

# **Providence Public School District**

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## **Facility Services**

### **Terms & Conditions**

**Document TC**



# Terms and Conditions

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### 1. Introduction

- 1.1. This summary of contract content sets forth certain essential terms and conditions that will be incorporated in the agreement between Providence Public School District and the Service Provider (the "Agreement") that provides for the provision of facility services for operations & maintenance, custodial, landscape, grounds, and hardscape assets of Providence Public School District by the Service Provider. By their submission of proposals in response to the Facility Service Request for Proposal of which these terms and conditions are a part, prospective Service Providers agree to the inclusion of these terms and conditions in the Agreement.

### 2. Purpose of Agreement

- 2.1. The purpose of the Agreement shall be to set forth the terms and conditions applicable to the provision by the Service Provider of facility services for operations & maintenance, custodial, landscape, grounds, and hardscape assets of Providence Public School District by the Service Provider.

### 3. Incorporation of Facility Services Specification and Proposal

- 3.1. The Agreement shall incorporate by reference the entire Facility Service Request for Proposal documentation, including Specification (the "Specification") all Service Provider submittals required by the Specification, and the Proposal submitted by the Service Provider in response to the Request for Proposals issued by Providence Public School District.

### 4. Definitions

- 4.1. The Agreement shall include a comprehensive set of definitions consistent with the defined terms set forth herein or in the Specification, and otherwise consistent with a commercial transaction of this nature. Capitalized terms defined in the Specification and used herein shall have the meanings given to them in the Specification.

### 5. Services

- 5.1. The Agreement shall set forth in detail the services required to be performed by the Service Provider with reference to the Request for Proposal documentation, including the Specification.

### 6. Bargaining Unit Representation

- 6.1. For the services of this Agreement, the Service Provider shall retain a trade work force that is represented by a bargaining unit recognized by the National Labor Relations Board (NLRB).



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### 7. Disruption of Existing Operations

- 7.1. The Service Provider is advised that, particularly during the solicitation period for this Agreement, there are existing operations which are being performed by an incumbent Service Provider.
- 7.2. Any bidding Service Provider shall be required to refrain from any activity which may disrupt, interfere, or otherwise have negative impact upon those operations. Prohibited actions include, but are not limited, to the following:
  - 7.2.1. Disrupting the work force of the incumbent service provider.
  - 7.2.2. Entering PPSD properties without following normal PPSD entry procedures.
  - 7.2.3. Interfering with PPSD school administration, faculty, staff, or students.
- 7.3. In the event of any disruption, the PPSD reserves rights to all legal remedies against an offending Service Provider.

### 8. Term

- 8.1. The initial term of the Agreement is projected to start 1 August 2023, unless indicated otherwise by the PPSD Representative.
- 8.2. The initial term of the Agreement shall be thirty-five (35) months, with two (2) two (2) year options to extend the term of the Agreement. These options may only be exercised by Providence Public School District, and if Providence Public School District elects in its sole discretion to exercise either or both options, the term of the Agreement shall be extended for a two (2) year period with respect to each option exercised, upon all the terms and conditions set forth in the Agreement. If Providence Public School District does not elect to proceed with the first two (2) year extension, the term of the Agreement shall end at the end of the initial three (3) year term. If Providence Public School District exercises the option for the first two (2) year extension but does not elect to proceed with the second two (2) year extension, the term of the Agreement shall end at the end of the first two (2) year extension. Any extension shall occur only upon affirmative election by Providence Public School District as confirmed in writing to the Service Provider.

### 9. Performance Metrics

- 9.1. The Agreement shall incorporate the performance metrics set forth in the Specification and the key performance metrics identified by the Service Provider as required by the Specification. The performance of the Service Provider shall be evaluated continuously in relation to the performance metrics and the performance requirements agreed upon by Providence Public School District and the Service Provider. The Agreement shall provide for Providence Public School District and the Service Provider to work cooperatively to finalize the performance metrics that shall be applicable to the performance of the Service Provider under the Agreement within the first thirty (30)



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days of the term of the Agreement, and the agreed upon performance metrics shall be incorporated in the Agreement pursuant to a formal amendment to the Agreement.

### 10. Compensation for Services

**10.1.** The Agreement shall set forth the agreed upon pricing for the provision by the Service Provider of the facility services that are the subject of the Agreement and the payment provisions applicable to the agreed upon pricing. Payments of the Services Provider's agreed-upon fixed annual basic services fee (the "Basic Services Fee") shall be made in equal monthly installments on the first day of each month through electronic funds transfer. All other payments required to be made by Providence Public School District to the Service Provider pursuant to the Agreement shall be due and payable as indicated in 31.4 Payment to Service Provider on page 19 within 30 days after receipt of the Service Provider's invoice.

**10.2.** Withholding for non-performance

**10.2.1.** Providence Public School District reserves the right to determine if the Service Provider has failed to perform in accordance with the Agreement, and withhold payment in the amount required to obtain services from alternate sources.

### 11. Incentive Compensation Program

**11.1.** The Agreement shall be administered with an Incentive Compensation Program including the following provisions.

**11.2.** Funding

**11.2.1.** 1/4 of 1% of the Service Provider contract Basic Services Fee per quarter, set aside by the Service Provider and not billed to Providence Public School District pending quarterly calculation of Incentive Compensation entitlement.

**11.2.2.** 1/4 of 1% of the Service Provider contract Basic Services Fee per quarter, added by Providence Public School District.

**11.2.3.** With the funding outlined above, the total amount of the incentive program equals 2% of the annual contract Basic Services Fee, funded equally by the Service Provider and Providence Public School District.

**11.3.** Basis for Incentive Compensation

**11.3.1.** Three Key Performance Indicators will be considered as the criteria for the Incentive Compensation Program, as follows:

**11.3.2.** Specified Custodial Service Cleanliness Standards

**11.3.3.** Incentive Eligibility Requirement. Subject to inspection by Performance Resource Partners, LLC (or a successor designated by Providence Public School District), which will be retained by Providence Public School District, Incentive Compensation will be considered by the Owner in the event 100% of the inspected spaces have achieved the Specified Cleanliness Standard.



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- 11.3.3.1. Minimum Specified Compliance Requirement.** In the event the Service Provider fails to achieve the specified Cleanliness Standard in more than 5% of the inspected spaces, the Service Provider's contribution to the Incentive Compensation Program will be forfeited.
- 11.3.4. Specified O&M Maintenance Standards**
- 11.3.4.1. Incentive Eligibility Requirement.** Subject to inspection by Performance Resource Partners, LLC (or a successor designated by Providence Public School District), which will be retained by Providence Public School District, Incentive Compensation will be considered by the Owner in the event 100% of the inspected spaces have achieved the Specified Maintenance Standard.
- 11.3.4.2. Minimum Specified Compliance Requirement.** In the event the Service Provider fails to achieve the specified Maintenance Standard in more than 5% of the inspected spaces, the Service Provider's contribution to the Incentive Compensation Program will be forfeited.
- 11.3.5. Customer Satisfaction**
- 11.3.5.1.** For each quarterly period of the Agreement, a selection of respondents to the specified Web-Based survey will have opinions solicited.
- 11.3.5.2. Incentive Eligibility Requirement.** When the results of the Customer Satisfaction Survey indicate a "Satisfied" percentage of 95% or more, Incentive Compensation will be considered by the Owner.
- 11.3.5.3. Minimum Specified Compliance Requirement.** In the event the Service Provider fails to achieve a "Satisfied" percentage of more than 90%, the Service Provider's contribution to the Incentive Compensation will be forfeited.
- 11.4. Conditions for Incentive Compensation from Providence Public School District or Forfeiture of Service Provider's Funding.**
- 11.4.1.** The Service Provider is required to equal or exceed the Incentive Eligibility Requirements for all three Key Performance Indicators to qualify for Incentive Compensation from Providence Public School District.
- 11.4.2.** Failure to achieve the Minimum Specified Compliance Requirement on any one or more of the three Key Performance Indicators will result in the forfeiture of the Service Provider's contribution to the Incentive Compensation Program.
- 11.4.3.** In the event results of all three Key Performance Indicators fall between the Incentive Eligibility Requirement and the Minimum Specified Compliance Requirement, or if the Service Provider meets the Incentive Eligibility Requirement for one or more of the Key Performance Indicators and the result(s) of the other Key Performance Indicator(s) fall(s) between the Incentive Eligibility Requirement and the Minimum Specified Compliance Requirement, Incentive Compensation will not



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be paid by Providence Public School District and the Service Provider will not be required to forfeit its contribution to the Incentive Compensation Program.

### **11.5. Delay in initiation of Incentive Compensation Program.**

**11.5.1.** The initiation of the Incentive Compensation Program will be deferred for six months from the start of the Agreement to allow for the Service Provider to establish appropriate operational procedures.

### **11.6. Invoicing for Incentive Compensation.**

**11.6.1.** The Service Provider shall indicate the appropriate adjustment to compensation on the Monthly Invoice following the quarterly Incentive Compensation Review (and, if applicable, in an invoice to be submitted within 30 days following expiration or termination of the Agreement).

### **11.7. Adjustments to Program**

**11.7.1.** It is noted that the Facilities Services Specification requires reporting of multiple Key Performance Indicators not part of the Incentive Compensation program. In the event of consistent and ongoing failure of the Service Provider to achieve a Key Performance Indicator (KPI) which is not part of the Incentive Compensation Program, the Owner reserves the right to unilaterally revise the KPI's that are the basis of the Incentive Compensation Program, and to impose conditions for withholding and payment of Incentive Compensation associated with the new KPI's, with 90 days notice.

**11.7.2.** The Owner and Service Provider may mutually agree to modify elements of the Incentive Compensation program. Any such modification shall be formally recorded as a change to the Agreement.

**11.7.3.** The Owner reserves the right to suspend the Incentive Compensation program at any time. In that event, the Service Provider's compensation shall be restored to the Basic Services Fee.

## **12. Adjustments to Compensation**

### **12.1. Changes in Use**

**12.1.1.** In the event Providence Public School District makes a significant change to the intensity of use of existing space at the Owner, the Owner will consider requests by the Service Provider for adjustments to compensation, subject to the following conditions.

**12.1.1.1.** Small areas of change will not be considered as valid for adjustment to compensation.

**12.1.1.2.** The Service Provider's assumptions for required staffing levels before and after changes in use are not a valid basis for consideration of compensation adjustments.





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**12.1.1.3.** The intensity of use and the nature of space activities before and after any changes may be considered as bases for compensation adjustments.

**12.1.1.4.** Providence Public School District will assume that the price per square foot of the Service Provider's services covered by the Specification, as reflected by the Basic Services Fee, are applicable to typical academic uses extant at Providence Public School District. That pricing will be considered by Providence Public School District as the baseline from which any adjustments in compensation will be considered.

**12.1.1.5.** The Service Provider is not entitled to invoice Providence Public School District for adjusted compensation until such time both parties formally agree to a modification of the Agreement.

## 13. Facilities Available to the Service Provider

**13.1.** The Service Provider is advised that the PPSD has little available space for dedication to use by the Service Provider. These spaces available to the Service Provider include the following:

**13.1.1.** Custodial Closets

**13.1.2.** Mechanical Equipment Rooms

**13.1.3.** Limited Storage Rooms

**13.2.** Additionally, the PPSD has limited on-site parking availability for use by Service Provider staff. The parking available may be used on an "as needed" and "as available" basis for the completion of the services required by the Facility Services Specification.

**13.3.** Therefore, the Service Provider is expected to provide space and accommodations for its operations in facilities that it provides for the purposes of this contract. Those provisions are expected to include, but are limited, to the following:

**13.3.1.** Administrative Offices

**13.3.2.** Meeting rooms

**13.3.3.** Locker rooms, if provided to Service Provider staff

**13.3.4.** Changing rooms, if provided to Service Provider staff

**13.3.5.** Shower rooms, if provided to Service Provider staff

**13.3.6.** Locations for CMMS installations, if needed

**13.3.7.** Shop and maintenance service spaces

**13.3.8.** Bulk storage spaces of District-wide consumables and replacement part inventory

**13.3.9.** Storage spaces of seasonal and centrally-located tools and equipment

**13.3.10.** Service Provider vehicle parking



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**13.3.11.** Service Provider vehicle and equipment maintenance facilities.

**13.4.** The PPSD acknowledges that such facilities shall remain in the control of the Service Provider upon expiration of the Service Provider Agreement.

## 14. Default

### 14.1. Default Terms and Conditions

**14.1.1.** Default by Service Provider. The occurrence of any of the following shall be an event of default by Service Provider under the Agreement:

**14.1.1.1.** The filing by Service Provider of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

**14.1.1.2.** The consent by Service Provider to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights that is not dismissed within ninety (90) days;

**14.1.1.3.** The entering of an order for relief against Service Provider or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Service Provider in any involuntary proceeding, and the continuation of such order, judgment, or decree unstayed for any period of ninety (90) consecutive days;

### 14.2. Remedies

**14.2.1.** Upon the occurrence and continuance of any event of default Providence Public School District may elect one or more of the following remedies:

**14.2.1.1.** To pay whatever amount or perform whatever work Service Provider failed to pay or to perform, for and on behalf of the Service Provider, and Service Provider shall reimburse Providence Public School District immediately upon demand for any sums thus paid and all costs and expenses incurred in connection with the making of such payment or the proper performance of any such work.

**14.2.1.2.** To terminate the Agreement.

## 15. Termination for Cause

**15.1.** In addition to the rights of termination set forth elsewhere in the Agreement (including without limitation in the Specification), the Agreement shall be subject to termination by either party as follows:

**15.1.1.** In the event that the other party (the "Defaulting Party") fails to perform any obligation under the Agreement and such failure of performance continues for a period of thirty (30) days after the delivery of written notice thereof by the other party (the "Non-Defaulting Party"). Upon the delivery of such written notice of default by the Non-Defaulting Party to the Defaulting Party and the failure of the Defaulting Party to cure the failure of performance that is the subject of such written



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notice, the Non-Defaulting Party shall have the right to terminate the Agreement immediately by delivering written notice of termination to the Defaulting Party. Notwithstanding the foregoing, the thirty (30) day notice requirement and opportunity to cure shall not apply (i) under circumstances in which the nature of the breach is such that it poses an imminent threat to the safety or security of persons or property, or substantial impairment to the Non-Defaulting Party's operations, or (ii) to the second or subsequent breach by a party that is substantially similar to a previous breach by such party for which an opportunity to cure was afforded pursuant to this Section.

**15.1.2.** Upon thirty (30) days' prior written notice, in the event that the other party engages in conduct which is unethical, unlawful, or adverse to the reputation of the terminating party; *provided*, however, such notice must state with sufficient detail the particular conduct giving rise to the notice of termination and the basis for attributing such conduct to the non-terminating party.

**15.1.3.** Upon thirty (30) days' prior written notice in the event that any court or regulatory authority of competent jurisdiction determines that either party may not participate in the Agreement or agreements of the same nature as the Agreement.

## 16. Termination for Convenience

**16.1.** After the first year of the initial term of the Agreement, Providence Public School District shall be entitled to terminate the Agreement for convenience upon the delivery of at least thirty (30) days prior written notice of termination by Providence Public School District to the Service Provider. Providence Public School District shall be entitled to extend the notice period with respect to any such termination for convenience up to one hundred twenty (120) days.

## 17. Consequence of Expiration or Termination

**17.1.** The Agreement shall provide that notwithstanding the reason or reasons for the termination of the Agreement (if applicable), in the event of the expiration or termination of the Agreement or the proposed termination of the Agreement following any particular notice period, Providence Public School District and the Service Provider shall work cooperatively to transition from the performance of the facility services covered by the Agreement by the Service Provider to the performance of all or any portion of such facility services either by Providence Public School District or a third party service provider or any combination thereof. In connection therewith the Service Provider agrees that either Providence Public School District or a new third-party service provider or both of them shall be entitled to offer employment to any or all of the then existing employees of the Service Provider that are performing facility services for Providence Public School District as part of the facility services provided by the Service Provider pursuant to the Agreement.



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### 18. Taxes

#### 18.1. Payment of Taxes

**18.1.1.** Service Provider shall pay, any and all taxes, assessments, inventory, and personal property taxes and similar charges on or relating to the work, if any, following or allocable to the Contract Term.

**18.2.** The Service Provider is hereby advised that Providence Public School District holds a Rhode Island Division of Taxation Sales Tax Exemption Certificate for qualified taxes. The Service Provider shall comply with the terms of that exemption.

### 19. Service Provider Insurance

**19.1.** At all times during the term of the Agreement, Service Provider shall maintain, at its own expense, the insurance set forth herein. All insurance required hereunder shall provide that it will not be altered or canceled except on thirty (30) days written notice from the insurer to Providence Public School District. All insurance maintained by Service Provider under this Article shall be pursuant to such forms as are satisfactory to Providence Public School District.

**19.2.** Providence Public School District shall be named as an “additional insured” on the general, automobile, and excess/umbrella liability policies of the Service Provider. The general, automobile, and excess/umbrella liability insurance policies shall provide that they afford primary insurance, and that the insurance company’s liability shall not be reduced by the existence of other insurance carried by Providence Public School District applicable to the loss.

**19.3.** General Requirements. Service Provider shall submit evidence to Providence Public School District before commencing the performance of services under the Agreement that Service Provider has procured insurance coverage of the types and with limits at or above those described in this section. Any insurance on a “claims made” basis shall be maintained for at least four (4) years after termination or expiration of the Agreement.

**19.4.** Certificates of Insurance. Prior to commencement of the Work, Service Provider shall provide Providence Public School District with certificates of insurance evidencing the required insurance. Such certificates shall be issued by an insurance carrier(s) acceptable to Providence Public School District and shall be endorsed to include: (1) Providence Public School District as an additional insured on the Commercial General Liability, Comprehensive Automobile Liability, Environmental Impairment and Excess/Umbrella Liability policies; and (2) thirty (30) days prior written notice of cancellation or material change in any of the coverages; and (3) all insurance provided by the Service Provider shall be primary; and (4) the insurer waives all rights of subrogation against Providence Public School District, its affiliated entities, and their respective officers, trustees, directors, members, managers, employees and agents.

#### 19.5. Subcontractors



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**19.5.1.** Consistent with Clause 30. Subcontractors/Subconsultants below, the Service Provider is obligated to verify that the specified insurance coverage is maintained for all entities or companies retained by the Service Provider providing service for this contract.

**19.6.** Minimum required insurance:

**19.6.1.** Statutory Workers' Compensation Insurance and Employer's Liability Insurance

**19.6.1.1.** Coverage:

**19.6.2.** Such insurance shall cover liability arising out of Service Provider's employment of workers and anyone for whom Service Provider may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.

**19.6.2.1.** Experience Modification Factor:

**19.6.3.** Service Provider shall submit a copy of the Service Provider's Experience Modification Worksheet.

**19.6.4.** The Experience Modification Factor shall be 1.00 or less.

**19.6.5.** Amount of Insurance:

**19.6.5.1.** Coverage shall be provided with limits of not less than:

**19.6.6.** Workers' Compensation: Statutory Limits.

**19.6.7.** Employer's Liability: \$1,000,000 each accident/each disease.

**19.6.8.** Required Endorsements:

**19.6.8.1.** Waiver of Subrogation in favor of Providence Public School District, its affiliated entities, and their respective officers, trustees, directors, members, managers, employees and agents;

**19.6.8.2.** If Supplier is a Professional Employer Organization (PEO) or temporary staffing agency, Alternate Employer Endorsement in favor of the above parties; and,

**19.6.8.3.** 30-day notice of cancellation, non-renewal, or material reduction in coverage.

**19.6.9.** Commercial General Liability Insurance

**19.6.9.1.** Coverage:

**19.6.10.** Such insurance shall cover liability arising out of the operations of Service Provider including, but not necessarily limited to, liability assumed under the Agreement. Defense shall be as an additional benefit and not included within the limits of liability.

**19.6.10.1.** Form:



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**19.6.11.** Commercial General Liability Occurrence form (at least as broad as an unmodified ISO Form CG 00 01 current version or its equivalent);

**19.6.11.1.** Amount of Insurance: Coverage shall be provided with limits of not less than:

**19.6.12.** Each Occurrence Limit: \$1,000,000

**19.6.13.** General Aggregate Limit: \$3,000,000

**19.6.14.** Products-Completed Operations Aggregate Limit: \$2,000,000

**19.6.15.** Personal and Advertising Injury Limit each occurrence: \$1,000,000

**19.6.15.1.** Required Endorsements:

**19.6.16.** Naming as Additional Insured Providence Public School District, its affiliated entities, and their respective officers, trustees, directors, members, managers, employees and agents;

**19.6.17.** Additional Insured status shall be provided on ISO Form 20 10 current version or its equivalent;

**19.6.18.** Waiver of Subrogation in favor of the above parties;

**19.6.19.** Primary Liability: Coverage as respects the Additional Insured shall be endorsed to be primary and non-contributory with respect to other insurance; and,

**19.6.20.** 30-Day notice of cancellation, non-renewal, or material reduction in coverage.

**19.6.20.1.** Continuing Commercial General Liability Insurance:

**19.6.21.** Service Provider shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least two (2) years following the end of the term of the Agreement.

**19.6.22.** Automobile Liability Insurance

**19.6.22.1.** Coverage:

**19.6.23.** Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

**19.6.23.1.** Form:

**19.6.24.** Business Auto form (at least as broad as an unmodified ISO Form CA 00 01 03 06 or its equivalent).

**19.6.24.1.** Amount of Insurance:

**19.6.25.** Coverage shall be provided with a limit of not less than \$1,000,000 per accident.

**19.6.25.1.** Required Endorsements:





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**19.6.26.** Naming as Additional Insured Providence Public School District, its affiliated entities, and their respective officers, trustees, directors, members, managers, employees and agents;

**19.6.27.** Waiver of Subrogation in favor of these parties; and, 30-Day notice of cancellation, non-renewal, or material reduction in coverage.

**19.6.28.** Environmental Impairment Coverage

**19.6.28.1.** Coverage:

**19.6.29.** Such insurance shall cover liability for losses arising from the release or escape of pollutants or the creation of environmental impairments resulting from the actions of the Service Provider.

**19.6.30.** Amounts shall conform with requirements of Commercial General Liability Insurance and Continuing Commercial General Liability Insurance specified above.

**19.6.31.** Abuse and Molestation Coverage

**19.6.31.1.** Coverage

**19.6.32.** Such insurance shall cover liability for damages due to bodily injury arising from physical abuse, sexual misconduct, or sexual molestation.

**19.6.33.** Bodily Injury includes sickness or disease sustained by a person.

**19.6.34.** Bodily Injury also includes mental anguish, mental injury, shock, fright, or death resulting from physical injury.

**19.6.34.1.** Amount of Insurance: Coverage shall be provided with limits of not less than:

**19.6.35.** Each Occurrence Limit: \$1,000,000

**19.6.36.** General Aggregate Limit: \$3,000,000

**19.6.37.** Employment Practices Coverage

**19.6.37.1.** Coverage

**19.6.38.** Such insurance shall cover liability for defense costs and damages related to various employment-related claims, including allegations of Wrongful Termination, Discrimination, Workplace Harassment and Retaliation deriving from the employer-employee relationship.

**19.6.38.1.** Amount of Insurance: Coverage shall be provided with limits of not less than:

**19.6.39.** Each Occurrence Limit: \$1,000,000

**19.6.40.** General Aggregate Limit: \$3,000,000

**19.6.41.** Umbrella Liability Insurance

**19.6.41.1.** Coverage:



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**19.6.42.** Such insurance shall be excess over and be no less broad than all coverage described above and shall include a drop-down provision.

**19.6.42.1.** Form:

**19.6.43.** This policy shall have the same inception and expiration dates as the Commercial General Liability insurance and Automobile Liability insurance required above.

**19.6.43.1.** Amount of Insurance:

**19.6.44.** Coverage shall be provided excess of primary limits for Commercial General Liability insurance and Automobile Liability insurance with a limit of not less than \$5,000,000 each occurrence, \$5,000,000 aggregate.

**19.6.44.1.** Continuing Umbrella Liability Insurance:

**19.6.45.** Service Provider shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least two (2) years following the end of the term of the Agreement.

### **19.7.** Additional Terms and Conditions

**19.7.1.** Companies without insurance certificates on file will not be allowed to perform services and will not remain on the bidders list for future consideration.

**19.7.2.** Without limiting rights of indemnification and other rights available to Providence Public School District under the Agreement, the Service Provider shall discharge and release Providence Public School District, its affiliated entities, and their respective officers, trustees, directors, members, managers, employees and agents, to the extent of the Service Provider's insurance coverage (including any retentions and/or deductibles), for and on account of any and all claims and liabilities arising out of any loss or damage to any property as are covered by insurance and shall notify its insurance carrier that it has waived subrogation rights against the aforementioned parties.

**19.7.3.** If Service Provider shall default in its obligation to procure and/or maintain some or all of the insurance coverages required hereunder, Providence Public School District may elect to procure said prescribed insurance in the name and at the expense of Service Provider without limitation of any other rights or claims that Providence Public School District may have. In such event, at Providence Public School District's option, Service Provider shall reimburse Providence Public School District upon demand for the costs incurred by Providence Public School District in procuring the insurance, or Providence Public School District may withhold such costs from amounts otherwise due to Service Provider.

**19.7.4.** All premiums, retentions, and/or deductibles shall be at the sole cost and expense of the Service Provider.

**19.7.5.** Prior to performing the work, Service Provider shall furnish Providence Public School District with a certificate or certificates on the standard ACORD 25 Form





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evidencing the insurance coverage above required and, upon request, shall furnish Providence Public School District, Inc. certified copies of all such policies.

**19.7.6.** Certificate Holder shall be as follows:

Providence Public School District  
Attn: Christopher Petisce  
Title: Executive Director of Finance  
Address: 797 Westminster Street, Providence, Rhode Island 02903  
eMail Address: Christopher.Petisce@ppsd.org

## 20. Providence Public School District Insurance

**20.1.** Providence Public School District shall keep all of the buildings, structures and other improvements that constitute part of the Providence Public School District campus and all Providence Public School District personal property contained therein insured against lost or damage from fire, explosion or other caused normally covered by standard broad form property insurance policies. Providence Public School District shall also obtain and maintain in full force and effect commercial general bodily injury and property damage liability insurance with a combined single limit of not less than One Million (\$1,000,000.00) Dollars for each occurrence during the term of the Agreement.

## 21. Indemnification

**21.1.** Without limiting the additional indemnification obligations set forth in the Agreement (including the Specification), Service Provider shall defend with competent counsel acceptable to Providence Public School District, indemnify and hold harmless Providence Public School District, its affiliated entities, and, as applicable, their respective officers, directors, trustees, members, managers, employees, agents and representatives of any kind, from and against any and all claims, demands, actions, suits and proceedings (whether civil, criminal or administrative), and all liability, loss, expense (including reasonable attorneys' fees), costs or damages, which are proximately caused by (i) Service Provider's breach of its obligations under the Agreement, or (ii) the intentional or negligent act or omission of the Service Provider or its officers, directors, members, managers, employees, agents, contractors or representatives.

## 22. Proprietary Information

**22.1.** Providence Public School District shall be entitled to utilize following the expiration or termination of the Agreement, without any obligation to make any payment on account thereof to Service Provider, any surveys and studies, management guidelines and procedures, operating manuals, and similar materials utilized by Service Provider in connection with the provision of facility services pursuant to the Agreement. Except to the extent Providence Public School District acquires rights of ownership of certain of such materials as provided in the Specification, Service Provider agrees to license, and does hereby license to Providence Public School District, the aforementioned rights of



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use. Service Provider agrees to take such actions and execute such documents as reasonably required by Providence Public School District to confirm the existence of such license.

### 23. Confidentiality

**23.1.** For the purposes of the Agreement, the content of all discussions held between the Service Provider and Providence Public School District shall be included in the definition of “Information.” The term “Information” also includes all information provided to the Service Provider by or on behalf of Providence Public School District, and all information generated by the Service Provider in the course of performing services pursuant to the Agreement.

**23.2.** In consideration of the economic and operational importance of the Information to Providence Public School District, the Service Provider hereby agrees as follows:

**23.2.1.** The Service Provider shall retain in confidence, and cause its directors, officers, members, managers, employees, agents, contractors, and consultants (collectively, the “Representatives”) to retain in confidence, all Information, and shall not, without the prior written consent of Providence Public School District, use the Information for any purpose other than the performance of its obligation under the Agreement. This restriction shall not apply to Information:

**23.2.1.1.** which is or becomes public knowledge (though no fault of the Service Provider), or

**23.2.1.2.** which is made lawfully available to the Service Provider by an independent third party without breach of an obligation of confidentiality, or

**23.2.1.3.** which is already in the Service Provider’s possession at the time of receipt from or on behalf of Providence Public School District (and such prior possession can be properly demonstrated by the Service Provider, or

**23.2.1.4.** which is independently developed by the Service Provider, its Representatives and/or subsidiaries or affiliates of its parent corporation, or

**23.2.1.5.** which is required by law, regulation, rule, act, or order of any governmental authority or agency to be disclosed by the Service Provider; provided, however, that the Service Provider gives Providence Public School District sufficient advance written notice to permit it to seek a protective order or other similar order with respect to such Information and thereafter discloses only the minimum Information required to be disclosed in order to comply.

**23.2.2.** The Service Provider shall limit disclosure of Information received hereunder to only those of its Representatives who have a legitimate need to know the Information in connection with the Service Provider’s performance of its obligations under the Agreement. The Service Provider shall advise such Representatives, upon disclosure to them of any Information, of the proprietary nature thereof, shall use all best efforts to prevent unauthorized disclosure or use by such Representatives, and



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shall be responsible for any disclosure or use in violation hereof by its Representatives.

**23.2.3.** Without limiting the generality of the confidentiality obligations set forth herein, to the extent that the Service Provider, in the course of providing services under the Agreement, has access to “education records”, it shall be deemed a “school official”, as each of those terms are defined under the Family Educational Rights and Privacy Act (“FERPA”). The Service Provider hereby acknowledges its obligations under FERPA, and shall comply with its obligations thereunder and under Providence Public School District’s policies and procedures adopted pursuant to FERPA.

**23.2.4.** The Service Provider shall promptly return, upon request, all documents, copies thereof, and any other material containing or constituting Information supplied to it by or on behalf of Providence Public School District.

**23.2.5.** The Service Provider represents and warrants that it has no obligations or commitments inconsistent with its obligations under this Agreement, nor will it assume any future obligations and commitments that are inconsistent with the specific terms and conditions of the Agreement.

**23.2.6.** The Service Provider acknowledges and expressly agrees that the disclosure and/or use of any Information in violation of this Agreement would be detrimental to Providence Public School District’s business. In accordance with applicable law, any such actual or threatened disclosure and/or use in violation of this Agreement shall entitle Providence Public School District to seek immediate equitable relief to enjoin any threatened or continuing violation.

## 24. Use of Owner’s Name

**24.1.** The Service Provider’s use of the name “Providence Public School District” alone or as part of another name in advertising or promotional materials shall be permitted only upon the prior written approval of, and in accordance with restrictions specified by, Providence Public School District.

## 25. Assignment.

**25.1.** Except as provided in Section 23.1, neither Providence Public School District nor Service Provider shall be entitled to assign the Agreement in whole or in part without the prior written consent of the other party, which other party shall be entitled to withhold in its sole discretion. Any purported assignment in violation of the preceding sentence shall be void.

**25.2.** The Service Provider shall not assign any amounts due or to become due under the Agreement without written notice to the Owner.



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### 26. Dispute Resolution

- 26.1.** If mutually agreed by the parties, any claim, dispute, or other matter in question arising out of or related to the Agreement may be submitted to mediation. Any claim, dispute or other matter in question arising out of or related to the Agreement and not resolved by mediation may, if agreed by the parties, be submitted to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with Commercial Arbitration Rules in effect on the date of the Agreement. Any demand for mediation or arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration.
- 26.2.** Continuing Contract Performance. Pending final resolution of any claim or dispute, except as otherwise agreed to in writing, the Service Provider shall proceed diligently with performance of its obligations under the Agreement.

### 27. Governing Law and Regulations

- 27.1.** The Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island, without regard to principles of conflicts of laws. Jurisdiction of any litigation with respect to the Agreement shall be in Rhode Island, with venue in a state or federal court of competent jurisdiction located therein.
- 27.2.** The Service Provider represents that it is in compliance with all applicable federal, state, or local laws, regulations, and orders with respect to equal opportunity, non-discrimination, and affirmative action, and either has previously provided or will provide to Providence Public School District any requested certifications and representations regarding compliance with such laws, regulations, and orders which Providence Public School District may require during the term of the Agreement. All of Service Provider's personnel shall be legally authorized to work in the United States in accordance and compliance with all U.S. immigration laws governing U.S. residency or registry for employment.

### 28. Liens

- 28.1.** The Service Provider shall protect and hold harmless Providence Public School District from, and shall promptly discharge if imposed, all mechanics or other liens or encumbrances on Providence Public School District property, which may be placed by any sub-contractors, material providers to, or creditors of, the Service Provider.
- 28.2.** Service Provider agrees to submit Release of Lien documentation upon demand by Providence Public School District to the Service Provider.

### 29. Representations and Warranties

- 29.1.** The Service Provider represents and warrants to Owner as follows:



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- 29.1.1.** Service Provider agrees that the Services shall be performed in a workmanlike and professional manner by its own employees and/or subcontractors of Service Provider having a level of skill in the area commensurate with the requirements of the Services to be performed and that such personnel shall achieve a level of productivity reflecting diligent application of such level of skill.
- 29.1.2.** The Services will be performed by appropriately qualified and trained personnel with due care, diligence, and supervision and to high professional standards of quality. Service Provider will perform the Services in compliance with all federal, state, and local laws and regulations and will have all permits and licenses required to perform such Services.
- 29.1.3.** The Service Provider shall supervise and direct its Services, competently and efficiently, using the Service Provider's best professional skill and attention.
- 29.1.4.** The Service Provider shall furnish sufficient forces, supervision, plans and equipment as may be necessary for the efficient progress of the Services and the quality of Services required thereunder.

## 30. Subcontractors/Subconsultants

- 30.1.** The Service Provider shall require that all Subcontractors/Subconsultants providing services under the Agreement are bound by written agreement to terms that are functionally identical to those set forth in the Agreement. Such agreement documents shall include the Services Specification (or applicable portion(s) thereof), these Terms and Conditions, and other related documents.
- 30.2.** Under no circumstances may a Subcontractor or Subconsultant submit bills or invoices directly to Providence Public School District. Providence Public School District has no contractual obligations to Subcontractors or Subconsultants. Service Provider shall be solely responsible for satisfying its obligations to its Subcontractors and/or Subconsultants, and shall indemnify and hold harmless Providence Public School District from and against all claims by Subcontractors and/or Subconsultants with respect thereto.
- 30.3.** Refer to Services Specification for additional obligations of the Service Provider in the solicitation and use of Subcontractors and Subconsultants.

## 31. Billing / Invoicing Requirements

- 31.1.** Basic Services Fee:
  - 31.1.1.** Service Provider shall invoice monthly on a date and in a format that is approved by the Providence Public School District Representative.
  - 31.1.2.** Invoices shall be for the past month activity.
  - 31.1.3.** Invoices shall reference the proper applicable Providence Public School District Purchase Order. In the event of any conflict between the terms of the Agreement



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and terms specified in any Service Provider invoice or Providence Public School District Purchase Order, the terms of the Agreement shall control.

- 31.1.4.** As indicated in Clause 11.6 Invoicing for Incentive Compensation. above, invoices shall incorporate any adjustments for Incentive Compensation additions or deductions.

### **31.2.** Charge / Reimbursable Services:

- 31.2.1.** Invoicing for Charge / Reimbursable Services shall be submitted separately, but accompanying the Invoice for Basic Services in a format approved by the Providence Public School District Representative.

- 31.2.2.** Invoices for Charge / Reimbursable Services shall reference the proper Providence Public School District Blanket Purchase Order.

- 31.2.3.** Invoices for Charge / Reimbursable Services shall reference the following:

- 31.2.3.1.** The Work Order generated for the activity.

- 31.2.3.2.** Reference to work being performed as part of an Owner insurance claim or potential insurance claim.

- 31.2.3.3.** Building Name for the location of the work.

- 31.2.3.4.** Percent Completion of work.

- 31.2.4.** Invoices for Charge / Reimbursable Services shall be submitted within 30 days of the completion of the work, unless explicitly agreed otherwise by the (OWNER INITIAL) Representative. Submittal of invoices for Charge / Reimbursable Services more than 30 days after the completion of the work will not be accepted by the Owner, and the Service Provider shall not be entitled to any payments for such invoices.

### **31.3.** Periodic reporting of Service Provider Services

- 31.3.1.** Within 30 days after the end of each Owner Fiscal Year (currently June 30), the Service Provider shall provide a summary of all Basic Services and Charge / Reimbursable Services performed for the Fiscal Year.

- 31.3.2.** The year-end summary may include work that has not yet been invoiced.

### **31.4.** Payment to Service Provider

- 31.4.1.** The Owner shall pay the Service Provider in a manner that is mutually agreed. Methods may include check or Electronic Funds Transfer. Notwithstanding the foregoing, payment of the Basic Services Fee shall be made by Electronic Funds Transfer as provided in Section 8.1.

- 31.4.2.** The Owner shall be entitled to deduct amounts charged to the Owner for inspections and quality compliance reviews and inspections, as described in Facilities Services Specification for Quality Control Processes.





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### 32. Miscellaneous Terms

- 32.1. Waiver.** The failure of either party to insist upon strict performance of any of the terms or provisions of the Agreement, or to exercise any option, right or remedy contained in the Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by either party of any term or provision of the Agreement shall be deemed to have been made unless expressed in writing and signed by such party.
- 32.2. Illegality.** If any clause or provision of the Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of the Agreement shall not be affected, unless such invalidity would create undue hardship to Service Provider or Providence Public School District, or is essential to the rights of either party, in which event such party may terminate the Agreement on written notice to the other party.
- 32.3. Exhibits.** Each exhibit referred to in the Agreement is attached to and incorporated by reference in the Agreement.
- 32.4. Approvals.** Whether or not expressly stated, any consent or approval of Providence Public School District or the (OWNER INITIAL) Representative required by the terms of the Agreement (including without limitation the Specification) must be obtained in writing, except to the extent that emergent or other circumstances make written consent impractical (in which case verbal consent may suffice).
- 32.5. Headings.** Headings of Articles and Sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular Articles or Sections to which they refer.
- 32.6. Including.** In the Agreement, whenever general words or terms are followed by the word “including” (or other forms of the word “include”) and words of particular and specific meaning, the word “including” (or other forms of the word “include”) shall be deemed to mean “including without limitation.”
- 32.7. Statutes and Regulations.** References in the Agreement to any federal, state, or local statute, code or ordinance shall be deemed to include any regulations promulgated thereunder.
- 32.8. Independent Contractors.** The Service Provider and Providence Public School District are independent entities. Neither party is, and neither party may represent itself as, an employee, agent (except for the limited purpose set forth in Section [16.2.4] of the Specification), representative, joint venturer, or partner of the other party. This Agreement is not intended to create an association, agency, joint venture, or partnership between the parties, or to impose any partnership liability upon either party and each party hereby disclaims any such liability.
- 32.9. Notices.** All notices or other communications required or desired to be given with respect to the Agreement shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate



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postage, and properly addressed as provided below. Each notice given by mail shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no such notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

### **32.9.1. To Owner:**

Providence Public School District  
Name: Brian Lemay  
Title: Director of Facilities and Capital Planning  
Address: 797 Westminster Street, Providence, Rhode Island 02903  
email address: Brian.Lemay@ppsd.org

### **32.9.2. To Service Provider:**

#### **32.9.2.1. As provided by Service Provider to Providence Public School District**

**32.10. Entire Agreement.** This Agreement, including its exhibits and together with the Owner's Request for Proposal Facilities Services and the Service Provider's proposal constitute the entire agreement between the parties hereto with respect their respective subject matter, supersede all prior understandings and writings, and may be amended or modified only by a writing signed by Providence Public School District and Service Provider. To the extent the terms of the Agreement (including without limitation the Specification) conflict with the Request for Proposal or the Service Provider's proposal, the terms of the Agreement shall control the parties' contractual obligations.

**32.11. Use of Premises:** Providence Public School District's premises may be used by Service Provider only for the Services described herein. The Service Provider shall not permit anything to be done or conducted in said premises in contravention of applicable statutes, law, ordinances, or zoning regulations, or in a manner that Providence Public School District determines may jeopardize the real property tax exempt status of any such premises.

**32.12. Coordination.** The Service Provider shall coordinate its Services hereunder with the services provided by Providence Public School District employees and other contractors, architects, engineers, and consultants working directly for Providence Public School District. Service Provider shall furnish labor that can work in harmony with such personnel. Harmony shall include the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slow downs, picketing, stoppages, or any violence or harm to person or property. Service Provider shall continue to provide its Services in the event of strikes or other labor disturbances impacting its personnel.

**32.13. Disruption.** The Service Provider acknowledges and agrees that it shall utilize care and attention to identify for Providence Public School District potential disruptions to





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students, faculty and personnel of Providence Public School District that may occur because of the Services and shall proceed so as to minimize disruption to the extent feasible. The Service Provider shall identify for Providence Public School District any risks to adjacent facilities components,

**32.14.** or finishes that may occur because of the Services and shall develop a plan to monitor any impacts to adjacent finishes, recommend measures to protect finishes, proceed so as to minimize risk to adjacent facilities components, systems or finishes and take appropriate measures to protect adjacent facilities components, systems, or finishes . The Service Provider shall promptly, at its expense, repair any damage to facilities components, systems or finishes and/or Providence Public School District's property resulting from its activities.

**32.15. Compliance.** The Service Provider represents and warrants that it is duly licensed (if applicable), and has otherwise obtained or made all consents, approvals and/or filings required to be obtained from or made with any governmental authority, as necessary to permit the activities contemplated by the Agreement. The Service Provider shall ensure that its services comply with all statutes, regulations, codes, ordinances, rules and orders of the United States of America, the State of Rhode Island, the City of Providence, and other governmental or public agencies and authorities having jurisdiction over such activities or Providence Public School District's operations in general, along with all amendments thereto, in effect from time to time. Without limiting the generality of the foregoing, Contractor specifically represents, warrants, covenants and agrees that its Services shall be provided in compliance with, and in a manner sufficient to enable Providence Public School District to comply with, The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Title IX of the Education Amendments of 1972, FERPA, and Owner policies and procedures adopted pursuant to any or all of the foregoing. Upon request by Providence Public School District, Service Provider shall require its personnel to attend any training conducted by or on behalf of the Owner for purposes of compliance with applicable laws.

**32.16. Time of Essence:** All contract terms that relate to time or timeliness of performance are of the essence of the Agreement.

## END OF TERMS AND CONDITIONS

