person listed below. The School District will provide its responses to all questions and inquiries, received by the give deadline, to all prospective proposers who received the original RFP, and to all other organizations who request our responses in writing.

Kaaliyah Fratacangeli

Office of Procurement Services
The School District of Philadelphia
440 N. Broad Street
Philadelphia, Pennsylvania 19130-4015
Kfratacangeli@philasd.org
215-400-5338

Pre-proposal Conference

The School District will hold a virtual pre-proposal conference through the link listed below, at the date and time listed in the schedule below. This meeting offers a chance for prospective Proposers to discuss the requirements of the RFP, obtain clarification regarding the documents, and request changes from the program office and Procurement Services.

Online Video Call Link: <https://philasd-org.zoom.us/j/85610409383?pwd=KVBPTu45on10ClgtW3gWxaXSChjoSb.1>

Proposal Opening

The School District will hold a virtual public opening through the link listed below, at the date and time listed in the schedule, below, in this section. This meeting offers a chance for prospective proposers to obtain the list of respondents to the RFP.

Online Video Call Link:

<https://philasd-org.zoom.us/j/87464629484?pwd=HmdVrj5SW4CMWo5JyKnSVXYJ6rIRzv.1>

Schedule

<u>Event</u>	<u>Date/Time</u>
• Deadline for Questions	6/27/25, 3:00 PM EST
• Pre-Proposal Conference	6/25/25, 10:00 AM EST
• Opening/Proposal Due Date	7/8/25, 11:00 AM EST
• Oral Presentations (if required)	TBD
• Anticipated Date of Board of Education Approval	8/21/25
• Anticipated Date of Commencement of Services	When Awarded

Requirements of a Responsive Supplier

All required documents must be fully completed, signed, dated, and submitted by the RFP due date for a supplier to be considered fully responsive. Failure to adhere to the directions within the RFP document or failure to provide fully completed documents referenced below can result in immediate disqualification where proposers cannot be evaluated nor considered on final awards.

RFP

- Full Proposal Response to Scope of Work
 - As outlined in Appendix A
- Organized Proposal Response
 - As outlined in Appendix C, with additional required attachments that are not included within the RFP package. This includes but is not limited to:
 - City of Philadelphia Tax Clearance Certificate
 - Audited Financial Statements
 - MWBE Certifications
 - List of References
- Signed Addenda(s)
 - If applicable. Contact the Procurement Buyer for confirmation or check the SDP's General Bid and RFP Opportunities website.
- Fully Completed and Signed Appendices
 - Appendix H: Signature Page
 - Appendix I: Equal Opportunity in Hiring
 - Appendix J: Non-Collusion Affidavit - Notarized
 - Appendix K: Cooperative Purchasing
 - Appendix O: Contractor Debarment
- Appendix E: Minority/Women-Owned Business Enterprise (M/WBE) Participation Plan
 - **Section I** - Fully completed and signed by the Prime Contractor
 - **Section II** - Fully completed and signed by the subcontractor when applicable.
 - **Section III** - Fully completed and signed by the Prime Contractor when applicable.
 - Signed **Procurement Vendor Acknowledgement Form**
 - Certifications of MWBE Primes and/or sub-contractors.

*Contact the Office Small Business Representative listed in Appendix E to clarify which documents are required as they relate to the specific RFP.

APPENDIX C: PROPOSAL FORMAT

To expedite the evaluation of each Proposal, the School District requires that all Proposers organize their Proposals as described in this section. Proposers must key their Proposals to this format, using the same numbering and headings. Proposers must address each item in the sequence shown below. Proposers may further break down this format if required to present items in a more detailed manner, or to enhance the understanding of the Proposal. Proposers should prepare Proposals in a simple and concise manner, with precise and clear presentation of all information.

Section 1: Proposer Organization and Signature

This section of the Proposal must include the following:

- A. the full, correct legal name, and ownership of the Proposer organization, the mailing address of Proposer's headquarters, and its telephone number. The Proposal must also include the Proposer's ownership history and experience;
- B. the name and title, phone number and email address of the individual at the Proposer responsible for providing any additional required information relating to the Proposal;
- C. the completed and signed Signature Page, in the form included below in this RFP as Appendix H, which includes:
 - 1. the signature, name and title, address, telephone number and email address of the principal of the Proposer organization, who has due authority to sign the Proposal and the ensuing Contract, if any; and
 - 2. the Proposer's Federal Tax ID Number and DUNS number.

Section 2: Experience of the Proposer

Describe the Proposer's experience with this type of work, including with school districts and with clients in Philadelphia, as applicable.

Section 3: Capacity

Describe the Proposer's capacity to perform this work, including number of personnel, equipment and infrastructure, as applicable.

Section 4: Plan of Work

Describe the Proposer's plan of work to perform this work, including planning, implementation, reporting, trouble-shooting.

Section 5: Pricing

Detail the Proposer's pricing for this work, as detailed here or in the Scope of Services.

Section 6: Subcontractor Data

Identify all subcontractors the Proposer plans to use, and describe their specific roles and responsibilities, and the experience and background of key personnel.

Complete the relevant sections of the specified MWBE forms within Appendix E, in addition to the Procurement Vendor Compliance Acknowledgement form.

The School District reserves the right to approve or disapprove any subcontractors that the Proposer engages or plans to engage.

Section 7: Financial Data

The Proposer(s) shall include sufficient evidence of financial stability by providing one or more of the following:

- Financial statements for the past three calendar or fiscal years.
- Profit & Loss Statements
- DUNS number

Joint Ventures. The School District will consider Proposals from joint ventures organized for the specific purpose of offering the services under this RFP, provided the joint venture satisfies the School District as to its ability to perform as required under this RFP and any awarded Contract. At a minimum, the School District will require the following as part of any Proposal by a joint venture:

1. Written evidence of joint venture status, *i.e.*, a copy of the joint venture agreement;
2. The identity by name and principal address of all joint venture participants;
3. The identity of the venturer who has day-to-day responsibility for administering the Contract, if awarded;
4. Evidence that the venturer having day-to-day responsibility for administering the Contract has prior satisfactory operations experience;
5. Complete information as to each venturer's obligation and commitment to other co-venturers with regard to the Contract, if awarded;
6. Complete description of prior relevant experience, including references (names, addresses, and telephone numbers);
7. Proof of financial responsibility;
8. Information as to contract administration responsibility in the event that the venturer identified in Item 3 above withdraws from the enterprise before Contract award or termination.

Section 8: Appendices and Addenda

The Proposer must include the following appendices in its Proposal, with all required signatures:

1. Participation Plan Form, included in Appendix E;
2. Appendix H: Signature Page;
3. Appendix I: Equal Opportunity in Hiring;
4. Appendix J: Non-Collusion Affidavit;
5. Appendix K: Cooperative Purchasing;
6. Appendix L: Vendor Code of Ethics
7. Tax Clearance Form, as stipulated in Appendix M
8. Appendix O: Contractor Debarment

Proposers must also sign and submit with their Proposal any School District RFP addenda sent during the RFP process.

The School District considers and designates as confidential and proprietary all information provided by the School District to prospective Proposers and Proposers, which information Proposers and prospective proposers may use solely for evaluating and responding to this RFP. Prospective proposers and Proposers may not and shall not disclose or release any of this information outside the prospective proposer's or Proposer's organization without written permission from the School District. The School District cannot guarantee the protection of any confidential or proprietary information provided by any Proposer.

APPENDIX D: EVALUATION CRITERIA

The School District will evaluate all Proposals submitted in response to this RFP through a School District or multi-disciplinary evaluation committee. The Evaluation Criteria in this Appendix D set forth the specific criteria the School District will use to evaluate Proposals. The School District will consider each measure included in the checklist, but the School District reserves the right and discretion to determine the different weights assigned to each criterion.

The School District will select the Proposer or Proposers for recommended award of a Contract or Contracts for the work, based on the School District's evaluation and discretion as to the best qualified Proposer or Proposers whose Proposal or Proposals best meet the needs of the School District as set forth in this RFP, and which constitute the best value to the School District, as determined in the School District's sole discretion.

Proposal Evaluation

The School District will base scoring on information including, but not limited to, the Proposer's Proposal documents, references, interviews, product demonstrations, and site visits. The evaluation team shall be under no obligation to contact Proposers for clarification of Proposals, but the School District reserves the right to do so at any time prior to execution and delivery of a Contract or Contracts.

Selection Process and Evaluation Criteria

Selection Procedure & Evaluation Criteria

A responsive proposal is complete and addresses all requirements of the RFP. Each proposal will be reviewed by the SDP selection committee to determine responsiveness. Proposals deemed non-responsive will be rejected without evaluation. The SDP reserves the right to reject any or all proposals when such rejection is in the best interest of the SDP. The SDP reserves the right to waive any informalities and technicalities in the RFP process or any non-material defects in proposals. The SDP may at any time terminate the RFP process provided for herein for any reason or no reason at the sole discretion of the SDP. The receipt of proposals or other documents by proposers during any state of the RFP process shall in no way obligate the SDP to enter into any agreement with any proposer or make the SDP liable for any proposer costs. The SDP may alter these and any other procedures as it deems necessary and appropriate.

If for any reason whatsoever the SDP rejects any proposer's proposal, the proposer agrees that it will not seek to recover lost profits on work not performed nor will it seek to recover its proposal preparation costs. By submitting its proposal, the proposer expressly states that it intends to be legally bound and accepts the limitation of remedies set forth in this paragraph. By submitting its proposal, the proposer further expressly states that should it file, initiate, or persuade another to file, initiate or in any other manner pursue or encourage any lawsuit or that such filing, initiating, or other pursuit constitutes a breach of its agreement with the SDP and that it will be liable for damages incurred by the SDP arising from the breach of this agreement including, but not limited to, the SDP's attorneys' fees and costs of defending such action.

Selection - Stage 1- QBS- Qualification Based Selection:

Proposals shall be evaluated by a selection committee. Each member of the selection committee will assign a score to the proposal based on the following evaluation criteria:

- A. Superior technical competence and qualifications of the Proposer's firm as evidenced by professional experience in the performance of design services for projects of comparable size, building type and complexity;
- B. Superior technical competence and qualifications of the assigned personnel as evidenced by the education and experience of key team members in providing the services described herein;
- C. Superior Quality of project approach including preliminary design ideas, schedule control and budget control
- D. Superior history and reputation in timeliness of design schedule and cost-effective designs by proposer
- E. Responsiveness to the requirements of this Opportunity

Each Proposer's firm will receive a ranking based on the selection committee's scores. If the committee requires additional information to make a recommendation, then a limited number of firms (to be determined by the SDP) with the highest rated technical proposals will be selected as finalists and invited to make a presentation to the selection committee. **Proposers must be prepared to make a presentation on the date noted in Section 9.0.** Project managers and key personnel shall attend the presentation. The finalists shall be prepared to present and respond to questions on preliminary design solutions, approach to major architectural and building systems, unique qualifications of the Proposer's firm, cohesiveness of the proposed team, and approach to schedule and budget control. The selection committee will once again evaluate each firm using a pre-established scoring rubric.

Selection - Stage 2:

The fee proposal of the highest rated firm will be opened and the SDP will enter into fee negotiations. (Fee proposals for the other firms will not be opened until such time as the firm in question has been selected for fee negotiation.)

If the SDP cannot reach an agreement on fee with that firm, negotiations with that firm shall be terminated. The fee proposal of the next highest rated firm will be opened and fee negotiations with that firm commenced.

The process will be repeated as necessary until agreement is reached or the SDP elects to terminate this solicitation.

The School District will evaluate Proposals on the criteria listed below and the ability of the Proposer to satisfy the requirements of this RFP in a cost-effective and efficient manner. Factors include, but are not limited to, the following:

Criteria	Brief Description	Percentage Weight
Experience	Does the firm have substantial experience in this industry and sector? Have they provided services to K-12 institutions similar to the School District? Have they provided services in a similar format, within a similar time frame, with similar populations, etc.?	25%

REQUEST FOR PROPOSAL (RFP)

Capacity	Does the firm have the resources in personnel, equipment, certifications, infrastructure, etc., to perform the services within a reasonable timeframe and at a high standard? Is the Proposer going to be registered as a Special Inspection Agency with the City of Philadelphia in October 2025 with registered special inspectors?	25%
Plan of Work	Has the firm detailed an approach to the work that is comprehensive and shows an understanding of the scope and of the School District?	25%
Pricing	Is the pricing proposal competitive, detailed and in line with the scope of services?	25%

Submission Requirements

A responsibility determination will be completed for each chosen supplier. The School District of Philadelphia reserves the right to require financial statements and project references when determining the responsibility of chosen suppliers.

Proposal Rejection

The School District reserves the right to reject any and all Proposals.

APPENDIX E: Business Diversity in the Procurement of Materials and Contracted Services

The School District, under the governance of the Board, seeks to ensure equal opportunity in all contracts let by the School District. To meet this goal, the School District issues this RFP under Board of Education Policy 612: *Business Diversity in the Procurement of Materials and Contracted Services* (for the purposes of this Appendix, the “Policy”). The Policy’s fundamental requirements include the mandate that all contractors serving the School District provide a full and fair opportunity for the participation of Minority and Women-Owned firms and other disadvantaged enterprises (“MWBEs”) in the performance of the Contract. The ranges of participation established by the School District represent meaningful and substantial participation for this work, based upon the availability of bona fide MWBE firms. The range of participation for this RFP is as follows:

MWBE Range: Best Effort

The School District may amend or adjust this range of participation. The School District will announce changes, if any, at the Pre-Proposal Conference, see Appendix B, to this RFP, and will also post any changes to the MWBE range on the Procurement Services website: <https://www.philasd.org/procurement/>.

The School District has contracted with the Office of Economic Opportunity (“OEO”) of The City of Philadelphia to establish ranges of participation for RFPs and other procurements, which serve as a guide in determining each Proposer’s responsibility and responsiveness. These ranges represent the percentage of MWBE participation that a contractor should attain in the available market, ready and able to provide the services required by the procurement, absent discrimination in the solicitation and selection of these businesses. These participation ranges serve as a material guide in determining Proposer responsiveness and responsibility. These ranges are based upon an analysis of factors such as the size and scope of the RFP Work and the availability of certified MWBE’s to perform various elements of the Work. The School District has attached its **MWBE Participation Plan form and corresponding instructions to this RFP, below**. Proposers must carefully review and complete the Participation Plan. The School District considers submission of a Participation Plan with Proposals under this RFP to constitute a material element of responsiveness and responsibility. **Failure to submit a Participation Form can result in rejection of your Proposal.**

All questions about the Business Diversity in the Procurement of Materials and Contracted Services policy and compliance requirements should be directed to the **Office of Small Business Development Project Manager, Richard Brown** at rkbrown@philasd.org.

Board of Education Policy 612: *Business Diversity in the Procurement of Materials and Contracted Services* applies to all School District and Intermediate Unit contracts, as designated by the School District and approved by the Board, including but not limited to, contracts for the design, development, construction, operation and maintenance of school buildings and other buildings and structures owned, leased or used by the School District or its contractors, assignees, lessees and licensees (the “Facilities”); contracts for professional services and contracts for the purchase of goods, services, supplies and equipment for the School District and the Facilities. Through adoption and implementation of the Policy, the School District seeks to achieve the objective of better promotion of prime contract and subcontract opportunities for MWBEs, as approved by the School District or certified by the OEO, Southeastern Pennsylvania Transportation Authority (“SEPTA”), or any other certifying agency designated by the School District in its discretion.

The Policy fundamentally requires that all contractors, vendors and consultants who contract with the School District, satisfy the School District that they shall: (i) not discriminate in contravention of any

Applicable Law; and (ii) provide a full and fair opportunity for the participation of MWBEs in the work under School District contracts. Contractors must demonstrate “meaningful and substantial” participation by MWBEs in all phases of a contract, under criteria adopted by the School District. “Meaningful and substantial” means the range of participation that reflects the availability of bona fide MWBEs for the work in the Philadelphia Metropolitan Statistical Area. The School District measures participation in the actual dollars received by MWBEs.

“Minority” as used in this Policy, means:

Black American, *i.e.*, all persons having origins in any of the Black African racial groups;

Hispanic/Latino American, *i.e.*, all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin;

Asian Pacific Island American, *i.e.*, all persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands; and

Native American, *i.e.*, all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

A. Procedures for Implementation

1. Articulation of the Policy, Staffing and Reporting

The School District Office of General Counsel and the Procurement Services’ Office of Small Business Development have developed this language for the RFP (the “Solicitation Language”), in order to set forth clearly the objectives of the Policy. School District employees shall include this Solicitation Language in all RFPs and similar procurements, *e.g.*, RFPs. The School District shall publicize and articulate the Policy to the public in general, and to each Person, Proposer, bidder contractor, lessee or licensee doing business with the School District.

The School District may employ additional staff or contract with other public or private entities to assist in the implementation of the Policy. School District staff shall provide the Board with quarterly reports on the levels MWBE participation in all contracting activities.

2. Promotion of MWBEs

The School District recognizes the importance of having meaningful and substantial MWBE participation in all contracts. To that end, the School District shall take steps to ensure that it affords to MWBEs a fair and equal opportunity to participate. Those steps may include but are not limited to: (i) making public contracting opportunities; (ii) advertising in newspapers and periodicals published by community-based organizations and MWBEs; and (iii) designing RFP packages in such a way as to promote rather than discourage MWBE participation.

3. Contracting Requirements

Prior to the dissemination of any RFP or other form of public solicitation (a “Solicitation”), the School District shall determine the projected range of MWBE participation in the Work procured (the “Participation Range”), and may include this information, along with the names and addresses of bona fide MWBEs potentially available for contracting or joint-venture opportunities with the Solicitation. Each Proposer shall submit with its Proposal or other form of response: (i) a plan that meets the Participation Range set forth in the Solicitation and lists the names, addresses, dollar amounts and scope of work

delegated, subcontracted or otherwise allocated to the MWBE to carry out (the "Participation Plan"); or (ii) a brief narrative explaining its reasons for not submitting a Plan which meets the Participation Range set forth in the Solicitation. Submission of the Participation Plan is an element of responsiveness and failure to submit a completed Participation Plan or a narrative explaining the reasons that the Participation Ranges could not be met may result in the rejection of a Proposal, bid or other form of response. If the Participation Range in a Proposal, bid or other form of response meets or exceeds the level determined by the School District as meaningful and substantial, the School District shall presume the Proposer's Proposal complies with the Policy. If, however, the proposed Participation Range falls below the meaningful and substantial level, then the Proposer must prove to the satisfaction of the School District that it did not discriminate in the solicitation of potential subcontractors, joint venture partners or both.

4. Sanctions

The Parties shall incorporate the Proposer's Participation Plan as a part of each Contract between the School District and a Contractor, and the Proposer's Participation Plan shall be enforceable like any other contractual term, covenant or condition, in the manner set forth in the Contract. Sanctions for breach of a Participation Plan shall include, among others, suspension or cancellation of the Contract, and in some cases debarment from future contracting opportunities with the School District.

PROPOSER RESPONSIBILITIES

THE POLICY

The Policy seeks to provide equal opportunity for all businesses and to ensure that the School District does not use its funds, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The School District is committed to fostering an environment in which all businesses freely, fairly and equitably participate in business opportunities, flourish without any impediments of discrimination, and participate in School District contracts and contracting opportunities on an equitable basis. In accordance with the contracting requirements of the School District, the Policy applies to RFPs for supplies, services & equipment, design & construction contracts, and contracts for professional services.

CERTIFICATION REQUIREMENTS

The School District shall credit toward participation ranges only firms certified by an approved certifying agency prior to RFP opening. Approved agencies include OEO, SEPTA, other state and city certification offices, State Departments of Transportation, the Small Business Administration, National and Local Minority Supplier Development Councils; National Association of Women Business Owners, and other identified certifying agencies approved by the School District.

PARTICIPATION CREDIT

MWBE subcontractors and manufacturers and suppliers of products are credited toward the participation range at 100%.

Proposers who utilize indirect contracting with MWBE firms to satisfy the participation range may do so, however indirect participation may not exceed twenty five percent (25.0%) of the requirement.

In order to maximize opportunities for businesses, the School District shall credit a firm certified in two or more categories toward only one participation range, *e.g.*, as either an MBE or WBE, but not both. Proposers should note in their Proposal the category; MBE, WBE, or other, for which the Proposer seeks credit.

For an MWBE submitting as the prime contractor, the School District shall credit toward the participation ranges the value of its own work or supply effort.

In listing amounts committed to on the Participation Plan submitted as part of its Proposal, Proposers should list both the dollar amount and percentage of total RFP Compensation for each MWBE commitment proposed. In calculating the percentage, Proposers may apply the standard mathematical rules in rounding off numbers. In the event of an inconsistency between the dollars and percentages listed on the Participation Plan form, the School District shall use and rely on the amount which results in the greater commitment.

RESPONSIVENESS

Proposers must submit documentary evidence of MWBEs solicited by the Proposer and of those MWBE with whom the Proposer has made tentative commitments.

Proposers shall submit with their Proposals documentation of all Proposer solicitations of prospective MWBEs, regardless of whether tentative mutual commitments resulted, as well as all tentative commitments made prior to Proposal submission, on the document entitled "Participation Plan" form. If the Proposer has entered into a joint venture with a MWBE partner, the Proposer must submit a copy of the joint-venture agreement along with the Participation Plan form.

The School District shall reject as non-responsive all Proposals from Proposers who fail to submit the required information on MWBE participation. Proposers should note that the School District shall credit toward the Participation Ranges only tentative commitments made prior to Proposal submission and listed on the Participation Plan form. Since the School District must ensure that all Proposers respond on equal terms, the School District shall reject as non-responsive a Proposal that indicates that the Proposer will make commitments after Proposal opening.

Upon execution and delivery of a definitive Contract, the completed Participation Plan forms and accompanying documents regarding solicitation and commitments with MWBEs become legally binding as part of the Contract. A Proposer should only make actual solicitations of MWBEs whose work or materials are within the scope of the RFP Work. The School District shall not deem mass-mailing of a general nature as MWBE solicitation, but rather treat these mailings as informational notification only. Prospective Proposers should give all solicited MWBE firms a reasonable period of time to ensure that MWBEs can prepare their quotes adequately and diligently.

The Proposer's listing of a commitment with an MWBE as described on the Participation Plan form constitutes a representation that the Proposer has, prior to Proposal submission, made a tentative commitment to contract with the MWBE firm, on receipt of a Contract from the School District.

PROPOSAL REVIEW

Upon receipt of Proposals for this RFP, the School District shall submit Proposer's Proposal for review to the School District's Office of Small Business Development ("SBD") to determine whether the Proposer has submitted a Proposal that meets the Participation Ranges for MWBE set forth in this RFP. If the Proposal meets these ranges, the School District shall rebuttably presume the Proposer to have met the requirements of the Policy.

Contractors shall maintain MWBE percentage commitments throughout the Term of the Contract; these percentage commitments shall apply to the total Contract value, *i.e.*, the Compensation, which shall include approved change orders and amendments. Any change in commitment, including but not limited

to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts must be approved by the School District.

ACCESS TO INFORMATION

The SBD unit or its designee shall have the right to make site visits to the Proposer's place of business and job site, and to obtain documents and information from any Proposer, Contractor, Subcontractor, supplier, manufacturer or other contract participant that may be required in order to ascertain Proposer responsibility and responsiveness. Failure to cooperate with the SBD unit in its review shall result in a recommendation to the School District user Department and RFP evaluation team that the School District deem the Proposer not responsible and reject its Proposal.

RECORDS AND REPORTS

The Contractor shall maintain records relating to its MWBE commitments, *e.g.*, copies of subcontracts, joint venture agreement, correspondence, canceled checks, invoices, telephone logs; for a period of at least six years following acceptance of final payment. 24 P.S. § 5-518. The Contractor shall make these records available for inspection by the SBD unit and other appropriate School District officials.

The Contractor shall submit reports and other documentation to the School District as deemed necessary by the SBD unit to ascertain the Contractor's successful discharge of its MWBE commitments.

REMEDIES

The School District deems the Contractor's successful compliance with the requirements of the Policy material to the Contract. Any failure to comply with these requirements constitutes a substantial breach of the Contract. The Contractor understands, acknowledges and agrees that in the event the School District determines that the Contractor has failed to comply with these requirements, the School District may, in addition to any other rights and remedies they may have under the Contract, any bond filed in connection therewith, or at law or in equity, exercise one or more of the following remedies:

- withhold payment(s) or any part thereof until corrective action is taken;
- terminate the Contract, in whole or in part;
- suspend the Contractor from participating in any future School District Contracts for a specified period; or
- recover as liquidated damages, one percent of the Compensation under the Contract for each one percent, or fraction thereof, of the commitment shortfall. *Note:* the "Compensation", *i.e.*, the total dollar amount of the Contract, shall include approved change orders, amendments, and for requirements contracts shall be based on actual quantities ordered by the School District.

APPEAL PROCESS

Appeal of any action taken under the Business Diversity in the Procurement of Materials and Contracted Services Policy state the clear reason for appeal and shall be made in writing to:

Throne Cropper, Deputy Chief, Procurement
Office of Procurement Services
The School District of Philadelphia
440 N. Broad Street, Third Floor
Philadelphia, PA 19130-4015

M/WBE Participation Plan Form Instructions

MWBE Participation Plan Submission & Form Completion Requirements:

The M/WBE Participation Plan Forms must be submitted with all vendor responses to the solicitation. Failure to submit and complete the appropriate MWBE Participation Plans Forms will deem the Prime Contractor's response to this solicitation as non-responsive and subject the response to disqualification.

1. Prime Contractor Responsibilities:

- Complete **Section I**, ensuring all rows are filled, dated, and/or signed with the Prime Contractor's information.
- If the Prime Contractor is a certified Small Business or Minority and/or Women Owned vendor, include a copy of the valid certification. **Section II is not required should the Prime Contractor be a certified Small Business or Minority and/or Women Owned vendor.**
- If the Prime Contractor is not already a certified Small Business or Minority and/or Women Owned vendor, specify the approximate percentage and/or dollar amount of the commitment to each certified MWBE subcontractor upon award on the following pages:
 - **Section II.** – "Approximate \$ amount of Subcontract" or "Subcontract % of Total Contract Amount"
- The Prime Contractor is also responsible for completing the **Procurement Vendor Compliance Acknowledgement Form**, following the MWBE Participation Plan Forms.

2. Subcontractor Responsibilities:

- Each Subcontractor must complete **Section II.**, ensuring all sections are filled, dated, signed and returned to Prime to include in the original submission.
- If a Subcontractor is a certified vendor, include a copy of the valid certification.
- Failure to complete **Page II.** correctly will deem the entire MWBE Participation Plan Form and vendor response as non-responsive, subjecting the Prime Contractor's response to disqualification.

3. Additional Subcontractors:

- If needed, use multiple copies of **Section II** for each additional Subcontractor.
- Multiple certified Small Business/MWBE sub-contractors can be utilized to meet the required MWBE Goal referenced within this Bid/RFP document.

4. Diversity Certifications:

- Include copies of all active and current Small Business and/or MWBE certifications for both the Prime Contractor and/or any Subcontractors, as applicable.

- All certifications must be current at the time of submission.
- 5. **MWBE Goal Compliance:**
 - If the MWBE Goal cannot be met, the *Prime Contractor* must:
 - Utilize **Section III** to provide an explanation and;
 - Submit evidence of Best Efforts for review and compliance by the Office of Procurement Services. This includes completing the table within **Section III** and listing at least three (3) sub-contractors that have been contacted to meet the goal set forth as a percentage or Best Efforts.
 - **Note: Section III** is not required if the Prime Contractor and/or Sub-Contractor has met the MWBE Goal by completing **Section I** and/or **Section II**.

**OFFICE OF PROCUREMENT SERVICES
OFFICE OF MINORITY AND SMALL BUSINESS DEVELOPMENT
Minority/Women-Owned Business Enterprise (M/WBE) Participation Plan**

I. Information in this section refers to the Prime Contractor/Vendor.

Company Name:		Federal Tax ID:	
Address:		Phone Number:	
City:		State:	Zip Code:
DBA (if applicable):		Fax Number:	
Primary Contact Person:		Primary Contact Email:	
Compliance Contact:		Compliance Contact Email:	
Bid/RFP Number:		Contract Overall MWBE Goal:	
<p>Diversity Business Certification to be used on this contract(s): Check all that apply and INCLUDE a copy of the certification.</p> <p> <input type="checkbox"/> Minority-Owned Business Enterprise (MBE) <input type="checkbox"/> Women-Owned Business Enterprise (WBE) <input type="checkbox"/> Federally Certified Disadvantaged Business Enterprise (DBE) <input type="checkbox"/> Small Business Enterprise (SBE) <input type="checkbox"/> Disabled Owned Business Enterprise (DSBE) <input type="checkbox"/> Veterans Business Enterprise (VBE) / Certified Service-Disabled Veterans <input type="checkbox"/> Business Enterprise (SDVBE) <input type="checkbox"/> LGBT Business Enterprise (LGBTBE) <input type="checkbox"/> Diversity Business Certifying Agency: _____ <input type="checkbox"/> None </p>			
Authorized Representative Signature:			
Print Name:			
Title:		Date:	
Certifying Agency		Certification No.	
<p><input type="checkbox"/> The School District of Philadelphia NON-Profit Registration Certificate</p> <p style="text-align: center;">Date certificate approved: _____ Certificate expiration date: _____</p> <p style="text-align: center;">Non-profit certification is renewed annually by the vendor..</p>			
<p>For School District of Philadelphia, Office of Procurement ONLY:</p> <p>For School District Employee signature ONLY: _____ Date: _____</p>			

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II. This section pertains to the subcontractors involved throughout the entire duration of this contract. Use Section II of this form for each additional subcontractor as needed. Please include copies of all relevant certifications.							
Company Name:			Federal Tax ID:				
Address:			Phone Number:				
City:		State:		Zip Code:			
DBA (if applicable):			Fax Number:				
Primary Contact Person:			Primary Contact Email:				
Compliance Contact:			Compliance Contact Email:				
Description of Services Provided:							
Approximate \$ amount of Subcontract:			Subcontract % of Total Contract Amount:				
<u>Diversity Business Certification to be used on this contract(s):</u> Check all that apply and INCLUDE a copy of the certification. <input type="checkbox"/> Minority-Owned Business Enterprise (MBE) <input type="checkbox"/> Women-Owned Business Enterprise (WBE) <input type="checkbox"/> Federally Certified Disadvantaged Business Enterprise (DBE) <input type="checkbox"/> Small Business Enterprise (SBE) <input type="checkbox"/> Disabled Owned Business Enterprise (DSBE) <input type="checkbox"/> Veterans Business Enterprise (VBE) / Certified Service-Disabled Veterans <input type="checkbox"/> Business Enterprise (SDVBE) <input type="checkbox"/> LGBT Business Enterprise (LGBTBE) <input type="checkbox"/> Diversity Business Certifying Agency: _____ <input type="checkbox"/> None – not applicable							
Authorized Representative Signature:							
Print Name:							
Title:			Date:				
<input type="checkbox"/> The School District of Philadelphia NON-Profit Registration Certificate <div style="text-align: right;"> Date certificate approved: _____ Certificate expiration date: _____ </div> <div style="text-align: right; font-size: small;"> Non-profit certification is renewed annually by the vendor. </div>							
For School District of Philadelphia, Office of Procurement ONLY: For School District Employee signature ONLY: _____ Date: _____							

THE SIGNER COMMITS TO PROVIDE SERVICES OR SUPPLIES AS DESCRIBED ABOVE AND WILL ENTER INTO A FORMAL AGREEMENT WITH THE BIDDER/PROPOSER CONDITIONED ON THE BIDDER/PROPOSER'S EXECUTION OF A CONTRACT WITH THE SCHOOL DISTRICT OF PHILADELPHIA.

III. M/WBE CONTRACTOR GOOD FAITH EFFORTS FORM

The Prime Contractor/Vendor must complete information in this section if the Prime Contractor(Vendor) proposes no Small Business and/or MWBE commitment.

Bidder/Applicant's Company:			
Authorized Representative:		Title:	
Address:			
Phone:		Email:	

The Bidder or Prime Contractor has the burden of demonstrating "Good Faith Efforts" to meet the diverse contracting goals. I certify that the following certified Minority/Women Business Enterprises were contacted to obtain a quote for work to be performed on the above-mentioned project/contract. List the certified firm's information: date, name, certification, contact person, contact phone number, type of work to be performed, and the estimated budgeted amount for each vendor, along with results of contact (please use the list below to indicate the result).

Date	Certified Firm Name	Firm's Certification(s)	Firm's Contract Person	Firm's Contact Phone #	Type of Work	Estimated Budgeted Amount for Certified Firm	Results (select from the list below)

To the best of my knowledge and belief, said certified Minority/Women Business Enterprise contractor(s) was/were not selected, unavailable for work on this project, or unable to provide a quote for the following reasons: Please give the appropriate reasons given by each MBE/WBE firm contacted above. See the list below of results based on the contacted certified M/WBE vendor:

- A.** Firm agreed to sub-contract and will enter into a formal agreement with the bidder
- B.** Did not have the capability/capacity to perform the work
- C.** Contract too small
- D.** Remote location / No presence in that area
- E.** Received solicitation notices too late
- F.** Did not want to work with this contractor
- G.** Other (give reason)

The Prime Contractor attests that it submits the following as evidence of its good faith efforts to find and retain certified minority and women-owned business enterprises in connection with this Bid or Proposal.

Authorized Representative Signature:			
Print Name:			
Title:		Date:	

PROCUREMENT VENDOR COMPLIANCE ACKNOWLEDGEMENT FORM

The Pennsylvania Public School Code authorizes the Board to adopt policies and procedures and to make rules and regulations to manage school affairs and fiscal well-being of the District, including with respect to competitive procurements and vendor responsibility. The School District of Philadelphia requires contracted vendors to comply with the policies and procedures adopted by the Board of Education. The School District of Philadelphia will maintain comprehensive records regarding the entire scope of the procurement process, post-award compliance, and administration of the M/WBE participation and compliance adherence process.

I, _____ {*Company Name*}, do hereby acknowledge and agree to the following:

1. I have read, carefully reviewed this Invitation for Bid (IFB), RFQ, or RFP and understand the benchmarks and measurements to achieve diversity goals as outlined for M/WBE Participation. Board of Education Policy [612 Business Diversity in the Procurement of Materials and Contracted Services](#) further outlines Business Diversity Goal requirements.
2. I understand that the completion and submission of the M/WBE Participation Plan Form and the supplementary documentation to support if applicable is an element of responsiveness to this IFB, RFQ, or RFP. Failure to submit this documentation with the proposal and/or evidence of Good Faith Efforts will result in rejection of the IFB, RFQ, or RFP.
3. If awarded a contract, I understand and will comply with all contract monitoring, compliance, and enforcement guidelines, including but not limited to recordkeeping and ongoing reporting on contract diversity outcomes that offer the maximum practicable opportunity for qualified and certified M/WBEs and other disadvantaged enterprises to participate throughout all phases of the contract and any subsequent contract amendment. Such as:
 - Monthly and Quarterly post-award compliance reporting via the School District of Philadelphia Oracle Supplier Compliance System to ensure that the vendor meets diversity participation commitments and other contract requirements.
 - Ongoing monitoring of prime contractors' payments to M/WBEs and other contractors utilized through payment reporting and acceptance of payments by sub-contractors.
 - Participating in ongoing training related to vendor compliance and reporting requirements.
4. I understand that non-compliance with vendor compliance reporting and/or diversity participation commitments throughout the life of the contract may result in any of the following events, including but not limited to: withholding of payments, contract termination, suspension, disqualification, debarment, or other sanctions and penalties for failure to comply.
5. I agree to conduct business with the highest levels of ethical standards and agree to comply with all applicable requirements at all times.

Receipt and Acknowledgement

By signing below, I agree that I have read both this acknowledgement statement and the referenced policies in their entirety. I understand that I am subject to these policies whether or not the

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acknowledgement form is signed. Lack of confirmation of receipt of the acknowledgement form does not exempt a vendor or contractor from Board policy enforcement.

Company Name: _____

Company Representative: _____

Signature: _____

Title: _____

Date: _____

Company's Compliance Officer:

Email Address of Company's Compliance Officer:

APPENDIX F: THE COMPETITIVE PROCESS

RFP Terms.

The competitive process set forth in this RFP, if successful, results in the execution and delivery of a definitive, legally binding contract, under which the School District engages a Proposer as Contractor to carry out the Work as set forth in the Contract, including, generally, this RFP and the Proposal.

This Appendix F sets forth the terms and conditions applicable to the overall competitive RFP process. Please review this Appendix carefully in order to understand both the rights of the School District and the duties of all Proposers.

Non-Commitment. The issuance of this RFP does not commit the School District to any award of a Contract or Contracts.

Reservation of Rights; Modification.

The School District reserves the right to supplement, amend or otherwise modify this RFP at any time prior to or after the selection of a Proposer to enter into contract negotiations or a Contract. Subject to the School District's reserved rights under this Section, if the School District determines to modify this RFP (in response, for instance, to a question or inquiry), the School District will issue an Addendum to this RFP. If the School District issues an Addendum to this RFP, the School District will send a copy of the Addendum to all Persons then involved in the completion of the RFP process.

In addition, the School District reserves the rights, in its sole discretion: (a) to accept or reject, at any time prior to the School District's execution of a Contract in connection with this RFP, any or all Proposals or any part of any Proposal submitted in response to this RFP; (b) to waive any defect or defects, including but not limited to a material defect, or technical omission or error; or (c) to advertise for new Proposals where School District, in its sole discretion, determines that the acceptance, rejection, waiver or re-advertisement would be in the best interests of the School District.

Further, the School District reserves the right to reject any Proposal which the School District, in its sole discretion, finds incomplete, obscure, conditional, or unbalanced, or which contains irregularities of any kind, including alterations or erasures. The School District shall reject any Proposal which fails to comply with any of the other mandatory requirements of this RFP.

For the sake of clarity, the School District reserves the right to decline to issue an award or contract to any Proposer, to cancel this RFP at any time, to re-issue this RFP for any reason, and to advertise for new proposals on the same or modified terms and conditions, or any combination of these actions, in the School District's sole discretion. The School District reserves the right to negotiate all or any part of a Proposer's Proposal at or prior to the execution and delivery of a Contract.

RFP Alterations. The School District strictly forbids any alterations to the text or any file associated with this RFP in any way. Any alterations to any version of this RFP, if submitted by a Proposer to the School District, may result in the School District deeming your Proposal unresponsive.

Submission of a Proposal. A Proposer's submission of a Proposal constitutes the Proposer's covenant, representation and warranty to the School District of the truth and accuracy, in all material respects, of the information set forth in the Proposal; the submission of a Proposal also constitutes the Proposer's acknowledgement that the School District reasonably relies on the contents of the Proposal in making its decision to award a Contract to the Proposer, or to negotiate the terms of a Contract with the Proposer.

Limit on Communication. From the date of the issuance of this RFP to the date of authorization to contract, the School District shall not permit any communication concerning this RFP between any prospective Proposers or their agent(s) and any School District staff or School District representatives, except as permitted and set forth in this RFP, see Appendix B, above. The School District expressly prohibits communication with School District staff or representatives, except as permitted and set forth in this RFP, see Appendix B, above. Any communication in violation of this provision shall not bind the School District, and violation of this provision by any prospective Proposer or Proposer or its agent constitutes grounds for immediate disqualification.

Interviews, Oral Presentations. The evaluation process may also include requests for additional information or data if, in the judgment of the School District, this could aid in completing a fair and accurate analysis. The School District reserves the right to request that one or more Proposers give oral presentations, demonstrations, or answer questions, or any or all three, about its Proposal, after receipt thereof, to clarify any aspect of its Proposal or to describe how the Proposer will accomplish any and all requirements. The School District shall advise the Proposer as to the time and place for any such oral presentation or presentations. The Proposer must make the presentation as requested, and should be prepared to discuss all aspects of its Proposal in detail. The School District anticipates that the typical oral presentation will require thirty (30) minutes for presentation and an additional fifteen (15) minutes for questions. Proposers must supply an email address and direct phone number of a contact person to permit efficient scheduling of presentations.

Negotiations. The School District reserves the right to negotiate all or any part of a Proposer's Proposal at or prior to the execution and delivery of a Contract. The School District reserves the right to negotiate unacceptable limitations or restrictions in an otherwise acceptable Proposal, and the right to reject such a Proposal. In the event that the School District and a Proposer cannot reach an agreement, the School District reserves the right to cut off negotiations with the Proposer at any time, and the right to negotiate a Contract with any remaining responsive and responsible Proposers, to decline to enter into any Contract or Contracts pursuant to this RFP, and to issue another RFP on the same, similar or altered terms, for some or all of the services contemplated by this RFP. The School District may negotiate with a Proposer or Proposers before or after the resolution passed by the Board, in any manner the School District or the Board, in their sole discretion, deem fit. No Person or Proposer shall have any rights against the School District arising at any stage of the RFP process from any negotiations that may take place.

Board Authorization. After the School District has reviewed all Proposals and interviewed Proposers of its choosing, if applicable, the School District anticipates seeking Board approval to authorize the School District to contract with one or more Proposers. The Contract or Contracts, if any, awarded pursuant to this RFP remain subject to due authorization hereafter by the Board of the School District.

Duration of the Proposal. A Proposal constitutes the Proposer's firm, fixed offer to enter into and perform a Contract with the School District for the Work described in this RFP and its Proposal, on the terms and conditions set forth in this RFP, in its Proposal, and in the form of Contract, that is, the Professional Services Contract attached in Appendix G, below.

In consideration of the School District's evaluation of the Proposer's Proposal, the Proposer hereby irrevocably covenants and agrees to hold open its Proposal as a firm, fixed offer to enter into and perform such a Contract with the School District for a period of at least one hundred eighty (180) calendar days commencing on the Proposal due date set forth in Appendix B, above. If the School District has not given notice to a Proposer of the School District's intent to either (i) execute and deliver a Contract with the Proposer on the terms and conditions set forth in this RFP, the Proposer's Proposal and the Contract set forth in Appendix G attached hereto, or (ii) enter into contract negotiations with the Proposer, within one hundred eighty (180) calendar days from the Proposal Due Date set forth in Appendix B, above, then the Proposer may withdraw its Proposal by written notice to the Procurement buyer specified within Appendix B, and thereupon may thereafter decline to enter into a Contract with the School District pursuant to this RFP.

Definitive Contract. Proposers who submit a Proposal in response to this RFP agree to accept the School District's Professional Services Contract, set forth in Appendix G. The successful Proposer(s) shall enter into a definitive, formal written Contract with the School District. The Contract form constitutes a material part of this RFP and Proposers hereby acknowledge their receipt, comprehension and acceptance of the terms and conditions set forth in this Contract form. The School District requests that each Proposer indicate their acceptance of the Terms and Conditions of the Professional Services Contract (Appendix G) by signing Attachment A.

The Contract shall consist of (i) the form of contract attached hereto as Appendix G, (ii) this RFP, (iii) Proposer's Proposal, and (iv) such other instruments as the School District and the Proposer may agree to. The Contract shall, among other things, (a) bind the Contractor to carry out the Work in conformity with the RFP and the Proposal forming part of the Contract; (b) require the Contractor to obtain criminal history record checks, both Pennsylvania State Police and FBI (with fingerprints), and a Pennsylvania Child Abuse History Clearance Report on all personnel and subcontractors who have direct contact with children; (c) bind the Contractor to a definite term of service and budget; (d) set forth terms and conditions governing accrual of fees and payment; (e) cap the Contractor's compensation; and (f) require the Contractor to maintain books, records, and acceptable accounting procedures regarding its costs, expenses, receipts and disbursements, and submit to audits by the School District and others.

Proposers must carefully review the form of contract attached hereto as Appendix G; the terms and conditions set forth therein constitute material terms and conditions for the Contract and the performance of the Work contemplated by this RFP. In general, the School District does not contemplate the need for substantial or material revisions to these Contract forms. In the event that a Proposer seeks to alter these legal forms, the School District requires that the Proposer clearly set forth in its Proposal any modification or modifications it seeks. The Proposer shall state its reason for each requested modification. Requests to modify these legal forms may constitute a negative factor in the School District's evaluation of a Proposal and may delay the definitive Contract.

Proposer-Contractor Responsibility. The successful Proposer-Contractor shall bear sole responsibility for meeting all terms and conditions specified in this RFP, its Proposal, and any resulting Contract.

City of Philadelphia Tax Requirements. Any vendor of goods, wares and merchandise, or purveyor of services, who has been awarded a Contract by the School District, will incur liability for payment of one or more of the following taxes; Mercantile License Tax, Net Profits Tax, City Wage Tax and General Business Tax. The successful Proposer, if not already paying one of more of these taxes, must apply to the City's Department of Revenue, Room 240, Municipal Services Building, 15th Street and John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19107, for an account number, and file appropriate business tax returns as provided by law.

No Defaults, Debts or Arrears. The School District shall not make any award to any Person in arrears or in default with the School District, the City, or the Commonwealth of Pennsylvania upon any debt or contract, including any debt for any tax or taxes due, or who has failed to perform faithfully on any previous contract with the School District, the City or the Commonwealth.

Proposal Costs and Ownership. The School District shall have no liability for any costs associated with the development, preparation, transmittal or presentation of any Proposal or material submitted in response to this RFP. Each prospective Proposer responding to this RFP agrees that it shall have no claim of any nature whatsoever against the School District for any costs or liabilities incurred relating to or in any way arising out of this RFP or in preparing and presenting its Proposal. The Proposal and all materials submitted in connection with this RFP shall become the property of the School District upon receipt by the Office of Procurement Services, and shall not be returned to the Proposer or Contractor. Regardless of the Contractor(s) selected, the School District reserves the right to use any information presented in a Proposal.

Public Disclosure. The information submitted by the Proposer, including statements and letters, remains subject to public disclosure as required by federal and other Applicable Law, including but not limited to the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101 *et seq.* (“RTKL”). Prior to contracting, the School District shall disclose Proposals submitted in response to this RFP to the members of the Evaluation Committee only, unless otherwise required by Applicable Law. The potential need for negotiations, or for “best and final offers”, and the need to protect the integrity of the public procurement process, preclude general disclosure of this information until after the Contract award.

Proposer’s Confidential or Proprietary Information. The School District cannot guarantee the protection of any confidential or proprietary information provided by Proposer. The foregoing to the contrary notwithstanding, if a Proposer reasonably deems and properly designates any portion of its Proposal as containing its own trade secrets, copyrights, trademarks, service marks or other validly held intellectual property rights, then the School District shall receive and hold the properly designated portions of the Proposal as confidential to the fullest extent permitted by law, including the RTKL; shall use reasonable diligence to preserve the confidential nature of the pertinent portions of the Proposal; shall use reasonable diligence to protect and preserve the Proposer’s valid legal rights therein; and shall give the Proposer or Contractor reasonable notice of any legal proceeding that the School District believes may compel the production to a third party of any portion of the Proposal which the Proposer has reasonably deemed and properly designated as containing its own trade secrets, copyrights, trademarks, service marks or other validly held intellectual property rights. In consideration of the foregoing covenant, the Proposer, by the act of submitting its Proposal, covenants and agrees to defend, indemnify and hold harmless the School District and its officers, employees and agents from and against any loss, claim, cost or cause of action by any third party arising out of any violation or alleged violation of any intellectual property right in any portion of the Proposal.

Advertising and Publicity. Proposers and Contractors may not make or issue any news releases or commercial advertising pertaining to the services contemplated under this RFP or any resulting Contract without the prior written approval of the School District, which approval the School District may grant, condition or withhold in its sole discretion.

Defined Terms.

1. “Board” means the Board of Education of the School District, which constitutes the board of school directors of the School District under Applicable Law, including but not limited to the Philadelphia Home Rule Charter, 351 Pa. Code §§ 12.12-100, *et seq.*; the Pennsylvania Public School Code, 24 Pa. Stat. § 1-101 *et seq.*; and the First Class City Public Education Home Rule Act, 53 Pa. Stat. 13201 *et seq.*

2. “Contract” or “Contracts” means a definitive written contract between a Contractor and the School District pursuant to which the School District engages a Contractor to perform services pursuant to this RFP and the Contractor’s Proposal. Each Contract shall consist of (a) the Professional Services Contract set forth in Appendix G attached hereto and hereby made a part hereof, (b) this RFP, (c) the Contractor’s Proposal, as the parties may have negotiated and amended said Proposal; (d) Contractor’s budget for its Services for the Term of the Contract; and (e) such other instruments as the School District may approve, which approval the School District may grant, condition or withhold in its sole discretion. “Contract” includes the Contract as the same may be amended from time to time by the School District and the Contractor.

3. “Commonwealth” means the Commonwealth of Pennsylvania.

4. “Contractor” means a Proposer who has executed and delivered a Contract with the School District pursuant to this RFP and its Proposal.

5. "Intermediate Unit" means the Philadelphia Intermediate Unit, also known as Intermediate Unit No. 26, an intermediate unit under the law of the Commonwealth of Pennsylvania, established by the Board of Education of The School District of Philadelphia pursuant to the Act of May 4, 1970, No. 102, P.L. 311, codified at 24 P.S. § 9-951 *et seq.*

6. "OEO", as defined in Section VIII below, means the Office of Economic Opportunity of The City of Philadelphia.

7. "Minority" has the meaning specified in Appendix E above.

8. "M/WBE" and "M/WBEs", as defined in Appendix E above, means minority- or women-owned business enterprises.

9. "Participation Range" has the meaning specified in Appendix E above.

10. "Person" means an individual, sole proprietor, partnership, corporation, whether for-profit or not-for-profit, limited liability company, limited partnership, limited liability partnership, business trust or other association.

11. "Policy," as defined in Appendix E above, means Policy 612- Business Diversity in the Procurement of Materials and Contracted Services adopted by the Board January 30, 2020.

12. "Proposal" means a written proposal responsive to the requirements of this RFP submitted to the School District in conformity with the requirements of this RFP by a responsible Proposer.

13. "MWBE Participation Plan" has the meaning specified in Appendix E above.

14. "Proposer" means a responsible Person who submits a Proposal.

15. "RFP" means this Request for Proposals. This RFP shall include the Appendices, Schedules, and Addenda, if any, attached hereto or subsequently issued by the School District, all of which are hereby incorporated herein by reference.

16. "School District" means The School District of Philadelphia, a body corporate and political subdivision formed and existing under the laws of the Commonwealth of Pennsylvania, established pursuant to Article XII of the Home Rule Charter of The City of Philadelphia. The School District is a separate and independent home rule School District of the first class under Pennsylvania law. The School District, under the governance of the Board, by contractual arrangements with the Intermediate Unit, provides staff to support the administrative and other functions of the Intermediate Unit.

17. "Solicitation" means an Invitation for Bid, Request for Proposals, Request for Qualifications or other competitive process

20. For other defined terms, please refer to the Professional Services Contract, Appendix G to this RFP.

Other Requirements of the Contract.

The Contract shall incorporate the following additional terms and conditions.

1. The Contractor shall obtain use of a location or locations to carry out its services and any other services set forth in the Contract, and shall ensure that the Contractor and any Subcontractors

comply with all federal, state and local laws and regulations in connection therewith, including but not limited to any and all zoning and environmental laws and regulations.

2. The Contractor shall give hiring preference to qualified School District employees whose positions have been terminated, in, for instance, a reduction-in-force.

3. The Contractor shall not use program funds to pay any of the Contractor's legal expenses for the prosecution or defense of claims against the School District or the Intermediate Unit.

4. Limitations: The Contractor shall not budget, charge or collect as fee, or incur any cost or expense, under its Contract except in conformity with Applicable Law and its Contract. The Contractor shall not charge or collect as fee, or incur any cost or expense, under its Contract except in conformity with a Budget prepared in conformity with the Contract and duly approved by the School District. In instances where the Contractor's costs and expenses serve its program of services and other programs and businesses of the Contractor, the Contractor shall pro-rate such costs and expenses across all relevant programs operated or run by the Contractor out of said offices or facilities.

5. Employment History Review. The Contractor shall promptly and timely carry out the employment history review process set forth in 24 Pa. Stat. § 1-111.1 (Act of October 22, 2014, P.L. 2624, No. 168).

APPENDIX G: SAMPLE PROFESSIONAL SERVICES CONTRACT

ORACLE CONTRACT NO. ____
OGC CONTRACT NO. ____ /FY25

**CONTRACT FOR PROFESSIONAL MATERIAL TESTING AND SPECIAL INSPECTION SERVICES –
IDIQ**

FOR THE CAPITAL IMPROVEMENT PROGRAM

BETWEEN

SCHOOL DISTRICT OF PHILADELPHIA

AND

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Exhibits:

Exhibit A	Board of Education Action Item dated _____, 2025
Exhibit B	Request for Proposals (RFP) Material Testing and Special Inspection Services - IDIQ (as redacted hereby) (incorporated by reference in its entirety into this Contract) and RFP, Appendix A: Scope of Services and Addendum No. _ (if any)
Exhibit C	Material Testing Consultant Technical Proposal (as modified hereby) Material Testing and Special Inspection Services – IDIQ dated _____, 2025 (incorporated by reference in its entirety into this Contract) and Technical Proposal, Cover Page, Organizational Chart, Key Personnel Resumes, and Plan of Work
Exhibit D	Letters of Understanding, Scopes of Work, and Task Orders for individual projects (collectively incorporated by reference in their entirety into this Contract)
Exhibit E	Material Testing Consultant Fee Proposal, Form Cover Sheet and Key Team Members (Hourly Rates) and Subconsultants Personnel (Hourly Rates)
Exhibit F	Material Testing Consultant Technical Proposal, M/WBE Participation Plan
Exhibit G	Schedule G – ELECTRONIC DATA REQUIREMENTS

Professional Material Testing and Special
Inspection Services Contract – IDIQ
Contract No. ____/FY25

Approved by Board Action Item #__

Dated: _____ 2025

SCHOOL DISTRICT OF PHILADELPHIA

BOARD OF EDUCATION

This Contract for Professional Material Testing and Special Inspection Services – IDIQ (the “Contract”) is made as of this ____ day of _____, 2025 by and between the SCHOOL DISTRICT OF PHILADELPHIA (hereinafter called “the School District”), acting through its Board of Education, located at 440 North Broad Street, Philadelphia, Pennsylvania 19130-4015 and _____ (hereinafter called “Material Testing Consultant” or “_____”) located at _____.

BACKGROUND

The School District currently serves over 125,000 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 Public School Code, 24 P.S.C. §21-21-2 and §3-301.

The School District has entered into a Contract for Capital Program Management Services with Johnson, Mirmiran & Thompson, Inc. (the “Program Manager” or “JMT”) to provide comprehensive professional program management services for the implementation of the School District’s Capital Improvement Program, beginning in February 2020, under the direction and management of the School District. The Capital Improvement Program consists of new construction, major renovations, life cycle replacements, modernizations to meet code requirements, and educational programming needs.

On May 29, 2025, the Board approved a six (6)-year amended Capital Improvement Program (“CIP”) for FY25 through FY30 totaling over \$2.700 billion and a proposed 6-year Capital Improvement Program (“CIP”) for FY26 through FY31 totaling over \$2.713 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 nearly 500 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 Management and Services, the Office of Environmental Management and Services, the Office of Real Property Management and the Office of General Counsel.

The basis for the budget for the OCP is the sale of bonds, usually repayable with interest over 30 years. The Capital Budget is also the basis for the multi-year Capital Improvement Program (CIP). Projects are selected for inclusion in the CIP using building condition assessment reports, work order and

deferred maintenance data, input from field maintenance employees and school administrators, and the priorities identified in the School District Superintendent's Strategic Action Plan.

In its Request for Proposals Material Testing and Special Inspection Services – IDIQ (hereinafter referred to as "RFP for Material Testing and Special Inspection Services" or "RFP"), the School District requested proposals from qualified professional firms to provide professional material testing and special inspection services, on an as-needed basis, at various schools.

_____ (__) firms, including _____, responded to the RFP for Material Testing and Special Inspection Services with a Proposal.

On _____, 2025, the Board, by Action Item #__, authorized the School District to execute and perform separate contracts to provide material testing and special inspection services with _____ qualified professional firms, including _____ ("Material Testing Consultant"), for the contract period commencing on _____, 2025 and ending on _____, 202_. A copy of the Board Action Item is attached as Exhibit A, and incorporated by reference into this Contract.

The School District and the Material Testing Consultant desire that the Material Testing Consultant perform, on time and on-budget, professional material testing and special inspection services, on an as-needed basis, at various schools, under the direction and management of the School District. The Material Testing Consultant will perform, on-time and on-budget, the professional material testing and special inspection services work assignments that are assigned by the School District's Executive Director or Operations Manager of Capital Programs, and will assume the responsibilities, duties and liabilities provided herein, and will work in concert with the Program Manager, the School District and others in connection with the Capital Improvement Program and the School District Master Plan, in strict accordance with the attached Board Action Item; and the School District's Request for Proposals ("RFP") Material Testing and Special Inspection Services – IDIQ (referred to as "RFP for Material Testing and Special Inspection Services") (as redacted hereby), attached as part of Exhibit B and incorporated by reference in its entirety into this Contract, and RFP, Appendix A: Scope of Services and Addendum No. __ (if any) attached collectively as part of Exhibit B and incorporated by reference into this Contract; and the Material Testing Consultant's Technical Proposal (as modified hereby) Material Testing and Special Inspection Services – IDIQ dated _____, 2025 (only the Cover Page, Organizational Chart, Key Personnel Resumes, and Plan of Work of the Material Testing Consultant's Technical Proposal are attached collectively as Exhibit C; however, the entire Material Testing Consultant's Technical Proposal is referred to as Exhibit C and incorporated by reference in its entirety into this Contract); and the Letters of Understanding, written Scopes or Scopes of Work and Task Orders for individual projects assigned by the School District, referred to as Exhibit D and collectively incorporated by reference in their entirety into this Contract; and on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION of the foregoing Background and the mutual covenants, promises, and agreements set forth herein, the School District and the Material Testing Consultant, intending to be legally bound, agree as follows:

Section 1. Incorporation of Background; Definitions; General Rules of Construction.

1.1 **Incorporation of Background.** The above Background is incorporated by reference into this Contract.

1.2 **Definitions.** Except as expressly provided otherwise in this Contract or in Exhibits A-G, capitalized terms shall have the meanings specified in this Paragraph 1.2. Such meanings shall be applicable to both the singular and plural of the term defined. Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa; and pronouns of any gender

shall be deemed to include and designate the masculine, feminine, and neuter genders. "Or" shall include "and/or".

(a) **Additional Services** – has the meaning attributed thereto in Paragraph 6.7, **Additional Services**.

(b) **Applicable Law** – means and includes all federal, state and local statutes, ordinances, resolutions and regulations, including the rules and regulations of any government authority, School District rules, regulations and policies applicable to the School District, the Material Testing Consultant and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

(c) **Additional Term** – means the one (1) of the two (2) optional additional one (1)-year or twelve (12)-months term described in Paragraph 2.2, **Option to Renew**.

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

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

(f) **Capital Improvement Program or CIP or Capital Program** – means the amended 6-year Capital Improvement Program (FY25 through FY30) and the proposed 6-year Capital Improvement Program (FY26 through FY31) approved by the Board on May 29, 2025, and any additions, deletions, changes, adjustments, and annual updates approved by the Board.

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

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

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

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

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

(l) **Contract Modification** – has the meaning attributed thereto in Paragraph 3.17, **Changes**.

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

(n) **Deliverables** – means all required submittals, work product, materials,

documents, drawings, magnetic media and reports, including all underlying information, data and research, to be provided by the Material Testing Consultant at regular review points and at the completion of the work as expressly noted herein or as may be required by the Material Testing Consultant.

- (o) **Effective Date** – means the date first written above.
- (p) **Federal** – means the United States of America and its legislative, executive, and administrative branches of government.
- (q) **Force Majeure Condition** – means a force majeure event or condition described in Paragraph 3.18, **Force Majeure**.
- (r) **Initial Term** – means the Initial Term specified in Paragraph 2.1, **Initial Term**.
- (s) **Key Personnel** – means those job titles and the persons assigned to those positions in accordance with the provisions of Paragraph 3.4.12 and Paragraph 8.1, **Key Personnel** of this Contract and any persons that the Material Testing Consultant shall invoice the School District for in performance of required services.
- (t) **Letter of Understanding** – means the written agreement signed by the School District and the Material Testing Consultant that describes, attaches, incorporates, or explains the Scope or Scope of Work, the Task Order, the Project Schedule or Work Schedule, the basis of the applicable Fee method, and other requirements for individual Projects assigned by the School District.
- (u) **Material Testing Consultant** – means the qualified professional consulting services firm performing professional material testing and special inspection services for individual Projects at various schools pursuant to this Contract.
- (v) **MBE/WBE** – means minority-owned business enterprise and women-owned business enterprise as certified or qualified by the School District Office of Minority and Small Business Development or certified by the City of Philadelphia's current Office of Economic Opportunity or former Minority Business Enterprise Council, or certified by the Southeastern Pennsylvania Transportation Authority's DBE Program Office, or certified by any other certifying agency designated by the School District in its discretion.
- (w) **Notice to Proceed** – means written authorization by the Contract Administrator for the School District to commence its respective services.
- (x) **OSHA** – means the Occupational Health and Safety Act of 1970.
- (y) **PDE** – means the Department of Education of the Commonwealth of Pennsylvania or the Pennsylvania Department of Education.
- (z) **Program Manager** – means Johnson, Mirmiran & Thompson, Inc. ("JMT"), the qualified professional consulting services firm who is performing professional capital program management services, including professional construction management services, for the Project under the School District's Capital Improvement Program pursuant to its Contract with the School District.
- (aa) **Project(s)** – means the individual project(s) that is (are) identified and addressed in the School District Capital Improvement Program.
- (bb) **Project Schedule** – means the schedule developed and included in the approved Scope for each project that is identified and addressed in the School District Capital Improvement Program, together with all modifications.

(cc) **Proposal** – means the Proposal dated _____, 2025 submitted by the Material Testing Consultant in response to the RFP, together with all subsequent modifications and supporting materials submitted by the Material Testing Consultant to the School District in response to the RFP.

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

(ee) **Request for Proposals or RFP** – means the Request for Proposals Material Testing and Special Inspection Services – IDIQ (referred to herein as “RFP for Material Testing and Special Inspection Services”) issued by the School District, including all Addenda thereto issued, if any.

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

(gg) **Scope or Scope of Work or SOW** – means the overall plan, including scope or scope of work, schedule, phase submission checklist, and budget, for the Task Order for the Project, together with all modifications, provided by the School District and agreed to by the School District.

(hh) **Services** – mean, collectively, those necessary to complete the Work, including without limitation those services, and such additional services as may be directed by the School District, to be provided by the Material Testing Consultant in accordance with the terms and conditions of this Contract and set forth in the Construction Documents, including any Project Schedule, Work Schedule, Deliverables, supplements, modifications, or amendments hereto, and any work functions necessary in order to complete such Services.

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

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

(kk) **Subcontractor or Subconsultant** – means any person, firm, partnership, corporation, other entity, or combination thereof, or their respective duly authorized representative(s), who has or will enter into a contract or consulting agreement with the Material Testing Consultant to perform any Services covered by this Contract.

(ll) **Subcontract** – means a contract or consulting agreement entered into by the Material Testing Consultant with a Subcontractor or Subconsultant in order to perform, directly or indirectly, its Services under this Contract.

(mm) **Task Order** – means a written list or itemization of work, together with material testing and special inspection services documents, and all modifications thereto, issued to the Material Testing Consultant, to be performed for an individual school facility assigned by the School District.

(nn) **Termination Notice** – means a notice given by the School District of its intent to terminate and its termination of this Contract. The termination procedure is set forth in Section 14, **Termination**.

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

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

*(qq) _____ – means _____, a (partnership or corporation or limited liability company) duly organized and existing under the laws of the State (Commonwealth) of _____, and licensed and authorized to do business under the laws of the Commonwealth of Pennsylvania, with offices at _____.

[Since definition list is alphabetical, clause must be inserted and put in alphabetical order.]

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

Section 2. Term of Contract.

2.1 **Initial Term.** The Initial Term of this Contract shall commence on _____, 2025, and, unless sooner terminated by the School District pursuant to the terms of this Contract, shall continue in full force and effect for a contract period of _____ () years through _____, 202_.

2.2 **Option to Renew.** The School District may, at its sole discretion, renew this Contract for up to two (1) additional successive one (1)-year (12 months) periods (individually an “Additional Term”, and collectively, “Additional Terms”). 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) days prior to the expiration of the then current contract term, the School District, at its sole discretion, may notify the Material Testing Consultant, in writing, of its intention to recommend renewal of this Contract for up to an additional one (1)-year (12 months) period to the Board. Within ten (10) days of the Material Testing Consultant’s receipt of the School District’s notice of its intention to recommend renewal of this Contract, the Material Testing Consultant 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 up to _____ () years up through _____, 202_, unless the Board or a successor entity authorizes a further renewal or extension by Action Item.

Section 3. Material Testing Consultant’s Services and Responsibilities.

3.1 **M/WBE Commitments and Requirements.** In supplementation of the Material Testing Consultant’s other covenants set forth in this Contract, the Material Testing Consultant covenants and agrees to carry out fully and faithfully its commitments set forth in this Contract concerning utilization of M/WBEs, if any. See Material Testing Consultant’s Minority/Women-Owned Business Enterprise (M/WBE) Participation Plan attached to this Contract as Exhibit “F” and Paragraph 8.3 of this Contract. For compensation under this Contract, the Material Testing Consultant’s M/WBE participation covenant shall equal (Best Effort or the dollar amount) set forth in its M/WBE Participation Plan.

3.2 **Role of Program Manager.** The Program Manager is responsible for managing the planning, evaluation, scheduling, design and design process (including selection and regular review), constructability, analysis, cost estimation, construction, project close-out and all aspects of the successful delivery of capital projects in the School District’s Capital Improvement Program, in accordance with the directions and decisions of the School District. The Program Manager’s role in the Capital Program is to manage the School District’s Capital Program in accordance with the directions and decisions of the School District. The Program Manager

is responsible for: (a) Leading the day-to-day management of the Project design and overseeing the overall Project design/coordination; (b) Managing the Project constructability reviews and Project Value Engineering; (c) Identifying and facilitating all Project applications, permits and approvals; (d) Liaising between the municipality and various community/business organizations and the School District; (e) Managing and hosting the Project community outreach events in collaboration with the Material Testing Consultant and the School District; and (f) providing oversight, coordination and management of individual capital projects under the Capital Program.

The School District, acting through its officials, employees and other agents, shall retain final authority with regard to all Capital Program and Project-related decisions. The School District shall hold the contracts of the various consultants and contractors performing services or work on individual capital projects under the Capital Program.

The Program Manager is the School District's authorized representative on the Project and is in charge of pre-construction, construction and post-construction activities on the Project. The Program Manager's staff will work closely with the staff of the School District in the School District Office of Capital Programs to successfully deliver the Capital Program and individual capital projects under the Capital Program. The Program Manager will report to the School District's Executive Director or Operations Manager of Capital Programs.

The School District shall furnish the Material Testing Consultant with a copy of any written agreement between the School District and the Program Manager.

3.2.1 Program Manager's Services and Responsibilities. The Program Manager will be performing the services and responsibilities set forth below during the pre-construction, construction and post-construction periods of the Project.

(a) The Program Manager will assign a Key Personnel member to oversee and manage all program management services performed by the Program Manager on the Project and to act as the Program Manager's primary authorized representative and principal contact person for all participants on the Project.

(b) The Program Manager will coordinate with multiple School District departments (e.g., Capital Programs, Facilities Management and Services, including Facilities and Maintenance Departments, Environmental Management and Services, Academic Supports, and School Personnel) during programming, design and construction for the Project.

(c) The Program Manager will coordinate with the Office of Capital Programs and will serve as a liaison for the School District in communicating with various stakeholders, public officials, parent-teacher groups, and school officials during the Project planning and programming, design and construction phases. The Program Manager will develop and implement a communication process on the Project to involve all stakeholders in the Project design process.

(d) The Program Manager will be managing the design of the Project during the pre-construction phases of the Project in consultation with the designated representatives of the School District's Director of Capital Programs. The Program Manager will design to cost when performing its services during the Project. The School District, through its Director of Capital Programs, shall retain final authority with regard to Project design and design-related activities and decisions. The Program Manager will also be managing or overseeing the overall Project design process from conceptual design through schematic and detailed, biddable construction documents, and will make recommendations to achieve process efficiencies. The Program Manager will confirm that all Project construction bidding complies with the Pennsylvania Separations Act, the Public School Code, the School Procurement Code, and School District policies. The Program Manager will manage all Project construction pre-bid conferences.

(e) The Program Manager will assist the School District in creating systems for the Project to move expeditiously through City review/approval processes, including Art Commission, Historical Commission, and Water Department as needed.

(f) The Program Manager will collaborate with the Material Testing Consultant, the School District's Office of General Counsel and the School District's outside counsel on permitting and review processes for the Project.

(g) The Program Manager will integrate comprehensive environmental remediation requirements and building system upgrades into the scope of work for the design of the Project.

(h) The Program Manager will provide cost estimation and budgeting for the Project and will create a value engineering process that creates the opportunity for cost savings without impacting the fundamental scope of the Project.

(i) The Program Manager will assist the School District with the planning, evaluation and sequencing for the Project, including the development of a "fatal flaw" analysis to determine potential challenges in the delivery of the Project in the time frame required by the School District. The Program Manager will develop an overall Project Schedule and will evaluate construction logistics for the Project. The Program Manager will review schedules, estimates and budgets developed for the Project and will make recommendations on Project changes, adjustments, modifications and revisions to the School District.

(j) The Program Manager will work closely with the School District's Office of Minority and Small Business Development to ensure maximum M/WBE business participation in all phases of the Project, and to ensure goals are both identified and met.

(k) The Program Manager will manage Project construction, including compliance with all contract requirements, progress in meeting Project schedules, on-site testing and environmental compliance, communication with stakeholders, including reports to the Superintendent and the Board of Education, change order management and, if necessary, development of recovery plans. The Program Manager will implement procedures on the Project that require quality workmanship and adherence to construction schedules.

(l) The Program Manager will develop and manage a program to ensure safety and environmental management during the Project. The Program Manager will monitor and require construction contractor compliance with all safety plans and environmental management plans for the Project.

(m) The Program Manager will maintain site personnel on the Project as necessary, manage bi-weekly construction and coordinate all communication with the construction contractors on the Project. The Project Manager will participate in regular construction update meetings as required for the Project.

(n) The Program Manager will guard against unnecessary expenses, defective or nonconforming work of construction contractors, overpayment to construction contractors or consultants, and any unnecessary increase in the Project cost or duration. The Program Manager will alert the School District to any pending, known or proposed changes, conditions, or other circumstances affecting the Project construction scope, budget or schedule.

(o) The Program Manager will evaluate Project change orders attributed to design errors, omissions and deficiencies, and will render professional opinions to the School District and assist the School District in recovery efforts, if necessary.

(p) The Program Manager will review and approve all requests for payments from Project participants under their School District Contracts on the Project. The Program Manager will provide the approved requests for payments to the School District for review. All payments will be made directly by the School District.

(q) The Program Manager will determine substantial completion, coordinate completion of punch lists, and secure final guarantees, releases, warranties and certificates of occupancy on the Project.

(r) The Program Manager will collaborate with the School District's Office of General Counsel and Office of Risk Management on any legal, risk management or insurance issues or any claims or lawsuits related to design services or construction work on the Project.

(s) The Program Manager will oversee building commissioning and will coordinate with the School District's Office of Facilities, Management and Services, including the Facilities and Maintenance Departments. For the purpose of this paragraph, the School District adopts the following definition of "commissioning" as "the process of ensuring that systems are installed, functionally tested, and capable of being operated and maintained to perform in conformity with their design, the specifications in the Contract Documents, and for the purpose intended".

(t) The Program Manager will collect and review Project close-out information for the Project, and will ensure smooth handoff at Project completion to end users.

(u) The Program Manager will determine the current status of the Project and will make reports and recommendations to the School District Director of Capital Programs regarding Project issues and problems as needed or required.

(v) The Program Manager will assist the School District in implementing the School District Project Labor Agreement (also known as the Partnership Agreement) on the Project.

(w) The Program Manager will assist the School District in application for PLANCON reimbursement for the Project from the State, as well as any other Federal/State/Local capital funding source identified. The Program Manager will attend meetings with these entities as necessary and provide Project information to them as required.

3.2.2 Limits on Authority and Responsibility. The services to be performed by the Program Manager on the Project shall not impose upon it any obligation to assume any responsibilities, duties, services or activities assumed or required to be rendered or performed by the Material Testing Consultant, the Construction Contractors or any other School District Consultants employed by, or associated with, the School District on the Project. Nothing contained in this Contract shall be construed to mean that the Program Manager assumes any of the contractual duties, responsibilities, or liabilities of the Material Testing Consultant, the Construction Contractors or any other School District Consultants in their contracts with the School District, or any of the customary duties, responsibilities or liabilities of an architect, construction contractor or other School District consultant on a construction project. Notwithstanding any provisions contained in this Contract, nothing contained in this Contract shall be construed to mean that the Program Manager is acting in a manner so as to assume responsibility or liability, in whole or in part, for the noncompliance of any Construction Contractors or their subcontractors with safety precautions and safety programs in connection with construction work on the Project, and for their noncompliance with any applicable federal, state, and local safety laws, statutes, ordinances, codes, rules, regulations, orders and decrees, including but not limited to OSHA, or with safety standards and regulations established by the School District for the Project, including but not limited to standards and regulations set forth in the Safety Manual established by the School District of Philadelphia, or with federal, state, and local health laws, regulations and building codes, or for any accidents arising out of or in connection with safety precautions and safety programs in connection with the construction work on the

Project which caused death, personal injury or property damage and which were caused by any Construction Contractors or their subcontractors.

3.3 **Status of Material Testing Consultant.** The School District has engaged the Material Testing Consultant as an independent contractor to carry out the Work, and neither the Material Testing Consultant nor any of the Material Testing Consultant's agents, employees or Subconsultants shall in any way or for any purpose whatsoever be deemed an agent or employee of the School District. Neither the Material Testing Consultant nor any of its agents, employees or Subconsultants constitute employees of the School District, and these persons shall have no right to receive any School District employee benefits, or any other privileges available to School District employees. Neither the Material Testing Consultant nor its agents, employees or Subconsultants shall represent themselves in any way as agents or employees of the School District, and none of the Material Testing Consultant, its agents, employees or Subconsultants has any power to bind legally the School District to any third party.

3.4 **Assignment of Tasks and Issuance of Task Orders to Material Testing Consultants.** The School District will, during the Term of the Contract, assign Tasks by a Task Order issued by the School District, to the Material Testing Consultants who have been selected to perform material testing and special inspection services at designated schools. The School District reserves the right to pass over a Material Testing Consultant and issue a Task Order to another Material Testing Consultant, similarly engaged by the School District to perform material testing and special inspection service at designated schools. The School District reserves the right to remove a Material Testing Consultant from performing material testing and special inspection services pursuant to a Task Order issued by the School District and replace the Material Testing Consultant with a new Material Testing Consultant at the convenience of the School District in accordance with Section 14.1. The Material Testing Consultant agrees that at any time up until _____ () years after the Effective Date, the School District, at its option, may issue Task Orders to the Material Testing Consultant.

3.5 **Material Testing Consultant's Representations, Warranties and Commitments.** The Material Testing Consultant hereby represents, warrants and commits to the School District, which representations, warranties and commitments shall survive the execution and delivery of this Contract, that:

3.5.1 The Material Testing Consultant has the power and authority to enter into and perform this Contract.

3.5.2 This Contract, when executed and delivered, shall be a valid and binding obligation of the Material Testing Consultant enforceable in accordance with its terms.

3.5.3 The Material Testing Consultant is financially solvent and possesses sufficient working capital to perform the services set forth in this Contract, on-time and on-budget, and is current in the payment of taxes and other indebtedness to the City of Philadelphia and the Commonwealth of Pennsylvania.

3.5.4 The Material Testing Consultant is ready, willing and able and has sufficient experience and competence to perform all of the responsibilities and duties set forth in this Contract, on-time and on-budget.

3.5.5 The Material Testing Consultant is authorized to do business in the Commonwealth of Pennsylvania and is properly licensed or registered by all necessary governmental and public and quasi-public authorities having jurisdiction over it, the services required hereunder, and the projects that are part of the CIP.

3.5.6 The Material Testing Consultant is a firm experienced and skilled in performing material testing and special inspection services for school projects of comparable size and complexity to the School District's capital projects.

3.5.7 The Material Testing Consultant has the necessary skills, experience, expertise, ability and available qualified, licensed, or registered staff to facilitate rapid material testing and special inspection services for assigned school projects, and to provide, on time and within the budget, material testing and special inspection services on a number of assigned school projects at the same time, and to complete these material testing and special inspection services on assigned school projects within required time deadlines.

3.5.8 The Material Testing Consultant will visit the site(s) of the assigned project(s) and familiarize itself with the local conditions under which the services required hereunder are to be performed.

3.5.9 All material testing and special inspection services and other disciplines and features of the Material Testing Consultant's work shall be reviewed and approved by professionals licensed or registered to practice in the particular professional field involved in the Commonwealth of Pennsylvania.

3.5.10 The Material Testing Consultant shall provide and maintain sufficient organization, personnel and management to carry out the requirements of this Contract, on-time and on-budget. The Material Testing Consultant shall assign to this Contract personnel having the necessary competency, qualifications, experience, skill and knowledge required to perform the respective services. The School District reserves the right to direct the Material Testing Consultant to remove any personnel from the Services provided under this Contract upon material reason therefore given in writing. If removal of personnel is for cause, any costs of such removal shall be borne by the Material Testing Consultant.

3.5.11 Material Testing Consultant's and its Subconsultants' Key Personnel. The Key Personnel of the Material Testing Consultant and its Subconsultants are listed in the Material Testing Consultant's Technical Proposal, at Section B, Organizational Chart (Exhibit C). The Key Personnel List, with hourly labor rates, is attached as Exhibit E and incorporated by reference into this Contract. The Key Personnel of the Material Testing Consultant and its Subconsultants, all of whose resumes have been provided, shall perform those material testing and special inspection services and other services of the Material Testing Consultant required under this Contract. These persons shall devote their time as necessary to the assigned project(s) to ensure the Material Testing Consultant's full and timely performance of this Contract, on-time and on-budget. The Material Testing Consultant shall not remove, reassign, replace, or substitute any listed Key Personnel, without the prior written notice to and consent of the School District, which consent shall not be unreasonably withheld. In the event that these persons become unavailable to serve on the assigned project(s), the Material Testing Consultant shall obtain the School District's prior approval of any selected substitute personnel, which approval shall not be unreasonably withheld.

3.5.12 Material Testing Consultant's Subconsultants. The Material Testing Consultant shall engage the Subconsultants, which have been approved by the School District, to perform material testing and special inspection services and other services required of the Material Testing Consultant under this Contract, on-time and on-budget: _____. The Material Testing Consultant shall require each of its Subconsultants to place his licensed or registered stamp (with name, seal, and dated signature) on any logs, tests, reports, tables, figures, photographs, exhibits, certifications or other documents prepared in accordance with State and Local laws, statutes, codes, ordinances, rules and regulations. The Material Testing Consultant shall not employ, contract with, or use the services of any person or firm, as a subconsultant or otherwise, without the prior written approval of the School District, which approval shall not be unreasonably withheld.

3.5.13 The Material Testing Consultant shall coordinate the activities of all its consultants and all other members of its material testing and special inspection services team. The Material Testing Consultant shall be responsible for all actions of its Subconsultants and other team members in accordance with Paragraphs 3.7, Standard of Performance, 3.8, Labor, Materials, Supplies and Equipment, and 3.14, Subletting and Assignment, of this Contract.

3.5.14 Any written commitment, warranty or representation by the Material Testing Consultant within the scope of this Contract shall be binding upon the Material Testing Consultant, whether or not incorporated into this Contract. Failure of the Material Testing Consultant to fulfill any such commitment, warranty or representation, or if any commitment, warranty or representation was untrue in any material respect when made, shall constitute a default under Section 14 (*Termination*). The commitments, warranties and representations of the Material Testing Consultant within the meaning of this Paragraph 3.5.16 shall include, without limitation, the following:

(a) fees, costs and rates committed to remain in force over specified period(s) of time;

(b) any representation or warranty made by the Material Testing Consultant In a proposal as to the Services to be performed under this Contract, the qualifications, licenses, registrations, credentials, training, experience, and capabilities of the Material Testing Consultant and its personnel, and the licenses, registrations, capabilities, and experience of its Subconsultants;

(c) any representation or warranty made by the Material Testing Consultant concerning the characteristics of items of services described in this Paragraph 3.5.14 made in any literature, descriptions, or documents accompanying or referred to in a proposal;

(d) any modification of, or affirmation, or representation as to the characteristics of items of services described in this Paragraph 3.5.14 which is made by the Material Testing Consultant in writing during the course of discussions whether or not incorporated into a formal amendment to the proposal in question; and

(e) any commitment, warranty or representation by the Material Testing Consultant in a proposal, supporting documents, or other writing issued during the course of the proposal review as to services to be performed, or any other similar matter, regardless of the fact that the duration of such commitment, warranty or representation may exceed the term of this Contract.

3.6 **Basic Services and Additional Services.** The Scope of Services and other requirements of this Contract constitute Basic Services, for which compensation will be paid under Paragraph 6.1 herein, but are not intended to have the effect of excluding services which are not specifically mentioned, but which are normally basic services required for performance of the obligations of the Material Testing Consultant under this Contract. The Material Testing Consultant shall furnish all other services that are necessary or required to fulfill the objectives of this Contract, for which Additional Services the Material Testing Consultant will be compensated under Paragraph 6.7 of this Contract. The services and responsibilities delineated in this Contract are intended to substantively define the role of the Material Testing Consultant, but may not include all of the services required of the Material Testing Consultant under this Contract.

3.7 **Standard of Performance.** The Material Testing Consultant 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 material testing and special inspection services such as those provided in this Contract. The Material Testing Consultant's attention is directed to the fact that the Services are urgently needed by the School District. The Material Testing Consultant's Services under this Contract shall be performed as expeditiously as is consistent with said professional standards and sound professional practices. The Material Testing Consultant shall use its best efforts to assure timely and satisfactory completion of its Services in accordance with the project schedule and project budget of assigned school projects. The Material Testing Consultant 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 Material Testing Consultant shall perform all Services under this Contract in accordance with the terms and conditions of this Contract and to the reasonable satisfaction of the School District. The Material Testing Consultant shall design to cost when performing its Services under this Contract.

3.7.1 All Services to be performed by the Material Testing Consultant that require the exercise of professional skills or judgment shall be accomplished by professionals licensed or registered to practice in the applicable professional discipline in the Commonwealth of Pennsylvania. The Material Testing Consultant shall remain responsible for the professional and technical accuracy of all Services or Deliverables furnished under this Contract.

3.7.2 When the Scope of Services of this Contract requires the Material Testing Consultant to prepare logs, tests, reports, tables, figures, photographs, exhibits, certifications or other documents or other assigned project(s)-related items of a similar nature, the Material Testing Consultant understands that such items must receive the School District's review and approval prior to their use in the assigned project(s). All Deliverables shall be prepared in a form and content satisfactory to the School District, and shall be delivered in a timely manner consistent with the Task Order(s) for the assigned project(s) and all modifications thereto, and the Work Schedule(s), Project Schedule(s), and Cost Guidelines for the assigned project(s).

3.7.3 In the event the Material Testing Consultant fails to comply with the standards specified in Paragraph 3.7 of this Contract, the Material Testing Consultant shall perform again, at its own expense, any and all of the Services or Work that is required to be re-performed as a direct or indirect result of such failure. Notwithstanding any review, approval, acceptance, or payment for any and all of the Services by the School District, the Material Testing Consultant shall remain responsible for the professional and technical accuracy of all of the Services and Deliverables, as defined herein and furnished under this Contract. This provision shall in no way be considered as limiting the rights of the School District against the Material Testing Consultant either under this Contract, in law or in equity.

3.7.4 With the exception of information, data, test results and other materials provided to the Material Testing Consultant by others, upon which the Material Testing Consultant is entitled to rely for accuracy and completeness under this Contract, the Material Testing Consultant shall be responsible for the professional quality, technical accuracy, completeness and coordination of all logs, tests, reports, tables, figures, photographs, exhibits, certifications or other documents, and other services furnished by the Material Testing Consultant and its Subconsultants under this Contract. Without any additional compensation, the Material Testing Consultant shall diligently and expeditiously correct any errors, deficiencies or omissions in the Services or Work and shall remain liable in accordance with this Contract and Applicable Law for all damages to the School District caused by the Material Testing Consultant or its Subconsultants or the Services or Work. Any logs, tests, reports, tables, figures, photographs, exhibits, certifications or other documents furnished by the Material Testing Consultant or its Subconsultants found to be defective, solely as a result of the errors, omissions or negligence of the Material Testing Consultant or its Subconsultants, shall be promptly corrected by the Material Testing Consultant or its Subconsultants, at no cost to the School District.

3.8 **Labor, Materials, Supplies and Equipment.** The Material Testing Consultant shall furnish all personnel, labor, materials, supplies, equipment, tools, and instruments necessary for the proper provision of the Services described in this Contract, on-time and on-budget, including but not limited to, telephone, fax machine, and similar items, at its facility. The Material Testing Consultant shall furnish the personnel and a sufficient amount of materials, supplies, equipment, tools, and instruments to perform the required Services, on-time and on-budget, in a complete, accurate, and timely manner consistent with the School District's interests or the requests of the School District and the requirements of this Contract. The Material Testing Consultant shall be responsible for the means, methods, techniques, sequences, and procedures to perform the Services required under this Contract. The Material Testing Consultant shall perform the required Services in such a manner as to not create a risk of harm to the School District, its agents, representatives, and employees, the general public, and the environment. The Material Testing Consultant shall perform the Services required under this Contract using qualified, licensed, or registered personnel at all times.

3.9 **Revisions to Work and Documents.** The Material Testing Consultant shall make revisions in logs, tests, reports, tables, figures, photographs, exhibits, certifications or other documents produced for the assigned project(s), at no additional cost to the School District, whenever such revisions are required by reason of the documents for the assigned project(s) being inconsistent with the approvals or instructions previously given by the School District, or such revisions are due to causes solely within the control of the Material Testing Consultant. The School District has the right to inspect the Work of the Material Testing Consultant and its Subconsultants in progress at any reasonable location and at any reasonable time. The Material Testing Consultant shall revise its Work, at no cost to the School District, in accordance with the written directives of the School District's designated representatives, provided such directives are not inconsistent with previous approvals or instructions. The Material Testing Consultant shall revise the Construction Bid Documents for the assigned project(s), at no additional cost to the School District, if the bids for the Prime Contract(s) of the assigned project(s) exceed the Construction Budget(s) for the assigned project(s) by more than eight percent (8%).

3.10 **Cooperation with Other School District Consultants.** The Material Testing Consultant shall perform its Services on the assigned project(s) in full cooperation with the Program Manager and other School District Consultants. The School District shall require the Program Manager and other School District Consultants to perform their services in full cooperation with the Material Testing Consultant. The Material Testing Consultant shall send to the Program Manager and other School District Consultants copies of all notices and communications sent to the School District or the Program Manager or received by the Material Testing Consultant from parties other than the School District, the Program Manager or other School District Consultants relating to the assigned project(s). The School District shall require the Program Manager and other School District Consultants to send to the Material Testing Consultant copies of all notices and communications sent to the School District or the Program Manager or received by the Program Manager or other School District Consultants from parties other than the School District and the Material Testing Consultant relating to the assigned project(s).

3.11 **Project Meetings.** The Material Testing Consultant shall prepare for and conduct progress meetings on the assigned project(s) with the Program Manager and the School District representatives from the Office of Capital Programs, in addition to other meetings specifically referred to herein.

3.12 **Project Minutes, Reports, Correspondence and Communications.** The Material Testing Consultant shall prepare and distribute minutes of meetings, progress reports, and any other reports, correspondence and communications on the assigned project(s) to School District representatives of the Office of Capital Programs, the Material Testing Consultant's Subconsultants, the Construction Contractors and any other participants on the assigned project(s), in an electronic format designated by the School District. Upon request or as required by this Contract, the Material Testing Consultant shall provide the School District with oral or written reports of its activities, on a monthly basis or more often as needed or required.

3.13 **Coordination and Safety of Onsite Activities.** The Material Testing Consultant shall cooperate and coordinate with all other School District consultants, contractors, and vendors and with School District personnel and consultants whose services for the School District relate to the Material Testing Consultant's Services, or requires them to perform activities in support of or in conjunction with the Material Testing Consultant's Services; and the Material Testing Consultant shall conduct its operations so that it does not interfere with the Program Manager and such other School District consultants, contractors, and vendors and School District personnel and consultants. Any difference or conflict that may arise between the Material Testing Consultant and the Program Manager or other School District consultants, contractors, or vendors, or between the Material Testing Consultant and the Program Manager or School District personnel or consultants, shall be decided solely by the School District. If requested by the School District or the Program Manager in writing, the Material Testing Consultant shall suspend any part of its Services, or modify its Services, if necessary to facilitate the services of other School District consultants, contractors, or vendors or School District personnel or consultants. In the event of such suspension or modification, the Material Testing Consultant shall have the right to submit a claim for an extension of time

equivalent to the period of any delay caused by compliance with the School District's or the Program Manager's request. Any such claim(s) of the Material Testing Consultant shall be submitted and resolved in accordance with Paragraph 3.17 (**Changes**). While on the premises of the School District or of any governmental or other entity other than the School District, the Material Testing Consultant shall comply with all rules and regulations of the School District or such other entity, including all safety and security requirements.

3.14 Subletting and Assignment.

3.14.1 The Material Testing Consultant shall not subcontract any Services hereunder without the School District's prior written consent, other than to the Subconsultants which have been approved by the School District under Paragraph 3.5.14 herein, nor permit any of its Subconsultants to do so. If the Material Testing Consultant subcontracts any Services hereunder without the School District's prior written consent, said subcontracting shall be deemed a material breach of this Contract, thereby giving the School District the right to immediately terminate this Contract with no further obligation whatsoever on the part of the School District.

3.14.2 All Subcontracts between the Material Testing Consultant and its Subconsultants must be in writing, and shall include at least a detailed description of the Services to be performed, and the agreed-upon compensation schedule. All Subcontracts must contain all contract provisions and certificates as are required by the School District and any State funding agency. In the event of non-performance by a Subconsultant under this Contract, the Material Testing Consultant shall be responsible to perform these Services, on-time and on-budget. All terms and conditions under this Contract applying to the Material Testing Consultant shall apply equally to its Subconsultants. The Material Testing Consultant agrees that all Subcontracts made pursuant to this Contract shall be made expressly subject to all of the terms and conditions of this Contract. The Material Testing Consultant shall ensure that it legally binds all Subconsultants to the same terms and conditions as the Material Testing Consultant under this Contract.

3.14.3 The Material Testing Consultant shall submit to the School District copies of all Subcontracts prior to execution by the Material Testing Consultant with the Material Testing Consultant's written request for the School District's consent. The Material Testing Consultant shall not enter into any Subcontract without first obtaining the School District's written consent to the proposed subconsultant and the proposed subcontract, which consent the School District may grant, withhold, condition or deny in its sole discretion. In the event the School District does not consent to a proposed subconsultant, the Material Testing Consultant shall immediately replace the proposed subconsultant with one to which the School District does consent; and if the School District does not consent to a proposed subcontract, the Material Testing Consultant shall revise the subcontract as required by the School District. In no event shall the Compensation or time of performance be increased on account of the School District's exercise of any of its rights under this Paragraph 3.14.3. The School District's consent to or approval of any Subcontract or Subconsultant shall not create any obligation of the School District to any Subconsultant or in any way relieve the Material Testing Consultant of its responsibility for the performance of Subconsultants and their consultants.

3.14.4 The Material Testing Consultant shall be fully responsible and liable for the performance of all Services, on-time and on-budget, required under this Contract in accordance with the Contract Documents, whether performed by the Material Testing Consultant's own personnel, by Subconsultants of the Material Testing Consultant, or by consultants of the Subconsultants.

3.14.5 The School District shall have no obligation to any Subconsultant. The Subconsultants shall have no recourse to the School District for any payment or for performance under their Subcontracts. No Material Testing Consultant, nor its Subconsultants, or any other person or entity employed by any of them, shall have any right or claim against the School District for any costs or damages arising from their performance of any of the Services, or for any monies due and owing to the Material

Testing Consultant for the performance of any of the Services. The Material Testing Consultant shall incorporate this requirement in all Subcontracts with Subconsultants.

3.14.6 The Material Testing Consultant shall not assign or otherwise transfer all or any part of its rights, duties or obligations under this Contract, in whole or in part, except with the prior written consent of the School District; any assignment or transfer (including, but not limited to, assignment of any Subcontract) without such written consent shall be null and void. The absence of such provision or written consent shall void the attempted assignment or transfer, and the attempted assignment or transfer shall be of no effect as to the Services, the Work, the Project or this Contract.

3.14.7 In no event shall the School District's consent to any assignment or transfer by the Material Testing Consultant of any rights, duties or obligations under this Contract relieve the Material Testing Consultant from its obligations hereunder or change the terms of this Contract. The Material Testing Consultant accepts full responsibility for and guarantees the performance of any and all assignees and transferees (including Subconsultants) of the Material Testing Consultant. The Material Testing Consultant shall not transfer or assign any contract funds or monies or claims due or to become due hereunder, in whole or in part, without the School District's prior written approval. The attempted transfer or assignment of any contract funds or monies which are due or which become due to the Material Testing Consultant, in whole or in part, or any interest therein, without such prior written approval, shall have no effect upon the School District.

3.14.8 Any assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. For purposes of this Paragraph 3.14 (*Subletting and Assignment*), an assignment includes the acquisition of the Material Testing Consultant, 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 Material Testing Consultant, and the transfer of this Contract or the Material Testing Consultant in any bankruptcy or other insolvency-related proceeding. A receiver or trustee of or for the Material Testing Consultant in any federal or state bankruptcy, insolvency or other proceeding concerning the Material Testing Consultant shall comply with the requirements set forth in this Contract, including but not limited to this Paragraph 3.14 (**Subletting and Assignment**).

3.15 **Legal Costs**. The Material Testing Consultant shall be responsible for all legal costs that must be incurred for it to properly perform the requirements of this Contract, on-time and on-budget, including but not limited to, legal costs that must be incurred for it to properly perform its work in accordance with Pennsylvania law, and legal costs that must be incurred to defend, indemnify, and hold the School District harmless from and against any claims, causes of action, lawsuits, or actions which are brought against the School District or the Material Testing Consultant by any governmental entity or any third party as a result of any act, failure to act, error, or omission by the Material Testing Consultant or its Subconsultants in connection with this Contract according to the indemnity in Section 9, **Indemnification**, of this Contract.

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

3.16.1 During the duration of the assigned project(s), the Material Testing Consultant shall provide any services which may be required to review and evaluate claims relating to the Work on the assigned project(s) or the execution or progress of construction, or the interpretation of the Construction Documents submitted in connection with the Work on the assigned project(s), so long as the Material Testing Consultant is qualified to provide such interpretation and it relates to aspects of the assigned project(s) for which the Material Testing Consultant is responsible. Such services shall be rendered by the Material Testing Consultant, on-time and on-budget, without additional fee or compensation, unless they require participation or involvement in litigation or arbitration to which the Material Testing Consultant is not a party. The Material Testing Consultant shall provide any services that may be required to review and evaluate claims (whether submitted pre-litigation or during litigation) relating to the provision of the Services, without additional fee or compensation, unless they require participation or involvement in litigation or arbitration to which the

Material Testing Consultant is not a party. During the duration of the assigned project(s), at no additional cost to the School District, except where the Material Testing Consultant is not a party, the Material Testing Consultant shall assist the School District in the investigation and defense of any claims which arise from the designs, plans, plats, drawings, specifications, reports, or other documents prepared by the Material Testing Consultant or its Subconsultants or which result solely from the breach of contract, errors, omissions or negligence of the Material Testing Consultant or its Subconsultants. At no additional cost to the School District, except where the Material Testing Consultant is not a party, the Material Testing Consultant shall assist the School District in the investigation and defense of any claims (whether submitted pre-litigation or during litigation) which arise from the provision of the Services, or which result solely from the Material Testing Consultant's breach of contract, errors, omissions or negligence.

3.16.2 Notice of Claims. If the Material Testing Consultant receives notice of a legal claim against it in connection with or in any way related to this Contract, the Material Testing Consultant shall (a) submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, (b) within five (5) business days of receipt of notice of the claim, give notice of such claim to the School District.

3.17 Changes.

3.17.1 At any time during the term of this Contract, the School District or the Structural Engineer may, without invalidating this Contract, make changes in any of the Services required under this Contract, within the general scope of this Contract as set forth in Section 3 (*Material Testing Consultant's Services and Responsibilities*), including, without limitation, requiring additional or different services, and changes in the time of performance; provided, however, as follows: (i) All such changes shall be made in accordance with the terms and conditions of this Paragraph 3.17 and the other provisions of this Contract, and shall be by Contract Modification, which shall be a written order or request that is accepted and agreed to by both the School District and the Material Testing Consultant, as evidenced by the signatures of both the School District's Contract Administrator and the Material Testing Consultant's Contract Administrator. (ii) If any such change causes an increase or decrease in the prices of services or the time required for the performance of this Contract, the Material Testing Consultant shall notify the School District at the earliest reasonable opportunity, and an equitable adjustment of this Contract amount or time of performance will be made, and will be incorporated as part of the Contract Modification, subject to the following condition: In no event shall the School District be liable to the Material Testing Consultant for additional compensation for any alleged change to the Services for which the School District has not agreed to and signed a Contract Modification. A Contract Modification shall set forth this Contract of the Material Testing Consultant and the School District on all of the following: (i) a change in the Services; (ii) the amount of adjustment in the Compensation, if any; and (iii) any adjustment in the time of performance. Any Contract Modification that increases the Compensation set forth in Paragraph 6.1 must be approved in writing by the School District's Executive Director or Operations Manager of Capital Programs to become effective.

3.17.2 All changes in the Services pursuant to this Paragraph 3.17 shall be performed, on-time and on-budget, under applicable provisions of this Contract, and the Material Testing Consultant shall proceed to perform the change in accordance with the time of performance provided in the Contract Modification, or if none is provided, shall proceed promptly to avoid adverse impact to the Services.

3.17.3 Assignment of School District's Right to File Direct Claims against the Prime Contractor for Material Testing Consultant's Damages. The Material Testing Consultant agrees that in no event shall the School District be liable to the Material Testing Consultant for payment of additional compensation for any direct, indirect or impact damages, including but not limited to costs of acceleration or for loss of revenue, overhead or profit, or for any delay damages, costs or expenses, including but not limited to attorneys' fees, court costs and legal expenses of whatever kind or nature, arising from any changes in any of the Material Testing Consultant's Services required under this Contract, including, without limitation, additional or different services, or changes in the time of performance, that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its

subcontractors or consultants on the assigned project(s), or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the assigned project(s). Instead, as its sole right and remedy with respect to such fault, negligence, breach of contract, willful act or omission, or such delay, disruption, interference or hindrance, of the Prime Contractor or any of its subcontractors or consultants, the Material Testing Consultant shall be entitled to make, assert, file or bring a direct claim, action, cause of action or lawsuit against the Prime Contractor or any of its subcontractors or consultants, as an assignee of the School District, pursuant to this Paragraph 3.17.3. For **the sole and only purposes** of making, asserting, filing or bringing direct claims, actions, causes of actions or lawsuits against the Prime Contractor or any of its subcontractors or consultants, the School District hereby assigns to the Material Testing Consultant the School District's right under the Prime Contract to make, assert, file or bring direct claims, actions, causes of action or lawsuits against the Prime Contractor or any of its subcontractors or consultants for any additional compensation, damages, losses, costs and expenses of the Material Testing Consultant that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the assigned project(s), or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the assigned project(s).

3.18 **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract because of reasons beyond its reasonable control, including but not limited to natural disaster, any act of God, war, civil disturbance, court order, labor dispute, change in governmental regulations, delay or failure by third parties to provide critical goods or services, delay in obtaining assigned project(s) site(s) access due to problems or delays in the land acquisition process that are not caused by the School District, delay in obtaining assigned project(s) site(s) access due to failure or refusal of adjoining property owner to give necessary permission for required construction work or necessary entry onto adjoining property to perform required construction work, or delay or failure of governmental or regulatory authorities having jurisdiction over the assigned project(s) to give necessary or required approvals or documents for assigned project(s) site(s) access, construction work, or remediation of known, unknown, differing, or unforeseen assigned project(s) site(s) conditions or environmental hazards or conditions, (hereinafter referred to as a "Force Majeure Condition"), the party that has been so affected shall immediately give notice to the other party; and shall exercise every commercially reasonable effort to resume performance as quickly as possible. The Material Testing Consultant shall not be in default under Paragraph 14.2, **Termination for Default**, if any event of default as provided therein is the result of a Force Majeure Condition and its occurrence is without the fault or negligence of the Material Testing Consultant. The School District shall not be liable to the Material Testing Consultant for any failure to perform any of its obligations under this Contract if such failure is the result of a Force Majeure Condition. Neither party shall be entitled to compensation for the other party's delays or nonperformance resulting from Force Majeure Conditions.

3.19 **Print and Electronic Media Copies.** The Material Testing Consultant shall promptly provide its logs, tests, reports, tables, figures, photographs, exhibits, certifications and other documents to the School District on electronic media acceptable to the School District (e.g., MS Word, CD-ROM, AutoCAD and PDF format) or in prints or any other format required by the School District. These documents shall be conformed by the Material Testing Consultant to include revisions by addenda, bulletins, or other changes made during the course of the assigned Project(s).

3.20 **Ownership and Use of Documents.**

3.20.1 **Ownership of Documents, Data and Files.** All documents in any form, data studies, computer files of any type, database records, and reports that are produced by the Material Testing Consultant under this Contract are to be the property of the School District, and shall remain the property of the School District.

3.20.2 **Risk of Loss.** During the performance of the Services herein provided for, the

Material Testing Consultant shall be responsible for any loss or damage to the documents, data, records, reports, and files that are produced by the Material Testing Consultant under this Contract while they are in its possession, and any such documents, data, records, reports, and files lost or damaged shall be restored at the expense of the Material Testing Consultant.

3.20.3 **Review and Access.** Full access to the Work during the Material Testing Consultant's preparation of the documents, data, records, reports, and files shall be available to the School District and other public agencies interested in this Work during normal business upon reasonable notice. For additional requirements pertaining to review and access to records, reports, and documents, see Paragraph 6.13, **Audits; Records and Payments; Inspectors General**, Paragraph 16.8, **General Publication Rights**, and Paragraph 16.15, **Examination of Records**.

3.20.4 **Termination or Expiration.** Upon termination or expiration of this Contract, the Material Testing Consultant shall deliver copies of those records, data, information and other documents, delivery of which is required by this Contract, to the School District. Said copies of records, data, information and documents shall remain the property of the School District.

3.21 **Findings Confidential.** Information developed and obtained by the Material Testing Consultant is considered confidential by the School District. The Material Testing Consultant agrees to refer all inquiries by outside parties to the School District. The Material Testing Consultant further agrees that it will not publish any articles, newsletters, marketing materials or other informational materials for public release or its own benefit regarding the assigned project(s), or any information developed or obtained during the performance of Services for the assigned project(s), without the express written approval of the School District. Employee newsletters and professional experience statements are not subject to this Paragraph 3.21. For additional requirements pertaining to confidentiality, publicity, and publication, see Section 11, **Confidentiality**, Paragraph 16.7, **Publicity**, and Paragraph 16.8, **General Publication Rights**.

3.22 **No Responsibility for Hazardous Materials.** Unless otherwise provided in this Contract, the Material Testing Consultant and its Consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the assigned project(s) site(s), including but not limited to asbestos, asbestos products, polychlorinated biphenyl ("PCB") or other toxic substances; provided, however, the Material Testing Consultant shall report to the School District the presence and location of any hazardous material that it notices or that a Material Testing Consultant of similar skill and expertise should have noticed. Nothing in this Contract shall impose liability on the Material Testing Consultant for claims, lawsuits, expenses or damages arising from or in any manner related to the exposure to or the handling, manufacture or disposal of asbestos, asbestos products, or hazardous waste in any of its various forms, as defined by the United States Environmental Protection Agency.

3.23 **Deliverables.** The Material Testing Consultant shall provide the Deliverables identified in Section 4, *Scope of Services*, of this Contract, on-time and on-budget, in strict conformity with the Task Order(s) for the assigned project(s) and all modifications thereto, and the Project Schedule(s) and the Work Schedule(s) for the assigned project(s). Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the School District. Such partial or incomplete Deliverables may not be considered as satisfying the specific submittal requirements as set forth herein. Partial or incomplete Deliverables shall in no way relieve the Material Testing Consultant of its schedule or cost commitments hereunder.

3.24 **Safety Responsibilities.** Although the Material Testing Consultant does not have direct safety responsibilities on the assigned project(s), it is expressly understood that the requirements of safety in conduct of the work to be performed hereunder shall be fundamental to the execution of the Material Testing Consultant's work. The Material Testing Consultant shall perform its work with due regard to the safety of persons and property. It is a condition of this Contract, and the Material Testing Consultant agrees, that the Material Testing Consultant shall not require its employees employed in the performance of this Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to personal

health and safety, as determined under any applicable OSHA regulations. Applicable safety laws, rules and regulations, and codes shall be observed by the Material Testing Consultant and its Subconsultants. It is the responsibility of the Material Testing Consultant to ensure that the work of its employees and Subconsultants required hereunder is performed in a safe and workmanlike manner and in compliance with general safety standards for the performance of such work. The Material Testing Consultant must ensure that all its personnel are able to adhere to applicable safety laws, rules and regulations, and codes. Safety deficiencies shall be brought to the attention of the School District and the Program Manager.

3.24.1 The Material Testing Consultant's personnel shall wear a hard-hat, long pants, shirts and proper footwear while on the assigned project(s) site(s). Appropriate eye protection is required when there is a potential for a foreign object to enter an employee's eye. All School District Projects shall have a 100% physical fall protection requirement for working at heights of six feet or more above a lower level. The Material Testing Consultant is expected to fully comply with the assigned project(s) physical fall protection requirement(s). The Material Testing Consultant's personnel shall complete a Project Safety Orientation for the assigned project(s). The Material Testing Consultant's personnel shall comply with identification badge requirements. The Material Testing Consultant's personnel are prohibited from use and possession of alcoholic beverages, drugs (other than prescription), carrying weapons or ammunition onto the assigned project(s) jobsite(s). The School District's Project Manager and the Program Manager shall be notified in writing within 24 hours of occurrence if any Material Testing Consultant personnel are injured on the assigned project(s).

3.25 **Stormwater Management Fees and Charges.** The Material Testing Consultant shall pay the current Miscellaneous Stormwater Management fees and charges set forth in the current version of the Philadelphia Water Department Regulations, Chapter 3 Rates and Charges, Section 308.0 Miscellaneous Stormwater Management Charges. The Material Testing Consultant shall pay the current Stormwater Plan Review Fees for all development or redevelopment plans submitted to the Philadelphia Water Department under Chapter 6 Stormwater of the Philadelphia Water Department Regulations for stormwater management approvals.

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

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

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

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

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

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

3.26 **COVID-19 Protocols.** The Material Testing Consultant shall comply with any Health and Safety Protocols established by the School District for the Covid-19 outbreak. The Material Testing Consultant shall cause its officers, agents, employees, servants and Subcontractors acting pursuant to this Contract to comply with any Health and Safety Protocols established by the School District for the Covid-19 outbreak.

3.27 **E-Builder Software.** The Material Testing Consultant shall use the Internet web-based project management communications tool, E-Builder® software, and protocols included in the E-Builder® software, on the assigned Project(s). The use of the project management communications tool, E-Builder® software, does not replace or change any contractual responsibilities of the participants on the assigned Project(s). See Schedule G – ELECTRONIC DATA REQUIREMENTS for detailed provisions. A copy of Schedule G – ELECTRONIC DATA REQUIREMENTS is attached as Exhibit G and incorporated by reference into this Contract.

3.28 **Modifications: Grant Contracts: Grant Funding.** After the Parties' execution of this Contract, the Parties acknowledge and agree that (i) the School District may receive a Grant from any source, including the United States of America ("Federal Grant"), the Commonwealth of Pennsylvania ("State Grant"), the City of Philadelphia ("City Grant"), including any department or agency thereof, or from any private charity or corporation that governs the professional architectural design services under this Contract, and (ii) the School District may elect, in its sole discretion, to use funds from a Federal Grant, State Grant, City Grant or a Grant from a private charity or corporation to pay for professional architectural design services of the Material Testing Consultant under this Contract. If the School District pays for any of the professional architectural design services of the Material Testing Consultant under this Contract with funds received by the School District as a Grant, or on any other terms, from any source, including the United States of America, the Commonwealth of Pennsylvania, the City of Philadelphia, including any department or agency thereof, or from any private charity or corporation, then the Material Testing Consultant shall comply with the terms of the applicable Grant Contract. The School District shall give the Material Testing Consultant a copy of the Grant on request by the Contractor.

3.28.1. **Federal Grant; State Grant.** In addition to any terms of the applicable Federal Grant or State Grant, the Material Testing Consultant shall comply with the provisions set forth in Subparagraphs 3.28.1.1 and 3.28.1.2 below if the School District uses funds from a Federal Grant or a State Grant to pay for professional architectural design services of the Material Testing Consultant under this Contract.

3.28.1.1 **Contractor Requirements.** The Material Testing Consultant shall abide by the Federal Grant-Funded Agreements Contractor Requirements and/or Pennsylvania Department of Education Contractor Requirements (collectively the "Contractor Requirements"), as applicable, which are available at <https://www.philasd.org/generalcounsel/forms/grant-funded-contracts-federal-and-pde-terms/> and hereby incorporated into and made a part of the Contract to the same extent as if it were attached hereto. The School District reserves the right, in its sole discretion, to update these requirements, from time to time, without notice provided to the Material Testing Consultant, whenever the federal government or the Commonwealth of Pennsylvania modify the Contractor Requirements. The Parties, by execution of the Contract, acknowledge their consent to the incorporation of the Contractor Requirements into the Contract.

3.28.1.2 **Federal Programs; Federal Funding.** The Material Testing Consultant acknowledges and agrees that the School District makes payment of the Compensation under this Contract to the Material Testing Consultant with federal funds. Accordingly, the Material Testing Consultant acknowledges and agrees that it constitutes a contractor for federal program purposes, as provided in applicable federal program rules and regulations. As provided in Paragraph 6.13 (**Audits;**

Records and Payments: Inspectors General) of this Contract, payments to and performance by the Contract remain subject to audit by local and federal auditors.

Section 4. Scope of Services.

4.1 Schedule.

4.1.1 **Mobilization.** The Material Testing Consultant shall commence its Services Immediately upon receipt of the written Notice(s) to Proceed issued by the School District for the assigned project(s).

4.1.2 **Work Schedule.** Schedule information for the Material Testing Consultant's Services will be described in the Work Schedule(s) and the Project Schedule(s) of the Task Order(s) and all modifications thereto for the assigned project(s) as appropriate. The Material Testing Consultant's Services must be provided within the time schedule provided in the Task Order(s) and all modifications thereto for the assigned project(s). The Material Testing Consultant shall refine schedules for the assigned project(s) utilizing scheduling software approved by the School District.

4.1.2.1 The Project Schedule(s) for the assigned project(s) shall be included in the Task Order(s) and all modifications thereto for the assigned project(s). The Project Schedule(s) shall include conceptual milestone dates for all activities described in the assigned project(s) scope(s) of work.

4.1.2.2 The Material Testing Consultant shall submit updated Project Schedules for the assigned project(s) to the School District, upon request, for updating of the program(s) and master schedule(s). The Project Schedule(s) submission(s) for the assigned project(s) shall include any reports, graphic, or electronic copies as required by the School District.

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

4.1.2.4 Schedules for the assigned project(s) shall be prepared using Microsoft Project 2013 or later. Schedules shall be cost loaded to reflect the approved schedule(s) of values for the assigned project(s).

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

4.2 **Statement of Services.** The Material Testing Consultant shall perform various material testing and special inspection services and work assignments that are assigned by the School District Executive Director or Operations Manager of Capital Programs or his or her designee on the School District's projects under the CIP, in strict accordance with the Appendix A: Scope of Services section of the RFP, which is attached as part of Exhibit B and incorporated by reference into this Contract; and the written Task Orders which are referred to as Exhibit D and collectively incorporated by reference into this Contract; and the Plan of Work section of the Material Testing Consultant's Proposal, which is attached as Exhibit C and incorporated by reference into this Contract; and on the terms and conditions set forth in this Contract, within the time deadlines set forth in Paragraph 4.1, **Schedule**, of this Contract and within budget requirements. The Material Testing Consultant shall place strict emphasis on quality, schedule and budget. The Material Testing Consultant shall employ competent personnel as required to properly perform these

material testing and special inspection services in a timely and professionally competent manner as per the RFP and in accordance with Paragraph 3.7, **Standard of Performance**.

4.2.1 The Material Testing Consultant shall support the School District's Office of Capital Programs' Design and Construction Project Management team. The Material Testing Consultant shall designate a senior person to serve as the Material Testing Coordinator. The Material Testing Coordinator (a Senior Project Manager/Field Supervisor) shall act as the day-to-day point of contact for the coordination of material testing services and inspections. The Material Testing Coordinator shall provide services under the immediate direction of the School District's Office of Capital Programs' Design and Construction Project Management team. The School District's Office of Capital Programs' Design and Construction Project Management team shall directly administer the work of the Material Testing Consultant, emphasizing on-time and on-budget performance.

4.2.2 The Material Testing Consultant shall have established offices with full-time material testing and inspection staff located within the Philadelphia Metropolitan Area. Upon the engagement of a Material Testing Project, the Material Testing Consultant shall employ the appropriate number of professionals to accomplish the required services, and must have the ability to perform multiple Material Testing Services simultaneously. In addition, the Material Testing Consultant must have the capabilities to dispatch additional professionals to construction site(s) during peak testing and inspection demand, or to provide specific services, and to fill in for the absences due to illness, personal leave or vacations.

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

4.2.4 **City of Philadelphia Department of Licenses and Inspections Special Inspections Program ("City L&I Department Special Inspections Program")**. Special inspections ensure structural integrity in construction and demolition projects. For some demolition and construction projects, the owner or design professional must hire a special inspections agency to perform the inspections required by the International Building Code. The City of Philadelphia Department of Licenses and Inspections monitors compliance with special inspections requirements. Special inspections, as required by the International Building Code, provide a means of quality assurance in construction and demolition projects. Construction materials must be tested and their installation monitored in order to provide a finished structure that performs in accordance with the construction documents. Trained specialists that provide these inspections give the owner, engineer and the public an indication that the required structural performance will be achieved. The owner or design professional is responsible for hiring the special inspection agency to perform the special inspections identified by the International Building Code as appropriate to the construction or demolition project. Documents for the City L&I Department Special Inspections Program can be found at the websites, <https://www.phila.gov/departments/departments-of-licenses-and-inspections/resources/special-inspections-information/#/>. These documents are: (1) City L&I Department Special Inspection Agency and Special Inspector Registration Information Sheet (Rev 3.2025); (ii) City L&I Department Special Inspections Publication called "Special Inspections Agencies and Inspectors August 2022"; (iii) City L&I Department Special Inspections Duties and Responsibilities Agreement (2021 IBC) (Updated 2025); (iv) City L&I Department Statement of Special Inspections Schedule (International Building Code) (2021 IBC) (2021 I-Codes); (v) City L&I Department Special

Inspections Program Final Compliance Form (2021 IBC) (2021 Codes); (vi) Exhibit A: Special Inspection Daily Report (May 29, 2019); (vii) Exhibit B: Special Inspection Deficiency Notice (May 29, 2019); and (viii) Exhibit C: Special Inspection Final Report (May 29, 2019). The standards for persons or agencies who perform special inspections on construction and demolition sites in Philadelphia as required by the International Building Code are outlined in the City L&I Department Special Inspections Publication called "Special Inspections Agencies and Inspectors August 2022". Agencies and inspectors performing special inspections must register with the City L&I Department. (See City L&I Department Special Inspection Agency and Special Inspector Registration Information Sheet (Rev 3.2025)). The City L&I Department requires the Statement of Special Inspections Schedule and the Special Inspections Duties and Responsibilities Agreement to be submitted to the City L&I Department with the permit application for the project. The City L&I Department requires the Special Inspections Program Final Compliance Form, the Special Inspection Daily Report (Exhibit A), the Special Inspection Deficiency Notice (Exhibit B), and the Special Inspection Final Report (Exhibit C) to be submitted to the City L&I Department field inspectors as the project progresses.

4.2.5 **Special Inspection Services.** The Material Testing Consultant shall provide special inspection services in conformance with the requirements of the City of Philadelphia Department of Licenses and Inspections ("City L&I Department") for special inspections. The special inspections categories shall include all Verification and Inspection items listed in the most current "Statement of Special Inspections" published by the City L&I Department.

4.2.6 **Material Testing Services.** The Material Testing Consultant shall ensure that all material testing is performed in accordance with the specific American Society for Testing and Materials (ASTM) standards and the specific American Association of State Highway and Transportation Officials (AASHTO) standards. The Material Testing Consultant shall perform the following material testing services: (i) Construction Materials Testing; (ii) Geotechnical Surface/Subsurface Testing; and (iii) Non-Destructive Testing.

(a) **Construction Materials Testing.** Construction Materials Testing shall include but not be limited to:

- (1) Soils testing;
- (2) Wood testing;
- (3) Concrete testing;
- (4) Masonry testing;
- (5) Roofing testing;
- (6) Fireproofing testing;
- (7) Structural steel testing;
- (8) Asphalt/macadam testing;
- (9) Aggregate testing;
- (10) Paint/finishes testing;
- (11) Piles testing; and
- (12) Nuclear density testing.

(b) **Geotechnical Surface/Subsurface Testing.** Geotechnical Surface/Subsurface Testing shall include but not be limited to:

- (1) Borings;
- (2) Percolation/infiltration;
- (3) Controlled fill testing;
- (4) Groundwater monitoring wells testing and observation wells testing; and
- (5) Foundation and earthwork inspection and testing.

(c) **Non-Destructive Testing.** Non-Destructive Testing shall include but not be limited to:

- (1) Radiography testing;
- (2) Ultrasonic testing;
- (3) Magnetic particle testing;
- (4) Liquid penetrant testing;
- (5) Radioisotope moisture survey;
- (6) Thermographic survey;
- (7) Video survey (sanitary/drain);
- (8) Electrical systems testing; and
- (9) Weld procedure testing and welder performance certification.

4.2.7 **Time for Submission of Documents.** Original logs, reports, tables, figures, photographs, exhibits, certifications or other documents prepared by the Material Testing Consultant shall be provided by the Material Testing Consultant to the School District within **48 hours** after their preparation.

4.2.8 **Limits on Authority and Responsibility.**

(1) The Material Testing Consultant is not authorized to change, enlarge, relax, alter or release any requirement of any of the Project Design or Construction Contract Documents or the Project Prime Contract(s), or to approve or accept any construction work that is not performed in accordance with the Project Prime Contract(s).

(2) Nothing contained in this Contract shall be construed to mean that the Material Testing Consultant assumes any of the contractual duties, responsibilities, or liabilities of the Program Manager in its contract for program management services with the School District, or any of the customary program management duties, responsibilities, or liabilities of a program manager on a construction project.

(3) Nothing contained in this Contract shall be construed to mean that the Material Testing Consultant assumes any of the contractual construction duties, responsibilities, or liabilities of the Construction Contractors in their contracts for construction work with the School District, or any of the customary construction duties, responsibilities, or liabilities of a construction contractor on a construction project.

(4) Notwithstanding the provisions of Paragraph 3.24, **Safety Responsibilities**, and any other provisions contained in this Contract, the Material Testing Consultant is not acting in any manner so as to assume responsibility, in whole or in part, for noncompliance of any Construction Contractors and their subcontractors with applicable federal, state, and local safety laws, statutes, ordinances, codes, rules, regulations, orders and decrees, including but not limited to, OSHA, or with safety standards and regulations established by the School District for the assigned project(s), including but not limited to standards and regulations set forth in the Safety Manual established for the School District of Philadelphia, or with federal, state, and local health laws, regulations and building codes, or for any accidents arising out of or in connection with safety precautions and safety programs in connection with the construction work on School District construction projects which caused death, personal injury or property damage and which were caused by any Construction Contractors or their subcontractors. Nothing contained in this Contract shall be construed to mean that the Material Testing Consultant is acting in a manner so as to assume the Construction Contractors' and their subcontractors' responsibilities or liabilities, in whole or in part, for safety precautions and safety programs in connection with construction work on School District construction projects. Nothing contained in the Safety Manual established for the School District of Philadelphia shall be construed to mean that the School District or the Material Testing Consultant are responsible for the jobsite safety of the construction means, methods, techniques, sequences, or procedures utilized by the Construction Contractors and their subcontractors in connection with construction work on School District construction projects. The Construction Contractors and their subcontractors are fully and solely responsible for the jobsite safety of the construction means, methods,

techniques, sequences, and procedures utilized by the Construction Contractors and their subcontractors in connection with construction work on the assigned Project(s). The Construction Contractors and their subcontractors are responsible for maintaining and supervising all safety precautions and programs in connection with construction work on School District construction projects, and for any violations of the safety precautions and programs in connection with construction work on School District construction projects. The Construction Contractors and their subcontractors are also responsible for complying with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property, or their protection from damage, injury or loss, in connection with construction work on School District construction projects, and for taking all necessary precautions to protect the safety and health of their employees and others on the jobsites of School District construction projects, including compliance with all applicable federal, state and local safety and health laws, regulations, and building codes, and for adhering to and enforcing the safety regulations set forth in the Construction Documents and in the Safety Manual established for the School District of Philadelphia.

Section 5. School District's Services and Responsibilities.

5.1 **Summary of Services and Responsibilities.** The School District will supervise and manage the material testing and special inspection services for the assigned Project(s). The School District's services, duties and responsibilities will include, but not be limited to, the following: (a) developing and preparing Task Orders for the assigned Projects; (b) directly supervising and managing the Material Testing Consultant's services for the assigned Projects, emphasizing on-time and on-budget performance; (c) verifying or monitoring the Material Testing Consultant's compliance with contract terms and requirements incorporated into the RFP and the Contract; (d) notifying the Material Testing Consultant of any non-compliance with contract terms and requirements incorporated into the RFP and the Contract; (e) overseeing the processing and approval of invoice payments for the Material Testing Consultant; and (f) reviewing and evaluating the Material Testing Consultant's material testing services, deliverables and documents, and special inspection services, deliverables and documents for the assigned Projects.

5.2 **Review and Changes to Documents and Information.** The School District shall review all of the Material Testing Consultant's logs, tests, reports, tables, figures, photographs, exhibits, certifications or other documents and other information prepared and submitted by the Material Testing Consultant to the School District under this Contract, and shall advise the Material Testing Consultant of any suggested changes, comments or recommendations thereto in a timely manner so as to cause no delay to the Material Testing Consultant.

5.3 **No Waiver by Review, Approval, Acceptance or Payment.** Neither the School District's review, approval or acceptance of, nor payment for, any of the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.

5.4 **Purpose of Review and Approval.** Notwithstanding anything to the contrary contained in this Contract, the School District's review and approval of any and all documents or other matters required herein shall be for the purpose of providing the Material Testing Consultant with information as to the School District's objectives, goals and educational requirements with respect to the assigned Projects and not for the purpose of determining the accuracy and completeness of such documents.

Section 6. Compensation and Payment.

6.1 **Compensation.** The School District has established a "general pool" of shared funds in the amount of _____ Dollars (\$_____) out of the authorized Capital

Fund from which professional material testing and special inspection services will be expended. The total of awards for professional material testing and special inspection services contracts shall be for a maximum-not-to-exceed _____ Dollars (\$_____). Pursuant to the attached RFP for Material Testing and Special Inspection Services – IDIQ, the School District reserves its option to award a Contract for Material Testing and Special Inspection Services to more than one (1) professional firm (Material Testing Consultant) for the Capital Improvement Program. It is the intent of the School District to make work assignments as the needs of the Capital Improvement Program and the availability and capability of specified firms dictate, without guarantee of any particular number or dollar value of work assignments to any specific professional consulting services firm, and to pay for all work out of the \$_____ “general pool” of shared funds of the Capital Fund. The Material Testing Consultant acknowledges and agrees that the School District does not promise the Material Testing Consultant _____ Dollars worth of work assignments, and that the School District reserves the right to limit the number of work assignments to the Material Testing Consultant under this Contract and the amount of the Contract award. The School District does not guarantee the assignment of the complete scheduled Capital Improvement Program, or any of the complete scheduled annual Capital Budget programs, or the complete program of material testing and special inspection services to the Material Testing Consultant.

6.1.1 Project Compensation. The School District agrees to pay the Material Testing Consultant Project Compensation out of a “general pool” of shared funds up to a total amount not to exceed _____ Dollars (\$_____) as compensation for the Services performed and Reimbursable Expenses incurred by the Material Testing Consultant under this Contract during the Initial Term of this Contract. No funds have currently been authorized for an Additional Term of this Contract. Project Compensation for the Material Testing Consultant’s work on each individual project shall be based on the hourly rates method and the rates for specific tasks.

6.1.2 Hourly Rates Method. The hourly rates on an individual project shall be determined by using the hourly billable wage rates of the Key Personnel of the Material Testing Consultant and its Subconsultants that are listed in the Material Testing Consultant’s Proposal and attached collectively as Exhibit E to this Contract and incorporated by reference into this Contract. The hourly rates on an individual project shall not exceed the hourly billable wage rates listed in the attached Exhibit E to this Contract. These hourly billable wage rates shall be fully loaded, and shall include all labor, benefits, taxes, insurances, fees, overhead costs, administrative costs, reimbursable costs, and profit costs, and shall be firm and fixed priced for the entire duration of this Contract. These hourly billable wage rates shall be all-inclusive wage rates for all personnel listed as Key Personnel on the Material Testing Consultant’s Key Personnel Team List and all personnel of its Subconsultants listed on the Subconsultants Personnel Lists. Charges for Principals of the Material Testing Consultant and its Subconsultants shall be for minimal hours only. The Material Testing Consultant shall be entitled to payment on an individual project for the authorized Reimbursable Expenses provided in Paragraph 6.8 herein under the hourly rates method. **Only one (1) hourly wage rate for each position of Key Personnel for the duration of the Contract shall be permitted and accepted. Ranges for positions of Key Personnel shall not be used. However, if ranges for positions of Key Personnel are used, the lower rate shall become the contract rate.**

6.1.3 Rates for Specific Tasks. The rates for specific tasks of material testing and special inspection services shall be determined by using the costs for each specific task that are listed in the Material Testing Consultant’s Fee Proposal, attached as part of Exhibit E to this Contract and incorporated by reference into this Contract. The rates for specific tasks on an individual project shall not exceed the rates for specific tasks of material testing and special inspection services listed in the attached Exhibit E to this Contract.

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

6.2.1 **Hourly Rates Method and Rates for Specific Tasks.** The School District agrees to pay the Material Testing Consultant its staffing related costs for Services actually performed on the assigned project(s), on a monthly basis, up to the lump sum fee that is set forth in Paragraph 6.1.1, in accordance with the hourly billable wage rates for its Key Personnel that are set forth on the Material Testing Consultant's Key Personnel Team List and its Subconsultants' personnel that are set forth on the Subconsultants Personnel Lists, which are attached collectively as Exhibit E and incorporated by reference into this Contract. The School District also agrees to pay the Material Testing Consultant its rates for specific tasks of material testing and special inspection services that are set forth in Exhibit E and incorporated by reference into this Contract.

6.3 Applications for Payment and Subconsultant Payment Confirmation.

6.3.1 The Material Testing Consultant shall submit monthly Applications for Payment or Professional Services Invoices for payment of Services actually performed and approved Reimbursable Expenses actually incurred during the previous calendar month to the School District administrator named in Paragraph 7.1 of this Contract.

6.3.2 Applications for Payment or Professional Services Invoices for Services shall be limited to the persons listed on the Material Testing Consultant's Key Personnel Team List and the Subconsultants Personnel Lists, and at the hourly billable wage rates indicated on the Material Testing Consultant's Key Personnel Team List and the Subconsultants Personnel Lists. Any revisions to key personnel or additional key personnel added to the Services and their hourly billable wage rate must be approved by the School District before the Material Testing Consultant's submission of Applications for Payment or Professional Services Invoices for their time expended on the Services. The School District shall not make payment to the Material Testing Consultant for Services performed by persons not listed on the Material Testing Consultant's Key Personnel Team List and the Subconsultants Personnel Lists, or additional key personnel added to the Services that have not been approved in advance by the School District. The School District shall also not make payment to the Material Testing Consultant for Services performed by persons or additional key personnel whose hourly billable wage rates have not been approved in advance by the School District.

6.3.3 All Applications for Payment or Professional Services Invoices must be submitted on the form provided by the School District, and shall, at a minimum, include the following: (1) amount of payment applied for; (2) an itemized description of all Services actually performed during the previous calendar month for which payment is sought and their associated costs and total charges based upon the hourly billable wage rates of the Material Testing Consultant's Key Team Members and its Subconsultants Personnel, attached as Exhibit E and incorporated by reference into this Contract, and the rates for specific tasks, attached as Exhibit E and incorporated by reference into this Contract; (3) the total charges; (4) whether the Services performed were Basic or Additional Services; and (5) School District payment document number (where applicable) and Contract number, and shall attach such supporting evidentiary documents as the School District may require.

6.3.4 The Material Testing Consultant shall submit one (1) monthly Application for Payment or Professional Services Invoice and one (1) monthly written summary of Project activities.

6.3.5 Applications for Payment or Professional Services Invoices shall be exclusive of state or local sales, use or gross receipts taxes, and federal excise taxes. The School District's Pennsylvania Sales Tax Blanket Exemption Number is 76-51500-1; its Federal I.D. Number is 23-600-4102; and its Federal Excise Tax Number is 23-63-0021-K.

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

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

6.3.8 The Material Testing Consultant's Federal Tax Identification Number is _____.

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

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

6.4 **Withholding or Reducing of Payments.**

6.4.1 Withholding of Payments. Notwithstanding any other payment terms or conditions to the contrary, the School District, after consultation with the Program Manager, reserves the right to withhold promised payments for the Material Testing Consultant's substantial failure to perform as agreed. Substantial failure to perform includes, but is not limited to, incomplete or incorrect or late submission of documents required under this Contract. However, before withholding payment under this Contract, the School District shall notify the Material Testing Consultant in writing of such failure and grant the Material Testing Consultant the opportunity to remedy same within fourteen (14) working days of said written notice. The School District, after consultation with the Program Manager, may extend such remedial period, at its sole discretion, if there is evidence of the Material Testing Consultant's good faith effort to remedy the failure. The School District will pay pro rata for the Material Testing Consultant's partial performance, provided such performance is acceptable to the School District and the Program Manager and is rendered satisfactorily.

6.4.2 Reducing of Payments. Notwithstanding any other payment terms or conditions to the contrary, the School District, after consultation with the Program Manager, reserves the right to reduce promised payments for the Material Testing Consultant's incomplete or incorrect or late submission of documents required under this Contract. However, before reducing payment under this Contract, the School District shall notify the Material Testing Consultant in writing of such failure and grant the Material Testing Consultant the opportunity to remedy same within fourteen (14) working days of said written notice. The School District, after consultation with the Program Manager, may extend such remedial period, at its sole discretion, if there is evidence of the Material Testing Consultant's good faith effort to remedy the failure. The School District, at its sole discretion, may accept an incomplete or incorrect or late submission of required documents from the Material Testing Consultant. If the School District decides, at its sole discretion, to accept an incomplete or incorrect or late submission of required documents from the Material Testing Consultant, then the School District will pay the Material Testing Consultant a pro rata amount of the fee for the incomplete or incorrect or late submission.

6.5 **Final Payment.** Final payment, including any unpaid balances and unpaid Reimbursable Expenses to date, shall not be issued to the Material Testing Consultant until the Material Testing Consultant

has satisfactorily completed all Services on the Project, and the Program Manager and the School District has received all deliverables required under this Contract, and has approved all deliverables required under this Contract as being in compliance with the Contract requirements.

6.6 **Basic Services.** All services that the Material Testing Consultant is required to perform for the Project under this Contract shall constitute Basic Services for which compensation will be paid under Section 6.1 herein.

6.7 **Additional Services.** The Material Testing Consultant may be retained by the School District to provide services of an emergency nature, in addition to the Services performed pursuant to the RFP, Appendix A: Scope of Services, and the Task Order(s) for Material Testing and Special Inspection Services ("Additional Services").

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

6.7.2 All Additional Services of the Material Testing Consultant must be approved in advance by the School District's designated representative.

6.7.3 Compensation for Additional Services shall be an equitable amount mutually negotiated by the School District and the Material Testing Consultant, taking into consideration all facts and circumstances. Compensation for Additional Services shall be based on the hourly rates and the costs for specific tasks set forth in the Material Testing Consultant's Fee Proposal, attached as Exhibit E.

6.7.4 Assignment of School District's Right to File Direct Claims against the Prime Contractor for the Material Testing Consultant's Additional Services. The Material Testing Consultant agrees that in no event shall the School District be liable to the Material Testing Consultant for payment of compensation for Additional Services for any of the Material Testing Consultant's Services that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the Project, or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the Project. Instead, as its sole right and remedy with respect to such fault, negligence, breach of contract, willful act or omission, or such delay, disruption, interference or hindrance, of the Prime Contractor or any of its subcontractors or consultants, the Material Testing Consultant shall be entitled to make, assert, file or bring a direct claim, action, cause of action or lawsuit against the Prime Contractor or any of its subcontractors or consultants, as an assignee of the School District, pursuant to this Paragraph 6.7.4. For **the sole and only purposes** of making, asserting, filing or bringing direct claims, actions, causes of actions or lawsuits against the Prime Contractor or any of its subcontractors or consultants, the School District hereby assigns to the Material Testing Consultant the School District's right under the Prime Contract to make, assert, file or bring direct claims, actions, causes of action or lawsuits against the Prime Contractor or any of its subcontractors or consultants for additional compensation due to the Material Testing Consultant for the Material Testing Consultant Services that is caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the Project, or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the Project.

6.8 **Reimbursable Expenses.** The School District agrees to pay the Material Testing Consultant, as Reimbursable Expenses on an individual project, at 100% of their actual costs, without additional markup, for incidental materials and services authorized by the School District. The Material Testing Consultant shall not be entitled to any other Reimbursable Expenses, except with the prior written consent of the School District. The cost of normal reports and documentation requested by the School District for its review or record shall not be considered a Reimbursable Expense.

6.9 **Release.** Prior to final payment, the Material Testing Consultant shall furnish to the School District a release of all claims against the School District.

6.10 **Non-Authorization of Funds.** The Material Testing Consultant acknowledges that payments under this Contract may not exceed the amount that the School District's Auditing Services Department certifies as available for this Contract. During the Initial Term and an Additional Term of this Contract, the School District reserves the right to fund the balance of the Compensation in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. The Material Testing Consultant agrees that the School District shall not be obligated to fund this Contract except out of funds certified by the School District's Auditing Services Department as currently available, even if those funds are less than the maximum amount stated in this Contract. If at any time sufficient funds are not certified as available, the School District may, at its sole discretion, exercise its options described in Paragraph 6.11, **Unavailability of Funds.**

6.11 **Unavailability of Funds.** In the event the School District, in its sole discretion, does not or cannot obtain or continue the funding for this Contract from any source or sources at an aggregate level sufficient to allow for payment for the Services required under this Contract, the School District may, in its sole discretion, exercise one of the following alternatives:

(a) Terminate this Contract effective upon a date specified in a Termination Notice pursuant to Section 14, **Termination**; or

(b) Continue this Contract by reducing, through written notice to the Material Testing Consultant, the scope of the Services required under this Contract and the amount of the Compensation, consistent with the nature, amount, and circumstances of the loss of funding; or

(c) Suspend the Services until such time as sufficient funds are available; provided, that in the event of such suspension, but only upon the availability of sufficient funds, the Material Testing Consultant shall resume the Services within thirty (30) calendar days following the School District's written notice to resume.

Any reduction of this Contract pursuant to this Paragraph shall not affect any obligations or liabilities of either party accruing prior to such reduction. The School District shall not face any liability or penalty as a result of such reduction of this Contract. In the event of termination or suspension pursuant to this Paragraph, the Material Testing Consultant shall have the rights and obligations set forth in Paragraph 13.2, **Suspension for Convenience** and Paragraph 14.1, **Termination for Convenience.**

6.12 **Crossing Fiscal Years.** If the School District will pay any portion of the Compensation set forth in this Section 6 in any School District fiscal year (the School District's fiscal year runs July 1 - June 30) subsequent to the fiscal year in which the Initial Term or an Additional Term of this Contract commences (in either case, "Commencement FY"), the Material Testing Consultant understands and agrees that the portion of the Compensation under this Contract payable with School District funds that may accrue hereunder in a subsequent fiscal year remains subject to legally mandated budget authorization by the Board of the School District under Applicable Law. If for any reason funds for that portion of the Compensation that may accrue hereunder in a subsequent fiscal year are not continued in any subsequent School District fiscal year, this Contract and the School District's liability under this Contract shall automatically terminate at the end of the fiscal year of the then current Commencement FY; provided, however, that the Material Testing Consultant shall be compensated in accordance with the terms of this Contract for Services that have been provided and accepted by the School District prior to the end of the fiscal year of the then current Commencement FY. Payments to the Material Testing Consultant pursuant to this Contract shall not exceed the amount authorized for this Contract plus any other amounts properly available for obligation for this Contract. If such funding is not available in a timely manner, the School District shall have the right to terminate this Contract. In the event of termination or suspension pursuant

to this Paragraph, the Material Testing Consultant shall have the rights and obligations set forth in Paragraph 13.2, **Suspension for Convenience** and Paragraph 14.1, **Termination for Convenience**.

6.13 Audits; Records and Payments; Inspectors General.

6.13.1 **Audits.** From time to time during the term of this Contract and for a period of six (6) years after the expiration or termination of this Contract (see 24 P.S. §5-518), the School District (including, without limitation, the Auditing Services Department), the Controller of the City, the Commonwealth of Pennsylvania (including, without limitation, its Auditor General and the Pennsylvania Department of Education), or a department, agency or instrumentality of the United States of America, if the School District funds this Contract with federal funds, or any of their authorized representatives (each, for the purposes of this Paragraph, an "Auditor") may audit any and all aspects of the Material Testing Consultant's performance under this Contract, including but not limited to its billings and applications for payment or invoices and payments received.

6.13.2 **Inspection.** If requested by an Auditor or the School District, the Material Testing Consultant shall submit to the Auditor and the School District, for review or inspection, all vouchers and applications or invoices presented for payment pursuant to this Contract, all cancelled checks, Materials, invoices, vouchers, reports, work product, work papers, books, records and accounts (whether in electronic, paper, or other form or medium) upon which the vouchers or applications or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract. The Material Testing Consultant 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 Material Testing Consultant in the City, or in another location with the Auditor's consent. The Material Testing Consultant shall cooperate with all School District, City, Commonwealth of Pennsylvania and federal inspections and reviews conducted in accordance with the provisions of this Contract. The scope of such inspection and review of the Work and Materials, and sites, locations and facilities, including, without limitation, programs, lies in the sole discretion of the Auditor. Such inspection or review may include, without limitation, meetings with persons receiving services under this Contract, review of staffing ratios and job descriptions, and meetings with any of the Material Testing Consultant's staff members who either directly or indirectly participate or participated in carrying out any of the Work, including preparing, delivering or installing any Materials.

6.13.3 **Retention and Availability of Records.** The Material Testing Consultant 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 Material Testing Consultant shall retain the records until all litigation, claims or audit findings have been completely terminated or resolved without right of further appeal. The Material Testing Consultant shall make available, within the School District or in the City or at the Material Testing Consultant's offices during regular business hours, at reasonable times during the term of this Contract and for the period set forth above in this Paragraph 6.13, all records (whether in electronic, paper, or other form or medium) pertaining to this Contract for the purpose of inspection, audit or reproduction by any Auditor. The Material Testing Consultant shall provide such records without unreasonable delay when requested by an Auditor. The Material Testing Consultant shall include this Paragraph 6.13 in all Subcontracts for Services required by this Contract.

6.13.4 **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 Material Testing Consultant 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 Material Testing Consultant and its partners, members, shareholders, directors, officers, employees,

agents, contractors and Subconsultants 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 Material Testing Consultant 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 Material Testing Consultant or any Subconsultant.

6.13.5 "Materials" as used in this Paragraph 6.13 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 Material Testing Consultant as part of or in connection with the Work, or for the Material Testing Consultant by a Subconsultant in connection with the Work, and deliverable or delivered to the School District by the Material Testing Consultant or its Subconsultants pursuant to this Contract.

6.14 Grant-Funded Contracts.

6.14.1 Compliance with Grant. If the School District pays for all or any portion of the Services 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 said governments, or from any public or private charitable trust or corporation, then the Material Testing Consultant shall comply with the terms of the applicable grant agreement or contract, as the case may be, in carrying out the Services, and the School District shall comply with the terms of said grant agreement or contract, as the case may be, in making any payment or payments hereunder to the Material Testing Consultant. The Material Testing Consultant 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 or contract.

6.14.2 Timely Submission of Invoices. If the School District pays any of the Compensation from federal government or Commonwealth grant funds, the Material Testing Consultant shall bill the School District for any outstanding Compensation owed to the Material Testing Consultant within ten (10) business days after the end of the Term (see, Section 2, Term of Contract.). In the event the Material Testing Consultant 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 Material Testing Consultant based upon the loss of federal government or Commonwealth funds caused by the Material Testing Consultant's delay, in which event the School District shall have no liability to the Material Testing Consultant for said balance of the Compensation.

Section 7. Contract Management.

7.1 **Contract Administrators.** The Material Testing Consultant and the School District shall each designate a qualified Contract Administrator prior to the Material Testing Consultant's commencement of the Services. The Contract Administrators shall be in charge of the work covered by this Contract and the principal points of contact with respect to administration of this Contract and the parties' overall relationship, and resolution of disputes arising hereunder. Either party may designate a successor Contract Administrator at any time by giving notice to the other party.

7.1.1 The Material Testing Consultant's initial Contract Administrator shall be:

Telephone number: _____
Facsimile number: _____
Email address: _____

7.1.2 The School District's current Contract Administrator shall be:

Meka Perez, Operations Manager
The School District of Philadelphia
Office of Capital Programs
440 North Broad Street, Suite 371
Philadelphia, PA 19130-4015
Telephone number: (215) 400-4730
Facsimile number: (215) 400-4731
Email address: mperez2@philasd.org

7.1.3 The Program Manager's current Contract Administrator shall be:

Vince Pagliaro, Jr., Executive Program Director
Johnson, Mirmiran & Thompson, Inc.
1600 Market Street, Suite 520
Philadelphia, PA 19103
Telephone number: (267) 256-0300
Facsimile number: (267) 256-0395
Email address: vpagliaro2-ext@philasd.org

Section 8. Employment Practices.

8.1 **Key Personnel.** Upon Contract award, the Material Testing Consultant and its Subconsultants shall assign the Key Personnel as listed in the Material Testing Consultant's Proposal, Organizational Chart (Exhibit C) and the Material Testing Consultant's Key Personnel List (Exhibit E) to perform the design, contract preparation and construction administration services of the Material Testing Consultant required under this Contract. The Material Testing Consultant and its Subconsultants shall not reassign or replace any Key Personnel listed above, without the School District's prior written consent, which shall not be unreasonably withheld. All Key Personnel must participate in the Project in their respective roles, and failure of any Key Personnel to do so may be grounds for termination of this Contract pursuant to Section 14, *Termination*. The School District reserves the right to direct the Material Testing Consultant to remove any personnel from the Services provided under this Contract upon material reason therefore given in writing, and to review and approve the replacement of Key Personnel. If removal is for cause, any cost of such removal shall be borne by the Material Testing Consultant.

8.2 **Subconsultants.** Subconsultants of the Material Testing Consultant shall look only to the Material Testing Consultant for payment, satisfaction, or legal redress in the event of any dispute arising out of this Contract, and hereby waive any claim or cause of action against the School District arising out of a Subcontract or other transaction with the Material Testing Consultant. The School District shall have no obligation to pay nor to see to the payment of any monies to any Subconsultant of the Material Testing Consultant, except as may otherwise be required by law. Nothing contained in Paragraph 6.3, **Applications for Payment and Subconsultant Payment Confirmation**, shall give rise to any duty on the part of the School

District to pay or to see to the payment of any monies to any Subconsultant of the Material Testing Consultant. The School District of Philadelphia 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)) (repealed), and the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions, Act of May 15, 1998, P.L. 358, No. 57 (62 Pa.C.S.A. §3938(b)(2)&(4)), do not apply to the School District of Philadelphia and its contracts for construction, reconstruction, alteration, repair, improvement, or demolition of its buildings or improvements of any kind to its real properties. Neither the Material Testing Consultant nor its Subconsultants can make, assert or file a claim, cause of action or lawsuit against the School District of Philadelphia for violation of the prompt payment provisions of the Award and Execution of Public Contracts Law (repealed), or the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions. The School District of Philadelphia is also a “school district” and a “political subdivision” of the Commonwealth of Pennsylvania, and therefore the Contractor and Subcontractor Payment Act, Act of February 17, 1994, P.L. 73, No. 7 (73 P.S. §501 et seq.), does not apply to the School District of Philadelphia and its contracts for work or improvements on its real properties. Neither the Material Testing Consultant nor its Subconsultants can make, assert or file a claim, cause of action or lawsuit against the School District of Philadelphia for violation of the Contractor and Subcontractor Payment Act.

8.3 Non-Discrimination and Compliance with Business Diversity Policies; M/WBE Commitments and Requirements.

8.3.1 The Material Testing Consultant, 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 Material Testing Consultant 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 Material Testing Consultant shall include the first three sentences of this Subparagraph, with appropriate adjustments for the identity of the parties, in any Subcontracts that it executes and delivers. If the School District has selected the Material Testing Consultant pursuant to a public solicitation or through a RFP or comparable process and the Material Testing Consultant submitted a plan describing the participation of minority-owned, women-owned or disadvantaged businesses as part of the solicitation or the RFP, then the Material Testing Consultant shall comply with its Participation Plan, as set forth in this Contract.

8.3.2 The Board of Education has adopted a diversity policy, policy 612: Business Diversity in the Procurement of Materials and Contracted Services (“Diversity Policy”), which relates to the solicitation and participation of Certified Minority-Owned Business Enterprises, Certified Women-Owned Business Enterprises (collectively “M/WBE”), and other Certified diverse, small, or disadvantaged businesses in School District procurements and contracts to further the School District’s diversity and anti-discrimination goals. In furtherance of the Diversity Policy, the School District has the discretion to establish participation rates and ranges for Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses in order to encourage meaningful participation of M/WBEs in the provision of quality goods and services to the School District. The Diversity Policy and the Administrative Procedures for the Diversity Policy are available on the Board’s website at <https://www.philasd.org/schoolboard/policies/> and incorporated by reference and made a part of the Contract to the same extent as if they were attached hereto. Hard copies of the Board Policy and Administrative Procedures will be provided upon request.

8.3.3 The Material Testing Consultant shall ensure that Certified M/WBEs and Certified diverse, small or disadvantaged businesses have a meaningful and substantial opportunity to participate in the performance of the Contract. The Material Testing Consultant covenants, represents and warrants that the Material Testing Consultant, its Subcontractors and partners commit to adhering to anti-discrimination laws and policies, diversity goals and workforce management practices that promote Meaningful and Substantial Participation of Certified M/WBEs and other Certified disadvantaged business enterprises throughout the Term of the Contract. If the Material Testing Consultant has submitted a plan describing the participation of Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses ("Participation Plan") as part of a public solicitation, RFP, or as required by School District policies, then the Material Testing Consultant shall comply with its Participation Plan. The Material Testing Consultant's Participation Plan shall be attached to this Contract and made a part hereof. The commitments made by the Material Testing Consultant in the Participation Plan are material representations that the School District relies upon in awarding and entering into this Contract.

8.3.4 The Participation Plan must demonstrate that the participation of Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses constitutes Meaningful and Substantial Participation in the Work, the Contract and any subsequent amendment. Participation shall be measured in terms of actual dollars received for work performed or services provided by Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses and the Material Testing Consultant's workforce management practices. The Material Testing Consultant shall take good faith actions to achieve the requirements of the Diversity Policy in conformity with Board of Education policies, including but not limited to submitting a Participation Plan.

8.3.5 The Material Testing Consultant shall not increase or decrease the percentages of Work, scope of Work, or dollar amounts for any Certified M/WBE and other Certified diverse, small, or disadvantaged businesses set forth in the Participation Plan without the written approval of the School District. The Material Testing Consultant shall not replace or substitute any Certified M/WBE and other Certified diverse, small, or disadvantaged businesses set forth in the Participation Plan without the written approval of the School District. If the requested change is approved, the Material Testing Consultant shall promptly submit a revised Participation Plan for School District approval. The Parties shall incorporate the revised Participation Plan in this Contract by amendment.

8.3.6 In addition to and not in derogation of the available rights and remedies under this Contract, the School District may, if the Material Testing Consultant breaches this Paragraph 8.3, pursue suspension or debarment in conformity with the procedures set forth in the Diversity Policy.

8.3.7 In addition to and not in derogation of any reporting requirements set forth in this Contract, when required by the Diversity Policy or the Participation Plan, as applicable, the Material Testing Consultant shall keep appropriate records and periodically report to the School District regarding the use of Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses.

8.4 Equal Opportunity.

8.4.1 The School District is an Equal Opportunity Employer and demands no less of companies with which it does business. The School District will not do business with companies or persons who unlawfully discriminate on the basis of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin, Vietnam-era or any other veteran status, or any other impermissible ground in their hiring, promotion, subcontracting, or procurement practices. By submitting any proposal to contract or entering into any contract with the School District, the Material Testing Consultant represents and certifies that it is an Equal Opportunity Employer; conducts its business affairs without improper regard to age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin, Vietnam-era or any other veteran status, or other impermissible ground; and has not been debarred, suspended, or declared ineligible to contract by any public or private agency or entity because of its discriminatory practices. The certifications in Paragraph 8.4 herein are material representations of fact upon which reliance was placed when

this transaction was entered into. If it is later discovered or determined that the Material Testing Consultant knowingly rendered an erroneous certification, the School District may pursue available remedies, including termination of this contract, suspension or debarment.

8.4.2 All parties hereto agree that in the performance of this Contract there shall be no discrimination against any employee or other person on account of age, race, color, sex, sexual orientation, handicap, religious creed, ancestry or national origin, disabled or Vietnam-era or any other veteran status. The School District, upon receipt of evidence of such discrimination by the Material Testing Consultant or its agents, employees, representatives, or Subconsultants, shall have the right, at its sole discretion, to terminate this Contract. The Material Testing Consultant agrees to include this Paragraph 8.4, with appropriate adjustments for the identity of the parties, in any Subcontracts that are entered into for Services to be performed under this Contract.

8.4.3 The Material Testing Consultant shall not discriminate nor permit discrimination against any person because of race, color, religious creed, age, sex, national origin, ancestry, handicap, disability, sexual orientation, union membership, disabled or Vietnam-era or any other veteran status, or limited English proficiency in the performance of this Contract, including, but not limited to, preparation, manufacture, fabrication, installation, erection and delivery of all supplies and equipment. In the event of receipt of such evidence of such discrimination by the Material Testing Consultant or its agents, employees or representatives, the School District shall have the right to terminate this Contract. In the event of the continued refusal on the part of the Material Testing Consultant to comply with this anti-discrimination provision, the Material Testing Consultant may be removed from the list of approved bidders of the School District. The Material Testing Consultant agrees to include this Paragraph 8.4, with appropriate adjustments for the identity of the parties, in all Subcontracts which are entered into for work to be performed pursuant to this Contract.

8.5 **Non-Discrimination.**

8.5.1 **Non-Discrimination in Hiring.** The Material Testing Consultant agrees that it will comply with provisions of the Philadelphia Fair Practices Ordinance administered by the Human Relations Commission of the City of Philadelphia, the Pennsylvania Human Relations Act. No. 222, October 27, 1955, as amended, 43 P.S. Section 951 et seq.; Title 7 of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 et seq., and all pertinent regulations adopted pursuant to the foregoing in providing equal employment opportunities in connection with all work performed by it pursuant to this Contract. The Material Testing Consultant, therefore, agrees:

(1) That it will not discriminate nor permit discrimination by its agents, servants or employees against any employee or applicant for employment with regard to hiring, tenure or employment, promotion, or any other terms, conditions or privileges of employment because of race, color, religion, age, national origin, sex, ancestry, handicap or disability and will move aggressively as is hereinafter set forth to prevent same.

(i) In all publications or advertisements for employees to work at the job site covered by this Contract placed by or on behalf of the Material Testing Consultant, the Material Testing Consultant will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, national origin, sex, ancestry, handicap or disability.

(ii) The Material Testing Consultant will notify each labor union or workers' representative from whom it seeks workers of the Material Testing Consultant's commitment as set forth in its proposal, and request that each union or workers' representative include minority group members and women among its referrals.

(iii) The Material Testing Consultant will hire minority and female workers for the skilled and unskilled jobs required to perform this Contract in proportion to their availability in the relevant labor pools in the Philadelphia Metropolitan Statistical Area, or to their availability in its qualified applicant pool, whichever is greater.

(iv) The Material Testing Consultant will post in conspicuous places available to its employees and to applicants for employment, a notice of fair practices to be provided by the Philadelphia Human Relations Commission.

(v) The Material Testing Consultant will maintain a work environment free of harassment, intimidation and coercion, and will ensure that all on-site supervisory personnel are aware of and carry out the Material Testing Consultant's obligation to maintain such a working environment.

(2) That it will identify on each certified payroll form submitted to the School District those of its employees who are minority group members and those who are female. As used here, "minority" means African American, Hispanic, Asian, or Native American. The School District shall at all times have access to work site and to the Material Testing Consultant's employment records to assure compliance with this subsection.

(3) That it will maintain on forms to be supplied by the School District, the name, race, sex, national origin, skill or craft, address, telephone number, and source of referral of each applicant for employment, which record shall show which applicants were hired.

(4) That in the event apprentices are hired in any skilled craft area, the Material Testing Consultant will endeavor to hire equal numbers of culturally diverse male and female trainees in each skill area.

8.5.2 Non-Discrimination in Contracting. It is the policy of the School District that business concerns owned and controlled by certified M/WBEs and other certified diverse, small, or disadvantaged businesses shall have full and fair opportunity to participate in performance of contracts let by the School District. Participation of certified M/WBEs and other certified diverse, small, or disadvantaged businesses must be meaningful and substantial in all phases of this Contract. The Material Testing Consultant represents and agrees that it will use the certified M/WBEs and other certified diverse, small, or disadvantaged businesses for the services and in the percentages listed in the Participation Plan and Paragraph 8.3 herein. The representations and agreements in Paragraphs 8.3 and 8.5 herein are material representations of fact upon which reliance was placed when this transaction was entered into. If it is later discovered or determined that the Material Testing Consultant has not made a good faith effort to comply with the listed percentages in the Participation Plan and Paragraph 8.3 herein, within the School District's sole judgment, the School District may pursue available remedies, including suspension or debarment of the Material Testing Consultant from future School District work as non-responsible.

8.5.3 Liability of Subcontractors. Any Subconsultant of the Material Testing Consultant shall have the same responsibilities and obligations as the Material Testing Consultant to comply with the provisions of this Paragraph 8.5 and shall be subject to the same penalties for failure to comply as set forth in Paragraph 8.5.4.

8.5.4 Penalties for Failure to Comply.

(1) It is hereby agreed that failure to comply and demonstrate a good faith effort to comply with the foregoing requirements shall constitute a substantial breach of this Contract.

(2) In the event that the School District determines, after investigation, that

the Material Testing Consultant or any Subconsultant has failed to comply with any provision of this Paragraph 8.5 and to demonstrate a good faith effort to comply, the School District may, in its sole discretion, invoke the termination provisions of this Contract or move to disqualify, suspend, or debar the Material Testing Consultant or any Subconsultant pursuant to Board Policy No. 610.1.

(3) The Material Testing Consultant or any Subconsultant, as the case may be, shall be given written notice of any determination of non-compliance and opportunity to achieve compliance within a time period to be specified in the notice.

(4) In the event the School District, after a hearing, determines to terminate the Contract, entered into under this Contract, for non-compliance with and failure to demonstrate a good faith effort to comply with the requirements of this Paragraph 8.4, all obligation on the School District's part to perform this Contract shall cease except for the obligation to pay the Material Testing Consultant the sums due.

Section 9. Indemnification.

9.1 Indemnification.

9.1.1 The Material Testing Consultant 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 School Reform Commission and the Board of Education, from and against any and all liability, losses, claims, suits, actions, costs, damages and expenses (including, but not limited to, attorneys' fees, court costs and legal expenses of whatever kind or nature) imposed on or asserted against the School District, and arising out of or in any way related to or resulting from the Material Testing Consultant'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, intentional acts or omissions, or employment discrimination of the Material Testing Consultant, its officers, agents, employees, servants, or Subconsultants acting pursuant to this Contract; or arising out of this Contract with the School District and related to any claim whatsoever brought by or against any agent, servant, employee, or Subconsultant of the Material Testing Consultant 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 Material Testing Consultant is or may become responsible, and any and all claims of illness, disability, or death regarding the transmission of infectious and communicable diseases, whether arising from the negligence of the Material Testing Consultant or its Subconsultants or otherwise. The Material Testing Consultant agrees that in the event that any employee of the Material Testing Consultant 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 Material Testing Consultant under this Contract that the Material Testing Consultant 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 Material Testing Consultant 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 Material Testing Consultant in the event that the School District is sued by an employee of the Material Testing Consultant. The parties further intend that this waiver satisfy the judicial requirements applicable to an express waiver as articulated by the Superior Court of Pennsylvania in Bester v. Essex Crane Rental Corp. v. Russell Construction Co., 619 A.2d 304 (Pa.Super. 1993).

9.1.2 This indemnity provision is intended, *inter alia*, to protect the School District, its commission members, board directors, officers, agents, representatives and employees from all claims that are asserted by employees, agents, or workers of any contractors or consultants who are injured on or by School District real property, on, by or as a result of School District personal property, or who assert an employment claim of any kind (including claims relating to the termination of employment) regardless of when

the claim is made, from the commencement to the completion of this Contract, whether the death, injury, damage or loss to persons and/or property, or the economic loss, damage or expense, or employment discrimination, is due to School District negligence, in whole or in part, and is not limited to death, injury, damage or loss to persons or property, or economic loss, damage or expense, or employment discrimination, which occur in actual performance of this Contract, nor is this indemnity provision limited by the Pennsylvania Workers' Compensation Act. This indemnity provision shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this Contract, and is independent of whether or not the Material Testing Consultant has insurance.

9.1.3 In the event the School District receives notice of a claim based upon the Material Testing Consultant's services, omission or breach, the School District will promptly notify the Material Testing Consultant in writing of such claim and will require and permit the Material Testing Consultant to assume the defense of the School District, its officers, employees, agents, and members of the School Reform Commission and the Board of Education, whenever and wherever under the circumstances indicated in Paragraph 9.1 herein, claims, suits or actions are brought against the School District, its officers, employees, agents, and members of the School Reform Commission and the Board of Education. The Material Testing Consultant shall require all insurance policies in any way related to the work and secured and maintained by the Material Testing Consultant and all tiers of its Subconsultants to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against the School District.

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

Section 10. Insurance.

10.1 **Insurance.** Prior to the commencement of any of the Services under this Contract and until the latest of completion of the Services, final payment by the School District, or final acceptance of the Services, the Material Testing Consultant (including but not limited to Architects or Engineers) shall provide and maintain, in full force and effect, the following minimum levels of insurance, at its sole cost and expense, covering the performance of the Services required under this Contract. The Material Testing Consultant shall include in its proposal or quote its cost of the required insurance, and the Parties shall make no adjustment to the Compensation on account of these insurance costs. The term "Material Testing Consultant" shall include Subcontractors and Sub-Subcontractors at every tier. The Material Testing Consultant shall require its Subcontractors under this Contract to maintain the required minimum levels of insurance. The Material Testing Consultant 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 Subparagraph 10.1e. In no event shall the Material Testing Consultant commence or permit commencement of any of the Services (or continue Services, in the case of an Additional Term) unless and until the Material Testing Consultant delivers and the School District has approved the required evidence of insurance in conformity with this Contract. If the School District finds the Material Testing Consultant'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 Material Testing Consultant, by set-

off against Compensation accrued or accruing, or through the Material Testing Consultant'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 of this Contract if, in the School District's sole judgment, a risk or risks warrant such additional coverage or limits.

a. Rating. The Material Testing Consultant shall procure all insurance from insurers permitted to do business in the Commonwealth of Pennsylvania and having an A.M. Best Rating of at least "A-, Class VIII".

b. Self-Insured Retention. The Material Testing Consultant shall not have a Self-Insured Retention ("SIR") on any policy greater than \$50,000; any and all SIRS shall remain the Material Testing Consultant's responsibility. If the Material Testing Consultant's policy or policies has or have a SIR exceeding this amount, the Material Testing Consultant must obtain the School District's approval of the SIR prior to starting Services. In the event any policy includes an SIR, the Material Testing Consultant is solely responsible for payment within the SIR of the policy or policies, and the Material Testing Consultant shall provide the Additional Insured requirements specified herein within the SIR.

c. Occurrence Basis. The Material Testing Consultant 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 Services 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 Services or final payment.

d. Notice of Cancellation or Non-Renewal. The Material Testing Consultant's insurance carrier or carriers each shall agree to provide at least thirty (30) calendar 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 Material Testing Consultant 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 Material Testing Consultant's insurance carrier or carriers do not issue or endorse their policy or policies to comply with this Subparagraph 10.1d., the Material Testing Consultant shall give notice to the School District of its receipt of any notice of cancellation or non-renewal at least thirty (30) calendar days prior to the effective date of the proposed cancellation or non-renewal.

e. Certificates. The Material Testing Consultant shall deliver to the School District the required original Certificate or Certificates of Insurance, evidencing the insurance coverages required under this Contract, at least ten (10) calendar days prior to the start of the Services, and again at least ten (10) calendar days before an Additional Term, and thereafter promptly before or on renewal or replacement of each coverage. The Material Testing Consultant shall not begin any Services until the School District has reviewed and, in its discretion, approved the Certificate or Certificates of Insurance. The required insurance shall not contain any exclusions or Endorsements unacceptable to the School District. Certificates of Insurance and Endorsements must specifically reference the School District Contract number for which they are being submitted. The Material Testing Consultant 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 Risk Management

E-mail: rzucaro@philasd.org and crollins@philasd.org

with a copy to:

The School District of Philadelphia
Office of Capital Programs
440 North Broad Street, Suite 371
Philadelphia, PA 19130-4015
Attn.: Steve Yarnall, Assistant Contracts Manager
E-mail: syarnall@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 Material Testing Consultant'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.

The ten (10) calendar day requirement for advance documentation of coverage may be waived in situations where such waiver will, in the sole judgment of the School District Director of Risk Management, benefit the School District.

The School District reserves the right to require the Material Testing Consultant to furnish certified copies of the original policies of all insurance required under this Contract at any time upon (10) calendar days' written notice to the Material Testing Consultant.

f. Additional Insured. The Material Testing Consultant shall add the School District of Philadelphia and the Program Manager, Johnson, Mirmiran and Thompson, Inc., and the Program Manager's Subconsultants on the Project, 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 Additional Insureds. The Material Testing Consultant and its insurer or insurers shall provide coverage for a period of three (3) years subsequent to the later of completion of Services or final payment. The School District reserves the right to require the Material Testing Consultant 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. The Material Testing Consultant shall procure and maintain an endorsement or endorsements stating that: (i) the coverage afforded the School District and its board members, officers, employees and agents, as Additional Insureds, shall be primary to any other coverage available to them, and (ii) no act or omission of the School District board members, officers, employees and agents shall invalidate the coverage, other than an act or omission that would constitute willful misconduct or gross negligence.

g. Waiver of Rights of Subrogation. The Material Testing Consultant shall waive all rights of recovery against the School District and all of the Additional Insureds for loss or damage covered by any of the insurance maintained by the Material Testing Consultant.

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 10 (*Insurance*), as a limitation of the liability of the Material Testing Consultant. The carrying of insurance

as set forth in this Section 10 (*Insurance*) shall not relieve the Material Testing Consultant 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 Material Testing Consultant requires for its own protection or on account of statute shall be its own expense.

i. Notice of Accidents, Claims and Suits. The Material Testing Consultant 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 Material Testing Consultant arising in the course of operations under the Contract. The Material Testing Consultant shall forward such documents received to its insurance company(ies), as soon as practicable, or as required by their insurance policy or policies. The Material Testing Consultant shall advise the School District in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon the Material Testing Consultant's services, omission or breach, that it will abide fully by Paragraph 9.1 (*Indemnification*) and Section 10 (*Insurance*) of this Contract, and that the applicable insurance carrier(s) has (have) been advised to defend, indemnify, and hold harmless the School District in accordance with the provisions of Paragraph 9.1 (*Indemnification*) and Section 10 (*Insurance*) of this Contract. The Material Testing Consultant shall not decline to provide the School District with full protection and coverage under Paragraph 9.1 (*Indemnification*) and Section 10 (*Insurance*) of this Contract because some other contractor or consultant may, in whole or in part, be responsible for the occurrence, death, injury, damage, or loss to persons or property, or economic loss, damage, or expense, or because the School District may be a co-insured or an additional insured on some other contractor's or consultant's policy of insurance. The Material Testing Consultant agrees that any violation of this Paragraph 10.1i. of Section 10 (*Insurance*) shall be deemed a material breach of this Contract.

j. Self-Insurance. The Material Testing Consultant may not self-insure any of the coverages required under this Contract without the prior written approval of the School District Director of Risk Management. In the event that the Material Testing Consultant desires to self-insure any of the coverages listed below, it shall submit to the School District's Contract Administrator and School District Director of Risk Management, prior to the commencement of Services hereunder, a certified copy of the Material Testing Consultant's most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., State approval) as may be requested by the School District's Contract Administrator or School District Director of Risk Management. In the event such approval is granted, it is understood and agreed that the School District, its board members, officers, employees and agents shall be entitled to receive the same coverages and benefits under the Material Testing Consultant's self-insurance program that they would have received had the insurance requirements been satisfied by an insurer or insurers permitted to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the School District Director of Risk Management. If at the time of commencement of this Contract, the Material Testing Consultant self-insures its professional liability or workers' compensation and employers' liability coverage, the Material Testing Consultant may, in lieu of the foregoing, furnish to the School District Director of Risk Management and School District a current copy of the State certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this Contract by the Material Testing Consultant to the School District, or to limit the Material Testing Consultant's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by the Material Testing Consultant hereunder.

10.2 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.

a. Workers' Compensation and Employer's Liability: Provided in the State in which the Material Testing Consultant performs the Services and elsewhere as required, and shall include:

- (1) Workers' Compensation Coverage: Statutory Requirements.

- (2) Employers' Liability Limits not less than:
 - (i) Bodily Injury by Accident: \$100,000 Each Accident
 - (ii) Bodily Injury by Disease \$100,000 Each Employer
 - (iii) Bodily Injury by Disease \$500,000 Policy Limit
- (3) USL&H, Maritime Liability, FELA, and DBA Coverage, if applicable.
- (4) Includes coverage for sole proprietors, partners, members or officers who will be performing the Services.
- (5) Where applicable, if the Material Testing Consultant is lending or leasing its employees to the School District for the Services under this Contract (e.g., crane rental with operator), it is the Material Testing Consultant's responsibility to provide the Workers' Compensation and Employers' Liability coverage and to have their policy endorsed with the proper Alternate Employer Endorsement in favor of the School District.

b. **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.

- (1) Occurrence Form with the following limits:
 - (i) General Aggregate: \$2,000,000
 - (ii) Products/Completed Operations Aggregate: \$2,000,000
 - (iii) Each Occurrence: \$1,000,000
 - (iv) Personal and Advertising Injury: \$1,000,000
- (2) Products/Completed Operations Coverage must be maintained for a period of at least three (3) years after final payment/completion of the Services (including coverage for the Additional Insureds as set forth in this Section 10 (**Insurance**)).
- (3) The General Aggregate Limit must apply on a Per Project basis.
- (4) Coverage for "Resulting Damage".
- (5) No sexual abuse or molestation exclusion.
- (6) No amendment to the definition of an "Insured Contract".
- (7) The School District may require higher limits of liability or aggregate coverages at any time during the term of the Contract, if, in the School District's sole discretion, the potential risk so warrants it.

c. **Automobile Liability:**

- (1) Coverage to include All Owned, Hired and Non-Owned Vehicles, or "any Auto". If the Material Testing Consultant does not have any Owned Vehicles, the Material Testing Consultant 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.
- (2) Per Accident Combined Single Limit: \$1,000,000

d. **Commercial Umbrella Liability:**

(1) Policy or policies to apply on a Following Form Basis of the following:

- (i) Commercial General Liability,
- (ii) Automobile Liability, and
- (iii) Employers' Liability Coverage.

(2) Minimum Limits of Liability:

- (i) Occurrence Limit: \$10,000,000
- (ii) Aggregate Limit (where applicable) \$10,000,000

e. **Architects and Engineers Professional Liability Policy:**

(1) Covering Architectural errors and omissions, including liability assumed under this Contract. Also covering losses caused by professional incidents that arise from the operations of the Architect and Engineer and/or their Subcontractors of any tier.

(2) The definition of "Covered Services" shall include the services required in the scope of this Contract.

(3) Minimum Limits of Liability:

- (i) Per Claim Limit: \$2,000,000
- (ii) Aggregate Limit: \$2,000,000
- (iii) Deductible Not to Exceed: \$50,000

(4) Insurance to be maintained for the duration of the Services and for a period of three (3) years after completion of the Services/final payment.

f. **Valuable Papers and Records Coverage:**

(1) Coverage for plans, specifications, drawings, reports, maps, books, blueprints and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers related to the Project.

Section 11. Confidentiality.

11.1 **Confidential and Proprietary Information.** The Material Testing Consultant acknowledges that it will be exposed to confidential and proprietary information of the School District and that such confidential and proprietary information will be contained in papers, records, documents and materials belonging to the School District or stored on equipment owned and operated by the School District. The Material Testing Consultant shall keep in strictest confidence all information relating to this Contract and all information that may be acquired in connection with or as a result of this Contract, which the School District designates as confidential or proprietary. The School District hereby designates the School District Data listed in Paragraph 11.3 as "Confidential and Proprietary Information". During the term of this Contract and at any time thereafter, without the prior written consent of the School District, the Material Testing Consultant shall not publish, disclose or use any such information which has been designated by the School District as proprietary or confidential, or which from the surrounding circumstances in good conscience ought to be treated by the Material Testing Consultant as proprietary or confidential, or any other information subject to a third party's proprietary right, such as a copyrighted or trademarked work. The term "Confidential or Proprietary Information" is not meant to include any

information that is in the public domain. Notwithstanding any other terms or conditions to the contrary, the Material Testing Consultant shall return to the School District all of the Confidential and Proprietary Information designated by the School District in Paragraphs 11.1 and 11.3 at the termination or expiration of this Contract.

11.2 Non-Disclosure. The Material Testing Consultant and its employees, agents, Subconsultants, and any person or entity acting on its behalf (i) will maintain in strict confidentiality all of the "School District Data," as defined and set forth in Paragraph 11.3; (ii) will not, without the School District's written permission, divulge, disclose, communicate, or distribute any of the School District Data to any person or entity except as may be strictly necessary to perform this Contract; (iii) will not, without the School District's written permission, in any way use any of the School District Data for their businesses or other advantage or gain (except as may be necessary to perform this Contract), including, without limitation, any use of the School District Data in any presentation, demonstration, or proposal to perform services, to the School District or to others, that may be conducted or created as part of their business activities or otherwise; (iv) will use the School District Data solely and exclusively in accordance with the terms of this Contract in order to carry out its obligations and exercise its rights under this Contract; (v) will afford the School District Data at least the same level of protection against unauthorized disclosure or use as the Material Testing Consultant uses to protect its own trade secrets, proprietary information, and other confidential information (but will in no event exercise less than reasonable care and protection); and (vi) will, immediately upon termination or expiration of this Contract, return all School District Data to the School District, destroy any and all copies of any School District Data that are in their possession, whether on paper or in electronic or other form, and if requested by the School District in writing, will certify in writing that there has been full compliance with this Paragraph 11.2.

11.3 School District Data. Except as provided otherwise in Paragraph 11.4, the School District Data shall include any and all of the following, whether in electronic, microfilm, microfiche, video, paper, or other form, and any copies or reproductions thereof:

- (a) financial data, records, and information related to the Project; and
- (b) any Data provided by the School District to the Material Testing Consultant in connection with the Services provided by the Material Testing Consultant; and
- (c) any and all other records, documents, computer software (whether owned by the School District or licensed or otherwise furnished to the School District by third parties), and data furnished by the School District to the Material Testing Consultant in relation to the Services required under this Contract; and
- (d) all records, documents, data, information, programs, and items of Services created by the Material Testing Consultant for the School District as part of the Services required under this Contract.

11.4 Exclusions. School District Data shall not include any information or data which:

- (a) was known to the Material Testing Consultant prior to the commencement of its performance of this Contract, free of any obligation to keep it confidential, or is proprietary to the Material Testing Consultant; or
- (b) was generally known to the public at the time of receipt by the Architectural Designer, or becomes generally known to the public through no act or omission of the School District; or
- (c) was independently developed by the Material Testing Consultant without knowledge or use of any Data of the School District; or

(d) is required to be disclosed by law or judicial process.

11.5 Remedy for Breach. In the event of any actual or threatened breach of any of the provisions of this Section 11 by the Material Testing Consultant, and in addition to any other remedies that may be available to the School District in law or equity, the School District shall be entitled to a restraining order, preliminary injunction, permanent injunction, or other appropriate relief to specifically enforce the terms of this Section 11. The Parties agree that a breach of the terms of this Section 11 by the Material Testing Consultant would cause the School District injury not compensable in monetary damages alone, and that the remedies provided herein are appropriate and reasonable.

Section 12. Disputes.

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

School District	Material Testing Consultant	Time After Dispute Notice
Project Designer or Project Manager	Project Material Testing Consultant	15 days
Design Manager or Contracts Manager	Project Manager	15 days
Executive Director or Operations Manager, Capital Programs	Principal in Charge	15 days

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

Section 13. Project Stoppage, Suspension or Abandonment.

13.1 Stoppage or Abandonment. The School District may order the Material Testing Consultant, in writing, to stop or abandon all or any part of its Services for the Project, for the convenience of the School District, or for work stoppages beyond the control of the School District or the Material Testing Consultant. Any increased costs incurred as a result of the stoppage or abandonment of the Project shall be an equitable amount determined by the School District and the Material Testing Consultant in view of all the facts and circumstances. If, however, the Project is abandoned, the School District shall pay the Material Testing Consultant for all Services performed and Reimbursable Expenses incurred to the date of abandonment in accordance with Paragraph 14.1, **Termination for Convenience**, of this Contract.

13.2 Suspension for Convenience. The School District shall have the right, at any time during the term of this Contract, to suspend all or any part of the Services, for the convenience of the School District, for the period of time that the School District, in its sole discretion, determines to be in the best interest of the School District, upon thirty (30) days' prior written notice to the Material Testing Consultant (except that in the event of a public emergency, as determined by the School District, no such period of notice shall be required.).

13.2.1 If a suspension of the Services pursuant to this Paragraph 13.2 is for greater than thirty (30) days, the Material Testing Consultant shall have the right to submit a claim to the School District for the payment of costs for all Services performed and Reimbursable Expenses incurred in accordance with the provisions of this Contract prior to the effective date of the suspension.

13.2.2 The Material Testing Consultant shall be entitled to a one-day extension of the time of performance provided in this Contract for each day that it is suspended pursuant to this Paragraph 13.2.

13.2.3 The School District shall have the right, during the period of any suspension pursuant to this Paragraph 13.2, to terminate this Contract as provided in this Section 14, in Section 6, and elsewhere in this Contract.

Section 14. Termination.

14.1 Termination for Convenience.

14.1.1 Termination for Convenience. The School District shall have the right to terminate this Contract, in whole or in part, for the convenience of the School District, at any time, upon thirty (30) calendar days' prior written notice to the Material Testing Consultant. Such termination for convenience shall be, at the School District's sole discretion, and without penalty, cost, or liability to the School District.

14.1.2 Effect of Termination for Convenience or Similar Grounds.

(a) The Material Testing Consultant shall be entitled to payment from the School District for any Services satisfactorily performed and Reimbursable Expenses incurred in accordance with the provisions of this Contract prior to the effective date of termination.

(b) The School District shall incur no liability beyond such stated amount for any Services that are terminated under Paragraph 14.1, **Termination for Convenience**, Paragraph 6.11, **Unavailability of Funds**, or Paragraph 6.12, **Crossing Fiscal Years**. Without limiting the generality of the foregoing, in no event shall the Material Testing Consultant be entitled to receive, or to submit any claim for, any of the following costs directly or indirectly caused by the termination: (i) field or home office overhead; or (ii) costs caused by or related to loss of productivity or loss of profit related to the Services and this Contract, or to any other Contract or services that the Material Testing Consultant performed or could have performed but was prevented from performing because of the termination or its commitment to the Services.

(c) In the event the School District partially terminates this Contract pursuant to this Paragraph 14.1.1, the Material Testing Consultant shall continue to perform this Contract in accordance with its terms with respect to all Services not terminated. The School District shall pay the Material Testing Consultant in accordance with this Contract for Services that are not terminated.

14.2 Termination for Default.

14.2.1 Event of Default. Each of the following constitutes an Event of Default by the Material Testing Consultant under this Contract.

(a) The Material Testing Consultant's failure to comply with any material provision, term, or condition of this Contract;

(b) the appointment of a receiver, trustee or custodian to take possession of all or substantially all the assets of the Material Testing Consultant for the benefit of creditors, or any action taken or suffered by the Material Testing Consultant under any federal or state insolvency, bankruptcy,

reorganization, moratorium or other debtor relief act or statute, including the Material Testing Consultant's filing for bankruptcy, and the filing of an involuntary petition against the Material Testing Consultant under the federal bankruptcy code or any similar state or federal law which remains undismissed for a period of forty-five (45) days;

(c) material misrepresentation or material falseness or inaccuracy of any representation or commitment of the Material Testing Consultant contained in this Contract, or in any other document submitted to the School District by the Material Testing Consultant in relation to the Services, the RFP, or the Proposal, or otherwise by the Material Testing Consultant directly or indirectly to the School District in connection with the School District's decision to execute, deliver and perform this Contract;

(d) failure of the Material Testing Consultant to provide, within five (5) business days, assurance reasonably acceptable to the School District that it can perform the Work in conformity with the terms of the Contract if (1) the School District has a reasonable basis to believe at any time during the term of the Contract that the Material Testing Consultant will not be able to perform the Work, and (2) the School District demands in writing assurance of the Material Testing Consultant's performance;

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

(f) indictment of or other issuance of formal criminal charges against the Material Testing Consultant or any of its directors, employees or agents or any of the directors, employees or agents of a Subcontractor or any criminal offense or any other violation of Applicable Law directly or indirectly relating to this Contract or the Work or Services required under this Contract, or which adversely affects the Material Testing Consultant's performance of this Contract in accordance with its terms, whether or not a court of law or other tribunal ultimately accepts a verdict or plea of guilty or no contest regarding the charged offense;

(g) disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the capital project(s) or the Services;

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

(i) failure by the Material Testing Consultant to comply with any term, covenant or condition set forth in Paragraph 16.18, **Tax Compliance**, or the breach of any of the Material Testing Consultant's representations and warranties set forth in Paragraph 3.5, **Material Testing Consultant's Representations, Warranties and Commitments**.

14.2.2 Notice and Cure. If the Material Testing Consultant commits or permits an Event of Default, the School District shall notify the Material Testing Consultant in writing of its determination that an Event of Default has occurred, and shall specify in reasonable detail the nature of the Default. Except for the breaches set forth in subparagraphs (b) through (i) of this Paragraph 14.2, the Material Testing Consultant shall have ten (10) business days from receipt of that notice to correct the Event of Default. If the Event of Default is not cured within that time period, the School District may terminate this Contract by providing the Material Testing Consultant with written notice of Termination for Default. The School District may extend such time period, at its sole discretion, if there is evidence of the Material Testing Consultant's good faith effort to cure the Event of Default within such time period. No notice from the School District or period of cure shall be required before invoking the remedies described in Paragraph 14.4, **Additional Remedies of the School District**, of this Contract if: (1) the Material Testing Consultant has temporarily or permanently ceased performing the Work; (2) an emergency has occurred relating to the Work, and that

emergency requires immediate exercise of the School District's rights or remedies, as determined by the School District in its sole discretion; (3) the School District has previously notified the Material Testing Consultant more than once in the preceding twelve (12) month period of any Event of Default under this Contract; (4) an Event of Default occurs as described in Paragraphs 14.2.1(e), (f), or (h); or (5) the Material Testing Consultant breaches any of its obligations under Paragraphs 16.13, **Background Checks**, or 8.5, **Non-Discrimination**. Nothing set forth in this Paragraph shall limit the School District's rights under Paragraph 14.5, **Additional Remedies of the School District**.

14.3 **Termination Duties**. Upon receipt of a Termination Notice from the School District, the Material Testing Consultant shall take immediate action toward the orderly discontinuation of Services under this Contract. The Material Testing Consultant shall exercise due care and caution to protect and secure completed Work. Upon expiration or termination of this Contract, the Material Testing Consultant shall be responsible for taking all actions necessary to accomplish an orderly discontinuation of performance of Services, and for collecting, assembling, and transmitting to the School District, at the Material Testing Consultant's sole expense, all designs, drawings, specifications, materials, reports, data, and other documentation which were obtained, prepared or developed as part of the Services required under this Contract. Designs, drawings, specifications, materials, reports, data and documentation shall be clearly labeled and indexed, to the satisfaction of the School District, and delivered to the School District by the Material Testing Consultant, within thirty (30) calendar days after receipt of a Termination Notice from the School District, or in such shorter period as the School District may specify in its Termination Notice.

14.4 **Additional Remedies of the School District**. In the event the Material Testing Consultant commits or permits an event of default, the School District may, in its sole discretion, exercise one or more of the following remedies in addition to or in lieu of the termination remedy provided in Paragraph 14.1:

(a) terminate this Contract in part only, in which case the Material Testing Consultant shall be obligated to perform this Contract to the extent not terminated; or

(b) perform (or cause a third party to perform) the Services and this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the School District. The Material Testing Consultant shall be liable to the School District for all sums paid by the School District and all expenses incurred by the School District (or a third party) pursuant to this Paragraph 14.4, together with interest at the statutory legal rate of 6% permitted in the Commonwealth of Pennsylvania thereon from the date of the School District's incurring of such costs. The School District shall not in any event be liable for inconvenience, expense, or other damage incurred by the Material Testing Consultant by reason of such performance or paying such costs or expenses, and the obligations of the Material Testing Consultant under this Contract shall not be altered or affected in any manner by the School District's exercise of its rights under this Section 14; or

(c) withhold, or offset against, any funds payable to or for the benefit of the Material Testing Consultant; or

(d) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of the Material Testing Consultant; or

(e) exercise any other right or remedy it has or may have at law, in equity, or under this Contract; and,

(f) in addition to, and not in lieu of, the foregoing remedies, the School District shall have the right to stop the Services or any portion thereof in the event the Material Testing Consultant fails to remedy any defects in any of the Services, or commits or permits any other event of default, following written notice by the School District, or fails to carry out any portion of the Services in accordance with this Contract, by issuing its written Stop Work Order, which shall be signed by the Executive Director or

Operations Manager of Capital Programs. Any Stop Work Order shall state in reasonable detail the cause(s) for its issuance. Upon receiving a stop work order, the Material Testing Consultant shall immediately cease working on that portion of the Services specified in the Stop Work Order until the School District notifies the Material Testing Consultant in writing that the cause for the Stop Work Order has been eliminated, and directs the Material Testing Consultant in writing to resume the Services. The Material Testing Consultant shall resume the Services immediately upon receipt of such written notice from the School District.

14.4.1 **Specific Performance.** The Material Testing Consultant's Work represents unique services not otherwise readily available to the School District. Accordingly, the Material Testing Consultant acknowledges that, in addition to all other remedies, the School District shall have the right to enforce the terms of this Contract by a decree of specific performance or an injunction, or both, restraining a violation, or attempted or threatened violation, of any term, covenant or condition set forth in this Contract.

14.5 **Concurrent Pursuit of Remedies; No Waiver or Duty to Exercise.** The School District may exercise any or all of the remedies set forth in this Section 14, each of which may be pursued separately or in connection with such other remedies as the School District, in its sole discretion, shall determine. No extension or indulgence granted to the Material Testing Consultant shall operate as a waiver of any of the School District's rights in connection with this Contract. The rights and remedies of the School District as described in this Section 14 and elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the School District under this Contract, at law, or in equity. Nothing contained in this Section 14 shall create a duty on the part of the School District to exercise any rights granted to it hereby for the benefit of the School District, or for the benefit of the Material Testing Consultant, or any person or entity other than the School District.

Section 15. Certification Regarding Debarment, Suspension and Ineligibility.

15.1 **Certification.** By signing this Contract, in addition to binding itself to the terms and conditions of this Contract, the Material Testing Consultant hereby certifies for itself, its principals and including, without limitation, its Subcontractors, if any, that none of them, nor any other person controlling, controlled by, or under common control with, the Material Testing Consultant, are presently debarred, suspended, proposed for debarment, declared ineligible for contracts, bids, requests for proposals or contract awards, or voluntarily excluded from performing the services under this Contract by any Federal government or Commonwealth of Pennsylvania or City department or agency or any school district.

15.2 **Explanation.** In the event the Material Testing Consultant is unable to certify to any of the statements in the above certification, the Material Testing Consultant shall provide **an immediate written explanation** to the School District administrator named in Paragraph 7.1 of this Contract.

15.3 **Notice.** The Material Testing Consultant shall provide **immediate written notice** to the School District administrator named in Paragraph 7.1 of this Contract if at any time, during the term of this Contract, the Material Testing Consultant learns that the above certification was erroneous when the Material Testing Consultant signed this Contract or subsequently became erroneous by reason of changed circumstances.

15.4 **Remedies.** If the Material Testing Consultant is unable to certify to any statements in the above certification, or has falsely certified, then in that event the School District, at its sole discretion, may immediately terminate this Contract without any liability or obligation of the School District to the Material Testing Consultant, and the Material Testing Consultant shall reimburse the School District for any and all reasonable costs incurred by the School District as a result of any investigation by the Federal government or the Commonwealth of Pennsylvania or the City concerning the Material Testing Consultant's compliance with the terms and conditions of this Contract that results in the debarment or suspension of the Material Testing Consultant.

15.5 **Compensation.** If the compensation paid to the Material Testing Consultant is derived from Federal government or Commonwealth of Pennsylvania grant funds, the Material Testing Consultant must bill the School District for any outstanding compensation owed to the Material Testing Consultant within thirty (30) days after the ending date of this Contract, as set forth in Section 2 (**Term of Contract**). In the event the Material Testing Consultant does not bill the School District for the balance of any compensation within said 30-day time period, the School District, in its sole discretion, reserves the right to withhold payment of the balance of the compensation to the Material Testing Consultant because of the unavailability of federal government or Commonwealth of Pennsylvania funds, in which event the School District shall not be liable to the Material Testing Consultant for the balance of the compensation.

15.6 **Survival.** This Section 15 shall survive termination of this Contract.

Section 16. Miscellaneous Provisions.

16.1 **Notices.** Any notice or communication required or permitted to be given under this Contract shall be given in writing, and shall be personally delivered by hand with receipt obtained, by a national overnight express carrier (e.g., Federal Express, Express Mail), by facsimile (with copy by registered or certified United States mail, return receipt requested, postage prepaid), or by registered or certified United States mail, return receipt requested, postage prepaid, addressed as follows:

IF TO SCHOOL DISTRICT:

Attn.: Meka Perez, Operations Manager
The School District of Philadelphia
Office of Capital Programs
440 North Broad Street, Suite 371
Philadelphia, PA 19130-4015
Telephone number: (215) 400-4730
Facsimile number: (215) 400-4731

IF TO MATERIAL TESTING CONSULTANT:

Attn.: _____

Telephone number: _____
Facsimile number: _____

If mailed, such notice or communication shall be deemed to have been given on actual receipt by the intended recipient.

16.2 **Governing Law.** This Contract and all disputes arising under this Contract shall be governed, construed, and decided in accordance with the substantive laws of the Commonwealth of Pennsylvania.

16.3 **Forum; Consent to Jurisdiction.** The parties agree that when any dispute between the parties cannot be amicably resolved and resort is made to legal action, any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in a federal or state court of competent jurisdiction in and only in Philadelphia County, Pennsylvania. It is the express intent of the

parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in this forum. The parties further agree not to raise any objection, as to forum or venue, to any lawsuit, action, claim, or legal proceeding which is brought in this forum, and the parties expressly consent to the jurisdiction and venue of this forum.

16.4 **Contract Documents: Order of Precedence.** The Contract Documents shall consist of the following: this Contract, Exhibits A-G to this Contract, and the Proposal (as modified hereby). In the event of conflict or variance between the body of this Contract (Sections 1-16) and any other document comprising the Contract Documents, this Contract shall govern. Conflicts and variances among the documents comprising the Contract Documents shall be resolved by giving precedence in the following order: This Contract, the Exhibits, and the Proposal.

16.5 **School District Liability, Responsibility or Risk of Loss.** Notwithstanding any other provisions of this Contract or any Addenda or Exhibits to the contrary, the School District, its officers, employees and agents and members of the School Reform Commission and the Board of Education retain their statutory governmental, official and any other immunity as provided pursuant to the Applicable Law, including 42 Pa C.S.A. §§8501 and 8541 et seq., and do not waive the defenses of governmental and official immunity derived from such laws. The Material Testing Consultant acknowledges that the School District:

- (a) Is a local agency, as defined in 42 Pa. C.S.A. §8501, §8541, and,
- (b) Does not waive, for itself or for its officers, employees, or agents, or for the members of the School Reform Commission and Board of Education, the defenses of statutory governmental or official immunity or any other defenses or immunities available to it or any of them.

The School District does not waive for itself or for its officers, employees, agents, or for the members of the School Reform Commission and Board of Education, any other defenses or immunities available to it or any of them.

16.6 **Compliance with Laws and Regulations.** All services performed and documents prepared by the Material Testing Consultant shall strictly conform to all federal, state, and local laws, statutes, codes, and ordinances and the applicable rules, regulations, policies, methods and procedures of the School District and all governmental bodies, boards, bureaus, offices, commissions, and other agencies.

16.7 **Publicity.** Neither the School District nor the Material Testing Consultant shall publicize this Contract or the Services, or attribute any comments or views about this Contract or the Services to employees or agents or officials of the other party, by press conference, press release, advertising or public relations materials without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that nothing in this Paragraph 16.7 shall be construed to prohibit either party from making any disclosure relating to this Contract or Services that is required under federal or state securities laws or state or local election laws, or to prohibit either party from publicizing, with reasonable prior notice to the other party, the fact that this Contract has been entered into, the subject matter of this Contract, or the amount of this Contract. Except as may be required for its performance of this Contract, or as mutually agreed by the School District and the Material Testing Consultant, the Material Testing Consultant shall refer all press and public inquiries regarding the Project to the School District's designated representative during the term of this Contract. At any time thereafter, the Material Testing Consultant may respond to press and public inquiries regarding the concept and design of the Project following notice to the School District's designated representative. During the term of this Contract, the Material Testing Consultant shall provide reasonable assistance to the School District in public relations activities, and shall prepare appropriate information for, and when requested, attend public meetings regarding the Project.

16.8 **General Publication Rights.** The Material Testing Consultant agrees with regard to publication of reports, studies, or other works developed in the course of this Contract as a result thereof, that the publication will not contain information supplied to the Material Testing Consultant by the School District which is confidential, or which identifies students, employees, or officers of the School District by name without first obtaining their written consent. The School District shall be allowed to review and suggest revisions to any proposed publication in which it is named for thirty (30) calendar days prior to submission for publication. Title to and the right to determine the disposition of any copyrights and copyrightable materials first produced by the Material Testing Consultant as a result of performance of this Contract shall remain with the Material Testing Consultant.

16.9 **Conflict of Interest.**

16.9.1 **Disclosure of Conflict of Interest.** The Material Testing Consultant represents, warrants and covenants that it has no public or private interest which does or may conflict in any manner with the performance of the Work and that neither it, nor any of its directors, officers, members, partners, employees or Subconsultants, has or shall during the Term acquire, directly or indirectly, any such interest. The Material Testing Consultant shall promptly and fully disclose to the School District's Contract Administrator all interests which may constitute such a conflict.

16.9.2 **Improper Gift; Improper Relationship.** The Material Testing Consultant represents, warrants and covenants that it has not directly or indirectly offered or given and shall not directly or indirectly offer or give any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any School District employee who participated in the decision to authorize or enter into this Contract. The Material Testing Consultant 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 Material Testing Consultant, has a direct or indirect investment worth \$1,000 or more in the Material Testing Consultant or is a director, officer, partner, trustee or employee of the Material Testing Consultant.

16.10 **School District Officers and Employees Not to Benefit.** The Material Testing Consultant 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 Material Testing Consultant shall comply with the School District Vendor Code of Ethics, and also, to the extent applicable, with the School District's Code of Ethics for School District officers and employees. The Material Testing Consultant shall disclose to the School District, with each invoice submitted, the name(s) of each School District official(s) or employee(s) who receive payment from the Material Testing Consultant, the amount such official or employee receives and the services rendered by the official or employee in consideration of the payment. Any fees or compensation paid by the Material Testing Consultant to the School District officials or employees in violation of School District policy and Applicable Law shall be recoverable from the Material Testing Consultant as damages.

16.11 **Non-Solicitation.** Neither party shall solicit the employment of any employee of the other party who has been assigned responsibilities under this Contract for the period of twelve (12) months following termination of responsibilities of each such employee. The School District agrees that it will not, directly or indirectly, for any reason, either during the term of this Contract or for a period of twelve (12) months after the termination of this Contract, without regard to the reason for termination, engage, utilize, or employ any employee or subconsultant of the Material Testing Consultant.

16.12 **Assignment of Material Testing Consultant's Employees.** The Material Testing Consultant agrees not to assign any person dismissed from School District employment to perform services under this Contract. The Material Testing Consultant further agrees to reassign immediately any person the School District finds unacceptable or incapable of performing contractual requirements.

16.13 **Background Checks.**

16.13.1 Required Background Checks. In accordance with 24 P.S. §1-111, as amended, and 23 Pa. C.S.A. §§6303, 6344 and 6354-6358, as amended, before starting any Services under this Contract, the Material Testing Consultant shall submit to the School District for the Material Testing Consultant, if the Material Testing Consultant is an individual, and for each of the Material Testing Consultant's and any of its Subconsultant's employees, officers, agents, servants, or Subconsultants who may have direct contact with children, as defined by 23 Pa. Cons. Stat. Ann. §6303(a), as amended, while performing any of the Services under this Contract, 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 Investigations 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, Employment History Review, as amended) and all relevant matters and materials disclosed.

16.13.2 Current; Direct Contact; Failure to Provide. For purposes of Subparagraph 16.13.1, "current" means processed by the issuing agency or organization within 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, 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 with children, the School District shall have the right, at any time and in its sole discretion, to require the Material Testing Consultant to deliver new reports, certifications, clearances or certificates as required by the more restrictive of School District policies, or Applicable Law, and the Material Testing Consultant shall comply promptly with any such request. If the Material Testing Consultant fails to deliver any such report, clearance, certification or certificate on behalf of the Material Testing Consultant, if an individual, or on behalf of any individual officer, employee, director or Subconsultant, then each such individual may not and shall not carry out any of the Services unless and until the Material Testing Consultant delivers that individual's report, clearance, certification or certificate to the School District.

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

16.13.4 The Material Testing Consultant's failure to comply with any requirement of 24 P.S. §1-111, as amended, and 23 Pa. C.S.A. §§6344 and 6354 through-6358 shall be deemed a material breach of this Contract, thereby giving the School District the right, at its sole discretion, to immediately terminate this Contract with no further obligation or responsibility on the part of the School District.

16.14 Successors and Assigns. The School District and the Material Testing Consultant, respectively, bind themselves, their heirs, executors, administrators, successors, permitted assigns and legal representatives to the other party to this Contract, and to the heirs, executors, administrators, successors, permitted assigns and legal representatives of such other party with respect to all covenants of this Contract. The parties hereto bind themselves, their heirs, executors, administrators, successors, permitted assigns and legal representatives for the faithful performance of this Contract.

16.15 Examination of Records. The Material Testing Consultant agrees, upon request and without expense to the School District, to make available its books and records concerning charges, fees and costs under this Contract, in the administrative offices of the School District, for inspection by

appropriate School District agents. The Material Testing Consultant agrees that the School District shall, until the expiration of three (3) years after final payment under this Contract or five (5) years after termination of this Contract, whichever is later, have access to and the right to examine and copy directly pertinent books, documents, papers and records of the Material Testing Consultant directly related to this Contract which have not been previously delivered to the School District. The period of access and examination for records shall continue during any litigation and until the settlement of claims arising out of the performance of this Contract.

16.16 Survival. Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination, including, without limitation, the following:

- (a) Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract;
- (b) The Material Testing Consultant's representations and covenants set forth herein;
- (c) Section 6, **Compensation and Payment;**
- (d) Section 9, **Indemnification;**
- (e) Section 11, **Confidentiality;**
- (f) Section 12, **Disputes;**
- (g) Section 14, **Termination;**
- (h) Section 15, **Certification regarding Debarment, Suspension and Ineligibility;**
- (i) Paragraph 16.2, **Governing Law;**
- (j) Paragraph 16.3, **Forum; Consent To Jurisdiction;** and
- (k) Paragraph 16.4, **Contract Documents; Order of Precedence.**

16.17 Taxes.

16.17.1 City of Philadelphia Taxes. The Material Testing Consultant may incur liability for payment of one or more of the following taxes levied by the City of Philadelphia; (a) Mercantile License Tax; (b) Net Profits Tax; (c) City Wage Tax; and (d) Business Privilege Tax. The Material Testing Consultant, if not already paying any such taxes, shall promptly apply to the City of Philadelphia, Department of Revenue, for a tax account number and shall file the appropriate business tax returns as provided by law.

16.17.2 Sales and Use Tax. The Material Testing Consultant agrees to execute all documents requested by the School District or its representative, and to provide prompt access to the School District or its representative, to all documents of the Material Testing Consultant and its Subconsultants related to the Services performed on the Project, to assist the School District in making a claim or filing a petition for a refund of sales and/or use tax. The Material Testing Consultant hereby assigns to the School District all of its right, title and interest in any sales or use tax paid or reimbursed by the School District that may be refunded as a result of any documentation, services, labor, supplies, tools, materials, or equipment purchased in connection with this Contract. The Material Testing Consultant authorizes the School District, in its own name or the name of the Material Testing Consultant, to file a claim for a refund of any sales or use tax subject to this assignment. Likewise, the School District hereby assigns to the Material Testing Consultant all of its right, title and interest in any sales or use tax paid by the Material Testing Consultant and not reimbursed by the School District that may be refunded as a result of any documentation, services, labor, supplies, tools, materials, or equipment purchased in connection with this Contract, and agrees to file, or at the School District's option, cooperate in the Material Testing Consultant's filing of, a claim for a refund of any sales or use tax subject to this assignment.

16.17.3 School District Tax Exemption. Notwithstanding any other provision of this Contract or the Exhibits to the contrary, the School District represents that it is a tax-exempt organization and is therefore not subject to taxes arising out of this Contract or the Material Testing Consultant's

performance under this Contract. In the event, however, that the Material Testing Consultant is assessed or levied any taxes, fees, or similar charges related to this Contract or the Material Testing Consultant's performance hereunder (except income or corporate taxes assessed against or levied on the Material Testing Consultant), the School District agrees to cooperate fully with the Material Testing Consultant, at School District expense, in any administrative actions or legal proceedings with the appropriate taxing authorities. If a final judgment is entered against the Material Testing Consultant relating to the payment of such taxes, fees, or charges, the School District agrees to indemnify the Material Testing Consultant for the amount thereof, including any penalties incurred in such review or contest. In no event shall the Material Testing Consultant be exposed to any liability for the payment or nonpayment of any such taxes, charges, or fees.

16.18 **Tax Compliance.** It is the policy of the School District to ensure that firms, businesses and other legal entities receiving School District contracts are current in their payment of City of Philadelphia ("City") taxes and School District taxes or other indebtedness owed to the City or the School District, including but not limited to taxes collected by the City on behalf of the School District, at the time of contract award. Pursuant to SRC Resolution SRC-2 dated February 21, 2013, the School District's SRC has adopted a Tax Compliance of Vendors Policy which provides that generally, the SRC will not authorize the award of a School District contract to a firm, business or other legal entity that is delinquent in its payment of City or School District taxes or other indebtedness owed to the City and/or the School District at the time of contract award.

16.18.1 All firms, businesses and other legal entities (hereafter called "Contractor") receiving a School District contract shall comply with all of the terms and conditions of the Tax Compliance of Vendors Policy.

16.18.2 **Tax Indebtedness Representation, Warranty and Covenant.**

(A) The Contractor represents, warrants and covenants to the School District that the Contractor and any other person controlling, controlled by, or under common control with the Contractor are not currently indebted to the City or the Commonwealth of Pennsylvania for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District) for which no written settlement agreement or payment plan with the City, or the Commonwealth of Pennsylvania, as the case may be, has been executed and delivered.

(B) The Contractor further represents, warrants and covenants to the School District that the Contractor and any other person controlling, controlled by, or under common control with the Contractor will not at any time during the term of this Contract (including any extensions or renewals thereof) be indebted to the City or the Commonwealth of Pennsylvania for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District), liens, judgments, fees or other debts for which no written settlement agreement or payment plan with the City of Philadelphia, or the Commonwealth of Pennsylvania, as the case may be, has been executed and delivered.

16.18.3 **Proof of Tax Compliance.**

(A) During the duration of any School District contract, the Contractor shall provide proof of its tax compliance in the form of a "Certificate of Tax Clearance" to the School District, at the School District's written request, in the sole discretion of the School District.

16.18.4 **Satisfactory Arrangement, Settlement Agreement or Payment Plan with City.**

(A) The Contractor agrees to provide written proof to the School District of any satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City or the School District.

(B) The Contractor shall continue to comply with said City satisfactory arrangement, settlement agreement or payment plan during the duration of any School District contract.

16.18.5 Agreement to Set off or Offset for Delinquent Tax or other Indebtedness.

(A) The Contractor agrees that the School District may set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or the School District against any School District payment or payments due under any School District contract.

(B) In addition to any other rights or remedies available to the School District at law or in equity, the Contractor acknowledges and agrees that the School District may set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or the School District against any School District payment or payments due under any School District contract if the Contractor breaches the tax indebtedness representation, warranty and covenant, and such breach is not resolved, to the School District's satisfaction, within a reasonable time frame specified by the School District in writing.

16.18.6 Agreement to Withholding of Contract Payment.

(A) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is delinquent in its payment of City or School District tax or taxes or other indebtedness owed to the City or the School District.

(B) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is delinquent in its payment of City or School District tax or taxes or other indebtedness owed to the City or the School District, and the Contractor has not entered into a satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District tax or taxes or other indebtedness owed to the City or the School District.

(C) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is in default of any satisfactory arrangement, settlement agreement or payment plan with the City.

(D) In addition to any other rights or remedies available to the School District at law or in equity, the Contractor acknowledges and agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor breaches the tax indebtedness representation, warranty and covenant, and such breach is not resolved, to the School District's satisfaction, within a reasonable time frame specified by the School District in writing.

(E) The Contractor agrees that the School District may continue withholding payment or payments due to the Contractor under any School District contract until the City Revenue Department notifies the School District that the Contractor is tax compliant.

16.18.7 Good Faith Contest.

(A) The Contractor shall be permitted to, in good faith, contest the amount of any Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District.

(B) The Contractor shall diligently and expeditiously proceed to resolve the matter with the City, or the Commonwealth of Pennsylvania, as the case may be, in order to reach a

satisfactory settlement agreement or payment plan with the City, or the Commonwealth of Pennsylvania, as the case may be.

(C) The Contractor shall expeditiously pay all uncontested obligations.

16.18.8 Termination of Contract.

(A) Termination for Convenience. The School District, at its sole discretion, may terminate any School District contract for its convenience, at any time, upon fourteen (14) days prior written notice to the Contractor of the School District's intention to terminate said contract ("Termination Notice"), and without penalty, cost or liability to the School District, provided the Contractor is:

(i) delinquent in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(ii) the Contractor has not contested the amount of the Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(iii) the Contractor has not entered into or executed any satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Pennsylvania or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District; or

(iv) the Contractor is in default of any satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Pennsylvania or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District.

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

(i) the Contractor is delinquent in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(ii) the Contractor has not contested the amount of the Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(iii) the School District has requested in writing that the Contractor enter into or execute a satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Pennsylvania or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District, and the Contractor has willfully or in bad faith refused or declined to comply with said School District request; or

(iv) the School District has requested in writing that the Contractor cure its default of any satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Pennsylvania or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the

Commonwealth of Pennsylvania, City or the School District, and the Contractor has willfully or in bad faith refused or declined to comply with said School District request.

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

16.19 **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.

16.20 **Right-to-Know Requests.** The Material Testing Consultant acknowledges and agrees that this Contract and records related to or arising out of this Contract remain subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 Pa. Stat. §§67.101 to 67.3104. If the Commonwealth of Pennsylvania or the School District need the Material Testing Consultant's assistance in any matter arising out of the Pennsylvania Right-to-Know Law related to this Contract, the Commonwealth of Pennsylvania or the School District shall notify the Material Testing Consultant using the contact information provided in the Contract. The Material Testing Consultant, at any time, may designate a different contact for such purpose upon reasonable prior notice to the Commonwealth of Pennsylvania and the School District.

16.21 **Act 126 Child Abuse Recognition, etc., Training.** Before starting any Services, the Material Testing Consultant shall submit to the School District for the Material Testing Consultant, if the Material Testing Consultant is an individual, and for each of the Material Testing Consultant's employees, officers, agents, servants, and Subcontractors, if any, who may have direct contact with children, as defined by 23 Pa. Cons. Stat. Ann. §6303(a), as amended, while performing any of the Services, a copy of the certificate of completion of Mandated Reported Training as required by Act 126 of 2012, codified at 24 Pa. Stat. §12-1205.6.

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

16.23 **Disaster Recovery; Business Continuity.** The Material Testing Consultant 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 Material Testing Consultant's business operations so as to minimize any interruption of the Services to the School District.

16.24 **Authority to Execute Contract.** The Material Testing Consultant and the School District each represents and warrants that it has caused this Contract to be duly authorized, executed, and delivered by and through persons authorized to execute this Contract on its behalf.

16.25 **No Third Party Beneficiaries.** Nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the Material Testing Consultant and the School District, any rights, remedies, or other benefits under or by reason of this Contract. Nothing contained in this Contract shall be deemed to create any contractual relationship with, or to give a cause of action in favor of, any third party against either the School District or

the Material Testing Consultant. Nothing contained in this Contract is intended to benefit any third party. The Material Testing Consultant's Subconsultants, the Construction Management Firm, and the Prime Contractor and its subcontractors and consultants are not intended third-party beneficiaries of this Contract.

16.26 **No Waiver.**

16.26.1 No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be observed by the other shall not be construed to be a waiver of any succeeding breach thereof, or of any other covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Contract shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity, or otherwise.

16.26.2 No term or provision hereof shall be deemed waived by the parties, unless such waiver or consent shall be in writing signed by both parties. No breach shall be excused, unless the agreement to excuse that breach is in writing signed by the non-breaching party.

16.27 **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.*

16.28 **Contract Drafted by All Parties.** This Contract is the result of arms-length negotiations between the parties, and shall be deemed to have been drafted by both parties, and any ambiguities in this Contract shall accordingly not be construed against either party.

16.29 **Severability and Partial Invalidity.**

16.29.1 The provisions of this Contract shall be severable. If any provision of this Contract, or the application thereof, for any reason or circumstance, is to any extent held to be invalid or unenforceable, the remaining provisions of this Contract (as well as the application of all provision(s) that were held to be invalid or unenforceable to persons or entities other than those as to which they were held invalid or unenforceable) shall not be affected or impaired thereby; and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

16.29.2 If any of the provisions of this Contract are determined to be invalid, then such invalidity shall not affect or impair the validity of the other remaining provisions, which shall be considered severable, and shall remain in full force and effect.

16.30 **Entire Contract.** This Contract, which includes all Exhibits referred to herein, contains the entire and integrated contract between the parties with respect to the subject matter hereof; supersedes all prior negotiations, representations, contracts, and undertakings, either written or oral, between the parties with respect to such subject matter; and cannot be changed, modified or amended except by contract in writing signed by both parties. No amendment or modification changing its scope or terms shall have any

force or effect, unless it is in writing and signed by both parties. This Contract shall not be superseded by any provision of the documents for construction.

REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have executed this Contract as of the Effective Date.

By: _____
Name: _____
Title: _____

SCHOOL DISTRICT OF PHILADELPHIA

By: _____
Name: TONY B. WATLINGTON, Sr., Ed.D.
Title: Superintendent

Approved as to Form:

Dawn R. Chism
Attorney for
SCHOOL DISTRICT OF PHILADELPHIA

Pre-Audit Approval

SCHEDULE “G”
ELECTRONIC DATA REQUIREMENTS

General Requirements:

- a. Lead Consultant and Sub-Consultants shall provide at a minimum, the following to its staff:
- i. **Computer:** Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher.
 - ii. **Computer Operation System:** Windows 7 or later, OSX v10.8 or later
 - iii. **Web Browser:** Microsoft Edge 91 or later, Google Chrome* 99 or later, Mozilla Firefox* 91 or later, Safari 14 or later
 - iv. **Work and Spreadsheet Processors:** Microsoft Office Word, Excel and Outlook
 - v. **Scheduling Software:** Microsoft Project or Primavera
 - vi. **Internet Service Provider:** A reliable ISP in the area of the Project
 - vii. **Connection Speed/Minimum Bandwidth:** DSL, ADSL or T1 Line for transferring a minimum of 3 Mbps Downstream and 512 Kbps Upstream
- b. Lead Consultant and Sub-Consultants shall provide its management personnel assigned to this Project with access to personal computers and the Internet on a daily basis.

Project Web Requirements:

- a. This project will utilize a web based project management tool called e-Builder®. This web based application is a collaboration tool, which will allow all project team members continuous access through the Internet to important project data as well as up to the minute decision and approval status information.
- b. Lead Consultant and Sub-Consultants shall conduct Project controls, outlined by the Owner, Development Manager, and Construction Manager, utilizing e-Builder®. **Access to this designated web based application will be provided to the Lead Consultant and SubConsultant by the District at no cost.** No additional software will be required. Furthermore, the Development Manager will assist Lead Consultant in providing training of Sub-Consultant’s personnel.
- c. Lead Consultant and Sub-Consultants shall have the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully apprised of Project developments, for correspondence, assigned tasks and other matters that transpire on the site. These may include but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Owner Variation Directives, Potential Variation Orders, Variation Order Requests, Variation Orders, and

the like. All supporting data including but not limited to shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety MSDS sheets, Substitution Requests and the like will be submitted in digital format via e-Builder®.

Electronic File Requirements:

- a. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Lead Consultant and Sub-Consultants shall also submit all closeout documents including all “As-Built Drawings”, catalog cuts and Owner’s Operation and Maintenance manuals in digital format. All documents (including as-built drawings) shall be converted or scanned into the Adobe Acrobat (.PDF) file format and uploaded to e-Builder®.

E-BUILDER® IMPLEMENTATION REQUIREMENTS

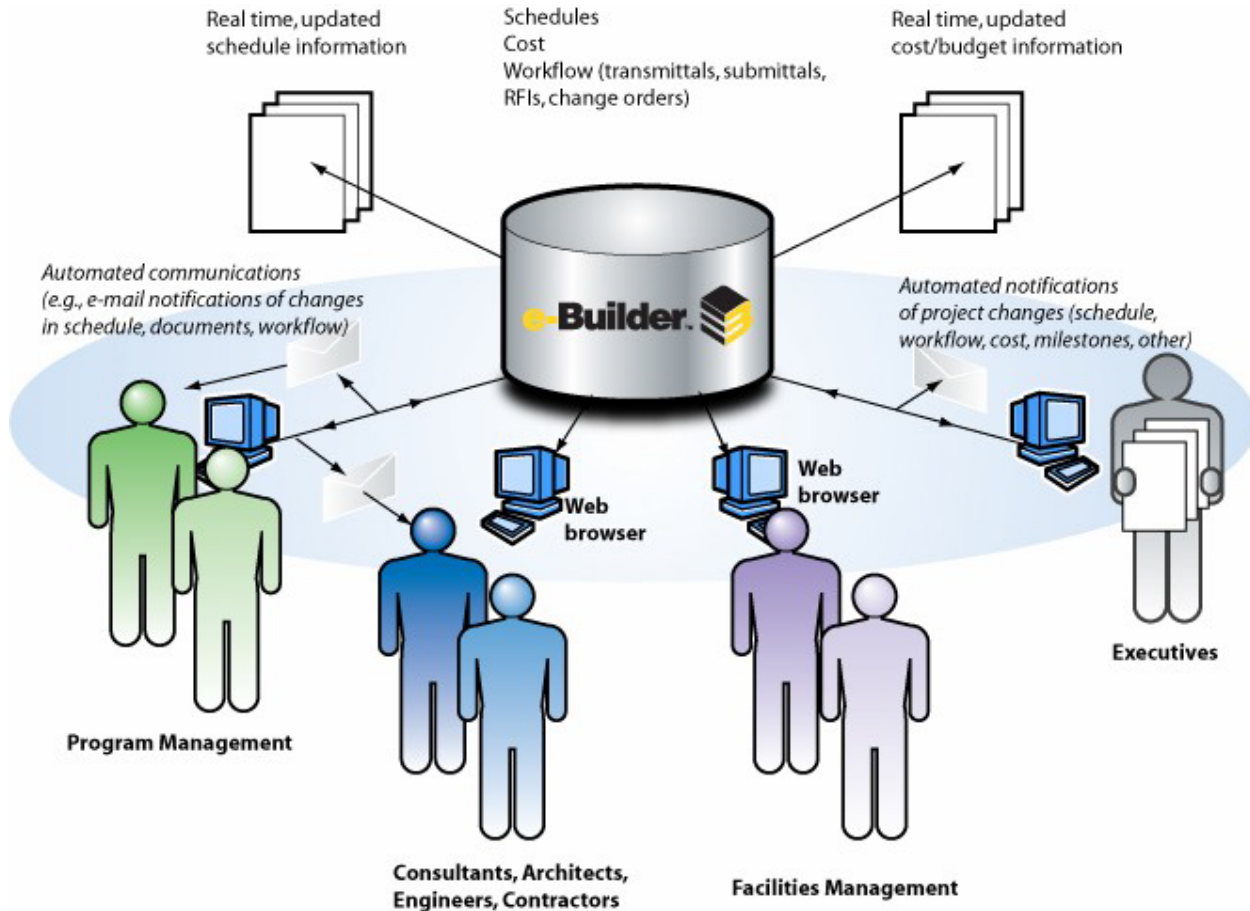
e-Builder® is a comprehensive Project and Program Management system that will be used for managing documents, communications and costs between the Lead Consultant, Sub-Consultants, Design Consultants and Owner. e-Builder® includes extensive reporting capabilities to facilitate detailed project reporting in a web-based environment that is accessible to all parties and easy to use.

Central Document Vault: e-Builder® system includes a central database that maintains all project information and manages project communications amongst team members.

Communication/Correspondence: e-Builder® provides electronic routable communication forms that provide historical tracking, documentation, and increased accountability of project members.

Project Calendars: Meetings will be scheduled and maintained centrally on e-Builder®

Reporting: All of the project and program data including documents, communications and costs are accessible through integrated on-line reports. These reporting tools are completely configurable by each user. All reports can be exported to Excel for added flexibility.



E-BUILDER LICENSING REQUIREMENTS

e-Builder® User Licenses: Each user license is for access to designated project site(s) that the individual is directly involved with and consists of unlimited data storage. Users must be direct employees of the Lead Consultant as well as its Sub-Consultants and/or Suppliers.

Each user license includes full access to e-Builder® including all of the documents and reports mentioned above. Furthermore, each user license provides the e-Builder® software as a service (SaS) including:

- All hosting, operation, maintenance and data back up of the e-Builder® software and documents which are maintained in state-of-the-art data centers located throughout the United States.
- Quarterly e-Builder® software enhancements
- Unlimited phone, email and web based support 24-hours

Request for e-Builder® User Licenses shall be made to the District who maintains access to the software.

The Lead Design Consultant is required to obtain e-Builder® user licenses for its employees and major Design Sub-Consultants as required to facilitate the communication and document flow process between the Owner, Development Manger, Construction Manager, Design Consultants, and its Sub-Consultants and/or major Suppliers.

APPENDIX H: SIGNATURE PAGE

DATE: <DATE>RFP NO.: <NUMBER>RFP FOR: <PROJECT NAME>PROPOSAL DUE DATE, TIME: <DATE>, <TIME>**OFFER:**

The undersigned hereby offers to sell to The School District of Philadelphia the commodities or services indicated in the following pages of this Proposal at the price(s) quoted, in complete conformity with all conditions, specifications, and terms set forth in the RFP. All Proposals shall remain open, valid offers for a period of <180> days from the Proposal Due Date.

The person who signs this document must have actual authority legally to bind and obligate the Proposer. A signature on this document indicates that the Proposer accepts all School District of Philadelphia terms and conditions, and that any and all other terms and conditions submitted by the Proposer are null and void, even if such terms and conditions may purport to provide to the contrary. The Proposer's signature also certifies that the Proposer has made no alterations or substitutions of any of the RFP documents.

Please direct any questions regarding this proposal to:

Name:

E-mail.:

COMPANY
NAME:AUTHORIZED
SIGNATURE:

NAME: _____ TITLE: _____

ADDRESS:

(CITY) _____ (STATE) _____ (ZIP) _____

TELEPHONE: _____ FAX: _____

APPENDIX I: EQUAL OPPORTUNITY IN HIRING

EQUAL OPPORTUNITY: NON-DISCRIMINATION IN HIRING/ NON-DISCRIMINATING CONTRACTING

NOTICE

The Proposer or Contractor shall not discriminate, nor permit discrimination, against any person because of race, color, religion, age, national origin, ancestry, creed, handicap, sexual orientation, actual or perceived gender identity or expression, marital status, pregnancy, union membership, disability, disabled or Vietnam era veteran status, or limited English proficiency, or other protected classification in the performance of the Work or the Contract, including, but not limited to, carrying out any of the Work, or the preparation, manufacture, fabrication, installation, erection and delivery of all supplies and equipment. In the event of receipt of evidence of such discrimination by the Proposer or Contractor or its agents, employees, subcontractors or representatives, the School District shall have the right to terminate negotiations or the Contract. In the event that the Proposer or Contractor, after notice, continues its refusal to comply with this anti-discrimination provision, the School District may by notice remove the Proposer or Contractor from the list of approved contractors of the School District.

(Name of Firm) (Seal)

(Signature of Owner or Partner) (Seal)

APPENDIX J: NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded pursuant to this RFP. According to the Pennsylvania Anti-Bid-Rigging Act, 73 P.S. § 1611 *et seq.*, governmental agencies may require submission of Non-Collusion Affidavits with Proposals.
2. The member, officer or employee of the Proposer who makes the final decision on price(s) and the amount quoted in the Proposal must execute this Non-Collusion Affidavit.
3. Bid or Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of Proposals remain unlawful and may subject participants to criminal prosecution. The person who signs the Non-Collusion Affidavit must and shall examine the Affidavit carefully before signing, and assure himself or herself that each statement is true and accurate, making diligent inquiries, as necessary, of all other persons employed by or associated with the Proposer who have any responsibility for the preparation, approval or submission of the Proposal.
4. In the case of a Proposal submitted by a joint venture, the Proposal documents must identify clearly each party to the venture, and each such party must separately sign and submit a Non-Collusion Affidavit with the Proposal documents.
5. Individuals may not participate in any manner in the preparation or submission of Proposals on behalf of more than one legal entity. Any individual participating in the submission of a Proposal as a member of a joint venture shall not submit a Proposal in his or her individual capacity. Each Proposer shall disclose, on a separate sheet or sheets attached to the affidavit, a written description of each and every legal relationship or affiliation that it has with the shareholders, directors, officers, or employees of any other potential Proposers for this RFP.
6. The term "complementary" as used in the Affidavit has the meaning commonly associated with the term in the Request for Proposals or competitive bidding processes. This includes the knowing submission of proposals higher than the proposal of another firm; any intentionally high or non-competitive proposal; and any other form of proposal submitted for the purpose of giving a false appearance of competition.
7. **Failure to file a notarized Non-Collusion Affidavit in compliance with these instructions will result in disqualification of the Proposer and its Proposal.**

APPENDIX K: COOPERATIVE PURCHASING

INTERGOVERNMENTAL COOPERATIVE PURCHASING

Pursuant to Section 1902 of Act 57 of May 15, 1998, as amended, 62 Pa. C.S. 1902, the Commonwealth Procurement Code, local public procurement units, local municipalities, and authorities have authority to participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction, with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such a local public procurement unit is defined as: a political subdivision, public authority, tax-exempt, nonprofit educational or public health institution or organization, nonprofit fire company, nonprofit rescue company, nonprofit ambulance company and, to the extent provided by law, any other entity, including a council of governments or an area government, which expends public funds for the procurement of supplies, services and construction.

Local Public Procurement Units located within the County of Philadelphia, or as otherwise agreed by the School District and the Contractor may, at their respective discretion, avail themselves of the contract or contracts awarded by the School District, provided the Contractor then agrees.

The terms and conditions of the Contract apply in full, except that, unless identified in an Exhibit or Schedule, quantities of items identified above do not include any requirements for such Local Public Procurement Units. Their requirements, if any, will be identified by the Local Public Procurement Unit through direct communications with the Contractor. All orders, invoices, payments, and related transactions will be made directly between the Contractor and individual Local Public Procurement Units.

Proposer shall respond to the following question by initialing at the appropriate place. Responses are required but shall not affect the award of the contract.

The provisions of this Proposal or Contract; price; delivery; terms and conditions, may be extended to any and all Local Public Procurement Units on a cooperative purchasing basis for the duration of the Contract.

_____ **YES**

_____ **NO**

(Name of Firm) (Seal)

(Signature of Owner or Partner) (Seal)

APPENDIX L: VENDOR CODE OF ETHICS

THE SCHOOL DISTRICT OF PHILADELPHIA VENDOR CODE OF ETHICS

The School District of Philadelphia ("SCHOOL DISTRICT"), through its Office of Procurement Services ("OPS"), is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards and enjoys the complete confidence of the public. To achieve these purposes, OPS requires each Contractor who seeks to do business with the SCHOOL DISTRICT to subscribe to this Vendor Code of Ethics.

- ☐ A Proposer's bid or proposal will be competitive, consistent and appropriate to the bid documents.
- ☐ A Proposer will not discuss or consult with other Proposers intending to bid on the same contract or similar SCHOOL DISTRICT contract for the purpose of limiting competition.
- ☐ A Proposer will not disclose the terms of its bid or proposal, directly or indirectly, to any other competing Proposer prior to the closing date for bids or proposals.
- ☐ A Proposer will not make any attempt to induce any individual or entity to submit or not to submit a bid or proposal.
- ☐ A Contractor will completely perform any contract awarded to it at the contracted price pursuant to the terms set forth in the contract.
- ☐ A Contractor will submit timely, accurate and appropriate invoices for goods and/or services actually performed under the contract.
- ☐ A Contractor will properly, accurately and fairly record all financial transactions with the SCHOOL DISTRICT in its books, journals, ledgers and/or other appropriate records.
- ☐ A Contractor will not offer or give any gift, item or service of value, directly or indirectly, to an SCHOOL DISTRICT employee, Board of Education (the "Board") member, SCHOOL DISTRICT consultant or contractor employed in connection with the subject matter of the bid or proposal or to any member of their immediate families. This restriction also applies to any family member, employee, BOARD member, SCHOOL DISTRICT consultant and/or contractor employed in connection with SCHOOL DISTRICT.
- ☐ A Contractor will not, without the prior written consent of the SCHOOL DISTRICT, initiate, negotiate or render an offer of employment to any SCHOOL DISTRICT employee who is directly concerned with, or personally participating on behalf of the SCHOOL DISTRICT with respect to any procurement or other matter involving the Contractor.
- ☐ A Contractor will not cause, influence or attempt to cause or influence any SCHOOL DISTRICT employee or BOARD member: (i) in any member which might tend to impair his/her objectivity or independence of judgment; or (ii) to use or attempt to use his/her official position to secure any unwarranted privileges or advantage for that Contractor or for any other person.
- ☐ A Contractor will comply with the SCHOOL DISTRICT's Anti-Discrimination Policy regarding inclusion of Small Women/Minority Owned Businesses in School District contracts.

(Name of Firm) (Seal)

(Signature of Owner or Partner) (Seal)

APPENDIX M: VENDOR TAX COMPLIANCE POLICY

1. It is the policy of the School District of Philadelphia that a competitive process is required for all contracts over \$22,500 unless (a) the School District is required by law to enter into a contract regardless of tax compliance; or (b) there is a strong countervailing reason approved by the Deputy Superintendent or the Chief Operating Officer, and the Board of Education is notified at the time of the approval.
2. It is the policy of the School District to ensure that firms, businesses and other legal entities receiving School District contracts are current in their payment of City of Philadelphia ("City") taxes or other indebtedness owed to the City, including but not limited to taxes collected by the City on behalf of the School District, at the time of the contract award.
3. Whenever a proposed Contractor, bidder, responder or contracting party is awarded a contract, the Contractor, bidder, responder or contracting party shall produce to the School District a Certificate that the Contractor, bidder, responder or contracting party is compliant with any tax obligations or an Affidavit that the Contractor, bidder, responder or contracting party is not subject to or liable for any City or School District taxes or other indebtedness owed to the City and/or the School District.
4. Generally, the Board of Education ("BOARD") of the School District will not authorize the award of a School District contract to a firm, business or other legal entity that is delinquent in its payment of City or School District taxes or other indebtedness owed to the City and/or the School District at the time of the contract award.
5. The BOARD reserves the right or option to award a School District contract to the apparent lowest or successful Contractor, bidder, responder or contracting party who does not provide a Certificate of Tax Clearance to the School District if the BOARD determines, in its sole discretion, that award of the contract to the apparent lowest or successful vendor, bidder, responder or contracting party is in the best interest of the School District, or required under applicable Federal or State laws, regulations or rulings. The BOARD also reserves the right or option to set off or offset the amount of any City taxes or other indebtedness owed to the City and/or School District against any payment or payments due to the apparent lowest or successful vendor, bidder, responder or contracting party under any contract with the School District.
6. The BOARD or the School District reserves the right or option to set off or offset the amount of any City taxes or other indebtedness owed to the City and/or the School District against any payment or payments due to a firm, business or legal entity under any contract with the School District.
7. The BOARD may authorize the award of a School District contract to a firm, business or other legal entity that is delinquent in its payment of City or School District taxes or other indebtedness owed to the City and/or the School District at the time of the contract award, if the BOARD determines, in its sole discretion, that award of the contract of the firm, business or other legal entity is in the best interest of the School District, or required under applicable Federal or State laws, regulations or rulings.
8. The BOARD, in its sole discretion, may authorize the award of a School District contract to a firm, business or other legal entity that is delinquent in its payment of City or School District taxes or others indebtedness owed to the City and/or the School District at the time of contract award and that has entered into a satisfactory arrangement with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City and/or the School District. The

firm, business or other legal entity must provide written proof of this satisfactory arrangement with the City before the authorization of the award of the contract.

9. The Chief Financial Officer will be responsible for monitoring and overseeing the School District's implementation and enforcement of the Tax Compliance of Vendors Policy.

New Tax Compliance Provisions

RFPS, RFQs and Bids

Tax Compliance. It is the policy of the School District of Philadelphia ("School District") to ensure that firms, businesses and other legal entities receiving School District contracts are current in their payment of City of Philadelphia ("City") taxes and School District taxes or other indebtedness owed to the City or the School District, including but not limited to taxes collected by the City on behalf of the School District, at the time of contract award. Pursuant to SRC Resolution SRC-2 dated February 21, 2013, the School District's School Reform Commission ("SRC") has adopted a Tax Compliance of Vendors Policy which provides that generally, the SRC will not authorize the award of a School District contract to a firm, business or other legal entity that is delinquent in its payment of City or School District taxes or other indebtedness owed to the City and/or the School District at the time of contract award. Attached is the Tax Compliance of Vendors Policy.

1. Comply with Tax Compliance Policy. All firms, businesses and other legal entities wanting to receive a School District contract or receiving a School District contract shall comply with all of the terms and conditions of the Tax Compliance of Vendors Policy.
2. Check for Tax Compliance Before School District Contract Award.
 - A. Before submitting a Proposal, Quotation, Quote or Bid, the Proposer, Contractor or Bidder shall check its tax compliance status with the City Revenue Department Tax Clearance Unit by going to the City Revenue Department website for tax compliance system (<https://tax-services.phila.gov/>) selecting "Vendor/Contractor" as the reason for compliance, and then submitting its name, type and tax identification number.
 - B. The City Revenue Department online tax compliance system will verify the tax compliance of the Proposer, Contractor or Bidder. If the Proposer, Contractor or Bidder is in compliance, then the Proposer, Contractor or Bidder shall print out a "Certificate of Tax Clearance" and include the "Certificate of Tax Clearance" in its Proposal, Quotation, Quote or Bid.
 - C. The City Revenue Department online tax compliance system will advise the Proposer, Contractor or Bidder if it is not in compliance and how to contact the City Revenue Department to resolve non-tax compliance issues. If the Proposer, Contractor or Bidder is not in compliance, then the Proposer, Contractor or Bidder shall contact the City Revenue Department Tax Clearance Unit directly (at telephone number 215-686-6565), identify itself as a School District Contractor, and resolve the non-tax compliance issue before the BOARD authorizes the award of the School District contract.
 - D. Generally, a Proposer, Contractor or Bidder will not receive a School District contract award until it has submitted proof of its tax compliance in the form of a "Certificate of Tax Clearance" to the School District. Generally, the BOARD will

not authorize the award of a School District contract to a Proposer, Contractor or Bidder that has not submitted a "Certificate of Tax Clearance" to the School District. Generally, the School District will not enter into a contract with a Proposer, Contractor or Bidder that has not submitted a "Certificate of Tax Clearance" to the School District. Failure by a Proposer, Contractor or Bidder to include the "Certificate of Tax Clearance" in its Proposal, Quotation, Quote or Bid may make the firm, business or other legal entity a "non-responsible" Proposer, Contractor or Bidder for award of a School District contract. Failure by a Proposer, Contractor or Bidder to provide a "Certificate of Tax Clearance" to the School District within the time period required by the School District may make the Proposer, Contractor or Bidder ineligible to receive an award of a School District contract.

3. Provide Proof of City Satisfactory Arrangement, Settlement Agreement or Payment Plan; Continue to Comply with said Arrangement, Agreement or Plan.
 - A. The Proposer, Contractor or Bidder shall provide written proof to the School District of its satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City or the School District. The Proposer, Contractor or Bidder shall not receive a School District contract award until it provides written proof of said City satisfactory arrangement, settlement agreement or payment plan to the School District.
 - B. The successful Proposer, Contractor or Bidder shall be required under the awarded School District contract to continue to comply with said City satisfactory arrangement, settlement agreement or payment plan during the duration of said contract.
4. BOARD Reserves Right or Option to Award School District Contract to Non-Tax Compliant Firm, Business or Other Legal Entity.
 - A. The BOARD reserves the right or option to award a School District contract to a Proposer, Contractor or Bidder that has not submitted a "Certificate of Tax Clearance" to the School District if the BOARD determines, in its sole discretion, that award of said contract to the Proposer, Contractor or Bidder is in the best interest of the School District, or is required under applicable Federal, State or Local laws, codes, regulations or rulings.
 - B. The BOARD reserves the right or option to award a School District contract to the apparent lowest or successful Proposer, Contractor or Bidder that does not provide a "Certificate of Tax Clearance" to the School District if the BOARD determines, in its sole discretion, that award of said contract to the apparent lowest or successful Proposer, Contractor or Bidder is in the best interest of the School District, or is required under applicable Federal, State or Local laws, codes, regulations or rulings.
 - C. The BOARD reserves the right or option to award a School District contract to a Proposer, Contractor or Bidder that is delinquent in its payment of City or School District taxes or other indebtedness owed to the City or the School District at the time of contract award if the BOARD determines, in its sole discretion, that award of said contract to the Proposer, Contractor or Bidder is in the best interest of the School District, or is required under applicable Federal, State or Local laws, codes, regulations or rulings.

- D. The BOARD reserves the right or option to award a School District contract to a Proposer, Contractor or Bidder that is delinquent in its payment of City or School District taxes or other indebtedness owed to the City or the School District at the time of contract award if the Proposer, Contractor or Bidder has entered into a satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City or the School District. The Proposer, Contractor or Bidder shall provide written proof of said City satisfactory arrangement, settlement agreement or payment plan to the School District before the BOARD authorizes the award of said contract.
 - E. The BOARD reserves the right or option to award a School District contract to a Proposer, Contractor or Bidder that is in default of any satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City or the School District if the BOARD determines, in its sole discretion, that award of said contract to the Proposer, Contractor or Bidder is in the best interest of the School District, or is required under applicable Federal, State or Local laws, codes, regulations or rulings.
5. BOARD or School District Reserves Right or Option to Set Off or Offset Delinquent Tax or Other Indebtedness against Contract Payment; Agreement to said Set Off or Offset.
- A. The BOARD or the School District reserves the right or option to set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or the School District against any payment or payments due to the successful Proposer, Contractor or Bidder under any contract with the School District.
 - B. The successful Proposer, Contractor or Bidder shall agree under the awarded School District contract that the School District may set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or the School District against any School District payment or payments due under any School District contract.
 - C. The successful Proposer, Contractor or Bidder shall agree under the awarded School District contract that the School District may set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or the School District against any School District payment or payments due under any School District contract if the successful Proposer, Contractor or Bidder breaches the tax indebtedness representation, warranty and covenant in said contract.
6. BOARD or School District Reserves Right or Option to Withhold Contract Payment; Agreement to said Withholding.
- A. The BOARD or the School District reserves the right or option to withhold payment or payments due to the successful Proposer, Contractor or Bidder under any School District contract if the successful Proposer, Contractor or Bidder is delinquent in the payment of City or School District tax or taxes or other indebtedness owed to the City or the School District. The BOARD or the School District further reserves the right or option to continue said withholding until the

City Revenue Department notifies the School District that the successful Proposer, Contractor or Bidder is tax compliant.

- B. The BOARD or the School District reserves the right or option to withhold payment or payments due to the successful Proposer, Contractor or Bidder under any School District contract if the successful Proposer, Contractor or Bidder is in default of a satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City or the School District. The BOARD or the School District further reserves the right or option to continue said withholding until the City Revenue Department notifies the School District that the successful Proposer, Contractor or Bidder is tax compliant.
- C. The successful Proposer, Contractor or Bidder shall agree under the awarded School District contract that the School District may withhold payment or payments due to the successful Proposer, Contractor or Bidder under any School District contract if the successful Proposer, Contractor or Bidder is delinquent in the payment of City or School District tax or taxes or other indebtedness owed to the City or the School District. The successful Proposer, Contractor or Bidder shall further agree under the awarded School District contract that the School District may continue said withholding until the City Revenue Department notifies the School District that the successful Proposer, Contractor or Bidder is tax compliant.
- D. The successful Proposer, Contractor or Bidder shall agree under the awarded School District contract that the School District may withhold payment or payments due to the successful Proposer, Contractor or Bidder under any School District contract if the successful Proposer, Contractor or Bidder is in default of a satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City or the School District. The successful Proposer, Contractor or Bidder shall further agree under the awarded School District contract that the School District may continue said withholding until the City Revenue Department notifies the School District that the successful Proposer, Contractor or Bidder is tax compliant.
- E. The successful Proposer, Contractor or Bidder shall agree under the awarded School District contract that the School District may withhold payment or payments due to the successful Proposer, Contractor or Bidder under any School District contract if the successful Proposer, Contractor or Bidder breaches the tax indebtedness representation, warranty and covenant in said contract. The successful Proposer, Contractor or Bidder shall further agree under the awarded School District contract that the School District may continue said withholding until the City Revenue Department notifies the School District that the successful Proposer, Contractor or Bidder is tax compliant.

7. Good Faith Contest.

- A. The successful Proposer, Contractor or Bidder shall be permitted under the awarded School District contract to, in good faith, contest the amount of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District.

- B. The successful Proposer, Contractor or Bidder shall be required under the awarded School District contract to diligently and expeditiously proceed to resolve the matter with the City, or the Commonwealth of Pennsylvania, as the case may be, in order to reach a satisfactory settlement agreement or payment plan with the City, or the Commonwealth of Pennsylvania, as the case may be.
 - A. The successful Proposer, Contractor or Bidder shall be required under the School District contract to expeditiously pay all uncontested obligations.

APPENDIX N: PRE-PROPOSAL CONFERENCE

Please forward your acknowledgment of receipt of the attached Request for Proposals to:

Kaaliyah Fratacangeli
Office of Procurement Services
The School District of Philadelphia
The Education Center
440 N. Broad Street
Philadelphia, Pennsylvania 19130
Office: 215.400.4380
Facsimile: 215.400.4381
E-mail: Kfratacangeli@philasd.org

Organization Name: _____ has received the
Request for Proposal for: **NG10662: Design Services for Roof Replacement & Masonry Repairs at
Overbrook High School**

At this time, the organization intends to:

- ☐ Submit a Proposal
- ☐ Not Submit a Proposal
- ☐ Attend the Vendor's Conference (if applicable)
- ☐ Not Attend the Vendor's Conference (if applicable)

Signature: _____

Title: _____

Date: _____

Please return this form to Kaaliyah Fratacangeli no later than **July 8, 2025** via mail or facsimile:
215.400.4381.

APPENDIX O: CONTRACTOR DEBARMENT

All prospective vendors bidding on School District of Philadelphia's requirements must read the terms as set forth below and sign the certification at the end of this section.

1. Contractor Debarment; Suspension

a. Contractor Certification

The Contractor certifies that it is not currently under suspension or debarment by any governmental entity, and if the Contractor cannot certify, then it agrees to submit written explanation of why such certification cannot be made

b. Authority to Debar

The School District shall have the authority to debar a Contractor for cause from consideration for award of contracts for a period of not more than three (3) years or to suspend a contractor from consideration for award of contracts, if there is probable cause for debarment, for a period of not more than three (3) months. Contractor shall be given reasonable notice and opportunity to be heard prior to a final debarment or suspension determination by the School District.

c. Cause for Debarment

The School District is authorized to debar or suspend a Contractor from contracting with the School District for any of the following causes which occurred within the past five (5) years.

- i. Conviction, including a plea of guilty or nolo contendere, for Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract in the performance of a contract or subcontract;
- ii. Conviction, including a plea of guilty or nolo contendere, under Federal or State statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibilities as a Contractor;
- iii. Conviction, including a plea of guilty or nolo contendere, under Federal or State antitrust statutes arising out of the submission of bids or proposals;
- iv. Any of the following violations of contract provisions of a character which is regarded by the School District to be so serious as to justify debarment action;
 - a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract
 - b) A recent record of failure to perform, unsatisfactory performance or performance not in accordance with the terms of one or more contracts
- v. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- vi. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of, or acquiescence in such activities by a contractor or any affiliate, officer, employee or other individual or entity associated with obtaining, attempting to obtain, or performing a public contract or

- subcontract;
- vii. Violation of Federal or State antitrust statutes;
- viii. Violation of any Federal or State law regulating political campaign contributions;
- ix. Violation of any Federal or State law regulating hours of labor, minimum wage standard or prevailing wage standards, discrimination in wages or child labor violations;
- x. Violation of the Workers' Compensation Act;
- xi. Violation of any Federal or State law prohibiting discrimination in Employment;
- xii. Debarment by any agency or department of the Federal Government or by any other State;
- xiii. Three or more occurrences where the Contractor has been declared ineligible for a contract;
- xiv. Unsatisfactory performance, including, but not limited to, any of the following:
 - a.) Failure to comply with the terms of a School District contract or subcontract, including, but not limited to, willful failure to perform in accordance with the terms of one or more contracts; a history of failure to perform; or, unsatisfactory performance of one of more contracts.
 - b.) Offering unbalanced bids.
 - c.) Failure to complete the work in the time frame specified in the contract.
 - d.) Being declared in default on prior work or project.
 - e.) Failure to submit documents, information or forms as required by contract.
 - f.) Making false statements or failing to provide information or otherwise to cooperate with a contracting agency
- xv. Any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity or business honesty that seriously and directly affects the present responsibility of a Contractor as determined by the School District;
- xvi. Any other cause the School District determines to be so serious and compelling as to affect responsibility as a Contractor, including debarment by another governmental entity for any cause set forth above

d. Determination; Decisions

- i. The School District shall issue a written decision to debar or suspend after the Contractor has been given notice of the potential adverse action and the opportunity to be heard. Failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered a basis for debarment.
- ii. The decision shall:
 - a.) State the reasons for the action taken;
 - b.) Inform the debarred or suspended Contractor involved of the right to judicial review.

- iii. A copy of the decision shall be delivered by registered mail to the debarred or suspended Contractor and any other person intervening.
- iv. The debarment or suspension shall be final and conclusive unless the debarred or suspended Contractor appeals to a court of competent jurisdiction within thirty (30) days after receipt of the decision.

e. Reimbursement; Investigations

The Contractor agrees to reimburse the School District for the reasonable costs of investigation incurred for the investigations of the Contractor's compliance with terms of this Contract or any other agreement between the Contractor and the School District, which result in the suspension, or debarment of the Contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime, travel, and lodging expenses and expert witnesses and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.

f. Subcontractors; Employees

If the Contractor enters into any subcontract or employs under this Contract any subcontractors/individuals who are currently suspended or debarred by any governmental entity or who becomes suspended or debarred by any governmental entity during the term of this Contract or any extensions or renewals thereof, the School District shall have the right to require the Contractor to terminate such subcontracts or employment.

g. Right of Nondisclosure

Information furnished by a bidder pertinent to determining responsibility of that bidder for contract award shall not be disclosed outside of the School District without prior written consent by the bidder, subject to provisions relating to the retention of contract documents.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion by any Federal or State Funded Agency

By signing and submitting this proposal, the prospective lower tier bidder is providing certification as set out below:

- 1.) The prospective lower tier participant bidder certifies by submission of this proposal that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.
- 2.) Where the prospective lower tier participant is unable to certify to any of the Statements in this certification, such prospective participants shall attach an Explanation to this proposal.

Signature of Bidder

Print Name

Position Held

Date

Appendix P: School District of Philadelphia

Technology Specifications

Overview

The School District of Philadelphia ("District") seeks a technology-based enterprise platform and/or service that collectively represents a turnkey solution (hereafter referred to as simply, "solution"). Understanding that the District's primary focus is K-12 education, the District is looking for a solution that includes all key resources for successful deployment, implementation, and ongoing support and maintenance. The responder should fully enumerate all one-time and recurring resources, costs, and requirements that would be assumed either partially or fully by the District in terms of technology procurement and support.

The District expects the responding vendor to focus and expand on the technology components of the proposed solution and has included pertinent background information on the following:

- ❖ 1. Network Specifications
- ❖ 2. Delivery Model
- ❖ 3. Data Protocols
- ❖ 4. Application Integration
- ❖ 5. Support and Service Level Agreements
- ❖ 6. Miscellaneous

It should be noted that portions of this appendix and the included informational sections may not be applicable to a vendor's solution, but has been included for completeness and full disclosure of the School District's IT infrastructure and systems environment.

1. Network Specifications

All District-operated school and administrative facilities support universal access to the Internet through local-area networks utilizing TCP/IP and standards-based non-proprietary protocols and transports. The District's network infrastructure includes several "intrusive" gateway components including firewalls, proxies, content filtering, traffic management and packet inspection technology. Network addressing is accomplished through the exclusive use of private IP addresses (i.e. 10.x.x.x), in conjunction with 1-to-MANY network address translation at the Internet gateway.

Minimally, each classroom and office location contains two (2) hardwired 1-Gbps switched Ethernet connections and all school facilities generally support building-wide 802.11ac WiFi wireless connectivity. Each school and administrative facility is connected to a fiber-optic metropolitan-area network through a 20-Gbps upstream connection, with all District facilities sharing 40-Gbps commodity Internet service, in addition to 10-Gbps Internet2 connectivity.

All proposal responses should specify detailed requirements for network connectivity and bandwidth capacity as well as ancillary requirements (if any) for specialized network or administrative services such as remote VPN access, firewall policy exemptions, or customized LAN configurations.

Technical considerations for compatibility with the District's network environment:

- Solution must be capable of working in a network proxy and network address translation (NAT) environment.
- Solution should require only the use of TCP service ports 80 (http) and/or 443 (https).

- Solution robustness and capacity should be verifiable via web performance and load testing software/service reporting, and capable of sustaining adequate simultaneous client/web connections for the intended use/audience.
- Hosted solutions should be equipped to provide increased bandwidth on demand, as needed.
- Should support connectivity by both IPv4 and IPv6 protocols.
- Should not require the use of Multicast protocols.

It should be noted that while the District maintains a fairly robust and highly-available technology and communications infrastructure for District-operated schools, no assumptions should be made concerning other public, private, or partnership school facilities, including Charter schools and Early Childhood centers. These locations operate and are maintained independently from the District in terms of technology and connectivity.

2. Delivery Model

2.1. Hosting

The District requires a hosted service delivery model such as an *Application Service Provider* (ASP), *Software as a Service* (SaaS), or Internet cloud-based model for hosting of vendor's solution. The proposed technology solution must not require or rely on the use of local on-premise server(s) or server appliance(s) other than those discussed elsewhere in this Appendix. Vendors should be prepared to provide information on the hosting facility, such as hosting company name, contact person, contact number and service level agreements that exist between respective companies.

2.2. Delivery Model Cost Breakdown (illustrative example only – include all costs, fees and resource needs that must be assumed by the District for the proposed solution(s))

- Hardware, Server and/or Software Acquisition Costs
- Installation Costs
- Application Licensing Fee(s)
- Database Licensing Fee(s)
- Maintenance Costs for Hardware and/or Software
- Maintenance Costs for Database(s)
- Technical Support Fee(s)
- Training Expenses
- Costs for Vendor Help Desk or Customer Support Center
- Vendor Programming Personnel Costs (estimate): *hrs. x \$/hr. = total*
- Vendor Consulting Services Costs (estimate): *hrs. x \$/hr. = total*
- School District of Philadelphia IT Personnel Maintenance Resources (estimate): *hrs.*
- 3rd-Party Software Expenses
- Disaster Recovery and/or Business Continuity Expenses
- Other Costs or Expenses (e.g Input Devices, Consumables, SSL Certificates, Online Storage, Offline Backup/Archival etc.)

3. Data Protocols

3.1. Data Ownership

The District assumes the term *Data* shall mean all information, whether or not confidential, entered into software or equipment by or on behalf of the School District and information derived from such information, including as stored in or processed through the equipment or software, including, without limitation, all data and information submitted to a vendor by the School District. All responding vendors should be aware that all School District Data shall remain the sole and proprietary property of the School District in perpetuity, throughout and beyond the term of any agreement.

Vendors shall not allow Data to be transferred or stored in any form, including physically or electronically, outside of the United States or its territories. Further, Vendor shall not permit its employees, contractors or service providers, to access District Data from outside of the United States or its territories, for any purpose including but not limited to use for call centers, help desks, technical support, system configuration, hosting, maintenance, troubleshooting or disaster recovery.

The School District requires that the Data owned by the District must be transferable to the District in

a usable format and should include an Entity Relationship Diagram and Data Dictionary. It should also include the ability to roll off data to retrievable archives and the ability to load historical data for reporting purposes.

No vendor shall be permitted to destroy or cause to be destroyed; any School District Data unless otherwise permitted by the District through prior expressed written consent. At any time during the term of any subsequent agreement resulting from this RFP, the School District may request copies of or access to, all or any subset of School District Data.

Upon termination of any agreement for any reason, within a time period to be set at the time of contract negotiations, the awarded vendor agrees to return in an industry-standard and District approved format, media containing all School District Data currently in the possession of the vendor and/or its subcontractors. Upon completion of the return of all Data to the District, the awarded vendor will then take all reasonable efforts to securely destroy and dispose of all School District Data in its possession or in the possession of its subcontractors.

The District must be notified immediately in the event of any type of data breach and the awarded vendor will satisfy applicable data retention requirements as set forth by the District.

3.2. Compliance

Vendors will be required to adhere to all local (Philadelphia County), state (Pennsylvania), and federal laws and regulations as applicable, including, but not limited to FERPA, COPPA, CIPA, CIPA-2, HIPAA and ADA.

The School District of Philadelphia is committed to providing access to our electronic information, including our websites, for individuals with disabilities in accordance with all applicable State and Federal laws. Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 require us to ensure that anyone with disabilities seeking information or services from us, have access to and use of information and data that is comparable to the access and use by any other members of the public who are not individuals with disabilities. This requirement extends to any and all web-based services, applications, or other technology that is acquired, contracted or otherwise made available by the School District, to its students, staff and/or community members. Responders to this solicitation shall be equally responsible and contractually bound to ensure their product and service offerings are accessible pursuant to the aforementioned laws. The School District's website accessibility standards can be found here: <https://www.philasd.org/administrative-procedures-for-website-accessibility/>.

3.3. Data Interchange

All external data interchange will require protocols and transports containing strong certificate-based encryption (minimal 256-bit, RSA minimal 2048-bit) such as HTTPS, FTPS, SFTP, SSH, or TLS (1.2 or newer). Vendor's Public Key or Digital Certificates must be valid, current and issued by a trusted Certificate Authority ("CA"), and generated from root CA's that are commonly included in popular web browsers as signing authorities. The School District WILL NOT support vendor solutions that rely on "self-signed" Digital Certificates.

4. Application Integration

4.1. Overview

The proposed solution may be required to import/export data files from various District enterprise systems. It is required that at a minimum the vendor utilizes a flat file format (i.e. comma-separated values) for data transport. Alternatively, the District will consider file formats that meet current District standards and that are directly compatible with the source/destination system(s) (e.g. XML). In many

cases, 3rd-party data integrations will interface with the District's Operational Data Store ("ODS") which connects the many disparate District systems into a single robust Oracle-based database.

The District has adopted IMS Global's OneRoster v1.1 CSV specification as the open standard for importing/exporting student information including user enrollment, demographics, course information, schedules and grades. Any technology solution that will integrate with District student data systems for the exchange of student information and academic data, will be required to natively support the OneRoster v1.1 specification. If such integration is necessary, the District will not consider solutions that require the use of a 3rd-party integration tool, platform, or service. Vendors should provide additional information, use cases, and/or references for successful implementations of IMS Global's OneRoster specifications, including version information.

The District currently uses two ERP systems: Oracle Fusion Cloud Enterprise Resource Planning for Finance and Procurement and CGI's *Advantage 2000*, for Human Resources Management and Payroll. Oracle Fusion Cloud ERP is a fully web-enabled interface to centrally manage purchasing and financial planning. *Advantage 2000* is an IBM mainframe-based application suite using Computer Associates' Datacom as the centralized database.

The District's Student Information System is Infinite Campus District Edition, a fully web-enabled interface for teachers, students, and administrators, utilizing Cloud Choice Hosting.

The District's Instructional Management System is Schoolnet by Pearson Education.

The District currently operates two student-facing Learning Management Systems - Google Classroom and Canvas. When appropriate, integration with these systems is preferred.

The District's Business Data Warehouse (BDW) is constructed on DataBlocks K12 Analytics model. The District's BDW is organized according to the multidimensional model that hinges on the concepts of facts and dimensions in an Oracle based system. The District's current BI layer is Qlik Business Intelligence and Enterprise Reporting platform.

The District's primary enterprise directory service is LDAP v3 compliant, running on a Linux-based architecture. The District does not utilize Microsoft's Active Directory for its enterprise directory services.

4.2. Web-based Standards, Client Software and Application Components

The proposed solution must generally adhere to the District's client (end-user) requirements.

- ✓ In general, applications that will be used internal and external to the District (schools, administrative offices, and/or staff/student/parent homes) must be web-based and entirely client platform/web browser agnostic.
- ✓ The District's standard supported web browser configurations are Google Chrome, Mozilla Firefox, Apple Safari, Microsoft Internet Explorer, and Microsoft Edge. The School District's minimum web browser specifications can be found here: <https://www.philasd.org/ithelpdesk/minimum-browser-requirements/>.
- ✓ The District supports Apple Mac OS X (v10.10 and newer), Microsoft Windows (v7 and newer), and Google ChromeOS (78 or newer) client operating systems.
- ✓ The District's supported mobile OS platforms are Apple iOS and Google Android.

- ✓ District-owned OS X and Windows desktop and laptop platforms are protected using an antivirus solution licensed from Fortinet.
- ✓ Vendors must provide a complete listing of any required web browser plug-ins or supplemental client software (e.g. Flash, Shockwave, QuickTime, Adobe Reader, etc.) as well as minimal supported version numbers.
- ✓ Any solution that relies on the use of a client-side Java engine, must utilize a current Oracle-supported version of the Java runtime engine (v1.8 or newer).
- ✓ For any services delivered via the web, the vendor must document the use of role-based functionality and access.

IMPORTANT NOTE: As of December 2020, Adobe Software has formally retired the Adobe Flash architecture. Many operating system and browser platforms have announced pending termination of support for Adobe Flash, and some have already begun disabling Flash support in their default configurations. Due to support concerns, the School District will likely disqualify any technology solution that is dependent upon the web-based Adobe Flash framework.

If the service delivery model is provided as a hosted, outsourced or cloud-based platform or service, the District is entirely agnostic to the server, software and back-end platforms being utilized by the vendor. However, if the solution requires that the District host or maintain any aspect of the proposed solution, the following system, application and database platforms are generally supported by the District:

- Oracle Database
- MySQL Database
- Java Programming Logic
- JSP Pages (Presentation Layer)
- Apache/Tomcat Application Server
- Unix/Linux-based Operating Systems

4.3. Google Workspace for Education (formerly, “G-Suite for Education”)

The District has implemented a G-Suite domain tenancy and provisions user accounts for most (but not all) of its associated users. Vendors may propose products or solutions that will interface with the District’s Google Workspace environment. Such proposals must comply with the District’s policies regarding data privacy and the use of online resources. The District chooses to enable and configure the use of Google’s services in accordance with state and federal laws, its internal policies, and the contract negotiated with Google, an excerpt of which is available for review at <http://www.philasd.org/privacy>. The District’s Google Workspace domain organizes staff members by account status, and students by school and grade level. The Google Workspace domain cannot differentiate users by classroom or section at a school. For any proposed solution, further discussions will be needed to determine if Google integration is feasible and appropriate.

4.4. Application Portal Integration, Identity Federation and Single Sign-On (SSO)

All third-party applications are generally required to integrate with the School District’s web-based Employee, Student and/or Family Portal(s) as appropriate.

The District has implemented an open-source Identity and Access Management platform, Central Authentication Service (CAS), which permits authenticated users to gain access to applications developed or hosted by third-party service providers. The District’s solution is built upon the open standard Security Assertion Markup Language (SAML 2.0). The District’s system will serve as the Identity Provider (or, “IdP”) to a vendor, who will act as the Service Provider (or “SP”).

The District prefers Service Provider-initiated Federation, where the SP generates an Authentication Request that is sent to the idP, and the idP responds with a SAML Response. If a vendor is unable to support SP-initiated SSO, then idP-initiated SSO can be initiated by the client, sending an unsolicited SAML Response to the SP. The District requires that all SAML assertions be digitally signed by certificate, but not encrypted. Vendors must provide static Service Provider ("SP") metadata in XML format for each SAML Service included in their proposal, including entityID, endpoint URL, and signing certificate. SAML Signing certificates may be self-signed or self-generated, but the web transport (https) of all SAML assertions must be encrypted with Transport Layer Security (TLS) version 1.2 or higher using a commercially signed certificate, as defined above in Section 3.3 ("Data Interchange").

The District will provide limited attribute release through SAML to authenticate its users and to provide basic demographic and role information. Application Security and Authorization will largely be processed through separate user data imports. Attribute release mappings are customizable to some extent. A typical attribute release scheme includes a Globally Unique Identifier: a static employee or student ID number released with a customer-specific prefix (for example, "philasd12345"), which is designed to never change for the life of that digital identity.

Vendors should provide documentation regarding the level of compliance with Single Sign-On protocols for any and all web browser-based applications proposed in the solution, or additionally/alternatively, whether the proposed solution is capable of authenticating directly to the District's enterprise directory service (i.e. LDAP) in some manner. Vendors should provide additional information, use cases, and/or references for successful implementations of open-source Identity Federation with other customers (if applicable).

4.5. Web Services and Application Programming Interfaces (APIs)

While the School District is limited in the current use and deployment of Web Services, third-party applications may be required in the future to provide Web Services methods to extract or insert data from a third-party application using standardized SOAP XML envelopes or REST transfers (for example). The Web Services Definition Language (WSDL) must comply with W3C standards.

4.6. E-mail & Calendaring Services

The School District provides e-mail, scheduling and collaboration services to all employees and students using either the Enterprise Edition of Zimbra Collaboration Suite v8.8, or Google Workspace (formerly, "G-Suite for Education"). Solutions that wish to enable the exchange of messages or event scheduling with District staff, must be capable of supporting open-source protocols and file formats such as SMTP and iCal.

4.7. Electronic Document Management

The School District utilizes an electronic document management system to store and retrieve personnel and financial documents. The District uses EMC Documentum ApplicationXtender 7.0 to index scanned versions of documents including (but not limited to): invoices, purchase orders, purchase vouchers, journal vouchers, grant certifications and documentation, payroll documentation, employee health and disciplinary correspondence.

The District may request that vendors include solutions for providing electronic forms of pertinent documentation, if such documentation is needed for inclusion in the electronic document management system. Vendors would be required to provide pertinent documents in an electronic format such as True Image File Format (TIFF) or Portable Document Format (PDF) along with indexing information for import by the District.

4.8. Employee Smart Cards

All District employees are issued employee smart card ID badges. The District's employee smart card standard is HID's iCLASS architecture. Employee contactless smart cards are used as a means of identification, access control and integration with the District's enterprise security and surveillance system.

The technical specifications for employee smart cards are as follows:

- HID Part #2002PG1MN
- Operating Frequency: 13.56 MHz
- 16K Bits (2K Bytes) with 16 Application Areas
- 35-bit Preprogrammed iCLASS Credential, Format H51558
- Plain White PVC with Gloss Finish (Front Packaging)
- Plain White PVC with Gloss Finish with Magnetic Stripe (Back Packaging)
- Sequential Matching Internal/External (Inkjetted) Card Numbering

4.9. Student Smart Cards

The District's student smart card standard is MIFARE. This technology is currently utilized in the District's high schools and middle schools for identification, entrance, egress and attendance tracking. Because the systemic use of student smart cards will be phased in over time, any vendor solution requiring student authentication might have to accommodate both PIN-code device entry as well as smart card use. There are currently three ways for vendor solutions to utilize student smart cards for authentication: (1) unique serial number pre-coded on every card; (2) unique student identification number programmed on data storage portion of card; or (3) use of very minimal application-specific space available on data portion of card (requires pre-approval by District IT management).

The current technical specifications for student smart cards are as follows:

MIFARE ISO/IEC 14443A with the following:

- Contactless Transmission: Up to 7 cm
- Operating Frequency: 13.56 MHz
- Fast Data Transfer: 106 Kbps
- 8K Bits (1K Bytes) organized in 16 sectors with 4 blocks of 16-bytes each with user definable access for each block
- Data Integrity: 16-bit CRC, parity, bit coding and counting
- Data Retention Period: 10 years minimum
- Write-Endurance: 100,000 cycles minimum
- ISO/IEF DIS9798-2 Three-Pass Authentication
- True Anti-Collision
- Replay attack protection through data encryption on RF-channel
- Two keys per sector per application for multi-application with key hierarchy
- Unique serial number for each device and transportable EEPROM keys

5. Support and Service Level Agreements

5.1. Deployment, Administration, Configuration and Maintenance Requirements

- Vendors should specify the personnel resources, skills and knowledge required to customize, deploy, implement and maintain the proposed solution.
- The District will expect regular and timely reports to support compliance with all service level agreements.
- The District will expect comprehensive usage statistics to be collected and shared that demonstrate the ongoing usage level of the proposed solution.
- Vendors should articulate the plan for providing support to end-users, the modalities of support that will be provided (e.g. telephone, e-mail, web-based portal, facsimile) and the proposed support service levels.

- Vendors should provide a standard technical support plan, articulating how the District reports and track issues.

5.2. Systems Redundancy / Data Archival / Disaster Recovery

Vendors should include a plan for systems redundancy, data archival/backup, and disaster recovery services in order to permit business continuity and to ensure the safety and integrity of the District's data. These considerations will be defined in more detail in the service level agreements during contract negotiations.

5.3. Data Controls / Audits

With reasonable notice, a vendor shall cooperate with the School District of Philadelphia, or any duly authorized local, state, or federal agency, to enable the successful conduct of an audit. The vendor shall, in a timely manner, provide technical and security related information necessary for such lawful and/or legally mandated audits. With respect to the collection, storage, use and processing of enterprise data and information, the District adheres to SSAE-16 reporting requirements as well as any applicable state and federal mandates. The responding vendor will be required, without exception, to conduct and provide, on an annual basis, an independent SSAE-16 SOC1, SOC2 and/or SOC3 report, as applicable.

5.4. Availability / Service Level Credits

Vendor's solution will be required to provide the highest degree of availability and responsiveness under nominal as well as "high load" usage conditions. Any contractual agreement resulting from award of this solicitation, shall include a mutually negotiated comprehensive service level agreement to include Vendor service level credits or reimbursement for performance failures including, but not limited to, unscheduled system downtime, loss of connectivity, unacceptable end-user response, loss of District data, excessive response or mean-time-to-repair (MTTR) times, and/or failure to provide acceptable annual SSAE-16 reports.

5.5. Training and Documentation

Vendors should detail the training materials (and specify medium – DVD, web-based, paper-based, etc.) that exist for the proposed solution, as well as the training services (i.e. number of persons, locations, number of days) that vendor is prepared to provide. The District strongly prefers that vendors propose multiple options for training models (i.e. computer-based instruction, instructor-led, "train-the-trainer").

Vendors should identify any/all documentation that exists for end users, administrators and developers, as applicable.

6. Miscellaneous

6.1. Security

Vendors should provide a detailed overview of the proposed solution or application's use of security in relation to server/infrastructure hardware, user logins, authentication methodology, etc. Remote support tools that require inbound firewall exceptions (e.g. Teamviewer, LogMeIn, etc) will not be permitted. All remote support must be delivered via a collaboration tool where a District staff member must initiate the session and said staff member can grant/revoke support staff any remote control privileges (e.g. Zoom, Google Meet, WebEx, etc).

6.2. Technical Environment Requirements

- Scalability – Vendor should include information regarding the anticipated performance and load, including maximum session concurrency, of the proposed

solution that meets or exceeds the anticipated demands within the District.

Vendors should also include information on additional resources (hardware, software and network) that would be required for increased usage.

- Constraints – Vendor should specify any pre-existing hardware or software that the proposed solution must directly interface with, inclusive of specific operating systems, databases, middleware, or web servers.
- General – In the scenario of an SDP-supported implementation, Vendor should document any dependencies on 3rd-party products or plug-ins required in the installation of the proposed solution, as well as any specific technical requirements relevant to the installation or operation of the solution.

6.3. Implementation, Deployment and Transition Requirements

- Transition Plan – Vendor should describe plans for transitioning current data, user accounts, etc., into the proposed solution (if applicable).
- Implementation – Vendor should describe technical plans for the installation, testing and infrastructure configuration required to prepare the solution for production use.
- Scheduling – Vendor should provide an estimated time-line for installation and implementation of the proposed solution.