
AGREEMENT

Between

THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

And the

FIRM NAME

For

**DESIGN, CONSTRUCTION ADMINISTRATION,
AND RELATED SERVICES**

For

SCHOOL FACILITIES PROJECTS

CONTRACT NO.:

SCHOOL DISTRICT:

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THIS AGREEMENT is made and entered into this ____ day of _____ 2007 (the "Effective Date"), between the New Jersey Schools Development Authority (Authority), and _____ ("Design Consultant") with a principal office location at _____.

WITNESSETH, that the Design Consultant, for and in consideration of the payments hereinafter specified and agreed to be made by the Authority, hereby covenant and agrees to do and perform all of the Work to be done and performed in accomplishing this Agreement for the Project identified as:

Contract Number: _____

Agreement Name: _____

in strict and entire conformity with the terms and conditions and all Appendices and Attachments set thereto and all other documents making this Agreement, all of which are hereby made part of this contract as fully and with the same effect as if the same had been set forth at length in the body of this Agreement.

Provided that the Design Consultant strictly and completely performs all of the Work and all other obligations set forth in this Agreement, and subject only to such increases or decreases as are effectuated by Amendments to the Agreement as provided in the Agreement, the Authority will pay _____ the sum _____ Dollars (\$0.00) for the Scope of Services defined herein.

ADDRESS FOR GIVING NOTICES:

New Jersey Schools Development Authority
One West State Street
Post Office Box 991
Trenton, NJ 08625-0991
Attn: Regina Bleck

ADDRESS FOR GIVING NOTICES:

IN WITNESS WHEREOF, the parties have caused this instrument to be signed, attested to and sealed.

OWNER
New Jersey Schools Development Authority

Attest:

_____	by	_____	
(Signature)		(Signature)	Date
_____		_____	
(Printed Name)		(Printed Name)	
_____		_____	
(Title)		(Title)	

CONSULTANT
(Name of Consultant)

Witness or attest:

_____	by	_____	
(Signature)		(Signature)	Date
_____		_____	
(Printed Name)		(Printed Name)	
_____		_____	
(Title)		(Title)	

AFFIX SEAL IF A CORPORATION

Reviewed and Approved as to form:

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY GENERAL OF
NEW JERSEY

By: _____
Name: Elaine Schwartz
Title: Deputy Attorney General

1.0 DEFINITIONS

The terms set forth in this Agreement shall have the meanings ascribed to them for all purposes of this Agreement unless the context clearly indicates some other meaning. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

- 1.1 **“21st Century Schools Design Manual”** or **“Design Manual”** means the manual of the Authority governing the procedures and design criteria to be followed by Design Consultant with respect to School Facilities Projects. The Design Consultant shall be bound by the Manual in effect as of the date of execution of this Agreement, unless otherwise instructed by the Authority pursuant to an Amendment.
- 1.2 **“Additional Services”** means services in addition to those required under the Contractual Documents required pursuant to an Amendment.
- 1.3 **“Agreement”** means this agreement (and all appendices) between the Authority and the Design Consultant for the provision of design, construction administration, and other services prescribed herein for the School Facilities Project, as such agreement may be amended from time to time in accordance with the provisions hereof.
- 1.4 **“Amendment”** means an amendment to this Agreement executed by the Authority and the Professional Services Consultant.
- 1.5 **“Authority”** or **“New Jersey Schools Development Authority”** or **“NJSDA”** means the public body corporate and politic established in but not of, the Department of Treasury, pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:17G-1 et seq. The Authority is the Party that has engaged the Design Consultant pursuant to this Agreement.
- 1.6 **“Authority Project Manager”** means the Authority’s representative authorized to act on behalf of the Authority with respect to the School Facilities Project and the Contractual Documents.
- 1.7 **“Bidding and Contract Award Phase”** means a phase of the Construction Phase as more fully set forth in the Design Manual.
- 1.8 **“Change Order”** means a written order by the Authority, directing or authorizing some change to the Construction Contract, including, but not limited to, an increase or decrease in the Construction Work, or an acceleration of time for the performance of such Construction Work, or a change in the sequence in which such Construction Work is performed. Included in each Change Order will be any adjustment to the Design Consultant’s Compensation warranted by the change in the Construction Contract.
- 1.9 **“Claim”** means a demand or assertion by one of the Parties seeking, as a matter of right, adjustment or interpretation of Contractual Documents, payment of money, extension of time or other relief with respect to the terms of the Contractual Documents and shall also mean other disputes and matters in question between the Parties arising out of or relating to the Contractual Documents.
- 1.10 **“Claims Adjustment Committee”** means the committee established by the Authority for the purposes of resolving any Claims of the Design Consultant

- 1.11 **“Client School District”** means the school district in which the School Facilities Project is located, as such school district is identified in Appendix A (Special Conditions).
- 1.12 **“Compensation”** means payment(s) due to the Design Consultant for Services rendered pursuant to either the Stage One Amount or the Stage Two Amount, as more fully set forth in Section 3 of this Agreement.
- 1.13 **“Construction Administration Phase”** means a phase of the Construction Phase as more fully set forth in the Design Manual.
- 1.14 **“Construction Administration Services”** means the services required to be performed by the Design Consultant pursuant to the Contractual Documents necessary for the administration and oversight of the construction of a School Facilities Project so as to ensure that the construction is being conducted as is required by the Construction Contract Documents.
- 1.15 **“Construction Change Directive”** means a written order, directing or authorizing some change to the Construction Work but for which compensation has not yet been determined.
- 1.16 **“Construction Contract Documents”** means the agreement between the Authority and the Contractor governing the construction of all or a portion of the School Facilities Project and all other documents setting forth the obligations of the Contractor with respect to construction of the School Facilities Project.
- 1.17 **“Construction Cost Estimate”** or **“CCE”** means the estimated cost to construct the School Facilities Project, which amount does not include the costs of permits, acquisition of land, site development, furnishings, contingencies, professional fees, financing costs, and any other similar types of costs.
- 1.18 **“Construction Documents”** or **“CDs”** means the documents required to be prepared and submitted by the Design Consultant during the Construction Documents Sub-phase as set forth in the Design Manual.
- 1.19 **“Construction Documents Phase”** means a phase of the Design Phase as more fully set forth in the Design Manual.
- 1.20 **“Construction Milestones”** means the dates by which critical activities of the Construction Phase must be completed. The Construction Milestones for each School Facilities Project shall be addressed in Appendix A (Special Conditions).
- 1.21 **“Construction Phase”** means that phase of a School Facilities Project during which the construction of the School Facilities Project is undertaken by a Contractor or Contractors. The Construction Phase shall have subsumed within it the Bidding and Contract Award Phase, the Construction Administration Phase, the Project Close-Out Phase and the Post-Occupancy Review Phase.
- 1.22 **“Construction Work”** means the services performed by the Contractor or any Subcontractor pursuant to the Construction Contract Documents, whether completed or partially completed and includes all other labor, materials, equipment and services provided or to be provided to fulfill such obligations.

- 1.23 **“Consultant Performance Evaluation Policy and Procedure”** means the policies and procedures developed by the Authority for the purpose of evaluating the performance or Services of a Design Consultant under the Contractual Documents.
- 1.24 **“Contract Change Request”** or **“CCR”** means a request for a change in the Construction Contract documents. A CCR may be made by the Authority or the Contractor.
- 1.25 **“Contractor”** means that person or firm or those persons or firms engaged by the Authority to undertake the construction of the School Facilities Project pursuant to the Construction Contract Documents. There may be either a single Contractor who has overall contractual responsibility for delivering all of the construction services needed to complete the School Facilities Project or there may be multiple Contractors who have responsibility for delivering particular aspects of the School Facilities Project.
- 1.26 **“Contractual Documents”** means all documents setting forth the obligations and responsibilities of the Design Consultant and the Authority with respect to the School Facilities Project and includes, but is not limited to, the Request for Proposals, the Design Consultant’s Fee Proposal, this Agreement and all appendices thereto, the Design Manual, any Amendments and addenda, and all exhibits and schedules attached to such documents.
- 1.27 **“Current Working Estimate”** or **“CWE”** means the estimated cost to complete the School Facilities Project and includes the cost of construction, permits, acquisition of land, site development, furnishings, contingencies, professional fees, financing costs, and any other similar types of costs.
- 1.28 **“Day”** or **“Days”** mean(s) a calendar day or days.
- 1.29 **“Deliverables”** means, among other things, technical data, plans, specifications, minutes, approvals, recommendations, drawings, reports, computer discs, spare parts lists, instruction books, operating and maintenance manuals, documents, writings, materials, services or any other thing the delivery of which, however accomplished, is required to be delivered by the Design Consultant, explicitly or implicitly, by the Contractual Documents.
- 1.30 **“Design Consultant”** means the architectural firm selected by the Authority to provide the Services required under the Contractual Documents.
- 1.31 **“Design Consultant Project Manager”** means that person designated by the Design Consultant to serve as its representative during the Term.
- 1.32 **“Design Development Documents”** means the documents required to be prepared and submitted by the Design Consultant during the Design Development Phase as set forth in the Design Manual.
- 1.33 **“Design Development Phase”** means a phase of the Design Phase as more fully set forth in the Design Manual.
- 1.34 **“Design Milestones”** means the dates by which all critical activities to be performed in the Design Phase shall have been completed by the Design Consultant. The Design Milestones for each School Facilities Project shall be addressed in Appendix A (Special Conditions).

- 1.35 **“Design Phase”** means that phase of this Agreement in which Pre-Development Activities and the design of the School Facilities Project are undertaken by the Design Consultant. The Design Phase shall consist of the Program/Concept Design Phase, Schematic Design Phase, the Design Development Phase and the Construction Documents Phase.
- 1.36 **“DOE”** means the New Jersey Department of Education.
- 1.37 **“Effective Date”** means the date on which this Agreement became effective, and for purposes of this Agreement, is that date so identified and set forth on page 1.
- 1.38 **“Fee Proposal”** means the Design Consultant’s fee proposal submitted in response to the RFP.
- 1.39 **“Final Completion”** means that point in time on a School Facilities Project when all requirements of the Construction Contract Documents have been performed, when all items on the Punchlist have been performed, when a Certificate of Occupancy, a Certificate of Continued Occupancy, or a Certificate of Completion, as applicable, has been issued.
- 1.40 **“Final Construction Cost Estimate”** or **“Final CCE”** means the CCE for the School Facilities Project set forth in the Final Project Report.
- 1.41 **“Final Current Working Estimate”** or **“Final CWE”** means the CWE for the School Facilities Project set forth in the Final Project Report.
- 1.42 **“Final Project Report”** means the final report submitted to the Authority by the DOE which report is DOE's direction to the Authority to undertake construction of the School Facilities Project described therein.
- 1.43 **“Fiscal Year”** means the fiscal year of the Authority, which commences on January 1 of each year and ends on December 30 of the same year.
- 1.44 **“Initial Construction Cost Estimate”** or **“Initial CCE”** means the CCE for the School Facilities Project set forth at project inception and established pursuant to Section 2.2.1.4.1 hereof. The Initial CCE shall be continually updated by the Design Consultant throughout the design and construction of the School Facilities Project as set forth in this Agreement.
- 1.45 **“Initial Current Working Estimate”** or **“Initial CWE”** means the CWE for the School Facilities Project that is set forth at project inception pursuant to Section 2.2.1.4.1 hereof. The Initial CWE shall be continually updated by the Design Consultant throughout the design and construction of the School Facilities Project as set forth in this Agreement.
- 1.46 **“Key Team Member”** means a principal, partner or officer of the Design Consultant, or a project executive, project manager, senior principal, studio head, or job captain identified in the Technical Proposal as having a responsible role in the successful completion of a School Facilities Project and who generally spends or is expected to spend 20 percent or more of his/her time on any phase of a School Facilities Project.
- 1.47 **“Land Acquisition Approval”** means an approval by the DOE of the acquisition of land for School Facilities Project purposes.

- 1.48 **“Lump Sum Amount - Program Phase”** means the total lump sum payable to the Design Consultant as Compensation for Services rendered during the Program Phase, if any, including allowances.
- 1.49 **“Lump Sum Amount - Design and Construction Phases”** means the lump sum amount of Compensation payable to the Design Consultant for Services rendered during the Design Phase (excluding the Program Phase) and the Construction Phase, including allowances. The Lump Sum Amount - Design and Construction Phases, exclusive of allowances, shall be calculated by application of a percentage to the total square footage of the School Facilities Project.
- 1.50 **“New Jersey Economic Development Authority”** or **“NJEDA”** means the entity created pursuant to P.L. 1974, c. 80, as amended (N.J.S.A. 34:1B-1 *et seq.*) or any successor thereto.
- 1.51 **“Notice to Proceed”** means a notice from the Authority to the Design Consultant directing the Design Consultant to commence performing its responsibilities pursuant to this Agreement. A Design Consultant may be directed to provide Services in connection with each School Facilities Project identified in Appendix A (Special Conditions) pursuant to one or more separate Notices to Proceed for such project’s: (i) Program/Concept Design Phase; (ii) Schematic Design Phase through Construction Documents Phase, (iii) Construction Phase, or (iv) any other appropriate Phases.
- 1.52 **“Party”** means one of the parties to this Agreement, which are the Authority and the Design Consultant.
- 1.53 **“Permit Application”** means that part of the Construction Documents Phase as more fully set forth in the Design Manual and requirements set forth by the Division of Community Affairs, Division of Codes and Standards per N.J.S.A. 5:23-1 *et seq.*.
- 1.54 **“Post Occupancy Review Phase”** means a phase of the Construction Phase as more fully set forth in the Design Manual.
- 1.55 **“Pre-Development Activities”** means activities undertaken under the oversight of the Authority in connection with the development of a School Facilities Project and includes such activities as site acquisition and development, preliminary design work, acquisition and installation of temporary facilities, and undertaking feasibility studies to determine the viability of new construction versus rehabilitation. Pre-Development Activities of the Design Consultant, if any, shall be initiated during the Program Phase, in accordance with the Supplemental Scope of Services and the Special Conditions (Appendix A).
- 1.56 **“Pre-Development Activities Schedule”** means the schedule for Pre-Development Activities established by the Authority or its PMF, which shall not be inconsistent with the Schedule.
- 1.57 **“Pre-Development Approval”** means the DOE approval of Pre-Development Activities.
- 1.58 **“Preliminary Project Report”** means the preliminary project report prepared by the DOE and issued to the Authority, containing a general description of the School Facilities Project approved by the DOE.
- 1.59 **“Professional Services Consultant”** means consultants, including Design Consultants, providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that

members of these professions and those in their employ may logically or justifiably perform. These consultants may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services.

- 1.60 **“Professional Services Consultant Agreements”** means the agreements between the Authority and Professional Services Consultants in connection with a School Facilities Project and, unless otherwise noted, shall include this Agreement.
- 1.61 **“Programmatic Requirements”** means those School Facilities Project-specific requirements established or approved by the DOE or the Authority.
- 1.62 **“Program/Concept Design Phase” or “Program Phase”** means a phase of the Design Phase as more fully set forth in the Design Manual.
- 1.63 **“Project Close-Out”** means those activities involving completion of a School Facilities Project which occur during the Construction Administration Phase as more fully set forth in the Design Manual.
- 1.64 **“Project Close-Out Phase”** means a phase of the Construction Phase as more fully set forth in the Design Manual.
- 1.65 **“Project Description”** means the document(s) identifying and describing the School Facilities Project. The Project Description may be amended, from time to time, in accordance with the provisions of this Agreement. The Project Description is attached hereto as Appendix D. The Project Description may include the Scope of Work and may also include the Preliminary Project Report. The Project Description shall contain, in addition to other things, a general description of the School Facilities Project.
- 1.66 **“Project Management Firm” or “PMF”** means a firm engaged by the Authority, at its sole option, to provide overall construction management services, oversight, direction, coordination and reporting in connection with School Facilities Projects undertaken by the Authority. The PMF shall be identified in Appendix A (Special Conditions).
- 1.67 **“Punchlist”** means the list, prepared before Substantial Completion, of incomplete or defective work to be performed or remedied by a Contractor after Substantial Completion.
- 1.68 **“Request for Proposals” or “RFP”** means the Authority’s request for Technical and Fee Proposals from Professional Services Consultants for the engagement governed by this Agreement.
- 1.69 **“Schedule”** means the time-frames governing the completion of the Services required to be performed within the Design Milestones and the Construction Milestones. The Schedule may be established as provided in Appendix A (Special Conditions).
- 1.70 **“Schematic Design Documents”** means the documents required to be prepared and submitted by the Design Consultant during the Schematic Design Phase as more fully set forth in the Manual.
- 1.71 **“Schematic Design Phase”** means a phase of the Design Phase as more fully set forth in the Manual.

- 1.72 **“School Facilities Project”** means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a School Facility or of any other personal property necessary for or ancillary to any School Facility; and for the purposes of this Agreement, the Design Consultant shall be responsible for all School Facilities Projects identified in the Special Conditions, attached hereto as Appendix A, and the term “School Facilities Project” shall include all projects so identified.
- 1.73 **“School Facilities Project Team”** means the team(s) identified by the Authority for the School Facilities Project. Such team(s) shall consist of, but not be limited to, representatives of the Client School District, the Authority Project Manager, the Design Consultant, the PMF, the Contractor, and any other Professional Services Consultants engaged by the Authority in connection with the School Facilities Project. The School Facilities Project Team may also include, at the option of the Authority, representatives of the DOE.
- 1.74 **“School Facility”** means and includes any structure, building or facility used wholly or in part for academic purposes.
- 1.75 **“Scope of Work”** means the document describing the work to be physically completed for the School Facilities Project, issued by the DOE or by the Authority (or its agents). The Scope of Work may be amended, from time to time, in accordance with the provisions of this Agreement. The Scope of Work may be included in the Project Description attached hereto as Appendix D.
- 1.76 **“Services”** means the services to be performed by the Design Consultant pursuant to the Contractual Documents, whether completed or partially completed and includes all other labor, materials and equipment provided or to be provided to fulfill such obligations.
- 1.77 **“Site”** means the site(s) proposed or selected for the School Facilities Project.
- 1.78 **“Special Conditions”** means that document attached as Appendix A to this Agreement, and made a part thereof, as such document may be amended from time to time, which identifies, among other things, the School Facilities Project(s) for which the Design Consultant shall be responsible..
- 1.79 **“State”** means the State of New Jersey.
- 1.80 **“Subconsultant”** means the Professional Services Consultant to whom another Professional Services Consultant subcontracts part of the Services, for which the latter is responsible.
- 1.81 **“Subcontractor”** means the contractor to whom a Contractor or other Subcontractor subcontracts part of the work, for which such Contractor is ultimately responsible.
- 1.82 **“Submittal”** means all documents required to be submitted by the Contractors, including, but not limited to, shop drawings, product data and samples.
- 1.83 **“Substantial Completion”** means that point in time when all essential requirements of the Construction Contract Documents have been performed so that the purpose of the Construction Contract Documents is accomplished; when the Punchlist has been created; when there are no important or material omissions or technical defects or deficiencies, as defined by the Authority; and when the School Facilities Project is ready for occupancy in accordance with its intended purpose.

- 1.84 **“Supplemental Scope of Services”** means those Program Phase Services set forth in Appendix B to this Agreement, which the Design Consultant shall be required to provide in accordance with the terms established in the Special Conditions (Appendix A).
- 1.85 **“Technical Proposal”** means the Design Consultant’s proposal submitted in response to the RFP.
- 1.86 **“Term”** means the term of this Agreement as set forth in Section 4 hereof.
- 1.87 **“The Unit of Fiscal Integrity”** means that unit within the Office of the Attorney General created by Section 70 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-43), and any successor to that entity, including the FISC unit within the Division of Criminal Justice, Bureau of Fiscal Oversight.
- 1.88 **“Uniform Construction Code”** means the New Jersey Uniform Construction Code as set forth in N.J.A.C. 5:23-1 *et seq.*
- 1.89 **“Value Management”** or **“Value Engineering”** means those services to be performed by the PMF and Design Consultant in accordance with the recommendations of the Society of American Value Engineers and shall include mechanical systems, roofing systems, finishes, energy management systems, lighting and power systems, site work, as well as maintainability and operability considerations.

2.0 RESPONSIBILITIES OF THE DESIGN CONSULTANT

2.1 General

- 2.1.1 Familiarity. The Design Consultant shall become fully familiar with all relevant project documentation as well as the contractual obligations of each entity doing work for the School Facilities Project, including, but not limited to, the PMF, other Professional Services Consultants, and the Contractor, as applicable. (A “Project Responsibility Matrix” is attached to this Agreement as Appendix C.)
- 2.1.2 Contractual Documents. The Contractual Documents establish the obligations of the Design Consultant. The Services described in this Agreement establish the minimum obligations of the Design Consultant. The Design Consultant shall be responsible for satisfying all of the Services described in this Agreement, even if such Services were not specifically addressed by the Design Consultant in its Technical Proposal. If the services promised in the Design Consultant's Technical Proposal exceed those described in this Agreement, the Request for Proposal, the Procedures Manual Design Manual and the Supplemental Scope of Services, then this Agreement shall be deemed to include such services and no additional compensation will be paid to the Design Consultant.
- 2.1.3 Schedule. The Services shall be performed within the Schedule and the Design Milestones and Construction Milestones. Time limits established by the Schedule and the Design Milestones and Construction Milestones shall not be exceeded by the Design Consultant, except as may be provided in this Agreement. There may be a Program Phase Schedule, and Schedules for the balance of the Design Phase and Construction Phase, as more fully provided in Appendix A (Special Conditions).

- 2.1.4 Service Requirements. In addition to the requirements set forth in this Agreement, the Request for Proposals, the Technical Proposal and the Supplemental Scope of Services, the Design Consultant shall comply with all requirements set forth in the Design Manual, except as may be otherwise provided in this Agreement.
- 2.1.5 Service Quality. The Design Consultant shall perform all Services in a good, skillful, and prompt manner, consistent with the level of skill and care ordinarily exercised by members of the Design Consultant's profession, currently practicing under similar circumstances.
- 2.1.6 Deliverables Quality. The Design Consultant is responsible for the quality, technical accuracy, and timely completion and delivery of all Deliverables. If circumstances will result or may result in a late delivery, it shall be the responsibility and obligation of the Design Consultant to make the details known immediately to the PMF.
- 2.1.7 Deficiencies. The Design Consultant shall, without additional compensation, cure any errors, omissions, or other deficiencies in the Deliverables. The approval of interim Deliverables shall not in any way relieve the Design Consultant of fulfilling its obligations under the Contractual Documents. Acceptance or payment for any of the Deliverables shall not be construed as a waiver by the Authority of any of its rights under the Contractual Documents or of any cause of action arising out of the Design Consultant's performance or non-performance under the Contractual Documents.
- 2.1.8 Design Consultant Project Manager. The Design Consultant shall designate a principal its firm, satisfactory to the Authority and its PMF, as the Design Consultant Project Manager. The Design Consultant Project Manager shall, so long as his/her performance is acceptable, remain in charge of the firm's services for each School Facilities Project through completion of the one-year warranty period, and shall represent the Design Consultant and be available for general consultation throughout each School Facilities Project.
- 2.1.9 Key Team Members. The Design Consultant shall utilize the Key Team Members identified in its Technical Proposal. The Design Consultant shall notify the Authority and the PMF in advance of any proposed change in its Key Team Members and shall submit to the Authority and the PMF, for approval, the name and qualifications of proposed substitutions with equal or superior qualifications at no additional cost to the Authority. No changes in Key Team Members shall be permitted without the prior, written approval of the Authority and the PMF. In the case of any disagreement between the Design Consultant and the Authority/PMF with regard to such proposed changes, such disagreement will be resolved by the Authority Project Manager in her sole discretion.
- 2.1.10 Substitution of Key Team Members. The PMF may, at its option, review from time to time the Key Team Members of the Design Consultant. If, in the PMF's opinion, changes to Key Team Members are necessary, the Design Consultant and the Authority will be notified in writing of such need, and the Design Consultant shall thereupon provide substitutes acceptable to the Authority.
- 2.1.11 Performance of Services. The Services to be provided by the Design Consultant pursuant to this Agreement shall be performed by the Design Consultant and its employees and Subconsultants, if any.

- 2.1.12 Subconsultants. In the event the Design Consultant hires, employs or otherwise engages Subconsultants, the Design Consultant shall be considered the sole consultant and the sole point of contact with regard to contractual matters. The Design Consultant assumes sole and full responsibility for the complete performance contemplated by the Contractual Documents, including the performance of all Subconsultants. The Design Consultant must: (i) select only Subconsultants that have been pre-qualified by the Authority, and (ii) obtain the consent of the Authority Project Manager prior to the engagement of any such Subconsultant.
- 2.1.13 Subcontracting. It is expressly understood by the Design Consultant that approval by the Authority Project Manager for the subcontracting of any Services under the Contractual Documents shall not relieve the Design Consultant from performing its obligations under the Contractual Documents. The Design Consultant shall at all times give due attention to the fulfillment of its obligations under the Contractual Documents and shall keep the Services under its control. Consent by the Authority Project Manager to any subcontracting of any part of the Services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the engagement by the Design Consultant of the Subconsultant. The Design Consultant shall be responsible for all Services performed by its Subconsultants, the provision of which Services shall conform to the provisions of the Contractual Documents and the requirements of applicable law, including, but not limited to, the Building Design Services Act, N.J.S.A. 45:4B-1 et seq.
- 2.1.14 Amendment. The Design Consultant understands and agrees that any change to this Agreement must be made in writing in the form of an Amendment, executed by the Design Consultant and the Authority.
- 2.1.14.1 Any Services performed by the Design Consultant without an Amendment that differ from, or are in addition to, the Services prescribed by this Agreement shall be done at the Design Consultant's own financial risk.
- 2.1.14.2 The Design Consultant shall make no changes to the scope of its Services, the Scope of Work, or the scope of the School Facilities Project without the prior, written consent of the Authority Project Manager and an Amendment to the Agreement. When requesting consent for such changes, the Design Consultant must simultaneously notify the Authority of any need for additional compensation engendered by such changes; provide a detailed cost break-down of, and justification for, the changes sought; and detail the impact of each change upon the Schedule and the Design Milestones and Construction Milestones. The requirements of this provision are in addition to any other requirements of the Contractual Documents regarding additional compensation.
- 2.1.15 Construction Liens. The Design Consultant agrees that no construction or other liens, or any other notices of Claims, including, without limitation, any Notice of Unpaid Balance and Right to File Lien under the Construction Lien Law, N.J.S.A. 2A:44-1 et seq. (collectively "Construction Liens"), shall be filed or maintained against any Site, or against the improvements that are the subject of the Services, for or on account of any work or labor performed or materials furnished under this Agreement.
- 2.1.16 Construction Liens - Subconsultants. The Design Consultant hereby expressly waives and relinquishes the right to have, file or maintain Construction Liens against any Site or

against the improvements which are the subject of the Services. The Design Consultant covenants and agrees to include a provision in every subcontract between it and any Subconsultant or materialman, by which provision each such Subconsultant or materialman shall agree to waive its rights to have, file or maintain Construction Liens against the Site or against the improvements which are the subject of their work, for or on account of any work or labor performed or materials furnished under their subcontracts.

- 2.1.17 Records. For all services rendered, the Design Consultant shall, in accordance with generally accepted accounting principles and practices, maintain weekly payroll, overhead, cost and accounting records, as well as all other records the Design Consultant may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority and the Unit of Fiscal Integrity (or their agents) as to all aspects of the services and material provided under the Contractual Documents, whether the services are performed by the Design Consultant, its Subconsultant or any other firm. All records shall be retained by the Design Consultant for a period of three (3) Fiscal Years following final payment by the Authority or the end of the Fiscal Year in which this Agreement expires, whichever occurs later. After this period, the Design Consultant may dispose of these records after first offering them, at no cost, to the Authority in writing; the Authority shall have thirty (30) days within which to accept them.
- 2.1.18 Hazardous Materials. Except as otherwise provided in Appendix B (Supplemental Scope of Services), where applicable, should the Design Consultant discover previously undetected asbestos, radon, lead, PCBs or other hazardous material, the Design Consultant shall report its findings immediately to the PMF. During any remedial action undertaken by the Authority or any other party, the Design Consultant may be required to cease working on the School Facilities Project, if so directed by the Authority and such stopping of Services shall be deemed a suspension governed by Section 6.3.2 hereof. The Design Consultant will resume working at the direction of the Authority, and the terms and conditions of the Contractual Documents shall remain in full force and effect.
- 2.1.19 Radon Mitigation. In all School Facilities Projects involving new construction, including additions, the Design Consultant shall incorporate into its design and construction administration services radon mitigation construction techniques consistent with the Radon Hazard Subcode of the New Jersey Uniform Construction Code, N.J.A.C. 5:23-10. This requirement shall apply to all School Facilities Projects, regardless of whether the project is located in a Tier 1 municipality, as defined in N.J.A.C. 5:23-10 (Appendix 10-A).
- 2.1.20 LEED™. Unless otherwise directed by the Authority Project Manager, the Design Consultant shall provide all design and construction administration services to ensure that the School Facility incorporates tenets developed by the United States Green Building Council (“USGBC”) and set forth in the Leadership in Energy & Environmental Design (“LEED™”) “Green Building Rating System” Version 2.0, and maximizes energy efficiency and environmental sustainability to the extent that would merit at least 26 points on the LEED™ rating scale. LEED™ is a registered trademark of the USGBC. The Design Consultant shall be solely responsible for obtaining all documents from the USGBC that the Design Consultant deems necessary to provide this service. The Design Consultant shall also adhere to all LEED requirements as stated in the Design Manual.

- 2.1.21 E-Rate Program. The Design Consultant shall ensure that the School Facilities Project is designed and constructed to maximize its telecommunications connectivity through, but not limited to, the E-Rate Program instituted in accordance with the provisions of the federal Telecommunications Act of 1996, Pub. L. 104-104, set forth at 47 U.S.C.A. § 253, and administered by the Schools and Libraries Division of the Universal Service Administrative Company at the direction of the Federal Communications Commission. The Design Consultant shall apply for and ensure that any resulting installation discounts or reimbursements are forwarded or credited to the Authority, as directed by the Authority Project Manager.
- 2.1.22 Generators. Unless otherwise directed by the Authority Project Manager, the Design Consultant shall provide all designs and construction administration necessary to include the number and type of electrical generators required to provide an effective temporary source of electrical power for the School Facility.
- 2.1.23 Meetings. In addition to any attendance required of the Design Consultant by the Contractual Documents at Planning Board or other regulatory or management meetings, the Design Consultant shall be obligated to participate in such meetings and presentations as may be determined by the Authority to be necessary to garner appropriate community input on and support for the School Facilities Project.
- 2.1.24 Assistance in Legal Proceedings. The Design Consultant agrees that it shall assist and cooperate with the Authority in any legal action or proceeding that is related to or that arises out of or in connection with the School Facilities Project and in which action or proceeding the Authority and the Design Consultant are not named as adverse parties. Such assistance shall include, but not be limited to, testifying as an expert or preparing exhibits, reports or models. Any Services provided by the Design Consultant pursuant to this paragraph shall be deemed “Additional Services” and shall be compensated as such in accordance with the Fee Proposal for “Additional Services.”
- 2.1.25 Regulatory Compliance. The Design Consultant, to the best of its knowledge, information, and belief, shall abide by all applicable local, state, and national code requirements, as well as all regulations imposed by funding sources (auditing requirements, payroll affidavits, etc.), such as may be identified at the time of execution of this Agreement.
- 2.1.26 Phases. Services shall be delivered in distinct phases, which the Authority may combine or eliminate in its discretion, in the best interests of the School Facilities Project. A typical School Facilities Project will consist of the Design Phase and the Construction Phase, each of which shall consist of the following phases:

Design Phase:

Program Phase
Schematic Design Phase
Design Development Phase
Construction Documents Phase

Construction Phase:

Bidding and Contract Award Phase

Construction Administration Phase
Project Close-Out Phase
Post Occupancy Review Phase

- 2.1.27 P.L. 2005, c. 51 Requirements. Pursuant to law, the Consultant shall, on a continuing basis, disclose and report to the NJSDA Board any “contributions,” as that term is defined in P.L. 2005, c. 51, made during the Term of the contract by it or any “Business Entity,” as that term is defined in P.L. 2005, c. 51, associated with the Consultant, on the “Disclosure of Political Contribution” form provided by the NJSDA, at the time such contribution is made.
- 2.1.28 P.L. 2005, c. 271 Special Provisions – Political Contributions Disclosure. Consultant comply with its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (“ELEC”), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3), in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Consultant’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.
- 2.1.29 Executive Order No. 129 Requirements. In accordance with Executive Order No. 129 (2004) (“EO 129”), and with P.L. 2005, c. 92, the Consultant shall have a continuing duty to comply with the provisions of EO 129 and P.L. 2005, c. 92, as applicable. If, during the Term, the Consultant or a subcontracted firm, who had on contract award declared that Services would be performed in the United States, proceeds to shift the performance of the Services outside of the United States, the Consultant shall be deemed in breach of the Agreement, which shall be subject to termination for cause, unless the Managing Director of the NJSDA Division of Contract Procurement and Administration shall determine in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

2.2 Design Phase

2.2.1 General Requirements.

- 2.2.1.1 Delivery of the Services in the Design Phase will be performed in distinct phases. The phases for which the Design Consultant shall be engaged shall be defined in the Design Manual.
- 2.2.1.2 All documents submitted by the Design Consultant pursuant to the Contractual Documents shall be subject to the written approval of the Authority Project Manager; such documents shall include all Construction Cost Estimates and all drawings and specifications, along with changes, revisions or amplifications thereof. The approval of drawings by the Authority Project Manager shall not be deemed to constitute authority to violate, cancel or set aside any provisions of this Agreement or of applicable law, regulations and codes, nor to relieve the Design Consultant from the responsibility of complying therewith. Construction Documents must comply with the latest edition of the Uniform Construction Code in effect at the time of approval by the Authority in the Final Review of the Construction Documents Phase.

2.2.1.3 Unless otherwise provided in the Contractual Documents, the Design Consultant shall secure (at the expense of the Authority) all permits, licenses and inspections required for the School Facilities Project except for those permits, licenses or inspections required to be obtained directly by the Contractor(s) or the Client School District.

2.2.1.4 Determination of Costs.

2.2.1.4.1 The Design Consultant shall prepare detailed plans and specifications in accordance with the description of the School Facilities Project as set forth in the Project Description, and the Design Consultant shall be responsible for designing the School Facilities Project in accordance with the Initial Construction Cost Estimate. The Initial Construction Cost Estimate and the Initial Current Working Estimate shall be established by the Authority, in consultation with the Design Consultant and the PMF upon commencement of the engagement of the Design Consultant under this Agreement. The Design Consultant shall prepare its own Construction Cost Estimate(s); any Construction Cost Estimates prepared by the Design Consultant shall represent the Design Consultant's best judgment as a design professional familiar with the construction industry. Once such Initial Construction Cost Estimate is established nothing contained herein, however, shall relieve the Design Consultant from its responsibility of designing the School Facilities Project within the Initial Construction Cost Estimate.

2.2.1.4.2 The Design Consultant and PMF shall reconcile all Construction Cost Estimates prepared by the Design Consultant and PMF. The Authority Project Manager will resolve any disagreements between the PMF and Design Consultant during the reconciliation of such estimates.

2.2.1.4.3 If the Construction Cost Estimate to deliver the School Facilities Project, as designed by the Design Consultant, exceeds the Initial Construction Cost Estimate, the PMF and Design Consultant will perform Value Engineering of the School Facilities Project. The Design Consultant shall re-design the School Facilities Project, in accordance with the results of the Value-Engineering effort, at no additional cost to the Authority. All disputes between the PMF and the Design Consultant regarding the results of the Value Engineering or the need to re-design shall be resolved by the Authority Project Manager, whose decision shall be binding.

2.2.1.4.4 The Final CCE and Final Current Working Estimate shall be established as a condition of this Agreement by the transmittal from the DOE of the Final Project Report. The Design Consultant shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Construction Contract Documents; to make reasonable adjustments in the scope of the School Facilities Project; and to include in the Construction Contract Documents alternate bid items to adjust the cost of construction to the Final Construction Cost Estimate.

2.2.1.5 Regularly scheduled meetings with the Design Consultant and its Subconsultants will be held so that the PMF can ascertain progress and/or introduce input regarding costs, constructability, Value Engineering, and other such matters. A schedule of meetings will be established after the Effective Date and shall be reviewed and revised as needed during each phase of the School Facilities Project.

2.2.2 Program/Concept Design Phase. Upon receipt of the Notice to Proceed with the Project generally, or the Notice to Proceed with the Program/Concept Design Phase specifically, the Design Consultant shall perform all procedures and provide all deliverables required as part of the Program /Concept Design Phase in accordance with the Design Manual. If additional Program Phase services are identified in Appendix A (Special Conditions), the Design Consultant shall perform such services in accordance with the criteria defined by the Design Manual, or Appendix B (Supplemental Scope of Services),

2.2.3 Schematic Design Phase. Upon receipt of the Authority's approval of the Program/Concept Design Phase Documents, the Design Consultant shall proceed with Schematic Design Phase Services, and shall perform all procedures and provide all deliverables required as part of the Schematic Design Phase in accordance with the Design Manual.

2.2.4 Design Development Phase. Upon receipt of the Authority's approval of the Schematic Design Phase Documents, the Design Consultant shall proceed with Design Development Phase Services, and shall perform all procedures and provide all deliverables required as part of the Design Development Phase in accordance with the Design Manual.

2.2.5 Construction Documents Phase. Upon receipt of the Authority's approval of the Design Development Phase Documents, the Design Consultant shall proceed with Construction Documents Phase Services, and shall perform all procedures and provide all deliverables required as part of the Construction Documents Phase in accordance with the Design Manual.

2.3 Construction Phase

Upon receipt of a Notice to Proceed with the Construction Phase, the Design Consultant shall proceed with Construction Documents Phase Services, and shall perform all procedures and provide all deliverables required as part of the Construction Documents Phase in accordance with the Design Manual. The Design Consultant shall be a representative of, and shall advise and consult with, the Authority during the Construction Phase. During the Construction Phase, the Design Consultant shall have authority to act on behalf of the Authority, but only to the extent specifically provided in this Agreement.

2.3.1 Bidding and Contract Award Phase

2.3.1.1 The Design Consultant shall proceed with the Bidding and Contract Award Phase only upon receipt of the Notice to Proceed with the Construction Phase.

2.3.1.2 When necessary to further explain and/or clarify the intent of the Construction Documents, the Design Consultant shall prepare and submit to the PMF any necessary addendum. Addenda that modify the terms or intent of the

Construction Documents shall be submitted for review by the PMF and for approval by the Authority Project Manager prior to issuance. The PMF will issue any such addenda to all prospective bidders.

2.3.1.3 If the Bidding and Contract Award Phase has not commenced within sixty (60) days after the Design Consultant submits the Construction Contract Documents and the Final Construction Cost Estimate to the Authority, any Final CCE shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Contract Documents to the Authority and the date on which proposals are sought.

2.3.1.4 In the event that the bids received for construction of the School Facilities Project are in excess of five percent (5%) of the Final Construction Cost Estimate, and changes to drawings and/or specifications are required to meet the Final Construction Cost Estimate, the Design Consultant shall redesign and/or propose sufficient, approved alternate designs, plans and specifications for the Construction Work, so as to secure a bid that will come within the Final Construction Cost Estimate without impacting the Programmatic Requirements of the School Facilities Project. The Design Consultant shall notify the Authority Project Manager immediately if it determines that such alternate design will impact the Programmatic Requirements of the School Facilities Project. Any redesign work and changes to plans, including reproduction costs for submissions in order to obtain final approvals and permits, shall be undertaken by the Design Consultant at no additional cost to the Authority.

2.3.2 Construction Administration Phase. Upon the Authority's issuance to a General Contractor of a Notice to Proceed with the Construction of the Project, the Design Consultant shall perform all procedures and provide all deliverables required as part of the Construction Administration Phase in accordance with the Design Manual.

2.3.2.1 Within thirty (30) days after Contract Award for construction of the School Facilities Project, the Design Consultant will produce and deliver "Conformed Contract Documents" for the Project. The "Conformed Contract Documents" shall incorporate all revisions as a result of the addenda and responses to requests for clarification created during the Bidding Phase prior to Contract Award.

2.3.2.2 The Design Consultant shall attend weekly progress meetings during the Construction Administration Phase to discuss such matters as procedures, progress, quality of construction, design issues, Submittals and scheduling.

2.3.2.3 The Design Consultant, in consultation with the PMF, will provide administration of the Construction Contract Documents. However, whenever there is a conflict in the Construction Contract Documents as to whether the Design Consultant or the PMF has authority or is responsible for any decision and/or action, the Authority Project Manager, in his sole discretion, at any time and from time to time, shall determine who, between the Design Consultant and the PMF shall be responsible for such decision and/or action. The Authority Project Manager shall make such determination in writing, with a copy to the PMF and the Design Consultant.

- 2.3.2.4 The duties, responsibilities, authority and limitations of authority of the Design Consultant and/or the PMF, as Authority Project Manager's representatives during construction, as set forth in the Construction Contract Documents will not be changed, modified, or extended without the prior written consent of Authority Project Manager and the Design Consultant or PMF, as the case may be, and notice to the other parties as appropriate. A copy of any such modification or extension shall be delivered to the Contractor prior to its taking effect.
- 2.3.2.5 At the Authority Project Manager's direction from time to time during the correction period described in the Construction Contract Documents, and upon execution of an Amendment, the Design Consultant may be required to provide Additional Services.
- 2.3.2.6 The Design Consultant shall visit each site at intervals appropriate to the stage of construction, but in no event less than weekly. The Design Consultant shall visit each site to become generally familiar with the progress and quality of the Construction Work completed and to determine in general if the Construction Work is proceeding in accordance with the Construction Contract Documents. However, the Design Consultant will not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Construction Work. On the basis of on-site observations as a Design Consultant, the Design Consultant shall keep the PMF, as the representative of the Authority, informed of the progress and quality of the Construction Work, and shall endeavor to guard the Authority against defects and deficiencies in the Construction Work. However, should the Design Consultant observe or become aware of conditions that require services beyond those included herein, to guard each School Facilities Project and the Authority against defects and deficiencies in the Construction Work, the Design Consultant shall so notify the PMF in writing.
- 2.3.2.7 The Design Consultant shall be responsible for reporting to the PMF and/or to the Authority any failure of the Contractor to carry out the Construction Work in accordance with the Construction Contract Documents and any work, factors, data or information that fails to conform to, or that may otherwise indicate any nonconformity with, the Construction Contract Documents, of which it knows or reasonably should have known. The Design Consultant shall recommend that the Authority reject Construction Work on the School Facilities Project that does not conform to the Construction Contract Documents by immediately notifying the Authority in writing. The Design Consultant's obligations under this Paragraph shall not be deemed to imply in any way that the Design Consultant is responsible for and has control or charge of construction means, method, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Construction Work, and that it will be responsible for the Contractor's failure to carry out the Construction Work in accordance with the Construction Contract Documents. The Design Consultant will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or their respective agents or employees, or of any other persons performing portions of the Construction Work. The Contractor shall be solely responsible for carrying out the instructions of the PMF and the Authority with respect to all safety precautions and programs instituted by the Authority in connection with the Construction Work and as to the means, methods,

techniques, sequences, or procedures which are required by the Construction Contract Documents.

- 2.3.2.8 If the Design Consultant is present at the Site, has actual knowledge of site conditions that may result in imminent danger and has the opportunity to inform the PMF and/or the Authority, the Design Consultant shall notify the PMF and/or the Authority within a reasonable period of time. However, neither this obligation of the Design Consultant nor any decision made in good faith either to exercise or not to exercise such authority shall relieve the Contractor, any Subcontractor, or any of their respective agents or employees, or any other person performing any of the Construction Work from complying with the Construction Contract Documents, competently and efficiently executing the Construction Work in a good and workmanlike manner, nor shall it give rise to any duty or responsibility of the Design Consultant, the PMF, and/or the Authority to the Contractor, any Subcontractor, or any of their respective agents or employees, or any other person performing any of the Construction Work.
- 2.3.2.9 Whenever the Design Consultant considers it necessary or advisable for implementation of the intent of the Construction Contract Documents, or for completion of the School Facilities Project in accordance with same, the Design Consultant shall recommend to the PMF additional inspection or testing of the Construction Work, whether or not such has been fabricated, installed or completed. The costs of any such additional inspection or testing shall not be borne by the Design Consultant but shall be paid by the Authority.
- 2.3.2.10 Except as may otherwise be provided in the Construction Contract Documents or when direct communications have been specially authorized, the Authority Project Manager and the Contractor shall communicate to the Design Consultant through the PMF. Communications by and with the Design Consultant's Subconsultants shall be through the Design Consultant. The PMF has the right to communicate with, exchange information with, and issue instructions to, the Design Consultant and/or Contractor, with copies to the other party, with the understanding that such communications are not to interfere with or hinder the performance of duties assigned to the Design Consultant. Notwithstanding that the communications to the Design Consultant shall be through the PMF, nothing shall relieve the Design Consultant from performing the Services required to be performed under the Contractual Documents at the time and in the manner specified.
- 2.3.2.11 The Design Consultant shall be responsible for certifying to the Authority the amounts due to the Contractor under the Construction Contract Documents. The Design Consultant shall review and certify the amounts due the Contractor within five (5) business days after receipt of the Contractor's invoice. In addition to these ongoing certifications, the Design Consultant shall also be responsible for certifying the final payment to the Contractor under the Construction Contract Documents.
- 2.3.2.11.1 The Design Consultant's certification of payment shall constitute a representation to the Authority, based on the Design Consultant's on-site observations as provided above, the data contained in the Contractor's invoice and any other facts, data or information known to it, to the best

of its knowledge, information and belief, that: (i) the Construction Work on the School Facilities Project has progressed to the point indicated; (ii) the quality of the Construction Work is generally in accordance with the Construction Contract Documents; and (iii) the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to specific qualifications expressed by Design Consultant.

2.3.2.11.2 Any representation made by the Design Consultant with respect to an invoice during the course of construction shall be subject to revision by the Design Consultant based on: (i) an evaluation of the Construction Work to determine conformance with the Construction Contract Documents upon Substantial Completion; (ii) results of subsequent tests prior to Final Completion of the School Facilities Project; and (iii) specific qualifications expressed by the Design Consultant.

2.3.2.11.3 Any certification by the Design Consultant that payment should be made shall not be deemed to be a representation that the Design Consultant has: (i) made continuous and exhaustive inspections to check the quality or quantity of the Construction Work; (ii) reviewed the Contractor's construction means, methods, techniques, sequences or procedures; (iii) reviewed copies of requisitions received from Subcontractors and material supplies of the Contractor and other data requested by the Authority to substantiate the Contractor's right to payment; or (iv) ascertained how and for what purpose the Contractor has used money previously paid by the Authority to the Contractor under the Construction Contract Documents; all of which shall be deemed to be the responsibility of the Contractor under the Construction Contract Documents.

2.3.2.12 The Design Consultant shall review and approve, or take other appropriate action upon, the Submittals for the purpose of determining whether or not the Construction Work, when completed, will be in compliance with the requirements of the Construction Contract Documents.

2.3.2.12.1 The Design Consultant's review pursuant to Section 2.3.2.11 shall not be deemed to be undertaken for the purpose of determining the accuracy and completeness of each Submittal, determining that any other details such as dimensions and quantities have been complied with, or of substantiating instructions for installation and performance of equipment or systems designed by the Contractors, all of which shall remain, unless otherwise specified in the Contractual Documents, the Contractor's responsibility.

2.3.2.12.2 The Design Consultant's review pursuant to Section 2.3.2.11 shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Consultant, of construction means, manners, methods, techniques, sequences or procedures. The Design Consultant's approval of specific items shall not indicate approval of an assembly of which the item is a component.

- 2.3.2.12.3 When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Contract Documents, the Design Consultant shall be entitled to rely upon such certifications to establish that the materials, systems, or equipment will meet performance criteria required by the Construction Contract Documents.
- 2.3.2.12.4 Any actions by the Design Consultant pursuant to Section 2.3.2.11 shall be taken with such reasonable promptness as to cause no delay to the Construction Work, while allowing for sufficient time in the Design Consultant's professional judgment for adequate review.
- 2.3.2.13 The Design Consultant shall assist the PMF in preparing Contract Change Requests, Change Orders and Construction Change Directives with supporting documentation and data if deemed necessary by the Design Consultant and the PMF for the Authority Project Manager's approval and execution in accordance with the Construction Contract Documents.
- 2.3.2.14 Within seven (7) days from the date on which the Design Consultant receives a Contractor's response to Contract Change Request from the Authority, the Design Consultant shall evaluate and make specific written recommendations, including evaluation of costs, to the PMF. If the nature of the work described in the Contract Change Request is complex, the PMF may grant the Design Consultant additional time for its evaluation, if requested in writing. The Design Consultant, upon the request of the Authority, shall attend meetings in connection with such CCRs.
- 2.3.2.15 The Design Consultant will conduct observations for each School Facilities Project to determine the dates of Substantial Completion and Final Completion, shall receive and forward to the Authority Project Manager through the PMF, for the Authority Project Manager's review, written warranties and related documents required by the Construction Contract Documents and assembled by the Contractor, and will issue to the PMF a final certificate for payment for each School Facilities Project upon compliance with the requirements of the Construction Contract Documents.
- 2.3.2.16 The Design Consultant shall prepare record drawings as set forth in the Manual, including but not limited, to significant changes in the Construction Work and of dimensioned locations of underground improvements including utility, supply, and drainage piping and apparatus, based upon marked-up prints, drawings, and other data which the Design Consultant shall receive from the Contractor. The Design Consultant shall include in the Construction Documents a requirement that the Contractor shall furnish such information to the Design Consultant.
- 2.3.2.17 The Design Consultant shall receive from the Contractor and deliver to the PMF, specified written guarantees, warranties, consent of surety to final payment (partial payment, if applicable), certificate of occupancy, operating and maintenance manuals, final HVAC pneumatic control drawings (if applicable), final corrected HVAC Test and Balance Report, parts books, diagrams, charts, and other documents for the Authority's use. The Design Consultant shall include in the Construction Documents requirements that the Contractor shall

furnish such information or documentation for each School Facilities Project to the Design Consultant for transmittal to the PMF as a prerequisite to final payment by the Authority to the Contractor.

2.3.2.18 The Design Consultant shall assist the PMF with the preparation of a Punchlist and with the monitoring and maintaining of an updated Punchlist to ensure that the Contractors take prompt action to correct incomplete and defective work.

2.3.2.19 The Design Consultant shall, in conjunction with the PMF and the maintenance personnel from the Client School District, observe the Contractors' checkout of utilities, operational systems and equipment for readiness, and shall assist with the initial start-up and testing of same.

2.3.2.20 Upon Substantial Completion, the Design Consultant shall provide (on forms to be provided by the Authority) an evaluation of the performance of any Contractor.

2.3.3 Project Close-Out Phase. Upon receipt of the Authority's approval of the Documents and Deliverables for the Construction Administration Phase, the Design Consultant shall proceed with Project Close-Out Phase Services, and shall perform all procedures and provide all deliverables required as part of the Project Close-out Phase in accordance with the Design Manual.

2.3.4 Post-Occupancy Review Phase. Upon receipt of the Authority's approval of the Documents and Deliverables for the Project Close-Out Phase, the Design Consultant shall proceed with Post-Occupancy Review Phase Services, and shall perform all procedures and provide all deliverables required as part of the Post-Occupancy Review Phase in accordance with the Design Manual.

2.3.4.1 When design issues or disputes arise during the one-year warranty and guarantee period for each School Facilities Project, the Design Consultant shall assist in the resolution of the Contractor's obligations under the one-year warranty and guarantee. The Design Consultant, in conjunction with the PMF, shall conduct, approximately eleven (11) months after Substantial Completion or final payment, a one-year warranty inspection, and shall submit a written report of the finding of such inspection to the Authority Project Manager. The Design Consultant shall, upon completion of warranty work by the Contractor (but not later than thirty (30) days after the end of the one-year warranty period), re-inspect the Construction Work, and submit a final report.

2.4 Final Release

2.4.1 Prior to final acceptance by the Authority of the School Facilities Project, the Design Consultant shall submit all of the Deliverables for the School Facilities Project.

2.4.2 The acceptance of final payment by the Design Consultant shall constitute a waiver of all Claims by the Design Consultant except for: (i) those Claims expressly reserved by the Design Consultant at the time of application for final payment; (ii) those Claims arising after final payment as a result of actions brought against the Design Consultant by third parties; and (iii) those Claims arising after final payment due to an alleged breach by the Authority of any provision of the Agreement which survives after the Term.

3.0 COMPENSATION

3.1 Amount of Compensation and General Provisions

3.1.1 The Design Consultant shall be compensated for its Services performed pursuant to this Agreement as follows:

Lump Sum Compensation for Program Sub-Phase: \$ _____

Allowances:

- 1. Site Investigation \$ _____
- 2. Executive Order 215 \$ _____
- 3. Expert Witness Testimony \$ _____
- 4. Laboratory \$ _____
- 5. Permits \$ _____
- 6. Construction Phase Demo \$ _____
- 7. \$ _____

Total Allowances: \$ _____

**TOTAL LUMP SUM AMOUNT
- PROGRAM SUB-PHASE** \$ _____

Lump Sum Compensation for Schematic Design Phase through Construction Phase: \$ _____

Allowances:

- 1. Testing and Inspection \$ _____
- 2. \$ _____
- 3. \$ _____
- 4. \$ _____
- 5. \$ _____

Total Allowances: \$ _____

**TOTAL LUMP SUM AMOUNT
- SCHEMATIC DESIGN PHASE
THROUGH CONSTRUCTION PHASE** \$ _____

TOTAL FEE	\$ _____
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- 3.1.2 The total fee specified above in Section 3.1.1 shall compensate the Design Consultant in full for all Services rendered pursuant to the Contractual Documents, except as otherwise provided by this Agreement.
- 3.1.3 In the event the Design Consultant exceeds or expects to exceed the amount of “Allowances” provided above in Section 3.1.1, the Design Consultant shall not be permitted an increase in such “Allowances” absent an Amendment to this Agreement, the execution of which is at the sole option of the Authority.
- 3.1.4 The Design Consultant shall submit no more frequently than monthly, an invoice for Services. The Design Consultant shall be paid on a monthly basis as invoices are submitted. Unless otherwise specified herein, payment for the Design and Construction Phases shall be paid as follows against the Lump Sum Amount for the Design and Construction Phase:

Schematic Design Phase:	14% of Lump Sum Amount
Design Development Phase:	22% of Lump Sum Amount
Construction Documents Phase	28% of Lump Sum Amount
Construction Administration Phase	32% of Lump Sum Amount
Project Close-Out Phase	4% of Lump Sum Amount
- 3.1.5 In the event the Authority requests of the Design Consultant the performance of Additional Services, which have not been provided for in the total fee specified in Section 3.1.1, the Design Consultant will be paid for such Additional Services on a monthly basis in accordance with a Fee Proposal for Additional Services. Any Additional Services must be approved pursuant to an Amendment.
- 3.1.6 Acceptance or approval of, or payment for, any of the Services performed by the Design Consultant under the Contractual Documents shall not constitute a release or waiver of any Claim the Authority has or may have for latent defects, errors, breaches, or negligence.
- 3.1.7 All payments for Services under the Contractual Documents will be made only to the Design Consultant. The Design Consultant shall assume sole and full responsibility for payments due to any of its Subconsultants.
- 3.1.8 Unless otherwise set forth in writing by the Authority, prices quoted shall be firm and not subject to increase during the Term.
- 3.1.9 The Authority assumes no responsibility and no liability for costs incurred by the Design Consultant prior to the execution of this Agreement and thereafter only as explicitly set forth in the Contractual Documents.

3.2 Invoices

- 3.2.1 Invoices for Services shall be submitted on an invoice form provided by the Authority and shall be accompanied by supporting documentation as required by the Authority. Copies of all bills for “Allowances” allowed by the Contractual Documents must be attached to the invoice form.

- 3.2.2 Invoices may be submitted monthly to the Authority or when Services are completed, reviewed and accepted by the Authority.
- 3.2.3 Invoices submitted to the Authority must identify the Authority's contract number for the School Facilities Project.
- 3.2.4 Invoices submitted to the Authority shall be processed and paid only after the Authority reviews and determines that the Services for which payment is sought have been completed at the times and in the manner specified in the Contractual Documents. Invoices will not be paid by the Authority if the Authority determines that the Services for which payment is sought are incomplete or unsatisfactory.
- 3.2.5 Each invoice signed by the Design Consultant and submitted to the Authority shall be a representation by the Design Consultant that all payments due its Subconsultants have been made and that all relevant laws and regulations have been complied with.

3.3 Withholding Payment for Unsatisfactory Services or Non-delivery of Deliverables

- 3.3.1 If the Authority determines that any Services are incomplete or unsatisfactory, or if the Authority determines that Deliverables have not been delivered at the times and in the manner and form specified in the Contractual Documents, the Authority will either: (i) retain for payment the relevant invoice (or portion thereof) until such time as the Design Consultant has made the necessary corrections/deliveries, or (ii) return the relevant invoice to the Design Consultant, who shall resubmit the invoice once all of the Services have been completed or corrected or the Deliverables have been delivered.
- 3.3.2 The withholding of any sums pursuant to this Section 3.3 shall not be construed as, or constitute in any manner, a waiver by the Authority of the Design Consultant's obligation to furnish the items required under the Contractual Documents. In the event the Design Consultant fails to furnish these items, the Authority shall have those rights and remedies provided by law and pursuant to the Contractual Documents in addition to, and not in lieu of, the sums withheld in accordance with this Section 3.3.

4.0 TERM AND DURATION

4.1 Term

The Term of this Agreement shall be from the Effective Date and shall extend until all obligations of the Design Consultant to deliver services pursuant to this Agreement have been performed to the satisfaction of the Authority, unless extended or sooner terminated as set forth in this Agreement.

4.2 Duration

- 4.2.1 Program Phase. The Design Consultant shall commence the delivery of Program Phase Services on a date no later than five (5) business days following the date of a Notice to Proceed with the Program Phase (the "Commencement Date for the Program Phase"). In the event the Design Consultant begins its Services under this Agreement with the Program Phase, the Authority shall not issue the corresponding Notice to Proceed until it has received from the Design Consultant and accepted the properly executed Contractual

Documents. The Notice to Proceed may be issued by the Authority at its convenience. The duration of Services to be provided by the Design Consultant for the Program Phase shall be from the Commencement Date for the Program Phase and continue for a period not to exceed the number of days provided in Appendix A (Special Conditions).

- 4.2.2 Design Phase. The Design Consultant shall commence the delivery of the services required pursuant to this Agreement for the Design Phase on a date no later than five (5) business days following the date of any Notice to Proceed with a Phase of the Design Phase (the “Commencement Date for the Design Phase”). In the event the Design Consultant begins its Services under this Agreement with the Design Phase, the Notice to Proceed for the Design Phase shall not be issued by the Authority until it has received from the Design Consultant and accepted the properly executed Contractual Documents. The Notice to Proceed for the Design Phase may be issued by the Authority at its convenience. The duration of Services to be provided by the Design Consultant for the Design Phase shall be from the Commencement Date for the Design Phase and continue for a period of days not to exceed the number of days provided in Appendix A (Special Conditions).
- 4.2.3 Construction Phase. If the Authority wishes to retain the Design Consultant for the Construction Phase, the Authority shall issue a Notice to Proceed with the Construction Phase. The Design Consultant shall be obligated to commence delivery of the Services required by this Agreement for the Construction Phase on the date it receives the Notice to Proceed with the Construction Phase (“Commencement Date for the Construction Phase”). Such Notice to Proceed may be issued by the Authority at its convenience. The duration of Construction Phase Services shall be from the Commencement Date of the Construction Phase and continue thereafter until the earlier of: (i) the issuance to the Authority of a final certificate of payment or (ii) sixty (60) days after the date of Substantial Completion of the Construction Work. It is expected that the duration of the Construction Phase shall be for the period of days provided in Appendix A (Special Conditions).

4.3 Extensions of Time and Compensation for Delay

- 4.3.1 The Authority will consider and in its discretion grant requests for extensions of the completion deadlines set forth in the Schedule and the Design Milestones and Construction Milestones due to a delay the cause of which is beyond the control of the Design Consultant. No request for extension will be considered by the Authority unless the Design Consultant: (i) delivers to the Authority a written notice of delay within five (5) days of an event causing a delay or expected to cause a delay; and (ii) delivers to the Authority a written request for extension within five (5) days following the conclusion of the delay for which an extension is sought. The written request for extension shall include the length of extension requested and the alleged cause of the delay. No extension of time will be granted prior to the beginning of such delay, and any extension granted shall not exceed the length/period of time lost due to such delay.
- 4.3.2 In the event the duration of the Construction Phase is extended due to a delay the cause of which is beyond the control of the Design Consultant, the Design Consultant may be compensated for such delay, but for only those costs the Design Consultant actually incurred as a direct result of such delay; any such compensation will be made in accordance with the Design Consultant's hourly rates as set forth in its Fee Proposal. No compensation will be provided under this Section 4.3.2, however, if the Design

Consultant fails to submit to the Authority a written request for compensation, which shall include the amount of costs actually incurred by the Design Consultant during such delay, the amount of compensation being requested, and the alleged cause of such delay.

- 4.3.3 Irrespective of whether the Design Consultant makes any requests under Sections 4.3.1 and 4.3.2, above, the Design Consultant shall notify the Authority of any event of which it is aware that may cause any delay in the completion of the School Facilities Project.
- 4.3.4 Other than as provided in this Section 4.3, the Authority shall not be liable to the Design Consultant for any damages or additional compensation on account of any delay whatsoever, whether caused by the Authority or any other party.

5.0 GENERAL COVENANTS

5.1 Insurance

5.1.1 The Design Consultant shall maintain, at its own cost and expense, the following insurance coverages/policies insuring the Design Consultant, its employees, and agents. The Design Consultant shall obtain this insurance from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and that are "A-" (or better) rated, as determined by A.M. Best Company. In each policy, the Design Consultant shall have incorporated a provision requiring written notice to the Authority at least thirty (30) days prior to the cancellation, expiration, non-renewal or material modification of any insurance required under this Section 5.1. Any and all deductibles shall be paid by the Design Consultant. The types and minimum amounts of insurance required are as follows:

5.1.1.1 Professional Liability Insurance (Errors & Omissions), with all coverage retroactive to the Effective Date of this Agreement, covering any and all bodily injury, property damage, pollution conditions asbestos-related claims, testing, monitoring, measuring operations, or laboratory analyses arising from the Services performed hereunder in any amount not less than \$1 million per claim and \$1,000,000 in the annual aggregate. Such coverage must be continuously renewed for a period of five (5) years after the date of final payment by the Authority hereunder or if coverage is not commercially available for such period of time, then for such shorter period of time as such insurance is commercially available.

5.1.1.2 Commercial General Liability Insurance, covering any and all bodily injury and property damage arising out of or in connection with the Services performed under the Contractual Documents. The policy shall include coverage for contractual liability and shall be in an amount not less than \$1 million per claim. The policy shall name as additional insureds the PMF, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, the State of New Jersey, the Client School District, and any Site owner different from the Client School District.

5.1.1.3 Worker's Compensation Insurance in accordance with the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Design Consultant while engaged in the performance of the Services under the

Contractual Documents. The coverage shall be statutory with an employer's liability coverage of \$500,000 per each accident.

- 5.1.1.4 Comprehensive Automobile Liability Insurance, including coverage for all owned, non-owned and hired vehicles, covering bodily injury and property damage. Such coverage shall be in the amount of \$1 million combined single limit. The policy shall name as additional insureds the PMF, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, the State of New Jersey, and the Client School District, and, only when the Design Consultant is engaged for the Program Phase, any Site owner different from the Client School District.
- 5.1.2 Attached to this Agreement (Appendix F) shall be valid insurance certificates in form and substance satisfactory to the Authority. The certificates shall evidence the effectiveness of the foregoing insurance policies and be accompanied by copies of any and all amendatory riders. An insurance certificate must be submitted to evidence each insurance renewal required by this Section 5.
- 5.1.3 By executing this Agreement, the Design Consultant expressly agrees that any insurance protection required herein or by the Contractual Documents shall in no way limit the Design Consultant's obligations under the Contractual Documents and shall not be construed to relieve the Design Consultant from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of the Contractual Documents or otherwise in law or equity.
- 5.1.4 In the event the Design Consultant fails or refuses to obtain and/or renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may (i) refuse to make payment of any further amounts due under the Contractual Documents; (ii) refuse to make payments due or coming due under other agreements between the Design Consultant and the Authority; (iii) suspend performance by the Design Consultant under this Agreement; or (iv) terminate this Agreement. Any funds retained pursuant to this Section 5.1.4 may be used, at the Authority's discretion, to renew the Design Consultant's insurance for the periods and amounts as set forth in this Agreement.

5.2 Ownership of Documents

- 5.2.1 The plans, ideas, methods, drawings, specifications, flow charts, data, diagrams, samples, tests, surveys, models, material, computer discs, evidence, documentation, and all copyrightable materials gathered, originated or prepared by the Design Consultant and its Subconsultants during the performance of the Services (the "Work Product"); and all copyrights resulting from the Work Product, and in all renewals and extensions of the copyrights that may be secured now or be hereafter in force and effect are instruments of the Design Consultant's Services performed under the Contractual Documents and unless otherwise provided, the Design Consultant shall be deemed the author of the Work Product and shall retain all common law, statutory and other reserved rights, including the copyright. Nevertheless, the documents shall become the property of the Owner.
- 5.2.2 The Authority and the Client School District shall be permitted to retain copies, including electronic CAD files and other reproducible copies, of the Work Product in connection

with the Authority's and School District's use and occupancy of the School Facilities Project. The Authority shall be permitted to use the Work Product without additional compensation to the Design Consultant, in connection with: (i) any alteration and/or addition to the School Facilities Project and (ii) for completion of the School Facilities Project in the event of a termination of this Agreement for cause pursuant to Section 6.2 hereof. In the event of a termination for convenience by the Authority pursuant to Section 6.1 hereof, the Authority may use the Work Product to complete the School Facilities Project upon the written consent of the Design Consultant and appropriate compensation as determined by the parties.

- 5.2.3 The Design Consultant's promotional and professional (or other) materials shall never include the Authority's confidential or proprietary information.
- 5.2.4 All drawings, specifications, and other instruments of professional service furnished on electronic media, disk, tape, or cartridge are record documents intended to be used for the sole purpose of maintenance of the original facility for which they were prepared. Due to the risk of damage, anomalies in transcription, and modification during use, whether intended or otherwise, the Design Consultant shall archive a copy of any electronic media transferred to the Authority or the Client School District, the contents of which it is expressly agreed shall be the primary conclusive proof in all disputes over content of electronic media furnished to the Authority or the Client School District. Hard paper copies of the information contained on the electronic media shall also be retained by the Design Consultant which shall serve as secondary proof of the content of electronic media if degradation, shelf-life or other circumstances shall make the electronic data irretrievable.
- 5.2.5 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Design Consultant's reserved rights.

5.3 Copyrights and Patents

- 5.3.1 If the Design Consultant employs any design, device, material, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patent holder. The Design Consultant shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Deliverables.
- 5.3.2 The Design Consultant shall defend, indemnify and save harmless the Authority and the State from any and all Claims for infringement by reason of the use of any patented design, device, material or process, or any trademark, copyright, trade secret or any other material protected in any manner from use or disclosure, and shall indemnify the Authority and the State for any costs, expenses and damages that it may incur by reason of an infringement at any time during the prosecution, or after the acceptance, of the Services.

5.4 Confidentiality

- 5.4.1 All data contained in documents supplied by the Authority, Client School District or any other party involved in the School Facilities Project, and after the execution of this Agreement, any data gathered by the Design Consultant in fulfillment of the Contractual

Documents and any analyses thereof (whether in fulfillment of the Contractual Documents or not), are to be considered confidential and shall be solely for use in connection with the School Facilities Project.

- 5.4.2 The Design Consultant shall not disclose to any third party the contents of the information, reports, findings, analyses, surveys, data and any other materials generated or produced in performance of this Agreement, or provide copies of same, without the prior, written consent of the Authority, except where such materials are legally required by order of court or administrative agency, whether state or federal, in which case the Design Consultant shall provide immediate notice to the Authority of such order.
- 5.4.3 The Design Consultant is required to use reasonable care to protect the confidentiality of the data by, among other things, requiring incorporation of this term into its contract(s) with its Subconsultant, if any. Any use, sale or offering of this data in any form by the Design Consultant, its employees, Subconsultants or assignees will be considered a violation of the Contractual Documents. Penalties for violation of this Section 5.4.3 include, but are not limited to, termination of this Agreement and/or legal action without the Authority being liable for damages, costs and/or attorney fees. The Design Consultant shall be liable for any and all damages arising from its breach of the confidentiality provision.
- 5.4.4 Any publicity and/or public announcements pertaining to the School Facilities Project shall not be made until and unless the Design Consultant obtains the prior, written approval of the Authority Project Manager.

5.5 Contractual Relationship

- 5.5.1 Nothing in this Agreement or the Contractual Documents shall be construed as creating a contractual relationship between any Subconsultant of the Design Consultant and the Authority.
- 5.5.2 The Design Consultant's status shall be that of an independent contractor, not an employee of the Authority. The Design Consultant agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof. The Design Consultant will not, by reason hereof, make any Claim, demand or application to any Authority officer or employee for any right or privilege afforded to an Authority officer or employee, including, but not limited to, workers' compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.
- 5.5.3 The Design Consultant and any Subconsultants engaged by the Design Consultant on the School Facilities Project are bound by the Contractual Documents terms and conditions, including maximum billing rates and reimbursables, as specified in the Fee Proposal.
- 5.5.4 Nothing contained in this Agreement or the Contractual Documents shall create a contractual relationship with a third party or create a cause of action in favor of a third party against the Design Consultant or the Authority. It is further intended that no individual, firm, corporation, or any combination thereof, which supplies materials, labor, services or equipment to the Design Consultant for the performance of the Services becomes thereby a third party beneficiary of the Contractual Documents.

- 5.5.5 The Authority and the Design Consultant hereby bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and the other Contractual Documents.

5.6 Assignment

- 5.6.1 The Design Consultant shall not assign or transfer its obligations, privileges or rights under the Contractual Documents without the prior, written consent of the Authority. Any assignment or transfer of the Design Consultant's rights under the Contractual Documents without the prior, written consent of the Authority shall not relieve the Design Consultant of any duty, obligation or liability assumed by it under the Contractual Documents.
- 5.6.2 Notwithstanding anything to the contrary, under no circumstance shall the Design Consultant assign its right to receive money under the Contractual Documents for any purpose or to any person whatsoever without the prior, written approval of the Authority or order of court.
- 5.6.3 The Authority may elect, in its sole discretion, to assign this Agreement to any other State agency, authority or other State instrumentality, or any local or municipal instrumentality, at any time during the Term of this Agreement; and in such case, the Design Consultant agrees to continue to perform all of its obligations as set forth in this Agreement. The Design Consultant shall make no Claim against the Authority in the event of such assignment and shall execute such certificates, documents and instruments as may be reasonably requested by the Authority to effect such assignment.

5.7 Mergers, Acquisitions, and Dissolutions

- 5.7.1 If, subsequent to the execution of this Agreement, the Design Consultant proposes to merge with or be acquired by another firm, or in the event of a proposed dissolution by the Design Consultant, the Design Consultant shall immediately notify the Authority and shall submit documentation to the Authority describing the proposed transaction.
- 5.7.2 The Authority, in its sole discretion, may approve the proposed transaction or terminate this Agreement for cause. The Authority will notify the Design Consultant of its decision within thirty (30) days of receipt by the Authority of documentation from the Design Consultant describing the proposed transaction.
- 5.7.3 In the event the Authority approves a merger or acquisition, the Design Consultant shall submit to the Authority: (i) corporate resolutions prepared by the Design Consultant and the new entity ratifying acceptance of the Contractual Documents; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s); (v) acknowledgment of the assumption of the Contractual Documents by the new entity; and (vi) any other information which the Authority may require.
- 5.7.4 In the event the Authority approves a dissolution, the Design Consultant shall submit to the Authority: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the

principal parties of a joint venture to dissolve the corporation, partnership or joint venture, respectively; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) any new or changed Federal Employer Identification Number(s); (iv) acknowledgment of the assumption of the Contractual Documents by the new parties; and (v) any other information which the Authority may require.

5.8 Mandatory Compliance With Law

- 5.8.1 The Design Consultant must comply during the Term with any and all Federal, State and local laws in effect or hereinafter promulgated that apply to performance by the Design Consultant under the Contractual Documents, including, but not limited to, the Building Design Services Act, N.J.S.A. 45:4B-1 *et seq.*
- 5.8.2 Each and every provision required by law to be inserted in the Contractual Documents shall be deemed to have been inserted therein. If any such provision has been omitted or has not been correctly inserted, the Contractual Documents shall be amended, upon application of either party, to provide for such insertion or correction.
- 5.8.3 If the Authority determines that the Design Consultant has violated or failed to comply with applicable Federal, State or local laws with respect to its performance under the Contractual Documents, the Authority may withhold payments for such performance and take such action that it deems appropriate until the Design Consultant has complied with such laws or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 5.8.4 The Design Consultant and its Subconsultants and Subcontractors of all tiers, if any, shall comply with any applicable provision of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 *et seq.* Invoices submitted to the Authority by the Design Consultant shall certify to such compliance.
- 5.8.5 To the extent applicable, the Design Consultant shall prepare the Construction Documents in accordance with the requirements of the New Jersey Uniform Construction Code ("NJUCC") set forth at N.J.A.C. 5:23, including, but not limited to the version of CABO/ANSI A117.1 and the Energy Sub-Code adopted in the NJUCC, applicable provisions of Title 6 of the New Jersey Administrative Code, the latest National Electrical Code, the New Jersey Fire Safety Code, the Building Officials & Code Administrators International, Inc. ("BOCA"), the Basic Building Code, the Occupational Safety and Health Administration, and any other applicable codes.
- 5.8.6 The Design Consultant's compliance with the legal requirements set forth in Section 2.1 and this Section 5.8 as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the Authority.

5.9 Affirmative Action and Non-discrimination

- 5.9.1 The Design Consultant and its Subconsultants shall abide by the affirmative action program established by the Authority pursuant to Section 48 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72, and any rules associated therewith, including, but not limited to, N.J.A.C. 19:32-5.1 *et seq.*

- 5.9.2 The Design Consultant shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq. and all rules and regulations issued thereunder. During the performance of this Agreement, the Design Consultant and its Subconsultants agree as follows:
- 5.9.2.1 The Design Consultant and its Subconsultants, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the Design Consultant, its Subconsultants and Subcontractors will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design Consultant and its Subconsultants agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- 5.9.2.2 The Design Consultant and its Subconsultants, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex;
- 5.9.2.3 The Design Consultant and its Subconsultants, where applicable, will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Design Consultant's (and its Subconsultant's) commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5.9.3 The Design Consultant and its Subconsultants, where applicable, shall comply with the regulations promulgated by the State Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.) as amended and supplemented from time to time, and with the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., with respect to its employment practices.
- 5.9.4 The Design Consultant and its Subconsultants agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Division of Contract Compliance & EEO pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time.

- 5.9.5 The Design Consultant and its Subconsultants agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- 5.9.6 The Design Consultant and its Subconsultants agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- 5.9.7 The Design Consultant and its Subconsultants agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- 5.9.8 The Design Consultant and its Subconsultants shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).
- 5.9.9 The Design Consultant shall comply with the *MacBride* principles of nondiscrimination in employment or have no business operations in Northern Ireland as set forth in N.J.S.A. 52:34-12.2.

5.10 Anti-collusion

- 5.10.1 The Design Consultant, by submitting its Technical Proposal and Fee Proposal and by executing this Agreement, does hereby warrant and represent that this Agreement has not been solicited, secured or prepared, directly or indirectly, in a manner contrary to the laws of the State; and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Services by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity, or consideration of any kind, direct or indirect, to any employee, officer, or board member of the Authority.
- 5.10.2 The penalty for breach or violation of this Section 5.10 may, at the sole option of the Authority, result in: (i) the termination of this Agreement without the Authority being liable for damages, costs and/or attorney fees; and/or (ii) a deduction from the payments to be made by the Authority pursuant to this Agreement of the full amount of such commission, percentage, brokerage or contingent fee.

5.11 Conflict of Interest

- 5.11.1 The Design Consultant shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to: (i) an Authority officer or employee with which the Design Consultant transacts, or offers or proposes to transact, business; or (ii) any member of the immediate family (defined by N.J.S.A. 52:13D-13i) of any such Authority officer or employee; or (iii) any partnership, firm or corporation with which such Authority officer or employee is employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- 5.11.2 The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee from the Design Consultant shall be reported in writing forthwith by the Design Consultant to the State Attorney General and the Executive Commission on Ethical Standards.
- 5.11.3 The Design Consultant shall not directly or indirectly undertake any private business, commercial or entrepreneurial relationship (whether or not pursuant to employment, contract or other agreement, express or implied) with, or sell any interest in the Design Consultant to, any Authority officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the Authority; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such Authority officer or employee is employed or associated, or in which such Authority officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationship subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee and upon a finding that the present or proposed relationship presents neither an actual conflict of interest, nor the potential for, or appearance of, such a conflict of interest.
- 5.11.4 The Design Consultant shall not influence, attempt to influence, or cause to be influenced any Authority officer or employee in such officer's or employee's official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.
- 5.11.5 The Design Consultant shall not cause or influence or attempt to cause or influence, any Authority officer or employees to use or attempt to use such officer's or employee's official position to secure unwarranted privileges or advantages for the Design Consultant or any other person.
- 5.11.6 Under N.J.S.A. 52:34-19, it is a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the Authority. It is the policy of the Authority to treat the offer of any gift or gratuity by the Design Consultant, its officers or employees, to any person employed by the Authority as grounds for debarment or suspension from submitting proposals and providing work or materials to the Authority.
- 5.11.7 The provisions cited in this Section 5.11 shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with the Design Consultant under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines that the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

5.11.8 For the purposes of this Section 5.11, a “Authority officer or employee” shall include special Authority officers or employees as defined by N.J.S.A. 52:13D-13b and -13e.

5.12 Indemnification

5.12.1 To the fullest extent permitted by law, the Design Consultant shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority, the Authority, and the Client School District, as well as their respective agents, servants, officers, directors and employees, from and against any loss, damage, injury, cost or expense; and from and against any Claim, demand, liability, lawsuit, judgment, action or other proceeding arising, to arise from, in connection with, or as a result of any of the following:

5.12.1.1 The negligent acts or omissions of the Design Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Design Consultant's request, subject to its direction, or on its behalf;

5.12.1.2 the loss of life or property, or injury or damage to the person, body or property of any person or persons whatsoever, that arises or results directly or indirectly from the negligent performance of the Services or delivery of Deliverables by the Design Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Design Consultant's request, subject to its direction, or on its behalf;

5.12.1.3 any gross negligence, default, or breach, of the Design Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Design Consultant's request, subject to its direction, or on its behalf;

5.12.1.4 violation or non-compliance with federal, State, local and municipal laws and regulations, ordinances, building codes (including without limitation the Americans with Disabilities Act and OSHA Environmental Protection Act) arising from the performance or non-performance of, or arising out of conditions created or caused to be created by, the Design Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Design Consultant's request, subject to its direction, or on its behalf; and

5.12.1.5 the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the Services.

5.12.2 The Design Consultant's indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in the Contractual Documents.

5.12.3 The Design Consultant agrees that any approval by the Authority of the Services performed, and/or reports, plans or specifications provided by the Design Consultant shall not operate to limit the obligations of the Design Consultant under the Contractual Documents; and that the Authority assumes no obligations to indemnify or save harmless the Design Consultant, its agents, servants, employees, or Subconsultants against all Claims that may arise out of its performance or nonperformance under the Contractual Documents; and that the provisions of this indemnification clause shall in no way limit the Design Consultant's obligations under the Contractual Documents, nor shall they be construed to relieve the Design Consultant from any liability, nor preclude the Authority

from taking any other actions available to it under any other provisions of the Contractual Documents or otherwise at law or equity.

5.12.4 The provisions of this Section 5.12 shall survive the termination of the Contractual Documents.

6.0 TERMINATION AND SUSPENSION

Nothing contained in this entire Section 6.0 shall limit the right of the Authority to recover any and all costs and damages resulting from the Design Consultant's failure to perform the Services in a satisfactory manner.

6.1 Termination for Convenience of the Authority

6.1.1 Performance by the Design Consultant of its obligations under the Contractual Documents may be terminated by the Authority in accordance with this Section 6.1 in whole or in part, whenever the Authority, in its sole discretion, determines that such termination is in its best interest.

6.1.2 Any such termination shall be effected by delivery of a "Notice of Termination" specifying the extent to which the Services under the Contractual Documents are terminated and the date upon which such termination becomes effective.

6.1.3 Upon such termination, the Design Consultant shall be entitled only to that proportion of the Compensation that the Services actually and satisfactorily performed by the Design Consultant bear to the total Services to be rendered under the Contractual Documents, less payments previously made.

6.1.4 In addition to the above, the Authority may negotiate with the Design Consultant to establish an amount of compensation for the Design Consultant's costs incurred in the close-out of the Contractual Documents.

6.1.5 Upon a termination for convenience, the Design Consultant shall furnish to the Authority, free of charge, such close-out reports, documents, tests, surveys, models, computer discs, computer software, evidence, and other documentation and materials as may be reasonably required by the Authority.

6.2 Termination for Cause

6.2.1 Without prejudice to any other remedy, the Authority may terminate this Agreement if the Design Consultant: (i) disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; (ii) refuses or fails to supply enough properly skilled workers or proper materials; (iii) fails to make payments to Subconsultants for materials or labor in accordance with the respective agreements between the Design Consultant and the Subconsultants; (iv) fails to maintain or produce any records required by the Contractual Documents to be so maintained or produced; (v) fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of the Contractual Documents; (vi) fails to obtain and properly maintain the level of insurance coverages outlined in Section 5.1; (vii) assigns or transfers its obligations, privileges or rights under the Contractual Documents without the prior,

written consent of the Authority; (viii) makes any misrepresentation or conceals any material fact; or (ix) commences or has commenced against it any action under the United States Bankruptcy Code or any state or federal insolvency law, the commencement of which, in the Authority's judgment, may effectively impair the ability of the Design Consultant to perform its obligations under the Contractual Documents; or (x) violates or breaches the Contractual Documents or any provision or material term thereof. For all such causes of termination except those contained in subsections (viii) and (ix), the Design Consultant may avoid termination if, within seven (7) days of Notice of Termination, it commences correction of such default, neglect or violation, with diligence and promptness, fully curing same within the time prescribed by the Authority within the Notice of Termination; failure to do so shall result in termination of this Agreement. If this Agreement covers more than one School Facilities Project, the Authority may terminate this Agreement with respect to all such projects or with respect to only the project to which the Design Consultant's default, neglect or violation relates.

- 6.2.2 Upon termination by the Authority pursuant to this Section 6.2, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Services that were required to be performed by the Design Consultant by whatever methods the Authority may deem appropriate.
- 6.2.3 In the event this Agreement is terminated for cause pursuant to this Section 6.2, the Authority reserves the right not to make any further payments to the Design Consultant and may require the Design Consultant to repay all or a portion of the monies already paid; and the Design Consultant shall be obligated to take any steps necessary to enable the Authority to complete the Services itself, or for the Authority to engage another Consultant to complete the Services at the Design Consultant's own expense for the portion that exceeds the amount that would have been paid to the Design Consultant for completing the Services; such steps may include, but are not limited to, the prompt delivery to the Authority of all plans, designs, original drawings, specifications, data, samples, tests surveys, models, material, computer discs, computer software, evidence, and other documentation.
- 6.2.4 No action by the Authority pursuant to this Section 6.2 shall operate to waive or release any Claims that the Authority may have against the Design Consultant under this Agreement or the other Contractual Documents.

6.3 Suspension for Convenience of the Authority

- 6.3.1 The Authority shall have the right to defer the commencement, or to suspend the whole or any part, of the Services whenever, in the sole discretion of the Authority, it is necessary or expedient for the Authority to do so. The Authority shall by notice to the Design Consultant suspend performance of the Services and upon receipt of such notice, unless otherwise directed in writing by the Authority, the Design Consultant shall immediately discontinue all Services, except as necessary to properly secure the School Facilities Project. Any requests for time-extensions due to suspension shall be made and considered as set forth under Section 4.3.1.
- 6.3.2 In the event of a suspension by the Authority pursuant to this Section 6.3, compensation shall be determined as follows:

6.3.2.1 If the Authority determines that the Services have been suspended for a period cumulatively totaling less than ninety (90) days, there shall be no additional compensation paid to the Design Consultant.

6.3.2.2 If the Authority determines that the Services have been suspended for a period cumulatively totaling ninety (90) days or more, and if the Authority determines that the suspension has resulted from no fault of the Design Consultant, the parties shall amend this Agreement to cover the remaining Services to be performed. Such Amendment shall provide a Compensation adjustment in an amount deemed proper by the Authority and Design Consultant after a review of the Design Consultant's submissions relating to the increased costs actually incurred by the Design Consultant as a direct result of the suspension. No such Amendment will change any of the other terms of this Agreement or the other Contractual Documents.

6.3.3 When the Authority has determined that a suspension is the fault of the Design Consultant, the Authority may, at its sole option, suspend all payments to the Design Consultant. Payment may be reinstated by the Authority upon completion of the Services in accordance with the other provisions of this Agreement and the other Contractual Documents, provided, however, that there shall be no upward adjustment in direct or indirect costs or in any other costs. Alternatively, the Authority may terminate this Agreement pursuant to Section 6.2, above, or carry out the Services as provided for in Section 6.4, below.

6.4 Authority's Right to Carry Out the Services

6.4.1 If the Design Consultant fails to perform any obligation imposed under the Contractual Documents, and fails within seven (7) days after receipt of written notice to commence and continue correction of such failure with diligence and promptness, the Authority may take steps to remedy such failure without prejudice to any other remedy the Authority may have. In such case, an appropriate written notice shall be issued deducting from the payments then or thereafter due the Design Consultant the cost of correcting such failure, including compensation for other Professional Services Consultant- or Contractor-additional services made necessary by such failure. If the payments then or thereafter due the Design Consultant are not sufficient to cover such amount, the Design Consultant shall pay the difference to the Authority upon demand.

6.4.2 Any action by the Authority under this Section 6.4 shall be without prejudice to the Authority's rights under the Contractual Documents and shall not operate to release the Design Consultant from any of its obligations under the Contractual Documents.

6.5 Unacceptable Services

6.5.1 The Authority shall give written notice to the Design Consultant as soon as practicable after it becomes aware of an error or omission by the Design Consultant. If the Authority determines that any Services delivered by the Design Consultant are unacceptable due to error, omission or failure to comply with the requirements of the Contractual Documents, the Design Consultant shall correct and revise the unacceptable Services in accordance with directions received from the Authority at no cost to the Authority. The corrected and revised Services shall be resubmitted to the Authority for approval.

6.5.2 The Design Consultant shall be liable to the Authority for all damages to the Authority caused by the Design Consultant's negligent errors and omissions. The Design Consultant shall reimburse the Authority for all costs incurred by the Authority as a result of such negligent errors and omissions, including interest and other expenses.

7.0 CLAIMS

All Claims made by the Design Consultant against the Authority shall be governed by the following provisions.

7.1 All Claims asserted against the Authority by the Design Consultant shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 *et seq.*, and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, *et seq.*

7.2 In the event that there is a dispute regarding any provision of the Contractual Documents, the matter may be submitted to the Claims Adjustment Committee.

7.3 The Design Consultant shall file notice of the Claim on a form provided by the Authority, which form shall be completed in its entirety and signed by the Design Consultant. Incomplete forms will be rejected and of no effect. Submission of completed notice forms shall constitute compliance with the notice provisions of the New Jersey Contractual Liability Act if such notices are given within the time limits established by N.J.S.A. 59:13-5.

7.4 The Claims Adjustment Committee shall review the dispute and make a determination. The Design Consultant shall act in accordance with the determination made by the Claims Adjustment Committee but may, at its option, reserve the right to assert a Claim pursuant to the New Jersey Contractual Liability Act.

8.0 REPRESENTATIONS

The Design Consultant hereby represents as follows:

8.1 The Design Consultant is financially solvent, can pay its debts when due, and possesses sufficient working capital to complete the services required and perform its obligations under this Agreement.

8.2 The Design Consultant is able to furnish the workplace, tools, materials, supplies, equipment and labor necessary to complete the services required under this Agreement and perform all of its obligations thereunder and has sufficient experience and competence to do so.

8.3 The Design Consultant is authorized to do business in the State of New Jersey and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Design Consultant and the Services it will be performing.

8.4 The Design Consultant's execution of this Agreement and its performance hereunder is within its duly authorized powers.

8.5 The Design Consultant certifies that it has satisfied itself, from its own investigation, of the conditions to be met, and that it fully understands its obligations and agrees that it will not make

any Claim for, or have right to, cancellation or relief from the Contractual Documents without penalty because of its misunderstanding or lack of information.

- 8.6 The Design Consultant certifies that all representations made by it in any of the Contractual Documents are true, subject to penalty of law. The Design Consultant understands and agrees that its knowing or intentional violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact may be cause for termination of this Agreement. The Design Consultant understands and agrees that the Design Consultant's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact shall serve as a legal bar to the Design Consultant's enforcement of its rights under the Contractual Documents, including any and all Claims at law or equity.
- 8.7 The Design Consultant is appropriately pre-qualified by the Authority and the Design Consultant is properly registered pursuant to the Public Works Registration Act, N.J.S.A. 34:11-56.48 *et seq.* (P.L. 1999, c. 238).
- 8.8 The Design Consultant and any Subconsultant has provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to P.L. 2001, c. 134, as set forth in Appendix H hereto, and the Design Consultant shall not enter into any subcontract with a Subconsultant that has not provided it and the Authority with proof of such valid business registration.

9.0 AUTHORITY'S RIGHTS AND RESPONSIBILITIES

9.1 Authority's Rights

- 9.1.1 The Authority shall have the right to perform work related to the School Facilities Project and to award contracts in connection with the School Facilities Project that are not part of the Design Consultant's responsibilities under this Agreement.
- 9.1.2 The Authority shall have the right, in its sole discretion, to accept or reject personnel proposed by the Design Consultant. The Design Consultant shall make a timely and prompt resubmittal to provide other personnel to replace any that are rejected by the Authority, both at the initial submittal or any subsequent rejection or substitution of personnel.
- 9.1.3 The Authority shall have the right to remove any of the Design Consultant's employees from the School Facilities Project at any time during the duration of this Agreement if that employee is deemed not to be of the level of competence or ability required under this Agreement, or if said employee is for any reason found to be unsuitable to perform pursuant to this Agreement, as determined by the Authority in its sole discretion. In such case, the Design Consultant shall promptly submit the name and qualifications of a replacement.
- 9.1.4 The Authority shall have the right to establish and maintain a Consultant Performance Evaluation Policy and Procedure. The performance of the Design Consultant under this Agreement shall be evaluated by the Authority and shall be a factor used in the technical scoring of the Design Consultant with respect to any future submission by the Design Consultant in response to a Request for Proposals by the Authority. This evaluation shall consider, among other things, the Design Consultant's ability to deliver

and complete the School Facilities Project within the specified time frame and budget established by the Authority and consistent with the requirements of the Contractual Documents.

- 9.1.5 The Authority has engaged a PMF, identified in Appendix A (Special Conditions) to assume certain of the Authority's day-to-day responsibilities for School Facilities Projects.
- 9.1.6 The Authority may make changes in the Scope of Work. The Authority may also make changes (at any time and in its sole discretion) to the scope of the School Facilities Project where such changes may give rise to changes in the Scope of Work. Any material change in the Scope of Work that requires a material change in the nature of the Services shall require the execution of an Amendment and shall be compensated for in accordance with the Fee Proposal for Additional Services.
- 9.1.7 In addition to any of the other rights and remedies of the Authority specified in this Agreement, the Authority reserves the right to bring an action against the Design Consultant for any damages sustained by the Authority from the use of the drawings or specifications prepared by the Design Consultant when such damage is occasioned by the negligent act, error, omission or willful misconduct of the Design Consultant.
- 9.1.8 The Authority's approval, acceptance, use of or payment for all or any part of Design Consultant's services hereunder or in connection with the School Facilities Project shall in no way alter the Design Consultant's obligations hereunder.
- 9.1.9 The Authority and the Unit of Fiscal Integrity reserve the right to audit (or have their agents audit) the records of the Design Consultant in connection with all matters related to the Contractual Documents. If, as a result of such audit, the Design Consultant is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Design Consultant's invoice amount to an amount considered commensurate with the actual services provided.
- 9.1.10 The Authority and its agents, have the right to request, and the Design Consultant agrees to furnish free of charge, all information and copies of all records, documents or books the Authority and its agents may request. The Design Consultant shall allow representatives of the Authority and its agents, to visit its office(s) periodically, upon reasonable notice, in order to review any information, records, documents or books related to the Contractual Documents or to otherwise monitor any Services being performed.

9.2 Authority's Responsibilities

- 9.2.1 The Authority shall designate a PMF for the School Facilities Project, in Appendix A (Special Conditions). Notwithstanding any actions of the PMF or any other employees of the Authority, the responsibility for the undertaking and completion of the School Facilities Project shall be as set forth for the Design Consultant in the Contractual Documents; with the Contractors as set forth in the Construction Contract Documents; for any other Professional Services Consultants as set forth in the Professional Services Consultant Agreement(s); for the PMF as set forth in the PMF Agreement.

- 9.2.2 The Authority has retained a PMF, whose services, duties, and responsibilities are described in the PMF Agreement, a copy of which will be furnished to the Design Consultant upon request. In the event that the Authority retains other Professional Services Consultants, the Authority shall also provide those Professional Services Consultant Agreement(s) to the Design Consultant upon request.
- 9.2.3 The services, information and reports required in the above paragraphs in this Section 9.2 shall be furnished at the Authority's expense.

10.0 MISCELLANEOUS

- 10.1 Notices. All notices or other communications required by this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by FedEx or similar guaranteed overnight courier and shall be deemed given on the day after depositing in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A (Special Conditions).
- 10.2 Incorporation by Reference. This Agreement incorporates by reference, as if set forth herein, all of the Contractual Documents in their entirety, including but not limited to this Agreement and its appendices, including Appendix B (Supplemental Scope of Services); the Request for Proposals; the Scope of Work; the Design Manual; and any Amendments and addenda thereto.
- 10.3 Conflict in Terms. In the event of a conflict in terms and conditions among the Contractual Documents, the following order shall prevail for purposes of the interpretation thereof:
- 10.3.1 Appendix A (Special Conditions)
 - 10.3.2 Agreement (excluding Appendices)
 - 10.3.3 Design Manual, May 15, 2007 version, or as amended
 - 10.3.4 Appendix B (Supplemental Scope of Services)
 - 10.3.5 Appendix C (Responsibility Matrix)
 - 10.3.6 Authority's Request for Proposals
 - 10.3.7 Design Consultant's Fee Proposal
 - 10.3.8 Appendix D (Project Description)
- 10.4 No Waiver of Warranties or Legal/Equitable Remedies. Nothing in the Contractual Documents shall be construed to be a waiver by the Authority of any warranty, expressed or implied, or any remedies at law or equity, except as specifically and expressly stated in a writing executed by the Authority Project Manager.
- 10.5 Procedural Requirements. The Design Consultant shall comply with all written procedural instructions that may be issued from time to time by the Authority.
- 10.6 Governing Law. This Agreement and all other Contractual Documents, and any and all litigation arising therefrom or related thereto, shall be governed by the applicable laws, regulations and rules of the State of New Jersey without reference to conflict-of-laws principles.
- 10.7 Time of the Essence. All time limits as stated in the Contractual Documents are of the essence.
- 10.8 Entire Agreement and Amendments. This Agreement and the other Contractual Documents represent the entire and integrated agreement between the Design Consultant and the Authority and supersede all prior negotiations, representations or agreements, either written or oral. This

Agreement and all other Contractual Documents may be amended only by written instrument signed by both the Design Consultant and the Authority. Should the Design Consultant at any time find existing conditions which would make modification in requirements desirable, it shall promptly report such matters to the Authority for consideration.

- 10.9 Severability. In the event that any provision of any Contractual Document shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.
- 10.10 Waiver of Breach. In the event that any provision of any Contractual Document should be breached by any party and thereafter waived by any party, such waiver shall be limited to the particular breach so waived by any party and shall not be deemed to waive any other breach. Any consent by the Authority to a delay in Design Consultant's performance of any obligation shall apply only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction. And any delay in the Authority's enforcement of any remedy in the event of a breach by the Design Consultant of any term or condition of the Contractual Documents or any delay in the Authority's exercise of any right under the Contractual Documents shall not be construed as a waiver.
- 10.11 Execution in Counterparts. This Agreement and any other Contractual Document, where applicable, may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 10.12 Unit of Fiscal Integrity. The Unit of Fiscal Integrity (or its agents) may, at its discretion, investigate, examine and inspect the activities of the Design Consultant and all other parties involved with the School Facilities Project relating to the design, construction and financing of the School Facilities Project and to the implementation of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 *et seq.*). The Unit of Fiscal Integrity (or its agents) may require the Design Consultant or any other party involved with the School Facilities Project to submit duly verified reports which shall include such information and be in such form as the Unit of Fiscal Integrity (or its agents) may require. In addition to the foregoing, the Unit of Fiscal Integrity (or its agents) may investigate, examine, inspect, or audit in any manner and at such times as the Unit of Fiscal Integrity deems necessary. The Design Consultant shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the Unit of Fiscal Integrity (or its agents), in its discretion, to investigate, examine, inspect or audit in any manner and at such times as the Unit of Fiscal Integrity (or its agents) deems necessary.
- 10.13 Security Clearance. The Design Consultant and its personnel, as well as all other Professional Services Consultants and Subconsultants, and their personnel, shall be subject to such security clearance at the School Facilities Project as the Authority may require.

APPENDIX A

SPECIAL CONDITIONS

(See attached sheets)

APPENDIX A

SPECIAL CONDITIONS

A.1 Client School District: _____

A.2 List of School Facilities Project(s):

Type of Construction (New, Addition, Renovation)

Name, Address, Lot, Block of Intended Facility

NJSDA Contract No. _____

A.3 List of Proposed School Facilities Project Sites
(Only where different or in addition to that set forth in Section A.2): N/A

_____ _____, NJ 0_____ Lot ____ Block _____	_____ _____, NJ 0_____ Lot ____ Block _____	_____ _____, NJ 0_____ Lot ____ Block _____
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A.4 Schedule - Program Phase: Immediately upon receipt by the Design Consultant of a Notice to Proceed with the Program Phase and prior to provision of other Services, the Design Consultant shall submit to the Authority for its review and approval, a detailed Schedule for the provision of all such Services required under this Agreement, as indicated in Schedule A-1 to this Appendix A. The Schedule shall be in the Critical Path Method (“CPM”) format. This Schedule shall be consistent with the expected duration of the Program Phase, as set forth in this Appendix A.

A.5 Design Milestones and Schedule: Immediately upon receipt by the Design Consultant of a Notice to Proceed with any phase of the Design Phase other than the Program Phase, and prior to provision of other Services, the Design Consultant shall submit to the Authority for its review and approval, a detailed Schedule for the Design Phase and for the Bidding and Contract Award Phase of the Construction Phase, which shall include, among other things, proposed Milestones for the Design Phase and the Bidding and Contract Award Phase. The Schedule shall be in the Critical Path Method (“CPM”) format. These Milestones shall be consistent with the expected duration of the Design Phase and of the Bidding and Contract Award Phase, respectively, as set forth in this Appendix A.

A.6 Construction Milestones and Schedule: Immediately upon issuance by the Authority of a Notice to Proceed with the Construction Phase, the Design Consultant shall meet with the PMF and the Contractor to prepare and submit to the Authority for its review and approval, a detailed Schedule for the Construction Phase, which shall include, among other things, proposed Construction Milestones. The Schedule shall be in the Critical Path Method (“CPM”) format. The Construction Milestones shall be consistent with the expected duration of the Construction Phase as set forth in this Appendix A.

A.7 Expected Duration:

I.	Program Phase	_____	days
II.	Design Phase (excluding Program Phase)	_____	days
III.	Bidding & Award Phase:	_____	days
IV.	Construction Phase (excluding Bidding & Award Phase)	_____	days
V.	Total Expected Duration:	_____	days

A.8 Phases of the Project for which Design Consultant is engaged (by School Facilities Project):
Program Phase through Post Occupancy Review Phase.

A.9 Project Management Firm (PMF): **Name of PMF and address**

A.10 Any other Professional Services Consultants: Firms engaged to provide the services listed in the Allowances set forth in section 3.1.1 of this Agreement.

A.11 Other Special Conditions:

A.12 Notices shall be addressed as follows:

Authority: New Jersey Schools Development Authority
1 West State Street
P.O. Box 991
Trenton, NJ 08625-0991
Attention: Regina Bleck
Title: Vice President Project Management

Design Consultant: **Address**

APPENDIX A
SPECIAL CONDITIONS
SCHEDULE A-1

Required Program Phase Services are indicated by “Yes.”
(Section References are to Appendix B, Supplemental Scope of Services)

Program Phase Services	Yes	No
1. Boundary Survey Plan (§ A.1)		
2. Topographical/Utility Survey Plan (§ A.2)		
3. Phase 1 - Preliminary Assessment (§ B)		
4. Phase 2 - Site Investigation (§ C)		
5. Geotechnical Investigation and Report (§ D)		
6. Wetland Investigation and Determination (§ E)		
7. Utility Investigation Analysis Report (§ F)		
8. Asbestos, Lead Base Paint, and PCB Investigation (§ G)		
9. Abatement, Demolition and Site Improvement (§ H)		
10. Property Environmental Assessment Report (Single Owner Site) (§ I)		
11. Property Environmental Assessment Reports (Multiple Owners Site) (§ J)		
12. Traffic Study and Air Quality Engineering and Analysis (§ K)		
13. Site Feasibility Report and Conceptual Site Plan (§ L)		
14. Executive Order 215 Report (§ M)		
15. Historical & Cultural Resources Report (§ N)		
16. Architectural Pre-Design & Programming Services (§ O)		
17. Architectural/Building Site Evaluation Services (§ P)		
18. Local Planning Board Application & Meeting Attendance (§ Q)		
19. Potential Expert Witness Testimony (§ R)		
20. Land Acquisition Checklist (§ S)		
21. Meetings (§ T)		

APPENDIX B

SUPPLEMENTAL SCOPE OF SERVICES

(See attached sheets)

APPENDIX B

SUPPLEMENTAL SCOPE OF SERVICES

INTRODUCTION

This Supplemental Scope of Services sets forth responsibilities, obligations, and Deliverables required of the Design Consultant, **in the event** the Design Consultant is engaged for the Program Phase of a School Facilities Project. Terms in this Appendix B shall have the same definitions established in the Agreement, except as otherwise indicated herein.

A. SURVEYING SERVICES

The Design Consultant shall have inspected and become familiar with the Site before responding to the RFP. Surveying services shall include all necessary fieldwork, file research, office work and coordination with the Authority's title company (hereinafter the "Title Company") in order to compile boundary, topographic, and utility survey data fully describing the Site. On the basis of such data, the Design Consultant shall develop boundary surveys and topographic/utility surveys for the Site. These services shall comply with all American Land Trust Association/American Congress of Survey and Mapping ("ALTA/ACSM") survey requirements, in addition to the requirements set forth below.

A.1 Boundary Survey Plan

A.1.1 Immediately upon receipt of the Notice to Proceed with the Program Phase, in accordance with the Schedule, the Design Consultant shall research all available records of deeds, easements, plans of survey, right-of-way ("ROW") maps, utility company maps, and Federal, State, County and City/Municipal records as necessary to fulfill the requirements of the boundary survey, and shall prepare and submit the boundary survey plan for the Site to the Authority Project Manager.

A.1.2 The Design Consultant shall prepare the boundary survey plan for the entire Site at a scale of 1"= 50' or other scale as approved by the Authority Project Manager. The boundary survey plan shall show all individual tax blocks and tax lots which comprise the entire Site and all adjoining rights-of-way to fully delineate and describe the property boundary including, but not limited to, the delineation and description of any individual internal tax lots. The boundary survey plan shall show metes and bounds for the entire Site and any individual internal tax lots.

A.1.3 The boundary survey plan shall show all structures, buildings, pavement areas, existing easements and street rights-of-way, on the Site. The boundary survey plan shall show distances between structures and/or buildings and the property and lot lines, at their closest points. The Distances shown on the boundary survey plan shall have been field measured.

A.1.4 The boundary survey plan, and all horizontal control, shall be presented in the New Jersey State Plane Coordinate System ("NJSPCS"). State Plane Coordinates shall be provided for all property corners.

- A.1.5 The boundary survey plan shall delineate and describe all utility easements and rights-of-way within the Site and within 100 feet of the Site boundary, or within such additional distance as may be required by local subdivision or land development ordinance.
- A.1.6 The boundary survey plan shall identify all owners of record and the acreage of each individually owned property within the Site, and shall also identify all adjoining property owners of record. All acreage shall be calculated to one one-hundredth (0.01) of an acre. Lot areas shall be calculated in acres and square feet. All current tax block and lot numbers shall be shown for all lots within the Site and for all adjoining properties.
- A.1.7 The Authority will order a title search for all properties within the Site, which shall identify and describe any and all encumbrances of any kind. Copies of the completed title search shall be provided to the Design Consultant. The Design Consultant shall coordinate such activity with the Title Company, as necessary to complete the final boundary survey plan within the Schedule. The final boundary survey plan will delineate and describe any and all encumbrances of any kind., and any additional pertinent information revealed by the title search. In the event the Title Company, if any, has not produced a report of title at the time these survey services are required, the Design Consultant shall proceed with the survey based on its research of information available from appropriate municipal and/or County records, and shall confirm such information in a supplement to the final boundary survey plan, at such time as the formal report of title becomes available.
- A.1.8 The boundary survey plan shall show all street names, ROW lines, and ROW widths.
- A.1.9 The Design Consultant shall prepare a certified metes and bounds description for the entire Site and for each individual property that may comprise the Site.
- A.1.10 The boundary survey plan shall indicate the location and description of all of the Site's property corners. The exact location of all property corners shall be marked in the field by temporary iron pins, drill holes, or other suitable recoverable marker. For this purpose, the Design Consultant shall use any existing monuments and, if necessary, shall establish a new permanent monument.
- A.1.11 A location or key map, north arrow and the appropriate graphic scale must be included on the final boundary survey plan.
- A.1.12 The boundary survey plan must be certified to the Authority, the Client School District, the DOE, and the Title Company.

A.2 Topographic/Utility Survey Plan

- A.2.1 The Design Consultant shall perform all field survey measurements necessary to develop a topographic/utility survey plan. All horizontal control shall be presented in the NJSPCS; vertical datum shall be National Geodetic Vertical Datum of 1929 ("NGVD").
- A.2.2 The Design Consultant shall prepare and provide a topographic plan of the Site at a scale of 1"=50' or other appropriate scale as approved by the Authority Project Manager. This plan shall show all Site topographic features, including, but not limited to, utilities, structures/buildings, pavements, slabs, vegetation, and surface materials. Contours shall

be shown on a one (1) foot contour interval. Spot elevations shall be provided as necessary within the Site at locations of structures, pavements, high and low points of elevation, and other appropriate points, in order to accurately document elevations of the Site's surface and subsurface features. Topographic mapping shall extend to 100 feet beyond the Site or to such additional distance as may be required by local subdivision or land development ordinances. The topographic mapping may be prepared via aerial photography at a scale sufficient to accurately produce the required topographic/utility survey plan. If the Design Consultant proposes to prepare the topographic mapping from existing aerial photography, the date of the aerial photography shall not be more than two (2) years prior to the Effective Date of this Agreement. The Design Consultant shall verify the existence of all structures indicated by the aerial photography, above or below ground, prior to commencement of the survey, and the location of all building corners, permanent structures and the like shall be field verified and relayed on to the topographic/utility survey plan.

- A.2.3 Utility information shall include accurate locations of any and all utilities, such as water lines, storm sewer, sanitary sewer, gas mains, telephone and underground electric lines; utility poles with identity numbers and street lights; the size of all such lines and their type of material construction, e.g., RCP, DIP, and PVC. The utility information shall also include the accurate location of all manholes, catchbasins, chambers, culverts, utility vaults, valve boxes, hydrants, headwalls, and any other features/structures related to utilities. The Design Consultant shall provide surveyed elevations of all invert, top of grate/casting, outfall inverts and top of headwall associated with the above mentioned features/structures, where accessible. Any sewers containing combined sanitary and storm sewer flows shall be noted as such.
- A.2.4 The final topographic/utility survey plan shall include pertinent data from the boundary survey plan, such as each individual tax lot line and description, area calculations, easements, street right-of-way lines and descriptions, street names and tax lot numbers.
- A.2.5 The Design Consultant shall provide the topographic/utility survey plan in a digital format AutoCAD version 14 (DXF or DWG file) or greater. Survey information shall be layered to facilitate its use as a base map for geotechnical and environmental investigations of the Site, and for subsequent architectural and site design phases of the project.

A.3 Survey Deliverables

- A.3.1 The Design Consultant shall provide certified, reproducible mylars and AutoCAD Compact Disks of the boundary survey plan, and topographic/utility survey plan. The Design Consultant shall provide ten (10) sets of signed and sealed prints of the final boundary survey plan and the final topographic/utility survey plan. These survey plans shall be signed and sealed by a New Jersey Licensed Surveyor or Professional Engineer, as appropriate. The Design Consultant shall provide ten (10) signed and sealed, certified, written boundary descriptions of the overall Site and of each individual property that may comprise the Site. The Design Consultant shall provide one (1) set of 8"x 8" contact prints of any aerial photography used to prepare the topographic base map.
- A.3.2 The Design Consultant shall provide two (2) color aerial photographs of the Site at a scale suitable to produce a 30" x 42" presentation board suitable for use at public meeting.

B. PHASE 1 - PRELIMINARY ASSESSMENT

The Design Consultant shall analyze the environmental conditions of the Site, as an essential part of Authority’s due diligence as a potential purchaser of the property. The Authority has entered into a Memorandum of Agreement (“MOA”) with the New Jersey Department of Environmental Protection (“NJDEP”) to conduct a review of all potential School Facilities Project sites. Accordingly, the NJDEP will review the Preliminary Assessment Site Investigation (“PASI”) produced by the Design Consultant, in accordance with the technical requirements for site remediation set forth at N.J.A.C. 7:26E.

B.1 Phase 1 - Preliminary Assessment.

The Design Consultant shall conduct a Preliminary Assessment (“PA”), in compliance with applicable provisions of N.J.A.C. 7:26E, to identify all potential areas of concern (“AOC”) at the Site, and to determine an appropriate Site Investigation (“SI”) scope of work to determine soil and groundwater conditions. The Design Consultant shall perform a thorough file review and document search of the Site’s past and current use. Such review and search shall include, but not be limited to, a review of municipal records, Sanborn Maps, historic aerial photographs, property surveys, local and County health department records, State records (including those of the NJDEP), Federal records (including those of the USEPA), and property owner records. Where practicable, the Design shall conduct interviews of existing and former property owners and/or other persons familiar with or responsible for operations and maintenance at the Site.

B.1.1 In conducting the files review and document search, the Design Consultant shall, at a minimum, address all of the following AOCs:

- (i) Underground Storage Tanks (USTs) and Aboveground Storage Tanks (ASTs)
- (ii) Transformers and lighting fixtures with PCB constituents
- (iii) Hazardous substance drop-off, handling, storage, and pick-up areas
- (iv) Mechanical and work rooms
- (v) Stained soil and building areas
- (vi) Dump and disposal sites
- (vii) Industrial activities
- (viii) Powerhouse/Boiler Plant
- (ix) Sewage disposal, septic fields and cisterns
- (x) Equipment and automotive maintenance and repair areas
- (xi) Drainage/piping systems associated with a potential AOC
- (xii) Cemeteries/Burial Grounds

B.2 Preliminary Assessment Report.

The Design Consultant shall submit for the Authority’s review and approval a Preliminary Assessment Report, which shall describe in detail: (i) the completed file review, document search and any other tasks accomplished, (ii) each known or potential AOC, and (iii) a scope of services and cost estimate for the recommended Site Investigation. The Report shall set forth all recommended sampling and analytical parameters in an itemized format for each AOC on the Site, with a corresponding cost estimate for such services. The Design Consultant shall also submit a cost estimate for any remedial action suggested by the Report.

C. PHASE 2 - SITE INVESTIGATION

Based on the information collected in the Preliminary Assessment Report, the Site Investigation is to determine whether contaminants are, in fact, present at the Site, at levels above the applicable unrestricted use remediation standards, or if no further remediation of any previously discovered contaminants is required. Findings shall be set forth in the Preliminary Assessment Site Investigation Report (the "PASI Report").

C.1 The Site Investigation.

The Design Consultant shall investigate each AOC identified in the Preliminary Assessment Report as needing a Site Investigation, and approved as such by the Authority. The Design Consultant shall develop and implement an SI plan in accordance with applicable provisions of N.J.A.C. 7:26E.

C.1.1 Site Investigation activities shall include, but are not limited to, those set forth in the list below. Further requirements of certain activities are set forth in the paragraphs following the list.

- (i) Health and Safety Plan
- (ii) Site Clearing
- (iii) Geophysical Survey
- (iv) Building Interior Inspection
- (v) UST Investigation
- (vi) Soil and Groundwater Sampling
- (vii) Laboratory Analysis
- (viii) Preparation and submission of the PASI Report
- (ix) PASI report revisions based on NJDEP review comments

C.1.2 UST Preliminary Assessment Investigation. Based on information contained in the Preliminary Assessment Report, the Design Consultant shall determine and list the location, capacity, and history of operation of known and potentially discoverable USTs on the Site. The Design Consultant shall develop and submit to the Authority Project Manager for approval a sampling plan for any UST identified as an AOC.

C.1.3 Soil and Groundwater Laboratory Analysis. The Design Consultant shall provide all soil and groundwater laboratory analysis in accordance with applicable provisions of N.J.A.C. 7:26E, and within the timeframes established in the Schedule.

C.1.4 Preliminary Remedial Cost Estimate. The Design Consultant shall provide a preliminary cost estimate for any remedial action identified as necessary at an AOC on the Site, for School Facilities Project purposes. The cost estimate shall assume that all remedial action design and construction shall be conducted in accordance with all applicable local, State and Federal regulatory and code requirements. The cost estimate shall include a breakdown of anticipated design and construction costs associated with completing each such remedial action. The PASI Report shall identify and explain the development permits and approvals necessitated by existing environmental conditions.

C.1.5 Submission of PASI Report, and Responsibility for Later Revisions. The Design Consultant shall submit the PASI Report to the Authority Project Manager and the NJDEP, in accordance with the Schedule, and in accordance with both substantive and formatting requirements of N.J.A.C. 7:26E. The Design Consultant shall be responsible for revising the PASI Report and/or any associated plans, as required pursuant to NJDEP review and comments. Revisions based on normal review comments from the NJDEP shall not be considered an Additional Service, and revisions to correct errors or omissions by the Design Consultant shall be provided at no additional cost to the Authority.

D. GEOTECHNICAL INVESTIGATION AND REPORT

The Design Consultant shall conduct a geotechnical evaluation of the Site to develop an understanding of geotechnical conditions that may affect the proposed development. The Design Consultant shall prepare a boring/test pit location and sampling plan in conjunction with the Authority's Project Manager prior to the start of geotechnical investigation fieldwork. The Design Consultant shall consider both environmental requirements (as evidenced in the PASI Report) and the geotechnical requirements of the proposed School Facilities Project, and shall maximize the efficiency of the boring/test pit location and sampling plan through minimizing the test pit/boring locations and the required fieldwork. All geotechnical investigation services shall be performed or supervised by an experienced Professional Engineer licensed in the State of New Jersey.

D.1 Borings

The location of borings on the Site shall be reviewed and approved by the Authority Project Manager. The Design Consultant shall provide **ten (10) MODIFY AS NECESSARY**, or such other number as the Authority Project Manager may direct, geotechnical soil borings to a depth of 40 feet below surface elevation or to refusal in bedrock at a lesser depth. All borings encountering bedrock shall include a five (5) foot rock core and recovery.

D.1.1 Drilling and representative sampling shall be accomplished in accordance with ASTM D 1586, and laboratory testing shall be accomplished in accordance with the Unified Classification System. The Design Consultant shall perform all sampling and testing necessary in order to complete the geotechnical investigation, and shall, at a minimum, identify soil and rock types, densities, bearing capacities and groundwater elevation. All borings shall be backfilled and/or grouted to existing grade.

D.2 Test Pits

The location of test pits on the Site shall be reviewed and approved by the Authority Project Manager. The Design Consultant shall provide **ten (10) MODIFY AS NECESSARY**, or such other number as the Authority Project Manager may direct, test pit excavations to a depth of eleven (11) feet minimum below the surface elevation. Test pits shall be utilized for the identification of soil types, ground water elevation, sample extractions, exploration of utilities, obstructions and areas which are or appear to have been previously disturbed or developed. All test pits shall be backfilled and compacted to existing grade, and restored to the existing surface condition.

D.3 Geotechnical Base Map

The Design Consultant shall submit a geotechnical base map, created from the boundary survey plan and topographic mapping. All boring and test pit locations shall be accurately surveyed and located on the geotechnical base map.

D.4 Geotechnical Report

The Design Consultant shall submit a written geotechnical report containing logs for all test pits and borings, drawings/profiles and testing results. The geotechnical report shall summarize all work accomplished, describe the developability of the Site for the School Facilities Project, and provide recommendations and suggestions for the most cost effective type(s) of foundation system(s) for construction of the School Facilities Project on the Site.

E. WETLAND INVESTIGATION AND DETERMINATION

The Design Consultant shall perform a wetland investigation on the Site in accordance with all applicable regulatory and code requirements, including, but not limited to, NJDEP freshwater wetlands classification parameters. The wetlands investigation shall include, but shall not necessarily be limited to, a visual observation by a qualified trained professional wetlands specialist who shall perform soil probes and plant and habitat analysis to determine whether or not wetlands are present.

E.1 Wetlands Evaluation Report

The Design Consultant shall prepare a Wetlands Evaluation Report detailing the results of the wetlands investigation and shall make a recommendation for any further action warranted by such results. If the wetlands evaluation reports indicates the presence of wetlands on the Site, the Design Consultant shall include in the report a cost proposal for the services involved in: (i) physically delineating the limits of all such wetland areas on the Site, by staking and/or flagging their limits, and (ii) precisely locating soil probes and wetland delineation points on the topographic base map. Provision of such services shall be considered Additional Services and shall require an Amendment. Provision of a list of potential NJDEP Statewide General Permits (“SGP”) necessary to conduct construction activities within the delineated wetland, including an application to the NJDEP for a Letter of Interpretation (“LOI”) and for the approval of the wetland delineation, if required, shall be considered Additional Services and shall require an Amendment.

E.1.1. If the Wetlands Evaluation Report does not indicate the presence of wetlands on the Site , the Design Consultant shall prepare a letter to the NJDEP stating that in their professional opinion that wetlands are not present on the Site. This letter shall request a response from NJDEP in the form of a LOI.

F. UTILITY INVESTIGATION ANALYSIS REPORT

The Design Consultant shall prepare a Utility Investigation Analysis Report identifying the locations of all utilities existing on the Site, and evaluating the capacity of the existing utility infrastructure to support the proposed School Facilities Project. The Report shall consist of a utility inventory and evaluation, including, but not limited to, sanitary sewer and storm sewer systems, potable water, electric power, natural gas, telephone service, cable television, communication lines, noting the age, size and condition of said utilities. The Report shall identify any restrictions imposed by local ordinance or State requirements and/or moratoria. The Report shall list all utility companies, with contact telephone numbers and point of contact

persons who provided information to the Design Consultant. Notes from all meetings and phone conversations and other communications, with the local utility companies shall be included with the Report. The Report shall contain a statement/letter from each utility agency and or authority stating whether there is sufficient capacity for the proposed School Facilities Project. The Report shall assess the utility systems' compatibility with the proposed School Facilities Project. The Report shall include an inventory of active and non-active utilities in each of the streets surrounding the Site. The report shall identify and evaluate any Statewide storm-water permit programs, which could affect the Site's development. The Report shall include all utility mapping completed under the survey provisions of this Supplemental Scope of Services, and the utility investigation conducted under this Section shall be used to confirm the utility data shown on such survey plans.

G. ASBESTOS, LEAD BASE PAINT, LEAD IN DRINKING WATER, RADON AND PCB INVESTIGATION

Within each individual building and affected site area, the Site Consultant shall perform an asbestos, lead, radon and PCB investigation for all suspected materials and systems as warranted.

G.1 ACM, LBP and Lead in Drinking Water Analysis.

The Design Consultant shall provide adequate random sampling and analysis on: (i) suspected ACM within each individual building and affected site area, such as interior and exterior pipe/duct insulations, equipment and boiler insulations, fire brick, HVAC units, plaster materials, floor and ceiling tiles, mastics/glues, roofing materials, glazing caulks, wire wrap, fireproofing, and (ii) suspected LBP, such as floor/wall/ceiling/equipment housing paint materials. The Design Consultant shall provide all required sampling and analysis procedures for determining the Total Lead Concentration and T-CLP of all suspected LBP materials. The Design Consultant shall obtain an adequate number of individual and bulk analyses to accomplish this task in compliance with all applicable regulatory and code requirements, including applicable provisions of N.J.A.C. 7:26E.

G.1.1 Existing School Facilities or Adaptive Re-Use Facilities. Where the evaluation of an existing School Facility building is required, the Design Consultant shall review the "Asbestos Management Plan" and the District's AHERA report regarding ACMs for the School Facility. The Design Consultant shall be responsible for investigation of any indication of the presence of any other hazardous materials, including but not limited to, radon, radioactive exit lights, molds, and mildews. If any known hazardous materials will be disturbed by activity of the Design Consultant or by the proposed construction of the School Facilities Project, the Design Consultant must identify the appropriate investigation and abatement methodology, which must include sampling for ACM in concealed spaces. The Site Consultant shall also perform a sampling and analysis report of potable water systems within the building(s) to determine the presence and concentration of lead. The report shall include the identification of all potable water sources (and locations) that contain lead above the State/Federal action levels. Provide cost estimated to successfully abate such conditions in accordance with all applicable regulatory and code requirements.

G.2 ACM, LBP and Lead in Drinking Water Report.

The Design Consultant shall submit an ACM and LBP Inventory Report, with appropriate exhibits. Each individual building shall be itemized separately in the Report. The Report shall

summarize all work accomplished, and shall include: (i) all laboratory data, (ii) sketch plans identifying the location of all samples obtained, (iii) summary tables identifying all analytical results, including, but not limited to, detection and friability levels of all ACM/non-ACM, concentrations of Total Lead, and T-CLP analyses, and (iv) a comparison of all such levels/concentrations to residential action levels as determined by NJDEP and USEPA. The report shall include an itemized inventory of all suspected ACM and LBP materials found to exist in each individual building in an itemized format with a corresponding cost estimate to successfully abate such conditions in accordance with all applicable regulatory agency and code requirements.

G.3 Radon Testing and Report

In accordance with NJSA 18A:20-40, NJSA 26:2D-70-80 and NJAC 7:28-27, conduct testing for the presence of radon. Where levels are identified equal to or greater than 4.0 pCi/L a radon mitigation business certified by NJDEP shall be responsible for a design that complies with the NJDEP requirements for radon mitigation systems.

G.4 PCB Analysis and Report.

The Design Consultant shall investigate existing buildings/structures to determine the presence of PCB-containing equipment/fixtures. A PCB Inventory Report shall be submitted, identifying light fixtures, electrical equipment, and any other items suspected of containing PCBs.

H. ABATEMENT, DEMOLITION, AND SITE IMPROVEMENT

The Design Consultant shall prepare construction documents (plans and technical specifications) for any necessary demolition and site improvement construction work, and shall provide administration and supervision services for same. Where necessary, the Design Consultant shall include in such construction documents any required asbestos, lead, PCB or other hazardous material abatement, and the Design Consultant shall incorporate all ACM and LBP Inventory Reports and PCB Reports into the abatement and demolition construction documents. The Design Consultant shall submit to the Authority a cost estimate for demolition and any related hazardous materials abatement required on the Site.

H.1 General.

H.1.1 Scope of Demolition. Generally, structures to be demolished may include: (i) all buildings/structures located on the Site and all associated utility systems servicing same, including all basements, foundation walls and foundation systems; (ii) all pavements, slabs, curbing on the Site, which are located outside of street ROW; (iii) All on-Site miscellaneous features or structures, except those the District wishes to save. In addition, this activity may include, but not be limited to utility work (for example, abandoning, capping, removal, protection, reconnection), UST removal, earthwork/grading and drainage, vehicular and pedestrian safety, maintenance of traffic, improvement and restoration, soil erosion and sediment control, details.

H.1.2 DCA Permits. The Design Consultant shall be responsible for obtaining all abatement, demolition and construction permits required from the New Jersey Department of Community Affairs (“DCA”)

H.1.3 Deliverables. Deliverables for these services shall include: (i) Demolition Plans and Specifications, (ii) Site Improvement Plans and Specifications, and, as appropriate, (iii) Asbestos Abatement Services Plans and Specifications, (vi) Lead Abatement Services Plans and Specifications, (v) PCBs Abatement Services Plans and Specifications, and (v) such plans and specifications as may be required for any other hazardous materials.

H.1.4 Format of Submissions. The Plans and Specifications and construction documents must be submitted in a format compatible with contractor procurement documents. The Design Consultant shall provide a minimum of three (3) copies (including one (1) unbound copy) of all submissions to the Authority, including exhibits, plans and drawings. The Design Consultant shall provide mylars, and AutoCAD disks/CDS of all plans and drawings acceptable to the Authority at a scale of 1" = 20', for construction documents.

H.2 Abatement Services - Construction Documents.

As more fully set forth below, where necessary, the Design Consultant shall incorporate the activities associated with the abatement of asbestos, lead, PCBs, and any other hazardous materials into the demolition and site improvement construction documents, as well as into all documents associated with the Construction Phase of the School Facilities Project, in accordance with all applicable local, State, and Federal regulations.

H.3 Demolition Services - Construction Documents.

The Design Consultant shall perform document research and field investigations as necessary to determine the types of structural and foundation systems in all buildings on the Site slated for demolition and in all existing structures or buildings located adjacent to those slated for demolition, both on-Site and off-Site, as well as all utilities located within adjacent on-Site and off-Site buildings and ROWs. The Design Consultant shall also confirm the square footage and structural framing and foundation systems of all structures to be demolished. The Design Consultant shall field verify the location of all existing basements and tunnels, utility chases or chambers, and incorporate same into the demolition and abatement construction documents, as appropriate. The construction documents shall include all plans and specifications necessary for the successful demolition of on-Site structures and the stabilization of adjacent, off-Site structures, as necessary.

H.3.1 Regulatory Compliance. The Design Consultant shall prepare all demolition construction documents, i.e., plans and specifications, to ensure that all related Construction Work is accomplished in accordance with all local, State and Federal requirements, and shall prepare all construction documents specifically for the abatement of asbestos or other hazardous materials to ensure that all related construction work is accomplished in accordance with all local, State and Federal requirements applicable to such abatement activity.

H.3.2 Scope. The scope of demolition work may include, but not be limited to, demolition, utility work (for example, abandoning, capping, removal, protection, reconnection), UST removal, earthwork/grading and drainage, vehicular and pedestrian safety, maintenance of traffic, improvement and restoration, soil erosion and sediment control, details.

H.3.3 Asbestos. Where asbestos is found to exist in a building on the Site, the Design Consultant shall prepare construction documents to permit its handling and/or removal in

accordance with all applicable local, State and Federal regulations. The Design Consultant shall assist the Authority in securing all necessary approvals and permits for such construction work.

H.3.4 Lead. Where lead is found to exist in a building on the Site, the Design Consultant shall prepare construction documents to permit on-site recycling/processing of building rubble for both on-Site and off-Site use to the extent possible. The Design Consultant shall assist the Authority in securing all necessary approvals and permits for such construction work.

H.3.5 PCBs. The Design Consultant shall perform an adequate random inspection of light fixtures and a thorough inspection of any transformers to confirm the presence of PCBs. Where necessary, the Design Consultant shall prepare construction documents for the successful removal and disposal of PCB ballasts in lighting fixtures and of PCB oils from transformers and associated equipment, in accordance with all local, State and Federal requirements.

H.3.6 Equipment Inventory. The Design Consultant shall provide an equipment inventory of all existing, major mechanical, electrical, plumbing, and elevator equipment to be demolished with any buildings on the Site. The inventory shall include, but not be limited to, type of equipment, manufacturer and model number. The major equipment inventory shall be included as part of the demolition construction documents.

H.4 Site Improvement and Demolition Services - Construction Documents, Generally.

The Design Consultant shall perform document research and field investigations necessary to prepare the site improvement and demolition construction documents, i.e. plans and specifications. Site improvement work shall include, but not be limited to, earthwork and backfilling; sidewalk, pavement, and curb restoration; required utility restorations; perimeter fencing; soil erosion and sediment control measures, and lawn establishment and stabilization. All demolished basements and depressions shall be backfilled to original grade. All site improvement construction documents services shall be supervised under the direction of a professional engineer and environmental specialist licensed/certified in the State of New Jersey.

H.4.1 Regulatory Compliance. The Design Consultant shall prepare site improvement construction documents, i.e. plans and specifications, so that all such construction work is accomplished in accordance with all local, State and Federal requirements.

H.5 Construction Phase Abatement, Demolition and Site Improvement Services, Generally.

During a School Facilities Project's Construction Phase, Design Consultant shall provide: (i) on-Site Construction Phase coordination and supervision services in connection with hazardous material abatement activities, as set forth below, on a part-time basis, which shall mean on at least one (1) day per week (7:30 a.m. to 4:00 p.m.) in accordance with the Schedule determined by the Authority Project Manager, and (ii) on-Site Construction Phase coordination and supervision services in connection with demolition and site improvement activities, as set forth below, on a full-time basis, which shall mean on at least five (5) days per week during the hours that Construction Work is performed (generally Monday through Friday 7:30 a.m. to 4:00 p.m.), in accordance with the Schedule determined by the Authority Project Manager.

- H.5.1 The Design Consultant shall provide part-time and full-time construction inspection and supervision services, and shall supervise the coordination between the abatement, demolition and site improvements, as necessary, in regard to implementation of the requirements and procedures (including, but not limited to, compaction and density tests) set forth in the construction documents.
- H.5.2 The Design Consultant shall provide coordination between the Authority and the Contractor when necessary during abatement and demolition activities.
- H.5.3 The Design Consultant shall review and approve shop drawings submitted by the Contractor under the direction of a New Jersey-licensed professional engineer, where applicable.
- H.5.4 The Design Consultant shall review and approve the Contractor's monthly invoices for work relating to abatement, demolition, and site improvements, prior to payment, in cooperation with the Authority.
- H.5.5 The Design Consultant shall submit to the Authority Project Manager a Progress Report at the end of each week, as well as daily work logs of all construction activities relating to abatement, demolition, and site improvement.
- H.5.6 The Design Consultant shall represent the Authority at related pre-construction and weekly job meetings, as requested by the Authority Project Manager.
- H.5.7 The Design Consultant shall prepare as-built drawings as required.
- H.5.8 The Design Consultant shall evaluate contract bulletins and Change Orders, if any, relating to abatement, demolition, and site improvement activities, in cooperation with the Authority.

I. PROPERTY ENVIRONMENTAL ASSESSMENT REPORT (SINGLE OWNER SITE)

I.1 The Design Consultant shall prepare a Property Environmental Assessment Report for the Site, identifying environmental AOCs.

I.1.1 The Property Environmental Assessment Report shall contain a brief summary of the environmental investigations conducted at the property as part of the PASI. The report shall contain a property plot plan (in a scale to be determined by the Authority Project Manager) showing the exact location of each AOC, soil sampling locations, monitoring wells, and all other significant items, on the Site. This report shall contain a tabular summary, in accordance with NJDEP requirements, showing the results of the soil and/or ground water sampling on the Site. The report shall contain the Design Consultant's recommendations for remedial actions, if any. The report shall also include a range of cost estimates for the specific soft costs (such as design, permits, fees, oversight, post excavation sampling) and for the hard costs (such as soil or groundwater remedial actions, asbestos abatement, and UST removal), which may be required to complete the remedial actions recommended for the Site. The report shall also include as a separate attachment costs estimates for building demolition and site clearing on the Site. These cost estimates shall include both hard and soft costs associated with demolition, including demolition engineering plans, specifications, permits, utility disconnects, and contractor costs. This attachment shall also include an estimate of the cost of any necessary off-

Site stabilization or other work. These cost estimates shall be set forth in connection with a schedule of the relevant task durations.

J. PROPERTY ENVIRONMENTAL ASSESSMENT REPORTS (MULTIPLE OWNERS SITE)

J.1 The Design Consultant shall prepare an Individual Property Environmental Assessment Report for each of the several multiple owners of a Site, identifying each environmental AOC on each individually owned property on the Site.

J.1.1 The Individual Property Environmental Assessment Report shall contain a brief summary of the environmental investigations conducted at each of the properties as part of the PASI. The report shall contain an individual property plot plan (in a scale to be determined by the Authority Project Manager) showing the exact location of each AOC, soil sampling locations, monitoring wells, and all other significant items on each of the subject properties. The report shall contain a tabular summary, in accordance with NJDEP requirements, showing the results of the soil and/or ground water sampling for the subject property. The report shall contain the Design Consultant's recommendations for remedial actions, if any, for the subject properties. The report shall also include a range of cost estimates for the specific soft costs (such as design, permits, fees, oversight, post excavation sampling) and for the hard costs (such as soil or groundwater remedial actions, asbestos abatement, and UST removal), which may be required to complete the remedial actions recommended for the subject property.

J.1.2 The Design Consultant shall be required to coordinate the final version of the Individual Property Environmental Assessment Reports with the appraisal consultant, which has been engaged by the Authority to establish a value for the properties on the Site.

J.1.3 The Individual Property Environmental Assessment Reports shall be drafted in a concise memorandum format, with accompanying attachments, and shall be suitable for presentation to the current property owners.

K. TRAFFIC AND AIR QUALITY ENGINEERING AND ANALYSIS

The Design Consultant shall provide a Traffic Impact Study assessing the traffic, parking, and air quality effects of the proposed School Facilities Project on existing patterns in proximity to the Site. This Study shall include a traffic engineering analysis, determining the capacity and existing levels of service ("LOS") of roadways and highways serving the Site. The Study shall also address anticipated traffic and air quality effects, requirements of local, county and State transportation agencies, and potential traffic mitigation improvements (both on-Site and off-Site), as appropriate. Traffic counts at all affected intersections, and both preliminary and final actual air quality measurements shall be required, as directed by the Authority Project Manager. The Study shall take into account the phasing of the School Facilities Project and any related improvements.

K.1 Sight Distance Analysis.

The Design Consultant shall provide a detailed site distance analysis along all frontages in order to determine the best and most efficient location for all points of ingress and egress, which maximize the site distances for vehicles entering and exiting the site.

K.2 Traffic Impact Study.

The Traffic Study shall assess the current level of services of the existing roadway network adjacent to the Site, and shall describe the project's impact on the surrounding area and changes to the existing level of services necessitated by the Site's intended use.

- K.2.1 The Traffic Study shall include a field inspection conducted to obtain an inventory of existing roadway geometry, traffic control, and the location and geometry of such adjacent driveways and intersections as may be gathered without an instrument survey.
- K.2.2 The Traffic Study shall include traffic volume recordings conducted during weekday AM and PM peak hours at adjacent intersections.
- K.2.3 The Traffic Study shall include estimates of traffic to be generated by the proposed School Facilities Project based on standard trip generation rates published by the Institute of Transportation Engineers, and/or trip generation research conducted by the Design Consultant. Site traffic shall be assigned to the adjacent roadway systems based upon the anticipated directional distribution.
- K.2.4 The Traffic Study shall include capacity analyses of the affected roadways and intersections surrounding the Site conducted to obtain existing and projected peak hour capacities and to define existing and projected levels of service.
- K.2.5 The Traffic Study shall include recommendations based on the resultant capacity computations, if deemed necessary, for offsetting any negative impacts of the proposed School Facilities Project, including, but not limited to, signalized intersections, modification to existing signal timing, roadway widening and/or roadway re-striping.
- K.2.6 The Traffic Study shall set forth the proposed points of ingress and egress, which shall have been inspected for adequacy of geometric design, spacing from adjacent driveways, and conformance with generally accepted design standards.
- K.2.7 The Traffic Study shall advise the Authority whether the Site's internal geometry properly accommodates large wheel vehicles, such as delivery trucks, refuse trucks and emergency vehicles, and shall recommend any actions required to ensure that the geometry necessary for vehicle accommodation is maintained throughout the School Facilities Project's Design Phase.
- K.2.8 The Traffic Study shall include a comparison of the proposed parking layout to generally accepted design standards, local ordinances and demands experienced at similar developments, and shall recommend any actions required to ensure that an appropriate parking layout is maintained throughout the School Facilities Project's Design Phase.

K.3 The Traffic Study Report.

Upon completion of the Study, the Design Consultant shall submit Traffic Study Report and any presentation graphics required for the Authority's review, for local planning board acceptance, and for any other presentations required by the Authority.

L. SITE FEASIBILITY REPORT AND CONCEPTUAL SITE PLAN

The Design Consultant shall prepare a Site Feasibility Report. This Report shall summarize the feasibility of the proposed School Facilities Project based on the information established in Sections A through J of this Supplemental Scope of Services. The Site Feasibility Report shall include a summary overview of the Site's characteristics, development constraints, environmental issues, civil engineering and geotechnical design requirements, and permit issues and requirements. In the Site Feasibility Report, the Design Consultant shall recommend optimum location(s) for siting the proposed building(s) and related improvements. The Design Consultant shall include a minimum of three (3) conceptual site plans (30" by 42"), showing such locations. The Design Consultant shall indicate each building with its associated footprint or envelope. The conceptual site plan shall conform to all applicable zoning and land development ordinances.

- L.1** The Site Feasibility Report shall include a preliminary project schedule for pre-construction services, including, but not limited to, site development permits, abatement and remedial actions, demolition and site clearing. The Report shall also include a preliminary project budget or cost estimate, identifying the estimated hard and soft costs necessary to remediate, design, and construct the proposed Project.
- L.2** The Site Feasibility Report shall be suitable in form and substance for use in procuring Design Phase and Construction Phase services of another Design Consultant.

M. EXECUTIVE ORDER 215 REPORT

The Design Consultant shall prepare a report in accordance with Executive Order No. 215 (1989) ("E.O. 215") for submission of the project to the NJDEP Office of Program Coordination. A copy of the E.O. 215 Guidelines are set forth as Exhibit 1 to this Supplemental Scope of Services. The Authority understands that some Deliverables under this Agreement shall be incorporated into the E.O. 215 submission. The Authority also recognizes that certain components of the E.O. 215 submission depend on the production of design elements, which may not be part of this Supplemental Scope of Services, and which, therefore, shall be provided pursuant to the later phases of the Design Phase for the proposed School Facilities Project. The Design Consultant shall be required to coordinate appropriately with any later-procured Design Consultant in order to meet such E.O. 215 requirements. The schedule for submission of the E.O. 215 report shall be coordinated with the Authority's Project Manager and the NJDEP. The Design Consultant shall provide the Authority ten (10) copies of the final document approved by the Authority and the NJDEP.

N. HISTORICAL AND CULTURAL RESOURCES

Where the Site is in or near an historic building district, the School Facilities Project design and construction must take into consideration and be sensitive to historic buildings and resources, and any archaeological resources on the Site.

N.1 Historical and Cultural Resources Report.

The Design Consultant shall submit to the Authority an Historical and Cultural Resources Report. The Historical and Cultural Resources Report shall set forth the results of a file search investigation identifying the likelihood of archaeological or historical resources on and near the Site and a review of any previously completed and/or ongoing historical investigations or reports conducted by the State of New Jersey, or other agencies. The Report shall set forth the location and boundaries and origin of historic districts on the Site and relevant surrounding area.

N.2 Mitigation.

If the Historical and Cultural Resources Report indicates that significant historical and/or archaeological resources are likely to exist on the Site, the Design Consultant shall perform any requisite further investigation of the Site. The Design Consultant shall submit a report of any such further investigation, with a recommendation for mitigation, including, but not limited to, a plan for the appropriate monitoring and supervision of any historical and /or archaeological resources throughout the Design and Construction Phases of the School Facilities Project.

O. ARCHITECTURAL PRE-DESIGN AND PROGRAMMING SERVICES

The Design Consultant shall provide architectural pre-design and programming services, which shall consist of preparing educational programming specifications and providing conceptual design and cost estimating services for the School Facilities Project on the proposed Site.

O.1 Programming and Conceptual Design.

Programming and conceptual design services shall include, but not be limited to the following:

- O.1.1 The Design Consultant shall consult with the Authority, the District, and the PMF and other parties, as appropriate, to ascertain the applicable requirements of the Project and shall review the understanding of such requirements with the Authority, the District, and the PMF.
- O.1.2 The Design Consultant shall document the applicable requirements necessary for the various Project functions or operations, such as those for existing and projected staff, students, other personnel, space allocations, furniture, furnishings, and equipment, operating procedures, security criteria, and communications relationships.
- O.1.3 The Design Consultant shall review any information supplied by the Authority, School District, the DOE, and the PMF, including but not limited to, any preliminary conceptual program documents, District Model, budget estimates, and set up all procedures, questionnaires, and such preliminaries in order to produce a complete School Facility program.
- O.1.4 The Design Consultant shall develop a School District questionnaire designed to obtain the information listed below. The questionnaire shall be submitted for approval to the Authority Project Manager and PMF prior to distribution to the District, and shall require information that shall include, but not be limited to, the following:
 - O.1.4.1 Confirmation of preliminary information from the District's Long Range Facility Plan ("LRFP"), including, but not limited to: student populations, grade breakdown, school planning areas, demographic data;
 - O.1.4.2 Operational characteristics of each of the school's academic departments;
 - O.1.4.3 Inter-relationships between academic departments;
 - O.1.4.4 Operational and relational problems resolvable through proper space planning;
 - O.1.4.5 Public access and reception requirements;

- O.1.4.6 Required unit support and ancillary work areas;
- O.1.4.7 Desired filing space, and records management requirements (including file cabinet and system inventory);
- O.1.4.8 All electronic voice and data equipment (including, but not limited to, PBX switches ACD units controllers, host equipment, peripheral equipment - both networks, current cabling requirement, computer protocols, electrical requirements and BTU output of the equipment); and
- O.1.4.9 Desired security requirements (including, but not limited to, electronic access control and intrusion alarm monitoring - taking into account normal working hours and frequency of required after-hours access).
- O.1.5 The Design Consultant shall conduct interviews with school district personnel, in order to: (i) review and verify data obtained from questionnaires; (ii) determine possibilities for consolidation of support and ancillary work areas, and (iii) determine required adjacencies.
- O.1.6 The Design Consultant shall develop typical spatial configurations including, but not limited to, classroom, laboratory, media center and cafeteria configurations (pursuant to the District Model, where applicable). Deviation from typical classroom sizes shall be fully documented with respect to need (e.g., special education support). Furniture shall be competitively procured, and designs incorporating typical classroom furniture shall, therefore, not be based upon any named manufactured system, but shall be generic enough to foster competition.
- O.1.7 The Design Consultant shall review both existing and/or proposed departmental spaces, including, but not limited to any special requirements, and security or public access issues, and make recommendations for departmental space utilization.
- O.1.8 The Design Consultant shall produce a Conceptual Design and Site Plan, which shall include, but not be limited to, diagrammatic drawings analyzing basic Site planning relationships and design considerations including Site constraints and conditions, roads, walks and utilities.

O.2 Deliverables.

- O.2.1 Utilizing DOE standardized formats and in conjunction with the pre-design services required by this Supplemental Scope of Services, the Design Consultant shall provide a draft Program Report describing the recommended design concept, and including, on a classroom/room basis, a completed tabulation of the quantity of materials and equipment necessary to fulfill the program requirements of the District's Model. The Program Report shall also include all ancillary space requirements, including materials and equipment and a listing, by subdivision of all electrical and electronic equipment and operational requirements. The Design Consultant shall provide to the Authority preliminary furniture and construction budgets. The draft Program Report shall be submitted in five (5) copies.

- O.2.2 The Design Consultant shall provide a minimum three (3) conceptual alternatives for the School Facilities Project until such time as the Authority and the District have agreed to a final plan, prior to the Schematic Design Phase.
- O.2.3 The Design Consultant shall provide draft blocking and stacking diagrams illustrating, per floor, each department's or wing's or classroom's total space. The diagrams shall be submitted on reproducible mylars or vellums with five (5) black-lined copies each.
- O.2.4 The Design Consultant shall define all options with respect to furniture and equipment for the proposed School Facilities Project.
- O.2.5 The Design Consultant shall establish all system furniture requirements for the proposed School Facilities Project.
- O.2.6 Program Report. After review and comment by the Authority and the District, if applicable, the Design Consultant shall make all the required corrections, and shall submit the final Program Report, with blocking and stacking diagrams. The final submission shall include five (5) bound copies of the Report, with reduced blocking and stacking diagrams included therein, as well as mylar reproducible or vellum copies of the diagrams.
- O.2.7 The Design Consultant shall provide the Authority with a conceptual Schedule for the School Facilities Project, with a bar chart diagram showing Pre-development Activities, Design Phase, bidding, and other Construction Phase time-frames.
- O.2.8 Preliminary Project Budget/Cost Estimate. The Design Consultant shall identify the estimated hard and soft costs necessary to remediate, design, and construct the proposed School Facilities Project. The cost estimates shall be reviewed by the PMF prior to the Authority's final acceptance of same.
- O.2.9 Presentation Graphics. The Design Consultant shall prepare presentation graphics including, but not limited to, a 30" by 42" rendered Site plan showing the intended School Facility as it would relate to the Site. This plan shall be provided in conjunction with the conceptual site plan, or Site utilization plan, and shall be suitable for submission by the Design Consultant for DOE land acquisition approval and for local municipal Planning Board review and comment.

P. ARCHITECTURAL/BUILDING SITE EVALUATION SERVICES

P.1 Existing Conditions Report, Generally.

The Design Consultant shall inspect any buildings on the Site in order to report on the condition of the building systems and their suitability for reuse in the School Facilities Project. The existing conditions report shall include an exterior and interior building survey and a review of the structural system.

- P.1.1 Exterior Survey. The exterior building survey shall examine roof systems, doors, windows, exterior walls, exterior paving and sidewalks.
- P.1.2 Interior Survey. The interior survey shall include, but not be limited to, the restrooms, bathrooms, lobby, floors, ceilings, interior partitions, stairways and elevators. The types

of systems and general condition/expected life will be included in the report. The report will note the type of structural systems present, e.g., steel frame, concrete, or metal fill deck, noting the design floor loads and other pertinent factors, and identifying any visible structural deficiencies, such as floor cracks, observed settlement, and column corrosion. The Existing Conditions Report shall set forth the existing HVAC system within the building, noting the types of mechanical systems present in the building, the age, condition, and expected life cycle of the equipment and whether or not it is viable for continued use, given the proposed renovation. This Report shall include a review of building code issues associated with the existing structure and the reuse of the building as a School Facility. The code review shall identify life safety and energy code issues associated with the intended reuse. The HVAC system review and code review shall include a review of design and construction issues associated with the classroom renovation and associated administrative space. The Existing Conditions Report shall evaluate the existing plumbing and fire protection systems. The review of existing conditions shall include the plumbing system water service size and location to the building, and the domestic water system supply to each floor of the building. The existing conditions review shall include a review of the sanitary waste water system and the storm water system, including roof drains and conveyance from the building and an evaluation of the fire protection system. The Existing Conditions Report shall include preliminary analysis and recommendations for the reconfiguration of these systems for the intended re-use of the building. The Existing Conditions Report shall include an evaluation of the existing building electrical systems. This analysis shall include an inspection of the electrical room(s) and switchgear, the metering system, the building distribution system, HVAC electrical loads, the emergency lighting systems, building lighting systems, telephone data systems and the fire and security system. The Design Consultant shall report on the condition of said systems and provide recommendations regarding their re-use or replacement based on the intended re-use of the building.

P.1.3 The Existing Conditions Report. The Design Consultant shall provide an analysis of the feasibility of re-use of the existing building as the proposed School Facility. This Report shall include the following sections:

- Executive Summary
- Building Overview
- Exterior Building Survey
 - Roof
 - Doors
 - Windows
 - Exterior Walls
 - Exterior Paving
 - Site Improvements

- Interior Building Survey
 - Restrooms
 - Lobby Areas
 - Ceilings
 - Interior Partitions
 - Stairways
 - Elevators
- Structural Survey
 - Structural System
 - Design Loads
 - Observations
- HVAC Survey
 - System Descriptions
 - Major HVAC Equipment
 - Observations
- Building Code Issues
 - Indoor Air Quality
 - Life Safety Code
 - Energy Code
 - Recommendations
- Plumbing and Fire Protection Systems
 - Existing System Observations
 - Plumbing Systems
 - Domestic Water System
 - Sanitary Waste System
 - Storm Water System
 - Fire Protection Systems
 - Analysis and Recommendations
- Electrical Systems
 - Service and Distribution Systems
 - Emergency Power Systems
 - Lighting
 - Telephone/Data
 - Fire Alarm System
 - Security System
 - Overall Condition of System/Recommendations
- Conceptual Renovation Cost Estimates
 - Exterior
 - Interior
 - Structural
 - HVAC
 - Building Code
 - Plumbing Fire Protection
 - Electrical
 - Selective Demolition

P.2 Asbestos, Lead Base Paint and PCB Investigation

The Design Consultant shall review the “Asbestos Management Plan” and the District’s AHERA report regarding ACMs in buildings on the Site, and shall investigate and include in the Existing Conditions Report, its findings on the presence of any other hazardous materials, including, but not limited to radon, PCBs, lead paint, radioactive exit lights, molds, and mildews, in accordance with Sections G and H of this Supplemental Scope of Services.

P.3 Utility Feasibility Analysis.

The Design Consultant shall investigate and, in the Existing Conditions Report, set forth its findings on whether the Site/building can support the proposed re-use and whether adequate utility capacity, including water, sewer, and electric, exist in sufficient capacity to support the maximum enrollment. Copies of letters from the local utility authorities and/or companies stating whether sufficient capacity is available to support the proposed development shall be included as exhibits to the Report.

P.4 Letter of Suitability for the Proposed Development

The Existing Conditions Report shall contain a letter signed and certified by a professional engineer and/or licensed Architect, as appropriate under the Building Design Services Act, N.J.S.A. 45:4B-1 et seq., indicating whether the site/building appears to be technically suitable for the proposed School Facilities Project and whether the proposed School Facilities Project is feasible from a regulatory and permitting standpoint.

Q. LOCAL PLANNING BOARD APPLICATION AND MEETING ATTENDANCE

The Design Consultant shall be responsible for preparing an application to the local planning board for a courtesy review of the proposed School Facilities Project. The Design Consultant shall prepare all plans and renderings in a manner suitable for presentation at a minimum of one public meeting. The Design Consultant shall attend a meeting with the Authority, School District and local officials prior to any planning board meeting.

R. POTENTIAL EXPERT WITNESS TESTIMONY

At the request of the Authority, the Design Consultant shall provide testimony as an expert witness in connection with the Authority’s acquisition, condemnation of the Site, and/or potential legal proceedings involving the Site any individual properties within the Site. This requirement shall not apply in the event that the Design Consultant and the Authority are adverse parties. The services typically entail the preparation and/or review of reports, studies and memoranda and other documents related to the Supplemental Scope of Services as applied to the Site.

S. LAND ACQUISITION CHECKLIST

The Design Consultant shall assist the Authority in completing the DOE Land Acquisition Checklist, pursuant to N.J.A.C. 6A:26-7.1. A copy of this checklist is included as Exhibit 2 to this Supplemental Scope of Services. The District shall provide data addressing checklist items regarding demographics, attendance area, and local endorsements. The Design Consultant shall provide the Authority with three (3) copies of the checklist in form approved by the Authority.

T. MEETINGS

During the Program Phase, the Design Consultant shall attend a minimum of five(5) major meetings, including the initial local planning board meeting, as directed by the Authority Project Manager.

APPENDIX C

PROJECT RESPONSIBILITY MATRIX

(See attached sheets)

APPENDIX D

PROJECT DESCRIPTION

(See attached sheets)

APPENDIX E

**DISCLOSURE TO UNIT OF FISCAL INTEGRITY
GENERAL CONSENT AND WAIVER**

&

INTEGRITY AFFIDAVIT

(See attached sheets)

APPENDIX E-1

**DISCLOSURE TO UNIT OF FISCAL INTEGRITY
GENERAL CONSENT AND WAIVER**

Contract #:

STATE OF _____

COUNTY OF _____

I, _____, of the City of _____, in the County of _____ and the State of _____ of full age, being duly sworn according to law on my oath, depose and say that:

A. I am _____ of the firm of _____, (the "Consultant"), which has been awarded the referenced contract (the "Agreement") for the above-referenced School Facilities Project, and that I execute said Agreement with full authority to do so; that said Consultant agrees to and hereby consents to permit the Unit of Fiscal Integrity in School Construction in the Office of the State Attorney General, established pursuant to Public Law 2000, Chapter 72, Section 70 or its authorized representatives (the "Unit"), access as described below, to:

All documents related to the Agreement, including but not limited to, prequalifying information, work product, and confidential memos and certifications required to be kept by any governmental agency, including but not limited to the Department of Community Affairs, the Department of Labor, the Department of Education, the Department of Environmental Protection, the Department of Treasury, the Division of Consumer Affairs, Licensing Boards, the New Jersey Economic Development Authority, and the New Jersey Schools Development Authority.

All documents related to the Agreement, which are required to be kept by the Consultant, including but not limited to contracts, specifications, drawings, deliverables, change orders, alternate submissions, approvals/rejections, unit prices, product data, time of performance schedules, construction photographs, quality control management and reports, value engineering information, up-to-date project accounting system, intermediate and final audits, as-builts, close-out documentation.

All documents related to the approval process for the referenced School Facilities Project, including but not limited to project siting, land acquisition, real estate documents (deeds, leases, title report including searches for easements, mortgages, judgments, liens, unpaid taxes, water & sewer, property description by metes & bounds), surveys, permits and inspections.

All documents related to the payment of professionals in connection with the Agreement, including but not limited to surveyors, title abstractor/company, lawyers, appraisers, soils engineers, bond counsel, underwriters, financial and investment advisors, trustees, official printers, bond insurers.

SCHOOL FACILITIES PROJECT
DESIGN CONSULTANT AGREEMENT
VERSION August 6, 2007
NJSDA # XX-XXXX-XXX

- B. The Consultant agrees to allow the Unit of Fiscal Integrity upon request, at all reasonable times, to inspect and photocopy any and all of the documents described above that are in its possession or custody, or are subject to its control. The Consultant agrees to make the requested documents available for inspection and photocopying within the State of New Jersey regardless where those documents are located prior to inspection.
- C. The Consultant further certifies that there have been no changes in circumstance, conditions or status of the Consultant's prequalification with the New Jersey Schools Development Authority (the "Authority") since the latest prequalification application was filed by the Consultant with the Authority.
- D. The Consultant certifies that any change in the information provided by the Consultant in its prequalification application currently on file with the Authority will be immediately reported to the Authority.
- E. The Consultant certifies that it shall immediately notify the Authority and the Unit of Fiscal Integrity (PO Box 063, Trenton, NJ 08625) if any director, partner, officer, employee of the Consultant or any shareholder owning 5% or more of the Consultant's stock:
 - 1. Is the subject of investigation involving any violation of criminal law or other federal, state, or local law or regulation by any governmental agency; or
 - 2. Is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
 - 3. Is convicted of any crime under state or federal law, or of any disorderly persons offense or misdemeanor involving a business-related offense.
- F. The Consultant hereby waives any objection it might otherwise raise permitting the Unit of Fiscal Integrity to investigate, examine and inspect all activities related to the Agreement pursuant to Public Law 2000, Chapter 72, Section 70. The Consultant further releases and holds harmless the inspector General and his authorized representatives, the Authority, or the State of New Jersey. All statements contained in the Consultant's Technical Proposal and Fee Proposal and in this waiver and consent are true and correct, and made with full knowledge that the Authority and the State of New Jersey rely upon the truth of the statements contained in this affidavit in awarding the Agreement for the School Facilities Project.

Sworn and subscribed to before me

this _____ day of _____, 200__.

Signature of Principal

Notary Public of

Print Name of Principal

My commission expires: _____, 200__.

APPENDIX E-2

INTEGRITY AFFIDAVIT

Contract #:

STATE OF _____

COUNTY OF _____

I, _____, of the City of _____, in the County of _____ and the State of _____ of full age, being duly sworn according to law on my oath, depose and say that I am _____ of the firm of _____, (the "Consultant") for the above-referenced School Facilities Project (the "Project"); that my firm has entered into the contract stated above (the "Agreement") with the New Jersey Schools Development Authority (the "Authority"); and that I execute the above-referenced Agreement, of which this Affidavit is a part, with full authority to do so; and that terms not otherwise defined herein shall have their meaning as set forth in such Agreement; AND

(NO GRATUITIES)

I SWEAR AND AFFIRM that the Consultant has not offered or tendered the payment of any fee, commission or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, whether or not in connection with the purchase, sale, or contract, to any person in the employ of the Authority or the State of New Jersey having any duties or responsibilities in connection with the purchase or acquisition of any property or services by the Authority or State of New Jersey, by or on behalf of any seller, supplier or provider of services, who has made, negotiated, solicited or offered to make any contract to sell or furnish real or personal property or services to the Authority or the State of New Jersey. I further understand that it is a violation of law to offer, pay, or give to any employee of the Authority or the State of New Jersey any fees, commission, compensation, gift or gratuity for or because of any official act or a violation of any official duty. Any person who does so may be subject to punishment; AND

(NO COLLUSION)

I SWEAR AND AFFIRM that the Consultant has not directly or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free, competitive bidding in connection with the School Facilities Project; that the Fee Proposal has been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition; that the fees have not been knowingly disclosed directly or indirectly by the Consultant to any other entity submitting a Proposal, unless otherwise required by law; that no attempt has been made by the Consultant to induce any other person or business entity to submit or not submit a Proposal for the purpose of restricting competition; AND

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(NO DISCRIMINATION)

I SWEAR AND AFFIRM that the Consultant will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, gender or sexual orientation and has complied and will continue to comply with all State and Federal laws and Executive Orders respecting non-discrimination; AND

(PREVAILING WAGE)

If applicable, I SWEAR AND AFFIRM that the Consultant shall or has complied with the New Jersey Contractor Registration Act, Public Laws 1999, Chapter 238 and the New Jersey Prevailing Wage Act, Laws of 1963, Chapter 150, and all amendments thereto, with respect to the School Facilities Project and any contracts related to school construction entered into on behalf of the Authority or the State of New Jersey, except those contracts not within the contemplation of these acts; AND

I SWEAR AND AFFIRM that all statements contained in the Consultant's Technical Proposal and Fee Proposal and this Affidavit are true and correct; and all such statements have been made with full knowledge that the Authority and the State of New Jersey rely upon the truth of the statements contained in this Affidavit in awarding the Agreement for the School Facilities Project.

Sworn and subscribed to before me

this _____ day of _____, 200__.

Signature of Principal

Notary Public of

Print Name of Principal

My commission expires: _____, 200__.

APPENDIX F

INSURANCE CERTIFICATES

(See attached sheets)

APPENDIX G

FEE PROPOSAL

(See attached sheets)

The fee proposal is included for reference. In accordance with section 10.3, in the event of a conflict in terms among the Contract Documents, the following order shall prevail for purposes of interpretation:

1. Appendix A (Special Conditions)
2. Agreement (excluding Appendices)
3. Design Manual, May 15, 2007 version, or as amended
4. Appendix B (Supplemental Scope of Services)
5. Appendix C (Responsibility Matrix)
6. Authority's Request for Proposals
7. Design Consultant's Fee Proposal
8. Appendix D (Project Description)

APPENDIX H

OTHER DOCUMENTATION

(See attached sheets)

- 1. ADVERTISEMENT**
- 2. NOTICE OF AWARD**
- 3. BUSINESS REGISTRATION CERTIFICATE**
- 4. EO129 CERTIFICATION**
- 5. PL 2005, CHAPTER 51 (formerly EO 134) - COMPLIANCE NOTIFICATION**
- 6. SBE FORM B**
- 7. SBE FORM C**

APPENDIX I

21st CENTURY SCHOOLS DESIGN MANUAL, MAY 15, 2007 VERSION

The 21st Century Schools Design Manual, May 15, 2007 Version is available at:

http://www.njsda.gov/Business/Doc_Form/PDFsForms/DM.pdf. This document is hereby made part of this contract as fully and with the same effect as if the same had been set forth at length in the body of this Agreement. It is the design consultant's responsibility to be familiar with this document and implement the provisions therein.