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AGREEMENT

BETWEEN

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

AND

_____

FOR

DESIGN-BUILD SERVICES

THIS AGREEMENT is made and entered into this ___ day of _____, 2008 (the "Effective Date") between the New Jersey Schools Development Authority (the "Authority"), having an office located at 1 West State Street, Trenton, New Jersey 08625-0991, and _____ (the "Design-Builder"), a _____ corporation with its principal place of business at _____.

The Design-Builder, for and in consideration of the payments hereinafter specified and agreed to be made by the Authority, hereby covenants and agrees to perform all of the Services and Work necessary to accomplish the Project identified as

Agreement Number: _____

Project Name: _____

in strict conformity with this Agreement, including all appendices and attachments hereto.

Provided that the Design-Builder performs all of the Work and Services specified and all other obligations set forth in this Agreement, and subject only to such increases or decreases permitted by this Agreement, the Authority will pay the Design-Builder an amount not to exceed the Guaranteed Maximum Price as set forth in Section 9.1 of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

This Agreement has been reviewed and approved.

_____
(Name)
(Title)

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

_____
Witness

By: _____
Title: _____

[NAME OF DESIGN-BUILDER]

_____
Witness

By: _____
Title: _____

Sworn to and subscribed
before me this _____ day
of _____, 2008.

_____
(Print Name), No
State of New Jersey

My Commission expires
on _____.

Distribution: Authority Central File, Authority Consultant Selection File and the Design-Builder.

1.0 DEFINITIONS

The terms set forth below 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.

1.1 "Agreement" means this agreement, including all appendices and all documents specifically incorporated herein, between the Authority and the Design-Builder, as such agreement may be modified by Amendment.

1.2 "Amendment" means a written modification to this Agreement executed by the Authority and the Design-Builder.

1.3 "Authority" or "New Jersey Schools Development Authority" 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-Builder pursuant to this Agreement.

1.4 "Authority having Jurisdiction" means any applicable local, State, national or Federal entities having jurisdiction over the Project or the Design-Builder.

1.5 "Authority's Project Manager" means the Authority's representative for the Project who administers the contract and manages the project on behalf of the Authority. The Authority's Project Manager shall have that authority specified in the Levels of Operating Authority Policy which document can be found on the Authority's website:

www.njsda.gov/RP/PoliciesAndRegulations /Operating_Authority.html.

1.6 "Bridging Architect" means the person, persons or firm engaged by the Authority to provide architectural and other services, including oversight and reporting, in connection with the design and construction of the Project.

1.7 "Bridging Architect Documents" means all documents prepared by the Bridging Architect setting forth the requirements and criteria for the design and construction of the Project and include, but are not limited to, the technical information included within the Request for Qualifications, Request for Proposals and any Addenda thereto.

1.8 "Change Order" means a written order, directing or authorizing a change in the scope of the Work or Services executed by the Authority and the Design-Builder and shall include adjustments, if any, to the GMP and extensions, if any, to the Contract Time.

1.9 "Claim" means a demand by the Design-Builder for (1) a time extension which is disputed by the Authority or (2) the payment of money or damages, arising from Services or Work performed by or on behalf of the Design-Builder in connection with the Design-Build Contract Documents, which is disputed by the Authority.

1.10 "Commencement Date" or "NTP Date" means the date set forth in the Notice to Proceed on which the Design-Builder to is authorized to commence performing its Services and Work pursuant to this Agreement and the Design-Build Contract Documents.

1.11 "Commissioning Agent" means the person, persons or firm engaged by the Authority to provide full building commissioning of the Project. The Authority will identify the Commissioning Agent in Appendix A by the Effective Date of this Agreement or by other means if such is engaged during the Term.

1.12 "Compensation" means payment(s) due to the Design-Builder for Services rendered or Work performed or pursuant to the Design-Build Contract Documents.

1.13 "Construction Documents" means the plans, Specifications and other documents prepared by the Design-Builder which set forth in detail the design for, and other necessary requirements relating to, the construction of the Project, based on the requirements set forth in the Design-Build Contract Documents.

1.14 "Construction Manager" or "CM" means the person, persons or firm engaged by the Authority to act as the Authority's representative on the Project, and to provide construction management services, including oversight and reporting services, in connection with the construction of this Project. The Authority will identify the CM in Appendix A by the Effective Date of this Agreement or by other means if such is engaged during the Term.

1.15 "Construction Work" means the portion of the Work in which the Design-Builder constructs the Project in accordance with the terms of the Design-Build Contract Documents.

1.16 "Contract Change Directive" or "CCD" means a written order by the Authority directing or authorizing some change to the Design-Build Contract Documents for which change compensation and/or Contract Time extension, if appropriate, has not yet been determined. Upon agreement on Compensation and/or Contract Time extension, for a CCD, if any, a Change Order shall be issued resolving the CCD.

1.17 “Contract Time” means the number of calendar days identified in Appendix A within which the Design-Builder is required to complete the Services and Work pursuant to this Agreement.

1.18 “Contract Milestones" mean the dates identified in the Project Schedule by which the Design-Builder must complete certain critical activities in advancement of the Project.

1.19 “Day” means calendar day, unless otherwise specifically defined.

1.20 “DCA” means the New Jersey Department of Community Affairs.

1.21 “DCA Building Permit” means the building permit issued by DCA pursuant to the New Jersey Uniform Construction Code.

1.22 “Deliverables” means any documents required to be produced by, or work product generated by, the Design-Builder pursuant to the Design-Build Contract Documents.

1.23 “Design-Builder” means that person, persons, firm or firms engaged by the Authority to design and construct the Project in accordance with the requirements of the Design-Build Contract Documents. Any and all references to the term “Contractor” in the Design-Build Contract Documents shall mean the Design-Builder as such term is defined in this Agreement.

1.24 “Design-Build Contract Documents” means the design-build contract between the Authority and the Design-Builder governing the design and construction of the Project and all other documents setting forth the obligations of the Design-Builder with respect to the design and construction of the Project. The Design-Build Contract Documents shall be consistent with the Bridging Architect’s Documents.

1.25 “Design-Builder’s Project Manager” means that person designated by the Design-Builder to serve as its representative for the Project and who shall have the non-exclusive authority to bind the Design-Builder in all matters relating to this Agreement.

1.26 “Design Manual” means the latest edition of the NJSDA’s 21st Century Schools Design Manual available at the time this Agreement is executed by the Parties.

1.27 “Directive” means an order by the Authority directing the Design-Builder to perform Services or Work under the Design-Build Contract Documents. A Directive by the Authority requires the Design-Builder to perform the directed Work or Services, even if there remains a dispute as to whether the Directive constitutes a Change in the Work or warrants additional Compensation.

1.28 "Director" means the Authority's Director of Contract and Workforce Compliance.

1.29 "Division" means the New Jersey Division of Contract Compliance & Equal Employment Opportunity in Public Contracts, or any successor entity.

1.30 "Document" means any written or graphic matter, however produced or reproduced, of any kind or description, including originals, marked copies and drafts, and including but not limited to, correspondence, letters, memoranda, notes, notations, transcripts, notes, books, pamphlets, or articles, requisitions, resolutions, certificates, opinions, reports, studies, analyses, evaluations, contracts, licenses, agreements, financial statements, ledgers, checks, books or records of accounts, statistical records, lists, tabulations, summaries, charts, graphs, maps, surveys, plans, drawings, specifications, schedules, sound recordings, photographs, computer disks, faxes and electronic mail, and papers and things similar to any of the foregoing.

1.31 "DOE" means the New Jersey Department of Education.

1.32 "Effective Date" means the date on which this Agreement has been fully executed by the Parties, as indicated above.

1.33 "ELEC" means the New Jersey Election Law Enforcement Commission, the State entity established pursuant to N.J.S.A. 19:44A-5.

1.34 "E-Rate Program" means the Schools and Libraries Program administered by the Universal Service Administrative Company under the direction of the Federal Communications Commission to assist schools in obtaining affordable telecommunications and Internet access.

1.35 "Final Completion" means that point in time on the Project when the Project is 100% complete and (i) all requirements of the Design-Build Contract Documents and the Bridging Architect Documents have been completed, (ii) all items on the Punchlist have been performed, and (iii) a Certificate of Occupancy, or a Certificate of Acceptance, as applicable, has been issued by DCA.

1.36 "Force Majeure Event" means an unforeseeable event beyond the control of the Design-Builder and the Authority that is not due to an act or omission of the Design-Builder (or any Subcontractor, Subconsultant or other person or entity for which the Design-Builder may be contractually or legally responsible) that materially and adversely affects the Design-Builder's obligations under this Agreement to the extent that such event (or the effects thereof) could not have been avoided or mitigated by due diligence and use of reasonable efforts by the

Design-Builder. Force Majeure Events may include wars, floods, hurricanes, tornadoes, acts of terrorism, earthquakes, and other acts of God.

1.37 “Guaranteed Maximum Price” or “GMP” means that amount set forth in Section 9.1 of this Agreement which the Design-Builder guarantees not to exceed for the design and construction of the Project. The GMP shall include the actual Cost of the Work and Services and Design-Builder’s Fee.

1.38 “Invoice” means a request for payment submitted by the Design-Builder to the Authority.

1.39 "Key Team Member" means individuals on the Design-Builder’s team, identified in the Design-Builder’s response to the Authority’s RFP or RFQ that have a responsible role in the successful completion of the Project and the performance under this Agreement. Key Team Members shall have the authority to bind the Design-Builder in all matters relating to this Agreement.

1.40 “Legal Requirements” means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the Design-Builder’s performance of Services or Work under this Agreement, including, but not limited to, the current versions of the Building Design Services Act, the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools under Construction or Being Planned for Construction, the Occupational Safety and Health Act of 1970, the Soil, Erosion and Sediment Control Act, as well as any requirements of local or national Authorities having Jurisdiction over the Project, as applicable.

1.41 “Notice of Award” means a notice from the Authority to the Design-Builder that the Design-Builder’s bid has been accepted and that the Authority intends to enter into a contract with the Design-Builder for the Services and Work set forth in the Request for Proposals.

1.42 “Notice to Proceed” or “NTP” means a written notice from the Authority setting the Commencement Date on which the Design-Builder is authorized to commence performing Services and Work pursuant to this Agreement.

1.43 “Parties” means the Authority and the Design-Builder.

1.44 "Performance Evaluation Policy and Procedure" means the policies and procedures developed or to be developed by the Authority for evaluating the performance of Professional Services Consultants, design-builders, contractors, etc.

1.45 "Professional Services Consultants" means consultants providing professional services associated with research, development, design, construction, construction administration, alteration, or improvement to 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, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, submittal review, testing, preparation of operating and maintenance manuals, and other related services.

1.46 "Project" means the design, demolition, construction, improvement, repair, alteration, modernization, renovation or reconstruction of all or any part of the School Facility identified herein and in Appendix A or the manufacture or supply of any personal property necessary for or ancillary to the School Facility identified in Appendix A and required by this Agreement.

1.47 "Project Labor Agreement" or "PLA" means the agreement negotiated and executed by and between the Authority and the New Jersey Building Trades Council. All Authority projects with estimated construction costs in excess of $5 million will be subject to the Project Labor Agreement ("PLA").

1.48 "Project School District" means the school district in which the Project is located. The Project School District is identified in Appendix A.

1.49 "Punchlist" means the list of incomplete or defective Work, including Work that does not comply with the applicable Code or Legal Requirements, to be performed or remedied by the Design-Builder. Punchlist(s) shall be prepared by the Bridging Architect in conjunction with the Authority and CM prior to the issuance of the Certificate of Substantial Completion.

1.50 "Safety Manual" means the latest edition of the NJSDA's Safety Manual available at the time this Agreement is executed by the Parties.

1.51 "Schedule" means the most current Critical Path Method ("CPM") schedule prepared and submitted by the Design-Builder to the Authority, wherein the Design-Builder identifies all critical, and certain non-critical, activities, Contract Milestones and the projected and actual time periods for completing such activities and Contract Milestones.

1.52 "Schedule of Values" shall mean an itemized list prepared by the Design-Builder that allocates the entire Guaranteed Maximum Price among the various portions of the Services and Work, except that the Design-Builder's fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form

and supported by such substantiating data as the Authority may require. If accepted by the Authority, the Schedule of Values shall be used as a basis for the Design-Builder's Invoices and only for this purpose.

1.53 "School Facility" means and includes any site, structure, building or facility used wholly or in part for academic purposes, and any property, structure, or area ancillary or appurtenant thereto.

1.54 "Services" means all services performed by or required to be performed by the Design-Builder pursuant to this Agreement for the design of the Project and includes design services performed by the Design-Builder and its Subconsultants, as well as management services needed to construct the Project.

1.55 "Site" means the site(s) proposed or selected for the Project.

1.56 "Specification" means a written description prepared by the Design-Builder as part of the Construction Documents setting forth the detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or Work to be incorporated into the Project, or a requirement of the Work to be performed under this Agreement. A Specification may include a statement of any of the Authority's requirements and may provide for inspection, testing or the preparation of a construction item before procurement. Specifications shall augment and complement the drawings and plans prepared by the Design-Builder.

1.57 "State" means the State of New Jersey.

1.58 "Subconsultant" means a Professional Services Consultant with whom another Professional Services Consultant subcontracts for the performance of all or part of the services for which the latter is responsible.

1.59 "Subcontractor" means the party to whom the Design-Builder or another subcontractor subcontracts part or all of the Work for which the Design-Builder or other subcontractor is ultimately responsible.

1.60 "Submittal" means documents or other tangible items prepared by the Design-Builder, including, but not limited to, shop drawings, product data and samples. Submittals are subject to review by the Bridging Architect for consistency with the Design-Build Contract Documents and the Bridging Architect Documents, and by the Authority for consistency with such documents, as well as for functional and aesthetic sensibility.

1.61 "Substantial Completion" means that point in time on the Project when all of the following have occurred: (i) all essential requirements of the Design-Build Contract Documents have been performed so that the purpose of the Design-Build

Contract Documents is accomplished; (ii) a Temporary Certificate of Occupancy has been issued by the Department of Community Affairs; (iii) the Punchlist has been created; (iv) the Design-Builder has delivered to the Authority the key(s) and/or code(s) for operation of the elevators; (v) there are no material omissions or technical defects or deficiencies, as identified by the Authority; and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.

1.62 "Substantial Completion Date" means the date by which the Design-Builder is required to achieve Substantial Completion as identified in Appendix A.

1.63 "Term" means the term of this Agreement as identified in Section 12.0 of this Agreement.

1.64 "Uniform Construction Code" means the New Jersey Uniform Construction Code, as set forth in N.J.A.C. 5:23-1 et seq., and all applicable Subcodes, as such Codes are amended from time to time.

1.65 "Work" means all construction work performed by the Design-Builder and its Subcontractors and suppliers, including providing all material, equipment, tools and labor, necessary to complete the construction, as described in and reasonably inferable from the Construction Documents and the Design-Build Contract Documents.

2.0 INTERPRETATION AND INTENT

2.1 Design-Build Agreement. The following notice is required pursuant to N.J.A.C. 13:27-7A.2: This is a design-build contract. Pursuant to N.J.A.C. 13:27-2A.1, a design-build contract is a written contract entered into between a contractor and an owner or developer which provides both for the construction or alteration of a building and for the performance of architectural services by an architect engaged by the contractor pursuant to a separate written contract. The architect or architectural firm that will be providing architectural services to the contractor in connection with this design-build contract will be: _____. The architect's address and telephone number are: _____. The architect is contractually obligated to provide services to the contractor. The owner or developer and the architect may, at any time, discuss issues pertinent to the design of the building which is the subject of the design-build contract.

2.2 Intent of Agreement. This Agreement is intended to permit the Parties to complete the Services, Work and all obligations required by the Design-Build Contract Documents within the Contract Time and Guaranteed Maximum Price. This Agreement, the Design-Build Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words

and phrases interpreted in a manner consistent with construction and design industry standards. Any services or work that may be reasonably inferred from the Design-Build Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. In the event of any inconsistency, conflict, or ambiguity between or among the terms of the Design-Build Contract Documents, the documents shall take precedence in the order in which they are listed in Section 22.3 of this Agreement.

2.3 Review of Documents. The Design-Builder acknowledges that, prior to submitting its bid on the Project, it reviewed all Documents relevant to the Project that have been prepared and furnished by the Authority, including but not limited to, the Design-Build Contract Documents, any geotechnical reports or surveys of the Site, and, if applicable, the Remedial Action Work Plan for the Site. If at any time during the Term of this Agreement, the Design-Builder requires information or documentation that has not been provided by the Authority, but is only available to the Authority, the Design-Builder must request such information from the Authority. Failure to request and review such information waives any Claim by the Design-Builder that such information was necessary to fulfill its obligations pursuant to the Design-Build Contract Documents and/or this Agreement. The Design-Builder shall promptly notify the Authority of all errors, omissions, inconsistencies or other defects (including inaccuracies) which it may discover in the Design-Build Contract Documents, and must provide written recommendations regarding changes or corrections to resolve any such error, omission, inconsistency or defect, and must obtain the Authority's approval before proceeding with the Services and/or Work thereby affected by any such error, omission, inconsistency or defect. The Design-Builder shall not make a Claim premised upon any apparent error, omission, inconsistency or other defect in the Design-Build Contract Documents unless the Design-Builder has first given notice to the Authority of the apparent error, omission, inconsistency or defect.

2.4 Review of Project Site and Conditions. The Design-Builder acknowledges that prior to submitting its bid and in accordance with prudent and generally accepted engineering and construction practices, it inspected and examined the Project Site and surrounding locations and undertook other sufficient and appropriate activities to familiarize itself with the Site. The Design-Builder further acknowledges that it has examined regional climate conditions and other conditions relevant to the Project. As a result, the Design-Builder is deemed to be familiar with and accepts the physical requirements of the Work and conditions of the Project.

2.5 Approvals and Acceptances. In all cases where approvals, acceptances, consents or determinations are required to be provided hereunder, such approvals, acceptances or consents shall not be withheld unreasonably and such determinations shall be made reasonably, except in cases where a different

standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, acceptance, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.

3.0 GENERAL RESPONSIBILITIES OF DESIGN-BUILDER

3.1 Scope of Work and Services. The Design-Builder shall perform all design Services and Construction Work, and provide all material, equipment, tools and labor, necessary to complete the obligations described in and reasonably inferable from the Design-Build Contract Documents within the time provided by the accepted Project Schedule.

3.2 Initial Meeting. The Authority will schedule a meeting between the Parties to be held within seven (7) Days after the Commencement Date to discuss issues affecting the administration of the Services and/or Work and to implement the necessary procedures and deadlines, including those relating to Schematic Design Documents, Design Development Documents, Submittals and payment, to facilitate the ability of the Parties to perform their obligations under this Agreement and the Design-Build Contract Documents and to ensure a Project that is designed and constructed in a manner consistent with the Design-Build Contract Documents and the Bridging Architect Documents.

3.3 Monthly Status Report. On or before the tenth day of the month, the Design-Builder shall provide the Authority with a monthly status report detailing the progress of its Services and Work, including (i) the actual progress of the Services and Work for the prior month according to the Schedule; (ii) discrepancies, conflicts, or ambiguities that exist in the Design-Build Contract Documents that require resolution; (iii) health and safety issues that exist in connection with the Services and Work; (iv) notice of potential Claims; and (v) other items that require resolution in order that the Design-Builder can complete the Services and Work within the Contract Time.

3.4 Schedule. Within four (4) Days after the Commencement Date, the Design-Builder shall prepare and submit to the Authority and CM a milestone Schedule for the execution of the Services and Work, for review and acceptance by the Authority. Within fourteen (14) Days after the initial meeting contemplated in Section 3.2 above, the Design-Builder shall submit to the Authority and CM a Schedule, in CPM format, using Primavera Project Planner (P3) version 3.1, or subsequent version, or Primavera Enterprise (P3e or P3e/c) version 5, or subsequent version, and shall indicate the dates for the start and completion of the various stages of the Services and Work, including the dates when Authority information or acceptances are required to enable the Design-Builder to achieve completion of the Services and Work within the Contract Time. The Design-

Builder shall include in the Schedule ample time for review of specific Deliverables by DOE and DCA, including time for receipt of comments from DOE or DCA, time for any modification of documents by the Design–Builder to accommodate such comments, and time for subsequent review by DOE or DCA of any modifications to the documents.

3.4.1 The Authority shall review the proposed Schedule submitted by the Design-Builder per Section 3.4, along with any written comments and recommendations for acceptance or rejection of the Schedule provided by CM. The Authority shall accept or reject the Schedule within seven (7) Days of receipt of CM's comments and recommendations. Once accepted by the Authority, the Schedule shall be used by the Authority to monitor the Design-Builder's progress.

3.4.2 The Design-Builder shall submit to CM monthly Project Schedule updates, on or before the tenth day of each month. Such updates will be used by the Authority and CM to ensure the Design-Builder's compliance with the Project Schedule and progress in timely achieving Contract Milestones. In the event that the Project Schedule update indicates that the Design-Builder will not meet the Contract Milestones within the time set forth in the Project Schedule, the Design-Builder shall be required to prepare and submit a recovery Project Schedule to the Authority and CM for review and acceptance by the Authority.

3.4.3 Any updates or revisions to the Project Schedule shall not relieve the Design-Builder of its obligations to complete the Services and Work within the Contract Time, as such dates may be adjusted in accordance with this Agreement. Neither the Authority's review and acceptance of the Project Schedule, nor CM's review and comment upon the Schedule (including any recommendations from CM, if offered) shall be construed as relieving the Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Services and Work.

3.4.4 The Design-Builder agrees that it will commence performance of the Services and the Work and direct an orderly progression of the Services and the Work to achieve Substantial Completion, including furnishing such employees, materials, facilities and equipment and working such hours, including extra shifts and overtime hours, as may be necessary to achieve such goal, all at the Design-Builder's own expense.

3.5 Government Approvals and Permits.

3.5.1 The Design-Builder shall obtain and pay for all necessary permits (with the exception of the DCA Building Permit as noted below), approvals, licenses, government charges and inspection fees required for the Project by any Authority having Jurisdiction over the Project, including but not limited to soils erosion permits, construction trailer permits, water permits, utility permits and street opening permits.

3.5.2 To the extent that necessary permits, approvals, licenses and the like require the payment of fees or submission of documents or drawings; provision of insurance certificates or other proofs of insurance; the addition of additional insureds under new or existing insurance policies; the indemnification of adjacent landowners, whether private or governmental, for encroachments or work upon their property; the revision of design documents; the performance of additional design, construction, or preparation work; or any other monetary or non-monetary conditions or requirements, the Design-Builder shall be responsible for fulfilling all such requirements, without additional cost to the Authority.

3.5.3 The Authority shall obtain and pay for the DCA Building Permit for the Project. To the extent that the Authority is responsible for obtaining this or any other permits, the Design-Builder shall provide assistance to the Authority in obtaining such permits, approvals and licenses.

3.6 Standard of Care. The Design-Builder shall perform all design Services in a good, skillful, and prompt manner, consistent with the level of skill and care ordinarily exercised by members of the design profession, currently practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall perform all construction Work efficiently, in a good and workmanlike manner and with the requisite expertise, skill and competence to satisfy the requirements of the Design-Build Contract Documents. The Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

3.7 Quality of Performance. All of the Design-Builder's Services and Work shall be performed in accordance with the Standard of Care and quality described in Section 3.6. Should the Design-Builder, its Subcontractors or Subconsultants fail to exercise the applicable Standard of Care, the Design-Builder shall promptly provide, at no cost to the Authority, any additional design Services or construction Work necessary to correct any failure to comply with such Standard of Care,

provided that the provision of such Services or Work by the Design-Builder shall in no way limit or restrict the Authority's remedies, including the Authority's right to withhold payment for such performance and take such action that it deems appropriate until the Design-Builder has complied with such Standard of Care or has remedied such non-compliance to the satisfaction of the Authority, and provided further that nothing in the foregoing shall be deemed to restrict or expand the Design-Builder's Standard of Care.

3.8 Errors, Omissions and Deficiencies. Design-Builder agrees to perform the Services and Work in a manner that will accomplish the intended purpose of the Design-Build Contract Documents and the Bridging Architect Documents. The Design-Builder shall, without additional cost to the Authority, timely cure any errors, omissions, or other deficiencies in the Services and/or Work caused by or in any way due to the actions or inactions of the Design-Builder. Any costs incurred by the Authority to correct any errors, omissions or deficiencies in the Design-Builder's Services and/or Work caused by, or in any way due to, the actions or inactions of the Design-Builder may be deducted, at the Authority's sole discretion, from the payments then or thereafter due the Design-Builder. If the payments then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to the Authority upon demand.

3.9 Liability for Errors, Omissions and Deficiencies in the Design. The Design-Builder shall be liable to the Authority for all damages to the Authority caused by the Design-Builder's errors, omissions and deficiencies in providing design Services. The Design-Builder shall indemnify and hold harmless the Authority for any and all costs incurred by the Authority as a result of such errors, omissions and deficiencies, including, but not limited to, interest, attorney's fees and other expenses.

3.10 Liability for Defective Work and Materials. The Design-Builder shall be liable to the Authority for all damages caused by defects in the Work performed or materials provided by the Design-Builder. The Design-Builder shall indemnify and hold harmless the Authority for any and all costs incurred by the Authority as a result of such defective Work and materials, including, but not limited to, interest, attorney's fees and other expenses.

3.11 The Design-Builder's Project Manager. Prior to the execution of this Agreement, the Design-Builder shall designate a principal of its firm satisfactory to the Authority as the Design-Builder's Project Manager and that person shall be identified in Appendix A. The Design-Builder's Project Manager shall, so long as his/her performance is acceptable to the Authority, be responsible for the Design-Builder's Services and Work through Final Completion of the Project, and shall represent the Design-Builder and be available for general consultation throughout

the Project. The Design-Builder's Project Manager shall have authority to receive and transmit instructions and information and render decisions related to the Project on behalf of the Design-Builder, and shall have the non-exclusive authority to bind the Design-Builder in all decisions, changes or other matters relating to the Project. All directions given to the Design-Builder's Project Manager shall be binding as if given to the Design-Builder.

3.12 Construction Manager. The Authority has engaged, or will engage, a CM to assume certain of the Authority's day-to-day responsibilities for the Project and to act as the Authority's representative for the Project. A CM, if already retained, shall be identified in Appendix A. If the CM is engaged after the execution of this Agreement, the Authority shall notify the Design-Builder of the identity of the CM at the time of CM's engagement.

3.13 Radon Mitigation. The Design-Builder shall comply with radon mitigation construction techniques consistent with the Radon Hazard Subcode of the New Jersey Uniform Construction Code, N.J.A.C. 5:23-10 et seq. This requirement shall apply to all 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).

3.14 LEED™ Certification. The Design-Builder shall design and construct the Project in accordance with the "green building principles" more fully provided for in the Design Manual, and shall incorporate the design 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" (LEED™ for Schools Version) to maximize energy efficiency and environmental sustainability to the extent that the Project will achieve Silver Certification under the LEED™ for Schools version. The Design-Builder shall be responsible for designing the Project to receive LEED™ Certification at a Silver level, and for applying for and securing such LEED™ Certification. LEED™ is a registered trademark of the USGBC.

3.15 E-Rate Program. The Design-Builder shall ensure that the Project is designed and constructed to maximize its telecommunications connectivity through, but not limited to, the Schools and Libraries Universal Service Fund, more commonly known as 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 Universal Service Administrative Company ("USAC") under the direction of the Federal Communications Commission ("FCC").

3.15.1 As part of its obligation to design the information technology features of the Project (the "IT Package"), the Design-Builder shall coordinate with the Authority to ensure that the Project is designed

and constructed to meet DOE's information technology requirements and the District's Educational Specification, and to maximize the discounts and reimbursements available for the Project under the E-Rate Program (the "E-Rate Reimbursements").

3.15.2 In preparation of the IT Package, the Design-Builder shall identify the technology infrastructure, equipment and electronics within the IT package that are eligible for reimbursement under the E-Rate Program ("E-Rate Eligible Components"), and shall determine when such E-Rate Eligible Components will be incorporated into the construction of the Project.

3.15.3 The Design-Builder shall apply on behalf of the Authority for E-Rate Rebates applicable to the Project, utilizing the FCC's E-Rate Program Application Form 470, and shall ensure that any resulting E-Rate Reimbursements relating to infrastructure and/or equipment are forwarded to the Authority.

3.15.4 In connection with its E-Rate Program application, The Design-Builder shall prepare a separate scope of work for the purchase and installation of the E-Rate Eligible Components, and shall procure and retain, in accordance with the Authority's procurement procedures and the FCC's mandatory bidding process, further described at www.sl.universalservice.org, separate technology services Subcontractor(s) or Subconsultant(s) to procure and install the E-Rate Eligible Components. If the Authority becomes aware that the Design-Builder failed to timely submit the FCC Form 470, or any other necessary E-Rate Program forms or application materials, in accordance with the procedures of the E-Rate Program; or that the Design-Builder has not forwarded to the Authority any resulting E-Rate Rebates relating to the Project's infrastructure, equipment or electronics, the Authority in its sole discretion may determine such action an Event of Default under this agreement. Such Event of Default may trigger Default remedies as stated in Section 18.1 hereunder. In addition, in the event of such failure to properly file for E-Rate Reimbursement or failure to properly remit Reimbursement to the Authority, the Authority shall have the right to withhold from future payments or recover from the Design-Builder the amount of the estimated or actual E-Rate Reimbursement.

3.16 Utility Rebate Programs. In addition to the requirements set forth in 3.15 above, the Design-Builder shall design and construct the Project to maximize all discounts, rebates and/or reimbursements for the Project available under any

applicable State, local or Federal utility rebate and/or reimbursement program, including but not limited to, the Smart Start Program.

3.17 Political Contributions Disclosure Form. Pursuant to law, the Design-Builder shall, on a continuing basis, disclose and report to the Authority, on the "Disclosure of Political Contribution" form provided by the Authority, any "contribution" (as that term is defined in P.L. 2005, c. 51) made during the Term of this Agreement by the Design-Builder or any "Business Entity" (as that term is defined in P.L. 2005, c. 51) associated with the Design-Builder, at the time such contribution is made.

3.18 Political Contributions ELEC Filing. The Design-Builder shall comply with its responsibility to file an annual disclosure statement on political contributions with 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 Design-Builder's responsibility to determine if filing is necessary.

3.19 Services to be Performed within the United States. The Design-Builder shall have a continuing duty to comply with Executive Order No. 129 (2004) ("EO 129"), and with P.L. 2005, c. 92, as applicable, which require that Services and Work under state government contracts be performed within the boundaries of the United States. By executing this Agreement, the Design-Builder agrees that all Services rendered and Work performed by the Design-Builder pursuant to this Agreement shall be performed within the United States. If, during the Term, the Design-Builder or a subcontracted firm proceeds to shift the performance of any part of the Work or Services outside of the United States, the Design-Builder shall be deemed in breach of the Agreement and shall be subject to termination for cause, unless the Authority 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 Authority or the State.

4.0 DESIGN-BUILDER'S DESIGN PHASE SERVICES

4.1 General

4.1.1 Consistency with Design-Build Contract Documents. The Design-Builder's design of the Project shall comply with the requirements described in the Design-Build Contract Documents, including the standards set forth in the latest version of the Authority's Design Manual.

4.1.2 Quality of Design Services. The Design-Builder shall, consistent with applicable State licensing laws, provide through qualified, licensed design professionals employed by the Design-Builder, or

procured from qualified, independent licensed design consultants, the necessary design Services, including architectural, engineering and other design professional services, for the preparation of the required drawings, Specifications and other design Submittals to permit the Design-Builder to perform the Services and Work consistent with the requirements of the Design-Build Contract Documents.

4.2 Delivery of Design Phase Services

In accordance with the procedures and requirements set forth in the Design Manual, the Design-Builder shall perform its Design Services in the following phases:

4.2.1 Schematic Design Documents Phase. By the date agreed to and set by the Parties in the Initial Meeting described in Section 3.2, which date shall be a milestone included in the Project Schedule, the Design-Builder shall prepare and submit to the Authority for review Schematic Design Documents that are based on and are reasonably inferable from, the Design-Build Contract Documents. The preparation and submission of all Schematic Design Documents shall be in accordance with the requirements set forth in the Design Manual. The Schematic Design Documents shall include drawings, diagrams and Specifications setting forth the requirements of the Project.

4.2.1.1 Revisions to Design Documents. The Design-Builder, the Authority, CM and the Bridging Architect shall meet, at a time and place announced by the Authority, to discuss the Schematic Design Documents, to determine whether the Schematic Design Documents are consistent with the Design-Build Contract Documents and are acceptable to the Authority and to agree upon any revisions, if necessary. The Design-Builder shall incorporate any such agreed-upon revisions into the Schematic Design Documents.

4.2.1.2 Submission of Schematic Design Documents to DOE. The Authority shall be responsible for preparing a document package, including the Schematic Design Documents, which shall be submitted to the DOE Commissioner for approval of the Project, pursuant to N.J.S.A. § 18A:7G-5, including a determination of whether the Project meets DOE facilities efficiencies standards ("FES") and area allowance standards for the student population to be served by the Project. The Design-Builder shall incorporate into the Schematic Design Documents any and all changes and

revisions required by DOE in order to secure DOE approval of the Project.

4.2.2 Design Development Phase. At the Initial Meeting described in Section 3.2, the Design-Builder and the Authority shall, consistent with any applicable provisions of the Design-Build Contract Documents, agree upon a schedule for the Design-Builder to provide Design Development Documents to CM and the Bridging Architect for review and comment and acceptance by the Authority. The dates for submission of Design Development Documents shall be included on the Project Schedule and all Design Development Documents shall be submitted in accordance with the requirements set forth in the Design Manual.

4.2.2.1 The Design Development Documents may include drawings, diagrams and Specifications setting forth the Project design, as agreed to by the Parties. On or about the date of the scheduled submissions, the Design-Builder, the Bridging Architect, CM and the Authority shall meet at the time and place specified by the Authority to review and discuss the Design Development Documents. The Design-Builder shall identify during such meetings, among other things, the evolution of the design or, if applicable, any deviations from previously submitted Design Development Documents. Minutes of the meetings will be maintained by the Design-Builder and provided to all attendees for review. Within ten (10) Days after each design review meeting, the Bridging Architect shall review the most recent Design Development Documents for consistency with the Design-Build Contract Documents, and provide comments to the Authority regarding whether the Design Development Documents are consistent with the Design-Build Contract Documents. In the event that any Design Development Documents are rejected by the Authority for failure to conform to the requirements of the Design-Build Contract Documents or for other reasons, the Design-Builder shall redesign and resubmit any such Design Development Documents until they are deemed by the Authority (as informed by the comments of the Bridging Architect and CM) to be acceptable and consistent with the Design-Build Contract Documents.

4.2.2.2 Design Development Documents shall meet the deliverable requirements of the Design-Build Contract Documents and the Design Manual, although the sequencing and phasing of design

and construction of the Project are within the sole discretion and control of the Design-Builder.

4.2.3 Construction Documents Phase. After acceptance of the Design Development Documents by the Authority, the Design-Builder shall submit, to the Authority and the Bridging Architect for their review and comment, Construction Documents setting forth in detail drawings and Specifications for the Construction Work. The Construction Documents shall be consistent with the latest set of Design Development Documents and shall be submitted in accordance with the requirements set forth in the Design Manual.

4.2.3.1 After acceptance of the Construction Documents by the Authority, the Design-Builder shall be responsible for submitting the Construction Documents to DCA for approval. The Design-Builder shall incorporate into the Construction Documents any and all changes and revisions required by DCA in order to secure DCA approval of the Project.

4.2.3.2 Upon DCA's release of the Construction Documents, the Design-Builder shall proceed with construction in accordance with the approved Construction Documents. The Design-Builder shall submit three (3) sets of approved Construction Documents to the Authority prior to commencement of the Construction Work.

4.3 Partial Submissions of Design Development and Construction Documents. The Design-Builder may prepare and submit Design Development Documents and Construction Documents for a portion of the Work prior to completion of the Design Development Documents and Construction Documents for the entire Work. However, no Construction Documents for any portion of the Work may be submitted unless the Authority has first reviewed and accepted at least partial Design Development Documents for such Work.

4.4 Effect of Bridging Architect's, CM's and the Authority's Review. The Bridging Architect's, CM's and the Authority's review pursuant to this Section 4.0 shall not be deemed to be undertaken for the purpose of determining the accuracy and completeness of each drawing or Specification, 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 Design-Builder, all of which shall remain the Design-Builder's responsibility. Neither the Bridging Architect's review and comment, CM's review and comment nor the Authority's acceptance of any Schematic Design Documents, Design Development Documents or Construction Documents shall be deemed to

transfer any liability from the Design-Builder to the Bridging Architect, CM or the Authority.

5.0 DESIGN-BUILDER'S CONSTRUCTION WORK

5.1 Requirements. The Design-Builder shall provide through itself or its Subcontractors the necessary supervision, labor, inspection, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit the Design-Builder to complete construction of the Project consistent with the Design-Build Contract Documents.

5.2 Submittals. The Design-Builder shall prepare and submit Submittals to the Bridging Architect for review and comment. The Submittals shall include shop drawings, product data, samples and other Submittals consistent with and in compliance with the Design-Build Contract Documents.

5.2.1 By providing the Bridging Architect with all Submittals, the Design-Builder represents that the Design-Builder has determined and verified all materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Design-Build Contract Documents.

5.2.2 The Bridging Architect's review pursuant to this Section shall be solely for the purpose of determining whether the items or equipment specified in Submittals are consistent with the requirements of the Design-Build Contract Documents, and is not to be deemed to be undertaken for any other purpose, including: (1) determining the accuracy and completeness of each Submittal; (2) determining that any other details such as dimensions and quantities have been complied with; (3) substantiating instructions for installation and performance of equipment or systems designed by the Design-Builder; (4) approving safety precautions; or (5) approving construction means, manners, methods, techniques, sequences or procedures, all of which shall remain the Design-Builder's responsibility. The Bridging Architect's review of specific items shall not indicate review, acceptance or approval of an assembly of which the item is a component. The Bridging Architect shall complete its review of the Design-Builder's Submittals within ten (10) Days.

5.2.3 Once the Bridging Architect has reviewed the Submittals, the Bridging Architect will provide the Submittals to the Authority for review and acceptance. The Authority shall review the Submittals

and either accept or reject the submittals within four (4) Days of receipt thereof. The Authority's review pursuant to this Section shall not be deemed to be undertaken for the purpose of: (1) determining the accuracy and completeness of each Submittal; (2) determining that any other details such as dimensions and quantities have been complied with; (3) substantiating instructions for installation and performance of equipment or systems designed by the Design-Builder; (4) approving safety precautions; or 5) approving construction means, manners, methods, techniques, sequences or procedures, all of which shall remain the Design-Builder's responsibility. The Authority's review of specific items also shall not indicate review, acceptance or approval of an assembly of which the item is a component.

5.2.4 The Design-Builder acknowledges that the Authority may require the Design-Builder to make a reasonable number of changes to the Submittals prior to the Authority's acceptance of such Submittals.

5.3 Equipment and Materials. The Design-Builder warrants to the Authority that all materials and equipment furnished pursuant to the Design-Build Contract Documents will be new, unless otherwise specified, and that all Work will be of good quality, free from faults, defects, and in conformance with the Design-Build Contract Documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected by the Authority. If required by the Authority, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to, and not in lieu of, any other warranty or guarantee provided for in this Agreement and/or by a manufacturer.

5.3.1 The Design-Builder shall furnish and deliver the necessary equipment and materials in ample quantities and as frequently as required to avoid delay in the progress of the Work and shall store them so as not to cause interference with the orderly progress of a Project. The Design-Builder shall have a representative at the Site to accept delivered equipment and materials, as such equipment and materials will not be accepted for delivery by the Authority.

5.3.2 Storage of materials is the responsibility of the Design-Builder. Materials shall be stored immediately on delivery in accordance with manufacturer's instructions to ensure the preservation of their quality and fitness. Stored materials, even if accepted before storage, may again be inspected by the CM and/or the Authority prior to their incorporation into the Project. Stored materials shall

be located so as to facilitate their prompt inspection and maintenance.

5.3.3 Any materials or equipment susceptible to damage from the elements shall be stored in weather-tight enclosures. The Design-Builder shall maintain the temperature and humidity in the enclosed areas within the ranges stated in the manufacturer's instructions for the particular materials or equipment. The Design-Builder shall also store unpacked and loose products on shelves, in bins, or in neat groups of like items within the enclosed areas.

5.3.4 For exterior storage of materials or equipment, the Design-Builder shall provide substantial platforms, blocking or skids, to support materials and equipment above ground. The Design-Builder shall protect materials and equipment from soiling and staining and, for materials and equipment that are subject to discoloration or deterioration from exposure to the elements, the Design-Builder shall cover such equipment and materials with impervious sheet metal and provide ventilation to prevent condensation. The Design-Builder shall store granular materials on clean, solid surfaces such as pavement, or on rigid sheet materials to prevent mixing with foreign matter. The Design-Builder shall provide surface drainage to prevent erosion and ponding of water in areas where materials and equipment are stored.

5.3.5 With the approval of the Authority, portions of a Project Site may be used for storage purposes and for the placing of the Design-Builder's plant and equipment, but additional space, if needed, must be provided by the Design-Builder at its own expense. Private property shall not be used for storage purposes without written permission of the owner or lessee of such property. Copies of such written permission shall be furnished to the Authority prior to storage. Storage sites shall be restored to their original condition at no cost to the Authority.

5.3.6 Any materials or equipment intended for use on the Project stored off-Site by the Design-Builder shall be stored in a bonded and insured warehouse.

5.3.7 No materials, equipment, or supplies for use on the Project shall be subject to any lien or encumbrance or other agreement by which an interest is retained by the seller or any other person or entity. The Design-Builder warrants, by signing its Invoice, that it has free and

sufficient title to all material, equipment and supplies used by it in the Work, free from all liens, claims or encumbrances.

5.4 Substitutes or "Or Equal" Items. Whenever materials or equipment are specified or described in the Design-Build Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that "no substitution is permitted," material and equipment of other suppliers may be accepted if written notice is provided by the Design-Builder to the Authority containing sufficient information to allow the Authority to determine that the material or equipment proposed is equivalent or equal to that named. Proposed substitutes will be compared against the criteria provided in the Design-Build Contract Documents. The Authority will either accept or reject the proposed substitution within ten (10) Days of receipt of the Design-Builder's written notice of the proposed substitution. Authority acceptance of a substitute item does not release the Design-Builder from its responsibility under the terms of this Agreement to perform Work in conformity with the requirements of the Design-Build Contract Documents.

5.4.1 The Authority will not permit any increase to the GMP or extend the Contract Time as a result of the use of authorized substitutes.

5.4.2 The Authority may require the Design-Builder to furnish, at no cost to the Authority, a special performance guarantee or other security with respect to any substitute.

5.4.3 When the Design-Build Contract Documents permit the use of one or more types of a particular material, equipment, or product, only a single accepted type is to be used on the Project by the Design-Builder in the prosecution of the Work.

5.5 Acceptance and Rejection of Materials, Equipment and Furnishings.

5.5.1 When specified by the Design-Build Contract Documents, materials, equipment, assemblies, and furnishings will be accepted only if the Design-Builder provides the Authority with such materials, equipment, furnishings or assemblies that are fully compliant with all requirements. The Design-Builder's incorporation of any and all materials, equipment, furnishings or assemblies into the Work shall constitute the Design-Builder's acknowledgement that such materials, equipment, furnishings or assemblies are compliant with all applicable requirements.

5.5.2 All materials, equipment, assemblies and furnishings, whether in place or not, which do not comply with the requirements of the Design-Build Contract Documents shall be considered unacceptable, and shall be rejected and removed immediately from the Project Site. Rejected materials, equipment, assemblies or furnishings, the defects of which have been corrected, shall not be used unless and until accepted by the Authority.

5.6 Use of Explosives

5.6.1 When the use of explosives is necessary for the prosecution of the Work, the Design-Builder shall exercise the utmost care not to endanger life or property, including the Work. The Design-Builder shall be responsible for all damage resulting from the use of explosives.

5.6.2 The Design-Builder shall schedule a pre-blast meeting with the Office of Safety Compliance, Mine Safety and Explosives and the New Jersey Department of Labor. No blasting will be permitted prior to the pre-blast meeting.

5.6.3 Explosives on the Project Site shall be stored safely under lock and key. The storage places shall be expressly marked **DANGEROUS EXPLOSIVES**. The storing and handling of explosives and highly inflammable materials shall conform to the regulations of DCA, the New Jersey Department of Labor and any local Authority having Jurisdiction over the Project. Proper means shall be used to avoid blasting damage to public and private property. All persons within the danger area shall be warned and given a reasonable time to withdraw.

5.6.4 Prior to the commencement of any blasting or use of explosives, the Design-Builder shall carefully document the existing condition of all adjacent properties by taking a minimum of twelve (12) photographs of each adjacent property, including the structures thereon, and by documenting the condition of same in a video recording. Design-Builder shall submit copies of such photographs in digital and hard-copy (8x10 glossy) format, and shall submit copies of the video in dvd format.

5.7 Cut-Overs. All cut-overs of mechanical and electrical services to existing buildings shall be approved, scheduled and coordinated in advance with the relevant municipal utility and the Project School District, and must be performed

at a time convenient to the occupants so as not to unreasonably interfere with their operations.

5.8 Field Office and Temporary Facilities. The Design-Builder will provide an on-Site, suitable, separate, weather-tight, heated, insulated field office for use by the Authority's employees, Professional Services Consultants and agents (including a CM). The Design-Builder shall also provide storage areas, staging areas, excavation borrow/spoils designated areas, commercial canteen areas, telephones, toilet facilities, and other temporary facilities which are necessary to perform the Services and Work, as well as employee vehicular parking areas. The Design-Builder shall locate such areas to suit Project requirements, subject to approval of the Authority. The Design-Builder shall be responsible for maintaining and securing the necessary permits for such facilities.

5.9 Temporary Services and Enclosures. The Design-Builder shall provide temporary electricity, water, or other utilities, and shall secure the necessary permits for such utilities to perform the Services and Work. The Design-Builder shall also supply temporary enclosures and heat as necessary to perform the Services and Work and to meet the Contract Milestone dates in the Schedule.

5.10 Access, Roads and Walks

5.10.1 The Design-Builder shall not obstruct any road or traffic area in the area of the Project. On the Project Site, the Design-Builder shall provide, place, grade and compact all necessary materials to maintain road and traffic areas in good condition and shall remove snow and debris as necessary to provide and maintain in serviceable condition the access roadbed, as well as pedestrian ways. The Design-Builder shall keep adjacent streets free of any dirt and debris coming from the Site. The Design-Builder shall provide all sediment control protection as required by any applicable agency or authority having jurisdiction over the Project. The entire Project Site shall be fenced in with wind screens for dust control.

5.10.2 The Design-Builder shall obtain permission in writing from the appropriate property owners before using for construction purposes any existing driveways or parking areas outside of the boundaries of the Project Site. If permission is obtained, the Design-Builder shall maintain such driveways and areas in good condition during the construction period, and at Final Completion, shall restore them to the same condition as they were at the start of the Work.

5.10.3 The Design-Builder, its employees, Subcontractors, Subconsultants, suppliers and/or vendors shall not park trucks or other vehicles on any streets adjacent to the Project Site.

5.11 Building and Site Cleanup. In addition to the requirements set forth in Section 5.10, the Design-Builder shall keep the Building, Site and any surrounding streets and sidewalks reasonably free from debris, trash and construction waste to allow the Design-Builder to perform the Work efficiently, safely and without interfering with the use of adjacent land. The Design-Builder shall also be responsible for providing snow removal, grass maintenance and litter removal.

5.11.1 The Site must be cleaned daily. All work areas and adjoining roads and walkways used by the public, must be broom swept and all debris must be removed at the end of every shift or at appropriate intervals during the workday, to the satisfaction of the CM and Authority, to ensure safety and proper housekeeping to minimize risk of injury, fire, or other impacts to worker or public safety.

5.11.2 If the Design-Builder fails to properly and completely clean up after each shift, the next scheduled shift may be utilized by CM (or Authority) to complete cleaning prior to the Design-Builder being allowed to proceed with any contract scopes of work. The Design-Builder is to provide full time dedicated labor forces to provide ongoing cleaning services. Failure to so provide will result in lost time at no additional cost to the Authority. In the event the Authority is required to retain outside cleaning services to perform the obligations of the Design-Builder under this Section, the Design-Builder will be backcharged for the full cost of such services plus the cost of supervision by CM or Authority, if applicable.

5.11.3 Throughout the duration of the Project, the Design-Builder shall sort and separate construction debris for recycling as required by USGBC LEED™ criteria.

5.11.4 Upon Substantial Completion of the Work, or a portion of the Work, the Design-Builder shall remove all debris, trash, construction waste, materials, equipment, machinery and tools to permit the Authority to occupy the Project, or a portion of the Project, for its intended use.

5.12 Winter Protection. The Design-Builder shall provide winter protection to the Project, including, but not limited to, providing temporary heat to maintain the

Project buildings at a temperature of at least forty (40) degrees Fahrenheit or greater, as may be required for the construction activity.

5.13 Photographs.

5.13.1 Conditions on or around the Project Site shall be carefully photographed and documented by video recording by the Design-Builder before commencing Work at the Project Site. The Design-Builder shall submit copies of such photographs in digital and hard-copy (8x10 glossy) format. The video recording shall be submitted by the Design-Builder dvd format and shall carefully capture all existing conditions in sufficient detail.

5.13.2 The Design-Builder shall submit to the Authority with its monthly Invoice (1) a minimum of twenty-four (24) photographs taken during the invoice period, provided in hard-copy (8x10 glossy prints) and digital format, and (2) a video recording in dvd format documenting the progress of the Work in sufficient detail to capture all existing conditions.

5.14 Repair of Finished Surfaces, Applied Finishes, Other Materials.

5.14.1 Before Final Completion of the Project, the Design-Builder shall replace all broken, scratched or otherwise damaged glass or other materials installed by it or its Subcontractors on the Project regardless of the cause of the breakage or damage.

5.14.2 The Design-Builder shall clean all glass and other materials on the Project upon Final Completion, or when directed, removing all paint spots, stains, plaster, or other foreign material.

5.14.3 The Design-Builder accepts sole responsibility for the repair of cracking, delaminating, peeling or dislodging of finished surfaces such as concrete, pre-cast concrete, cast and natural stone, unit masonry, millwork, plaster, glass and applied finishes such as paint, and special coatings within the limits of specified warranty periods, regardless of the cause.

5.15 As-Built Drawings. The Design-Builder shall keep on the Project Site at all times one set of drawings to be marked "AS-BUILT." During the course of the Project, the Design-Builder shall mark these drawings with colored pencils to reflect any changes, as well as the dimension and the location of all pipe runs, conduits, traps, footing depths or any other information not already shown on the plans or differing therefrom. All buried utilities outside the building shall be located by a

survey performed by a licensed surveyor, who shall certify as to the accuracy of the surveys. These marked-up plans and surveys shall be made available to the Authority upon request at any time during the progress of the Work. The Design-Builder shall submit the "as-built" documents to the Authority with a certification as to the accuracy of the information thereon at the time of Final Completion and before Final Payment is made to the Design-Builder. The Design-Builder shall also submit to DCA prior to issuance of a Certificate of Occupancy, an “as-built” survey of the Building location along with any additional documentation required by the Authority in order to secure a of the Certificate of Occupancy.

5.16 Project Closeout. Upon Final Completion of the Project, the Design-Builder shall submit to the Authority upon request, three (3) sets of all shop and/or erection drawings used for "as-built" documentation. The Design-Builder shall provide to the Authority Operating, Instruction and Maintenance (“O&M”) manuals for Equipment. The Design-Builder shall provide video training to instruct Authority personnel to properly operate and maintain systems, equipment and similar items provided as part of the Design-Builder’s Work..

5.17 Record Drawings. The Design-Builder shall take the “as-built” drawings referenced in Section 5.14 above and convert them into Auto CAD Record Drawings in their native electronic format. The Record Drawings shall be submitted to the Authority in accordance with the requirements set forth in the Design Manual and shall include, but not be limited to, significant changes in the Work or dimensioned locations of underground improvements, including utility, supply, and drainage piping and apparatus, based on marked-up prints, drawings, and other data created or obtained during the course of the Project.

6.0 PROSECUTION AND PROGRESS OF THE SERVICES AND WORK

6.1 Performance of Services and Work. Appendix A to this Agreement includes the names and titles of all key employees, Subcontractors and Subconsultants retained by the Design-Builder to perform Work and/or provide Services for the Project. Throughout the Term of the Project, the Design-Builder shall update the list of employees, Subcontractors and Subconsultants every six (6) months or within five (5) Days after the Design-Builder replaces any employees, Subcontractors or Subconsultants on the Project.

6.2 Key Team Members.

6.2.1 The Design-Builder shall utilize the Key Team Members identified in its response to the Authority’s RFP for this Project, unless the Authority rejects any Key Team Member identified in the Design-Builder’s response to the Authority’s RFP for the Project.

6.2.2 Replacement of Key Team Members. The Design-Builder shall provide notice to the Authority in the event that the Design-Builder proposes to replace, add or remove any Key Team Member. No changes in Key Team Members shall be permitted without the prior, written approval of the Authority. Any proposed replacement or new Key Team Member must have equal or superior qualifications to the Key Team Member that the Design-Builder proposes to replace. The Design-Builder shall submit to the Authority, for approval, the name and qualifications of proposed Key Team Member substitutions.

6.2.3 Changes to Key Team Members Requested By the Authority. The Authority may, at its sole option, review from time to time the Design-Builder's Key Team Members. If, in the Authority's sole opinion, changes to Key Team Members are necessary, the Authority shall notify the Design-Builder in writing. Upon receipt of said notice, the Design-Builder shall submit to the Authority, for approval, the name and qualifications of proposed Key Team Member substitutions. No changes to Key Team Members shall be permitted without the prior, written approval of the Authority.

6.3 Subcontractors and Subconsultants. In the event the Design-Builder hires, employs or otherwise engages Subcontractors or Subconsultants, the Design-Builder shall be considered the sole point of contact with regard to matters relating to this Agreement. The Design-Builder assumes sole and full responsibility for the complete performance contemplated by this Agreement, including the performance of all of its Subcontractors and Subconsultants.

6.3.1 Approval by the Authority. The Design-Builder must: (i) select only Subcontractors and Subconsultants that have been pre-qualified by the Authority, and (ii) obtain the consent of the Authority prior to the engagement of any such Subcontractors or Subconsultants. The Design-Builder is not required to obtain the Authority's consent prior to the engagement of vendors or suppliers.

6.3.1.1 The Design-Builder will not be permitted to subcontract to firms or individuals suspended or debarred by the State of New Jersey, or to firms or individuals that are otherwise ineligible to perform as Subcontractors or Subconsultants on the Project pursuant to regulation, Authority procedures or the requirements of the Design-Build Contract Documents.

6.3.1.2 The Design-Builder shall list in its bid proposal all Subcontractors or Subconsultants required by the Design-Build Contract Documents to be included therein.

6.3.1.3 As soon as a potential additional Subcontractor or Subconsultant has been identified by the Design-Builder, but in no event less than twenty (20) Days prior to the scheduled commencement of Services or Work by such Subcontractor or Subconsultant, the Design-Builder shall notify the Authority in writing of the name and address of the Subcontractor or Subconsultant and shall request that the Authority approve the Subcontractor or Subconsultant. Within ten (14) Days after receipt of such request, the Authority will notify the Design-Builder whether the Subcontractor or Subconsultant has been approved, or will advise the Design-Builder of the reasons for the Authority's disapproval of the Subcontractor or Subconsultant, or need for further investigation into the Subcontractor or Subconsultant's application representations. If a proposed Subcontractor or Subconsultant is disapproved, the Design-Builder shall submit other candidates for approval.

6.3.1.4 The Authority shall not be liable for any costs, damages or delays incurred by the Design-Builder resulting from the Authority's disapproval of a Subcontractor or Subconsultant, nor shall the Design-Builder be entitled to any reimbursement or time extensions in connection with such disapproval.

6.3.2 Responsibility for Subcontractors and Subconsultants. It is expressly understood by the Design-Builder that the consent of the Authority to the subcontracting of any Work and/or Services under this Agreement shall not relieve the Design-Builder from performing its obligations under the Design-Build Contract Documents. The Design-Builder shall at all times give due attention to the fulfillment of its obligations under the Design-Build Contract Documents and shall keep all Work and Services under its control. Consent by the Authority to any subcontracting of any part of the Work or Services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as consent to the engagement by the Design-Builder of Subcontractors and/or Subconsultants. The Design-Builder shall coordinate the activities of all Subcontractors and Subconsultants. The Design-Builder shall be responsible for all Work or Services performed by its Subcontractors and/or Subconsultants.

6.3.3 Performance of Work or Services by Subconsultants, Subcontractors and Suppliers. The Design-Builder assumes sole responsibility to the Authority for proper performance of the Services and Work by Subconsultants, Subcontractors and entities supplying materials or equipment to the Design-Builder or its Subcontractors and Subconsultants, and any acts and omissions in connection with such performance. Nothing in the Design-Build Contract Documents is intended or deemed to create any legal or contractual relationship between the Authority and any Subcontractor, Subconsultant or supplier of materials or equipment, including but not limited to any third-party beneficiary rights.

6.4 Project Labor Agreement. The Design-Builder, as the general contractor on the Project, shall indicate its agreement to abide by the terms of the PLA, by submitting an executed original Contractor Signature Page to the CM and the Authority's Labor Relations Unit prior to the start of any Work on the Project. Failure to execute the Contractor Signature Page shall constitute a material breach of this Agreement.

6.4.1 The Design-Builder shall include and incorporate the full text of the PLA, including a copy of the Contractor Signature Page as executed by the Design-Builder and the form of the Subcontractor's Letter of Assent ("LOA"), into each and every subcontract for Services and Work on the Project, when the subcontract concerns Services or Work regulated by the PLA.

6.4.2 The Design-Builder shall ensure that each and every Subcontractor and Subconsultant performing PLA-regulated Services or Work on the Project shall submit to CM an original, executed LOA, in the form attached to the PLA, and shall submit a copy of the executed LOA to the Authority's Labor Relations Manager prior to the start of any Services or Work on the Project.

6.4.3 Subcontractors and Subconsultants of any tier whose proposed Services or Work is regulated by the PLA, and who are found to be non-compliant after the start of any such Services or Work may have their approval revoked and/or may be subject to removal.

6.5 Cooperation. The Design-Builder shall cooperate with any other Professional Services Consultants and contractors, including the Commissioning Agent, engaged by the Authority for this Project. The Authority will identify in Appendix A such Professional Services Consultants and/or contractors and their roles by the Effective Date of this Agreement or by other means if such

Professional Services Consultants and/or contractors are engaged during the Term. At the direction of the Authority, the Design-Builder shall also cooperate with the Project School District and its personnel and any other applicable agencies.

6.6 Records. For all Work performed and Services rendered, the Design-Builder shall, in accordance with generally accepted accounting principles and practices, maintain weekly certified payroll, workers' compensation payroll, overhead, cost and accounting records, as well as all other records that the Design-Builder may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority, any other State oversight or inspecting agency. Before Final Payment will be made to the Design-Builder, the Design-Builder must provide all such records to the Authority.

6.7 Quality Assurance/Quality Control ("QA/QC"). The Design-Builder shall have full responsibility for quality assurance and quality control throughout all phases of the Project. The Design-Builder shall prepare and submit to CM a detailed written Quality Assurance/Quality Control (QA/QC) Program. CM shall review the Design-Builder's QA/QC Program and recommend acceptance or rejection of the Program to the Authority within ten (10) Days of receipt of the Design-Builder's QA/QC Program. The Authority will either accept or reject the Design-Builder's QA/QC Program within five (5) Days of CM's recommendation to the Authority. If the Authority rejects the Design-Builder's QA/QC Program, the Design-Builder shall revise and resubmit the QA/QC Program to the Authority until it is accepted. Once the QA/QC Program is accepted, the Authority shall monitor the Design-Builder's compliance with the Program to ensure that the Services and Work are performed to meet or exceed the requirements of the accepted QA/QC Program. As part of the Design-Builder's QA/QC Program, the Design-Builder shall designate one (1) full-time employee whose sole responsibility will be to maintain and monitor the Design-Builder's compliance with its QA/QC Program. If the Design-Builder's Services and/or Work fail to meet the accepted QA/QC Program, the Authority will implement a course of action to address the Design-Builder's failure to comply with the QA/QC Program. The Authority's actions to verify the Design-Builder's compliance with the QA/QC Program shall not relieve the Design-Builder of its obligation to establish a QA/QC Program, comply with the QA/QC Program or meet the requirements of the Design-Build Contract Documents. The Design-Builder's failure to comply with the requirements of this Section 6.7 shall be deemed an Event of Default under this Agreement. Such Event of Default may trigger Default remedies as stated in Section 18.0.

6.8 Safety Plan. The Design-Builder shall be responsible for preparing a Safety Plan for the Project which recognizes the importance of performing the Services and Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals

at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property and individuals at the Site or adjacent thereto. CM and/or the Authority's safety division shall review Design-Builder's Safety Plan for consistency with the Authority's requirements and policies, based upon the latest version of the NJDSA Safety Manual and all other applicable Legal Requirements, including, but not limited to, governmental safety codes, rules, regulations and requirements, such as OSHA. Within ten (10) Days of receipt of the Design-Builder's Safety Plan, CM and/or the Authority's safety division shall recommend to the Authority acceptance or rejection of the Design-Builder's Safety Plan. The Authority will either accept or reject the Safety Plan within five (5) Days of CM's and/or the Authority's safety division's recommendations. The Design-Builder shall continue to submit its Safety Plan to CM and/or the Authority's safety division until it is accepted. Once the Design-Builder's Safety Plan is accepted, CM and/or the Authority's safety division shall monitor the Design-Builder's compliance with the Safety Plan throughout the Term of this Agreement to ensure that the Design-Builder meets or exceeds the accepted Safety Plan. If at any time, however, any part of the Project Site is deemed unsafe by CM and/or the Authority's safety division, the Authority may require the Design-Builder to stop performance and take immediate corrective measures. Additionally, as the Authority has implemented a School Facilities Projects OCIP in accordance with N.J.S.A. 18A:7G-44, the Site and work areas of the Design-Builder and its Subcontractors shall be subject to inspection by the OCIP insurance carrier's risk control engineer, and the Design-Builder and its Subcontractors are required to cooperate with safety recommendations made by such risk control engineer.

6.9 Security Plan. The Design-Builder shall be responsible for preparing and submitting a Security Plan to CM. Within ten (10) Days of receipt of the Design-Builder's Security Plan, CM shall review and recommend to the Authority acceptance or rejection of the Design-Builder's Security Plan. The Authority will either accept or reject the Design-Builder's Security Plan within five (5) Days of receipt of CM's recommendation to the Authority. If the Design-Builder's Security Plan is rejected, the Design-Builder shall revise and resubmit its Security Plan to CM until it is accepted. Once the Design-Builder's Security Plan is accepted, CM shall monitor the Design-Builder's compliance with the Security Plan to ensure that the Design-Builder meets or exceeds the accepted Security Plan. At a minimum, the Design-Builder's Security Plan shall require the Design-Builder to provide all locks, doors and security necessary to secure the School Facility until Final Completion. The Design-Builder's Security Plan shall also provide for one (1) security guard to be present at the Project Site at all times when the Design-Builder is not on-Site. In addition, the Design-Builder shall be responsible for the security of any stored materials and/or temporary structures that it has located on the Project Site or elsewhere. The Design-Builder shall also

provide all Site fencing, gates, security personnel, security services, and security structures and equipment required by the Design-Build Contract Documents, or otherwise necessary to properly protect the Site and the Work.

7.0 INSPECTION OF THE WORK AND CORRECTION OF NON-CONFORMING WORK

7.1 Inspection of the Work. Each part or detail of the Work performed by the Design-Builder is subject to inspection by DCA, CM, the Bridging Architect, the Authority or its representatives. The Authority, CM, the Bridging Architect and DCA shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Design-Builder as is required to make a complete and detailed inspection. When the Authority, CM, the Bridging Architect and DCA representatives are on the Project Site in the course of their employment, they shall be deemed conclusively to be invitees of the Design-Builder.

7.1.1 The Design-Builder shall not cover any work that has not been inspected or approved by DCA.

7.1.2 The Authority may order any Work done without the required inspection to be removed and replaced. The Design-Builder will be responsible for the costs of uncovering, removing, and/or replacing the uninspected Work.

7.2 Correction of Non-Conforming Work

7.2.1 Repair and Replacement. In the event that the Authority finds that any of the Work performed or any of the materials furnished or equipment supplied, or any of the finished Work in which such materials are used or such equipment is installed, are not in strict conformity with the requirements of the Design-Build Contract Documents, the Work, materials and/or equipment shall be removed and replaced or otherwise be brought into strict compliance with the requirements of the Design-Build Contract Documents by and at the sole cost and expense of the Design-Builder.

7.2.2 Correction of Nonconforming Work. The Authority shall require timely correction by the Design-Builder of nonconforming Work. If nonconforming Work remains uncorrected for more than thirty (30) Days from the Design-Builder's receipt of notice of the nonconforming Work from the Authority, CM, the Bridging Architect, or DCA, the Design-Builder's next Invoice shall be reduced by an amount equivalent to the entire value of the

nonconforming Work, as if the nonconforming Work was 0% complete. CM shall maintain a continuing list of nonconforming Work as determined by CM, the Authority or the Bridging Architect, and shall distribute this list to the Design-Builder periodically. If the Design-Builder fails to correct any nonconforming Work in accordance with this Section, the Authority shall take all steps to remedy the Design-Builder's failure. In such case, an appropriate written notice shall be issued deducting from the payments then or thereafter due the Design-Builder the cost of correcting such failure. If the payments then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to the Authority upon demand.

8.0 CHANGES TO THE SCOPE OF SERVICES AND WORK

8.1 Change Orders

8.1.1 A Change Order may be executed by the Design-Builder and the Authority for the purpose of (a) modifying the scope of the Services or Work; (b) revising the Contract Time; (c) making adjustments to the GMP to reflect changes in the scope of the Services or Work; or (d) revising other terms and conditions of the Design-Build Contract Documents.

8.1.2 All changes to the scope of the Services or Work authorized by Change Order shall be performed pursuant to the terms of a Change Order, including, but not limited to, any drawings or Specifications provided as part of the Change Order.

8.1.3 The Authority may direct the Design-Builder to perform Services and/or Work required by the Design-Build Contract Documents. Such Directives from the Authority do not constitute a change to the scope of the Work or Services and will not result in an increase in the GMP or an adjustment to the Contract Time. The Design-Builder shall perform the Services or Work described in the Directive, even if the Design-Builder disputes that such Services or Work are required by the Design-Build Contract Documents.

8.2 Changes in Scope Warranting an Adjustment to the GMP.

8.2.1 The GMP shall not be increased unless there is a change in the Design-Builder's scope of Services and/or Work .

8.2.2 The increase or decrease in the GMP resulting from a change in the scope of the Services or Work shall be determined by one or more of the following methods:

(a) Unit prices agreed to between the Parties;

(b) A lump sum submitted by the Design-Builder, properly itemized and supported by sufficient substantiating data to permit a thorough evaluation by the Authority;

(c) Costs, fees and any other markups set forth in the Agreement; or

(d) If the Parties cannot agree to the adjustment to the GMP, the cost of the change shall be determined by the reasonable direct costs in performing the Work and providing the Services resulting from the change, including a markup of 15% for reasonable overhead and profit. If the net result of both additions and deletions is a decrease to the GMP, there shall be no overhead or profit adjustment to the GMP. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

8.2.3 If the Authority and the Design-Builder disagree upon whether the Design-Builder is entitled to an adjustment to the GMP for any Services or Work required by the Authority, or if there are any other disagreements over the scope of Services or Work or proposed changes to the scope of Services or Work, the Authority and the Design-Builder shall resolve the disagreement pursuant to Section 19.0 of this Agreement. If the Parties are unable to agree and the Authority directs the Design-Builder to perform the Services or Work in accordance with the Authority's interpretations, the Design-Builder shall perform the disputed Services or Work upon issuance by the Authority of a Contract Change Directive ("CCD") to the Design-Builder (i) directing the Design-Builder to proceed with the Services and Work in dispute, and (ii) specifying the Authority's interpretation of the Services and/or Work that are to be performed. If a CCD is issued, the Design-Builder shall proceed with the Services or Work while pricing and negotiating the same, unless otherwise directed by the Authority. Upon issuance of a CCD, the Design-Builder shall be entitled to submit an Invoice for the CCD Work or Services actually performed during the prior month in an amount up to the Authority's reasonable estimated direct costs to perform the Services or Work. The Authority agrees to pay such amounts, with the express understanding that (i) such payment by the Authority does not prejudice the Authority's right to assert that it has no responsibility to pay for such Services or Work;

(ii) the Design-Builder shall complete one-hundred (100%) of the Services or Work required by the CCD; and (iii) receipt of such payment by the Design-Builder does not prejudice the Design-Builder's right to seek full payment of the disputed Services or Work if the Authority's CCD is deemed to be a change in the scope of the Services or Work.

8.3 Force Majeure and Other Changes Warranting an Adjustment in the Contract Time.

8.3.1 If the Design-Builder is delayed in the performance of the Work or Services due to a Force Majeure Event, the Contract Time for performance shall be reasonably extended by Change Order as set forth in Section 8.1.

8.3.2 In addition to the Design-Builder's right to a time extension for Force Majeure Events, the Design-Builder may be entitled to an appropriate adjustment to the GMP if the Force Majeure Event causes a change to the scope of Services or Work.

8.3.3 The Authority will also consider and, in its discretion, grant requests for adjustments to the GMP or extensions of the Project Schedule due to a delay the cause of which is beyond the control of the Design-Builder.

8.3.4 No request for compensation or extension will be considered by the Authority unless the Design-Builder: (i) delivers to the CM and the Authority Project Manager 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 of the Project Schedule and/or compensation within fourteen (14) Days following the conclusion of the delay for which an extension is sought.

8.3.5 The Design-Builder's failure to comply with the written notice requirements set forth in Section 8.3.4 waives any right to an extension of time or compensation for delay from the Authority.

8.3.6 Irrespective of whether the Design-Builder makes a request for an extension of time or compensation for delay pursuant to this Section, the Design-Builder shall notify the Authority of any event of which it is aware that may cause any delay in the completion of the Project.

8.4 Differing Site Conditions and Hazardous Materials.

8.4.1 Differing Site Conditions

8.4.1.1 Differing Site Conditions shall be defined herein as concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in this Agreement or the Design-Build Contract Documents, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work. If the Design-Builder encounters a Differing Site Condition, the Design-Builder may be entitled to an adjustment to the GMP and/or the Contract Time to the extent the Design-Builder's costs and/or time of performance are adversely impacted by the Differing Site Condition.

8.4.1.2 Upon encountering a Differing Site Condition, the Design-Builder shall provide prompt written notice to the Authority of such condition, which notice shall not be later than seven (7) Days after such condition has been encountered and before the Differing Site Condition has been substantially disturbed or altered. The Design-Builder waives any right to an adjustment in the Contract Time or the GMP for a Differing Site Condition unless the Design-Builder provides timely written notice as required under this Section.

8.4.2 Contaminated or Hazardous Materials. Should the Design-Builder discover previously undetected asbestos, contaminated soils, radon, lead, PCBs or other hazardous or contaminated material, the Design-Builder shall report its findings immediately to the Authority. During any remedial action undertaken by the Authority or any other Party, the Design-Builder may be required to cease Work on the Project, if so directed by the Authority. If the Design-Builder is required to cease performance of Work due to the discovery of hazardous or contaminated materials, such Work stoppage shall be deemed a suspension governed by Section 17.0. The Design-Builder will resume Work at the direction of the Authority and the terms and conditions of the Design-Build Contract Documents shall remain in full force and effect.

9.0 COMPENSATION

9.1 Guaranteed Maximum Price and Fee

In consideration for the full, complete and timely performance of all Work and Services under this Agreement, the Authority shall reimburse the Design-Builder for the actual Cost of the Work and Services plus the Design-Builder's Fee of ____ ($_____) (the "Contract Price"). The Contract Price is guaranteed by the Design-Builder not to exceed _____($_____) (the "Guaranteed Maximum Price" or "GMP"), subject only to Authority-approved adjustments to the GMP as provided for in this Agreement. Any and all costs exceeding the GMP shall be paid by the Design-Builder without reimbursement from the Authority. The Design-Builder certifies to the Authority that it has thoroughly reviewed the Design-Build Contract Documents which form the basis of the GMP and further represents that the Project can be designed and constructed for that amount.

9.2 GMP Reserve. An amount equal to five percent (5%) of the Cost of the Services and Work shall be held as a reserve within the GMP. The reserve will be used to cover additional, unanticipated or other unestimated costs which are necessary to complete the Services and Work. The Authority has the right to determine the allocation of the reserve and the reserve will not be used by the Design-Builder without the prior written consent of the Authority. Upon Final Completion, should there be any remaining reserve, seventy-five percent (75%) of the remaining reserve will be credited to the Authority and twenty-five percent (25%) will be credited to the Design-Builder.

9.3 Cost of the Services and Work.

The term Cost of the Services and Work shall mean costs reasonably incurred by the Design-Builder in the proper performance of the Services and Work. The Cost of the Services and Work shall include only the following:

9.3.1 Wages of direct employees of the Design-Builder performing Services and/or Work at the Project Site or, with the Authority's approval, at locations other than the Project Site, provided, however, that the costs for those employees of the Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services.

9.3.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel engaged to perform Work and/or Services and who are located at the Project Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Services and Work.

9.3.3 Costs incurred by the Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required

by law, collective bargaining agreements, or which are customarily paid by the Design-Builder, to the extent such costs are based on wages and salaries paid to the employees of the Design-Builder as set forth in Sections 9.3.1 and 9.3.2 above.

9.3.4 The reasonable portion of the cost of travel, accommodations and meals for the Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Services and Work.

9.3.5 Payments properly made by the Design-Builder to Subcontractors and Subconsultants for performance of portions of the Services and/or Work, including any insurance and bond premiums incurred by Subcontractors or Subconsultants.

9.3.6 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Services and Work.

9.3.7 Costs, less salvage value, of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of the Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

9.3.8 Costs of removal of debris and waste from the Site.

9.3.9 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Project Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, internet service, photocopying and reasonable petty cash expenses.

9.3.10 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by the Design-Builder at the Site, whether rented from the Design-Builder or others, and incurred in the performance of the Services and Work.

9.3.11 Premiums for insurance and bonds required by Section 15.0 of this Agreement.

9.3.12 All fuel and utility costs incurred in the performance of the Work.

9.3.13 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Services and Work.

9.3.14 Costs for permits, royalties, licenses, tests and inspections incurred by the Design-Builder required under this Agreement and the Design-Build Contract Documents.

9.3.15 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons or property.

9.3.16 Other costs reasonably and properly incurred in the performance of Services and Work to the extent that such costs are approved by the Authority in writing.

9.4 Non-Reimbursable Costs

The following shall be excluded from the Cost of the Services and Work:

9.4.1 Compensation for the Design-Builder's personnel stationed at the Design-Builder's principal or branch offices, except as provided for in Sections 9.3.1 and 9.3.2 above.

9.4.2 Overhead and general expenses, except as provided for in Section 9.3 above, or which may be recoverable for changes to the Services and Work.

9.4.3 The cost of the Design-Builder's capital used in the performance of the Services and Work.

9.4.4 Costs that would cause the GMP, as adjusted in accordance with this Agreement, to be exceeded.

9.5 Savings

9.5.1 If the sum of the actual Cost of the Services and Work and the Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference (the "Savings") shall be shared as follows:

Twenty-five percent (25%) to the Design-Builder and seventy-five percent (75%) to the Authority.

9.5.2 Savings shall be calculated and paid as part of Final Payment under Section 10.5, with the understanding that to the extent the Design-Builder incurs costs after Final Completion which would have been payable to the Design-Builder as a Cost of the Services and Work the Design-Builder shall be entitled to payment from the Authority for that portion of such costs that were distributed to the Authority as Savings.

9.6 Schedule of Values

9.6.1 Before the second Invoice, the Design-Builder shall submit to the Authority a Schedule of Values. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portion of the Work, except that the Design-Builder's fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form as the Authority may require and supported by such data to substantiate its accuracy. If accepted by the Authority, this Schedule of Values shall be used as a basis for the Design-Builder's Invoices and only for this purpose. Adjustments to the Schedule of Values must be approved in writing by the Authority.

9.6.2 The Design-Builder shall not front-end load its Schedule of Values, but the Design-Builder may include in its Schedule of Values a line item for the reasonable value of the Design-Builder's mobilization.

9.7 Invoices

9.7.1 On or about the twenty-fifth day of each month, the Design-Builder shall submit to the Authority a pencil copy of an Invoice, in a form acceptable to the Authority, requesting payment for the Design-Builder's Services and Work completed during each prior month, so that such pencil copy can be reviewed by the Authority, and any appropriate changes can be made before the Design-Builder submits the official Invoice on the first day of the next month.

9.7.2 Invoices shall show the percentage of completion of each portion of the Services and Work as of the end of the prior month covered by the Invoice. The percentage of completion shall be the percentage of that portion of the Services or Work which has actually been completed during the prior month.

9.7.3 Each of the Design-Builder's Invoices shall include:

(a) the Authority's contract number and name of the Project;

(b) all data supporting the amounts requested and any other documentation reasonably requested by the Authority;

(c) a certification by the Design-Builder that all payments due its Subcontractors and/or Subconsultants have been made from prior paid Invoices and that all Legal Requirements have been complied with; and

(d) if the Design-Builder is withholding payment from any Subcontractor, Subconsultant or supplier, a certification by the Design-Builder that a valid basis exists under the terms of the Subcontractor's, Subconsultant's or supplier's contract to withhold payment.

9.7.4 In computing the payment amount due to the Design-Builder for the prior month's Services and Work, the Authority shall:

(a) take that portion of the GMP properly allocable to completed Services and Work as determined by multiplying the percentage of completion of each portion of the Services and Work by the share of the GMP allocated to that portion of the Work in the Schedule of Values;

(b) add that portion of the GMP properly allocable to materials and equipment as set forth in Section 9.7.6 below;

(c) add the Design-Builder's fee computed as ___ percent (___%) of the Cost of the Services and Work in the current Invoice,

(d) subtract the aggregate of previous Authority payments to the Design-Builder;

(e) subtract amounts, if any, which the Authority has disapproved or is withholding pursuant to Section 9.8.1 below; and

(f) subtract Retainage of five percent (5%) from the total invoiced amount.

9.7.5 Invoices submitted to the Authority shall be processed and paid only after the Authority reviews and determines that the Services and Work for which payment is sought has been completed at the

times and in the manner specified by this Agreement and the Design-Build Contract Documents. Invoices will not be processed if the Design-Builder has failed to provide an acceptable Project Schedule or Project Schedule update. Invoices will not be paid by the Authority if the Authority determines that the Services and Work for which payment is sought is incomplete or unsatisfactory.

9.7.6 Invoices may request payment for equipment and materials not yet incorporated into the Project, provided that (i) the Authority is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, the Authority will receive the equipment free and clear of all liens and encumbrances.

9.7.7 Within thirty (30) Days after receipt of the Design-Builder's properly supported Invoice, the Authority, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32 and 2A:30A-2, will make payment of the approved amount of such Invoice, unless within twenty (20) Days of receipt the Authority issues a notice in accordance with the Prompt Payment Act indicating that funds will be withheld, and identifying the amount of the funds to be withheld and the reason for such withholding. The thirty (30) Day period for providing payment to the Design-Builder shall be extended in circumstances in which authority for an action is required from the Authority's Board of Directors as indicated by the Operating Authority of the Authority. The Authority reserves the right to refuse payment in the amount specified in the Invoice to the extent that the Design-Builder fails to provide complete and sufficient documentation in support of the amounts claimed.

9.7.8 If the Design-Builder submits any false or fraudulent Invoice to the Authority for payment, the Design-Builder shall be held liable and subject to all penalties and damages under the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq.

9.7.9 In the event the Design-Builder fails to pay its Subcontractors or Subconsultants in a timely manner and the Authority is in full compliance with its obligations regarding timely payment of sums due the Design-Builder, the Authority may, but is not obligated to, make payments directly to each Subcontractor or Subconsultant or by two-party checks. The Authority's decision to make such payments to the Design-Builder's Subcontractors or Subconsultants will not give rise to any liability of the Authority for making such

payments, will not in any way require the Authority to exercise its option to make such payments, and will not create any contractual relationship between the Authority and any Subcontractor or Subconsultant. Payments to Subcontractors and Subconsultants will not constitute acceptance of the adequacy of any Services or Work performed by the Design-Builder or its Subcontractors or Subconsultants.

9.7.10 In the event of a dispute between the Authority and the Design-Builder as to whether an amount is owed for certain Services or Work, or as to whether an amount has been reasonably withheld by the Authority, the Authority shall pay all amounts that are not in dispute, but shall not be required to pay the amount that is in dispute until the parties settle or otherwise resolve such dispute. The Design-Builder shall continue to perform all of its obligations under the Design-Build Contract Documents notwithstanding such dispute.

9.7.11 The Design-Builder shall receive payment from the Authority by one of the following electronic payment methods: (1) the Automated Clearing House ("ACH") payment system, or (2) wire transfer. Any fees or costs associated with the use of either of the listed electronic payment methods shall be solely the Design-Builder's responsibility. The Design-Builder may obtain the documents required to use either electronic payment method from the Authority's website. The Design-Builder shall provide to CM the documents necessary to use the electronic payment method selected before any payment will be made to the Design-Builder by the Authority.

9.8 Withholding of Payment.

9.8.1 The Authority may deny the Design-Builder's Invoice, in whole or in part, if: (a) the Services or Work have not progressed to the point represented by the Design-Builder in its Invoice; (b) the quality of the Services or Work do not conform to the Contract Documents; (c) defective or deficient Services or Work have not been timely corrected; (d) the Design-Builder has caused damage to the Authority, the Authority's property or to another contractor; (e) reasonable evidence exists that the Services and/or Work will not be completed within the Contract Time, or within any Contract Milestones identified in the Schedule; (f) the Design-Builder has failed or refused to properly schedule and coordinate the Services and/or Work , or to provide Project Schedules and updates; or (g)

the Design-Builder has failed or otherwise refused to comply with any term in the Design-Build Contract Documents.

9.8.2 If the Authority determines that a sufficient basis exists to withhold payment from the Design-Builder pursuant to Section 9.8.1, the Authority will either: (i) retain for payment the relevant Invoice (or portion thereof) until such time as the Design-Builder has made the necessary corrections/deliveries, or (ii) return the relevant Invoice to the Design-Builder, who shall resubmit the Invoice once all of the Work or Services have been satisfactorily completed or corrected.

9.8.3 The withholding of any sums pursuant to this Section shall not be construed as, or constitute in any manner, a waiver by the Authority of the Design-Builder's obligation to perform the Services or Work required under this Design-Build Contract Documents. In the event that the Design-Builder fails to perform any Services or Work required by Design-Build Contract Documents, the Authority shall have, in addition to the sums withheld in accordance with this Section, all rights and remedies provided by law, equity and this Agreement.

9.8.4 In addition to any other right to withhold payments under this Agreement, the Authority shall have the right to withhold from payments due the Design-Builder such sums as necessary to protect the Authority against any loss or damage which may result by reason of: (a) any willful misconduct or wanton or negligent act, error or omission by the Design-Builder, any Subcontractor or Subconsultant, or any of their employees, representatives or agents which gives, or may give, rise to a claim by the Authority or by some other person or entity against the Authority; (b) the Design-Builder's breach of any of its material obligations under this Agreement; (c) reasonable evidence that the Design-Builder will not complete the Services or Work required by this Agreement within the Contract Time, and that the unpaid balance will not cover the actual damages suffered for the delay; and (d) the Design-Builder's inability or failure to complete any of the Services or Work required by this Design-Build Contract Documents.

9.9 Retainage.

9.9.1 Except as otherwise provided herein, the Authority shall withhold funds ("Retainage") from payments made to the Design-Builder in accordance with this Section. The Authority shall withhold five

percent (5%) of the GMP, as it may be adjusted by Change Order, as Retainage from all invoiced amounts.

9.9.2 At the time of Substantial Completion, the Design-Builder may request that the Authority reduce Retainage. The Authority in its sole discretion may reduce the percentage of Retainage withheld, or may release the total amount of Retainage being held by the Authority if the Authority determines that such action is warranted by the progress and quality of the Work and Services.

9.9.3 At the time of Final Payment, the Authority shall release to the Design-Builder all Retainage other than amounts applied to the payment of Liquidated Damages or amounts which the Authority in its sole discretion deems necessary to retain to cover any existing or threatened claims or liens, or any amounts otherwise due the Authority under this Agreement.

9.10 Other Deductions.

9.10.1 In addition to Retainage, the Authority may deduct from any payment the following:

(a) any liquidated damages which have accrued as of the date of the application for payment;

(b) any sums expended or expected to be expended by the Authority in performing any of the Design-Builder's obligations under the Contract Documents which the Design-Builder has failed to perform or has deficiently performed; and

(c) any other sums which the Authority is entitled to recover from the Design-Builder under the terms of the Contract Documents.

9.10.2 The Design-Builder agrees that, to the extent that the Authority may deduct or withhold money from the Design-Builder pursuant to the terms of this Contract, the Authority has available to it any monies due or that may become due the Design-Builder under other contracts between the Design-Builder and the Authority. Such other contracts shall include joint ventures in which the Design-Builder is a participant, but only to the extent of its participation. The right to recover against the Design-Builder as herein provided is in addition to and does not affect the right of the Authority to

seek recovery against the Design-Builder or surety under the Contract, bonds, or as otherwise allowed by law.

10.0 SUBSTANTIAL COMPLETION AND FINAL COMPLETION

10.1 Substantial Completion of the Services and Work under the Design-Build Contract Documents shall be achieved no later than the Substantial Completion Date identified in Appendix A ("Substantial Completion Date). Final Completion of the Work shall be achieved within ninety (90) Days of the Substantial Completion Date ("Final Completion Date").

10.2 Substantial Completion.

10.2.1 Requirements for Substantial Completion. The Bridging Architect in conjunction with CM shall determine the date that the Design-Builder achieves Substantial Completion for the Project. In order to achieve Substantial Completion, the Design-Builder must have achieved the following on the Project: (i) all essential requirements of the Design-Build Contract Documents have been performed so that the purpose of the Design-Build Contract Documents have been accomplished, (ii) a Temporary Certificate of Occupancy has been issued by the Department of Community Affairs, (iii) a Punchlist has been created by the Bridging Architect, in conjunction with CM and the Authority, (iv) the Design-Builder has delivered to the Authority the key(s) and/or code(s) for operation of the elevators; (v) there are no material omissions or technical defects or deficiencies, as identified by the Authority, and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.

10.2.2 Punchlist and Certificate of Substantial Completion. Once the Design-Builder believes that it has reached Substantial Completion of the Project but for preparation of the Punchlist, CM shall inspect the Project in conjunction with the Bridging Architect and the Authority. If the Authority, the Bridging Architect and CM determine that Substantial Completion has been achieved but for preparation of the Punchlist, CM, in conjunction with the Authority and the Bridging Architect, shall prepare a Punchlist. Once the Punchlist is complete, the Authority shall distribute to the Design-Builder a Certificate of Substantial Completion with an attached Punchlist. As the Design-Builder corrects the Work identified on the Punchlist, the Bridging Architect and CM shall update the Punchlist and ensure and verify that the Design-Builder corrects the

incomplete or defective Work as required by the Design-Build Contract Documents.

10.3 Liquidated Damages

10.3.1 Inasmuch as delays in the completion of the Work and/or Services may result in an increase in costs to the Authority and/or the Project School District, the precise amount of which may be difficult to ascertain, it is hereby agreed that if Substantial Completion is not achieved on or before the Substantial Completion Date (as extended pursuant to the provisions of this Agreement), the Design-Builder shall pay the Authority the amount identified in the Supplemental Conditions as Liquidated Damages for each Day beyond the Substantial Completion Date that Substantial Completion is not achieved.

10.3.2 The Design-Builder also agrees that if Final Completion is not achieved by or before the Final Completion Date (as extended pursuant to the provisions of this Agreement), the Design-Builder shall pay the Authority the amount identified in the Supplemental Conditions as Liquidated Damages for each Day beyond the Final Completion Date that Final Completion is not achieved.

10.3.3 The Authority and the Design-Builder agree that the actual damages that would be suffered by Authority and/or the Project School District if Substantial Completion and/or Final Completion of the Services and Work is delayed are speculative and not susceptible of precise determination and that the specified liquidated damages amounts (either in this Agreement or in any Change Order) represent a reasonable estimate by the Authority and the Design-Builder of the damages that the Authority would suffer in such event and, therefore, constitute damages and not a penalty.

10.3.4 The Authority shall have the right to deduct Liquidated Damages from any amounts, including Retainage, owed by the Authority to the Design-Builder or its surety. If Liquidated Damages are not deducted from such amounts, Liquidated Damages shall be payable by the Design-Builder to the Authority within ten (10) Days after receipt by the Design-Builder of a demand for payment of Liquidated Damages by the Authority.

10.4 Final Completion

10.4.1 Certificate of Final Completion. The Authority shall issue a Certificate of Final Completion and determine the date of Final Completion of the Project. Final Completion means that point in time on the Project when (i) all requirements of the Design-Build Contract Documents have been completed in a manner consistent with the Bridging Architect Documents, (ii) all items on the Punchlist have been performed, and (iii) a Final Certificate of Occupancy, or a Certificate of Acceptance, as applicable, has been issued. Following the issuance of a Certificate of Substantial Completion for the Project and the Design-Builder's design consultant's determination that the Punchlist Work has been completed, the Design-Builder's design consultant, in conjunction with CM and the Bridging Architect, shall evaluate the Work and notify the Authority when the Work is ready for final inspection. The Design-Builder's design consultant shall, in conjunction with the Project School District, the Authority, CM and the Bridging Architect, conduct a final inspection of the Work to ensure that all Punchlist Work has been completed and all nonconforming and/or deficient Work has been corrected or remedied. The Bridging Architect shall evaluate the Work to ensure that all Work and all Punchlist Work has been completed in a manner consistent with the Design-Build Contract Documents. The Design-Builder and its design consultant shall assist the Authority in issuing a Certificate of Final Completion.

10.5 Final Payment

10.5.1 Final Payment shall be made by the Authority to the Design-Builder only when:

(a) This Agreement has been fully performed by the Design-Builder, including all requirements set forth in the Design-Build Contract Documents;

(b) The final Invoice and final accounting have been submitted by the Design-Builder and have been reviewed and approved by the Authority;

(c) Final releases have been obtained from the Design-Builder, its Subcontractors and Subconsultants;

(d) The Authority has accepted the Services and Work under this Agreement and the Design-Build Contract Documents; and

(e) The Design-Builder has provided to the Authority all manuals, warranties and as-built drawings for the Project.

10.5.2 If all requirements for Final Payment have been fulfilled by the Design-Builder, the Authority shall make the Final Payment in accordance with the New Jersey Prompt Payment Act.

10.6 Final Release

10.6.1 The acceptance of Final Payment by the Design-Builder shall constitute a waiver of all claims by the Design-Builder against the Authority except for: (i) those claims expressly reserved by the Design-Builder at the time of Final Payment; and (ii) 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.

10.6.2 Acceptance of, or payment for, any of the Services or Work performed by the Design-Builder shall not constitute a release or waiver of any claim the Authority has or may have against the Design-Builder for latent defects, errors, omissions, deficiencies, breaches of contract, or negligence. If the Authority discovers latent defects, errors, omissions or deficiencies in the Services or Work after Final Release, the Design-Builder shall correct any such defects, errors, omissions or deficiencies in the Services or Work at no expense to the Authority.

10.6.3 All payments for Services or Work performed under this Agreement will be made only to the Design-Builder, except as expressly stated in this Agreement. The Design-Builder shall assume sole and full responsibility for payments due to any of its Subcontractors, Subconsultants or suppliers.

10.6.4 Notwithstanding any other provision of the Contract, for a period of three (3) years after Final Completion of the Project, all estimates and payments made pursuant to the Design-Build Contract Documents, including the Certificates of Final Completion and Final Payment, are subject to correction and adjustment for clerical or other errors in the calculations involved in the determination of the amount of the payments. The Design-Builder and the Authority agree to pay to the other any sum due under the provisions of this Section, provided, however, that if the total sum to be paid is less than $100, payment will be waived.

11.0 THE AUTHORITY'S RESPONSIBILITIES

In addition to other responsibilities of the Authority as set forth in this Agreement and the Design-Build Contract Documents, the Authority shall:

11.1 Provide the Design-Builder with the Design-Build Contract Documents.

11.2 Cooperate with the Design-Builder throughout the Term of this Agreement. The Authority shall perform its responsibilities, obligations and services, including review and acceptance of the Design-Builder's submissions, in a timely manner so as not to delay or interfere with the Design-Builder's performance of its obligations under this Agreement.

11.3 Provide, at its own cost and expense and to the extent available, for the Design-Builder's information and use, the following, all of which the Design-Builder is entitled to rely upon in performing its obligations hereunder:

11.3.1 Surveys describing the property, boundaries, topography and reference points for use during design and construction, including existing service and utility lines;

11.3.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

11.3.3 A legal description of the Site;

11.3.4 As-built and record drawings of any existing structures at the Site; and

11.3.5 Environmental studies, reports and impact statements describing the environmental conditions, including hazardous conditions existing at the Site.

11.4 Attend Project related meetings and participate in inspections, as necessary.

11.5 Designate a Project Manager as the Authority's representative for the Project who administers this Agreement and manages the Project on behalf of the Authority. The Authority's Project Manager shall have that authority specified in the Levels of Operating Authority Policy which document can be found on the Authority's website,

www.njsda.gov/RP/PoliciesAndRegulations /Operating_Authority.html.

12.0 TERM

The Term of this Agreement shall be from the Commencement Date and shall extend until all obligations of the Design-Builder to provide Services and perform Work pursuant to the Design-Build Contract Documents have been performed to the

satisfaction of the Authority, unless extended or sooner terminated as set forth in this Agreement.

13.0 WARRANTIES

13.1 General. The Design-Builder warrants to the Authority that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Design-Build Contract Documents, of good quality, in conformance with the Design-Build Contract Documents and free of defects in materials and workmanship.

13.2 Commencement of Warranties. The warranties shall commence upon Substantial Completion of the Project and continue for one (1) year, unless otherwise stated in the Design-Build Contract Documents. Should any warranty commence earlier than the Substantial Completion Date, the Design-Builder shall extend the warranty to one (1) year past the Substantial Completion Date. The Design-Builder's warranty obligations exclude defects caused by abuse, alterations, or failure to maintain the Work by persons other than the Design-Builder. Nothing in this Section is intended to limit any manufacturers' warranties which provide the Authority with greater warranty rights than those set forth in this Section or the Design-Build Contract Documents. The Design-Builder will provide the Authority with all manufacturers' warranties upon Substantial Completion.

13.3 Warranty Inspection. Approximately eleven (11) months after Final Payment, the Authority shall conduct, in conjunction with CM, a warranty inspection of the Work. The Design-Builder shall, at no cost to the Authority, correct any deficiencies, latent defects or warranty work discovered in the 11-month warranty inspection.

13.4 Subcontractor, Subconsultant and Supplier Warranties. The Design-Builder shall obtain appropriate warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by any and all Subcontractors, Subconsultants and suppliers, and shall cause such warranties, guarantees and obligations to be extended to the Authority without derogating the Design-Builder's own representations and warranties to the Authority for such Work. The foregoing warranties, guarantees and obligations shall be in effect for periods of time co-extensive in duration with the Design-Builder's warranty for such Work. All such warranties, guarantees and obligations shall be in writing and shall run directly to and be jointly and severally enforceable by the Design-Builder and/or the Authority and their respective successors or assigns. The Design-Builder shall be responsible for enforcing such warranties, guarantees and obligations, at its own expense, in the name of and on behalf of the Authority if the Authority so requests.

14.0 PERFORMANCE AND PAYMENT BONDS

14.1 The Design-Builder shall furnish within five (5) Days of receipt of the Notice of Award both a performance bond and a payment bond, each in a form approved by the Authority, in an amount equal to one-hundred percent (100%) of the GMP, guaranteeing the due and timely performance of all obligations of the Design-Builder under this Agreement. No contract shall be executed by the Authority unless and until the required bonds are submitted and approved by the Authority.

14.2 The surety issuing the bonds must be currently authorized to do business in the State of New Jersey.

14.3 The bonds shall cover all guarantees and warranties required by the Design-Build Contract Documents, and all alterations, extensions of Contract Time, Changes in the Services or Work and other changes authorized by the Design-Build Contract Documents, without the need to secure the consent of the surety or sureties.

14.4 Bonds must be legally effective as of the date this Agreement is executed. Each bond must indicate the Design-Builder's name exactly as it appears in this Agreement. Current attorney-in-fact instruments and financial statements of the surety must be included for each bond. An authorized officer or agent of the surety must execute the bonds. All bonds and the sureties that write them must conform in all respects to the requirements of applicable State law.

15.0 INSURANCE

15.1 Owner Controlled Insurance Program Coverage. The Authority has implemented a School Facilities Projects Owner Controlled Insurance Program ("OCIP") in accordance with N.J.S.A. 18A:7G-44. The terms and conditions of this Section15..1, addressing OCIP and the Design-Builder insurance requirements, shall apply during the Term of this Agreement. In addition, the Design-Builder and its subcontractors/subconsultants shall be required to comply with all provisions of the applicable NJSDA Safety Manual, as such compliance has a direct bearing on the insurance costs of the Authority. OCIP will provide on-site General Liability, on-site Employer's Liability and Workers' Compensation, Builder's Risk and on-site Excess Liability coverage. Through OCIP, the Authority shall provide coverage to the Design-Builder and eligible Subconsultants/Subcontractors of every tier providing on-Site Services and Work on the Project, except as otherwise provided herein. Certain types of subcontractors/subconsultants are not eligible for enrollment in the OCIP, as set forth below in Section **15.23** below. Firms providing temporary labor services and leasing companies are to be treated as Subconsultants/Subcontractors for OCIP enrollment purposes. The Authority shall pay all premiums associated with

OCIP, including deductibles or self-insured retention, unless otherwise provided in this Agreement.

15.2 Design-Builder and Subconsultant/Subcontractor Insurance Requirements. Although OCIP provides broad coverage and high limits, it is not intended to, nor does it, meet all of the insurance needs of the Design-Builder and its Subconsultants/Subcontractors. In addition to coverage provided by OCIP, the Design-Builder shall be responsible for providing proof that it and its Subconsultants/Subcontractors have retained, at a minimum, the insurance coverage set forth in Section 15.13.

15.3 OCIP Management. Management of OCIP enrollment and other OCIP-related issues shall be handled by the Authority's OCIP Administration Services Provider in conjunction with the Authority's RMU (collectively, OCIP Management"). All OCIP questions are to be directed to OCIP Management.

15.4 Mandatory Enrollment. Enrollment in OCIP is mandatory for all OCIP-eligible subcontractors and subconsultants, but is not automatic. The Design-Builder is required to identify to OCIP Management all Subconsultants/Subcontractors of every tier providing on-Site Services and Work on the Project. For those subcontractors and subconsultants who are eligible for enrollment in OCIP, the Design-Builder shall require all such subcontractors and subconsultants to enroll in the Authority's OCIP program pursuant to the enrollment procedures as provided by the Authority in the SDA OCIP Insurance Procedures Manual (the "Manual"). Any failure on the part of the Design-Builder to comply with this Section may negate coverage under OCIP, and the Design-Builder shall bear all risk associated with any such lack of coverage.

15.5 Coverage Term. The term of OCIP coverage shall extend and terminate as follows:

15.5.1 Coverage of the Design-Builder. Builder's Risk coverage shall extend to and terminate upon the occurrence of Substantial Completion of the Project, as such is defined herein. On-site General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage of the Design-Builder shall extend to and terminate upon Final Completion of the Project, as defined herein.

15.5.2 Coverage of Subconsultant/Subcontractor. On-site General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage provided to any Subconsultant/Subcontractor shall extend to and terminate upon the earlier of: (i) Final Completion of the Project, defined herein or (ii) the completion of

the Subconsultant/Subcontractor's services or work at the Project. Builders Risk coverage provided to any subconsultant/subcontractor shall extend to and terminate upon the earlier of: (i) the occurrence of Substantial Completion of the Project, as such is defined herein, or (ii) completion of such subconsultant/subcontractor's work at the Project.

15.5.3 Warranty Work Exclusion. The Design-Builder and any Subconsultant/Subcontractor of any tier shall be ineligible for participation in the OCIP and thus shall be responsible for purchasing and maintaining its own insurance coverage in accordance with Section 15.23.2 below for the performance, after Final Completion of the Project, as such is defined herein, of any warranty Work on the Project pursuant to Section 13.0, and in no event shall such Work be subject to coverage under the OCIP.

15.6 Authority's Right to Terminate OCIP Insurance Coverage.

15.6.1 The Authority, at any time, has the right to terminate or to modify OCIP or any portion thereof. To exercise such right, the Authority shall provide thirty (30) Days advance written notice of termination or material modification to the Design-Builder and all Subconsultants/Subcontractors covered by the affected OCIP coverage. In such event, the Design-Builder and its Subconsultants/Subcontractors shall be required to obtain such replacement insurance coverage as may be specified by the Authority. Certificates of Insurance evidencing that such replacement insurance coverage has been obtained shall be provided to the RMU prior to the effective date of the termination or modification of OCIP coverage. The Authority shall reimburse the Design-Builder for the reasonable cost of such replacement insurance coverage. The Design-Builder shall be required to invoice the Authority for the reasonable cost of such replacement insurance obtained by the Design-Builder and its Subconsultants/Subcontractors.

15.6.2 The Authority has the right to terminate enrollment of the Design-Builder or any of its Subconsultants/Subcontractors in OCIP or any portion thereof at any time. To exercise such right, the Authority shall provide thirty (30) Days advance written notice of termination to the Design-Builder or Subconsultant/Subcontractor. In such event, the Design-Builder or Subconsultants/Subcontractors shall be required to obtain such replacement insurance coverage as may be specified by the Authority. Certificates of Insurance evidencing that

such replacement insurance coverage has been obtained shall be provided to the Authority prior to the effective date of the termination of coverage of the Design-Builder or its Subconsultants/Subcontractors under OCIP. The Authority shall reimburse the Design-Builder and its Subconsultants/Subcontractors for the reasonable cost of such replacement insurance coverage. The Design-Builder shall be required to invoice the Authority for the reasonable cost of such replacement insurance coverage obtained by the Design-Builder and its Subconsultants/Subcontractors. Notwithstanding anything to the contrary, in the event that this Agreement is Terminated for Convenience or Terminated for Default, OCIP coverage shall terminate as set forth in the Notice of Termination for Convenience or Notice of Termination for Cause, as appropriate.

15.7 Waiver of Subrogation. The Design-Builder waives all rights of subrogation and recovery against the Authority, the Bridging Architect, any Professional Services Consultants, agents or employees of the Authority and/or Subconsultants/Subcontractors of all tiers to the extent of any loss or damage suffered during construction, including damage to any property or equipment insured under OCIP. The Design-Builder shall require all Subconsultants/Subcontractors of any tier enrolled in OCIP to include in their contracts with the Design-Builder the same waiver of their rights to subrogation and recovery.

15.8 No Release. The provision of OCIP by the Authority shall in no way be interpreted as relieving the Design-Builder of any other responsibility or liability under this Agreement or any applicable law, statute, regulation, including, but not limited to, the risk of loss and indemnification obligations under Section 16.13.

15.9 OCIP Provided Coverage. The terms and conditions of OCIP insurance policies or programs, as such policies or programs may be from time to time amended, are incorporated by reference. The Design-Builder agrees to be bound by the terms of coverage of OCIP insurance policies or programs. The terms of coverage of OCIP insurance policies or programs are set forth below.

15.9.1 Workers' Compensation and Employer's Liability Insurance shall be provided for the Design-Builder's employees and its Subconsultants/Subcontractors working on the Project Site, in accordance with applicable state laws. Separate policies will be provided reflecting the following coverage and limits of liability:

Workers' Compensation Applicable Statutory Benefits
Employer's Liability

$1,000,000	Bodily Injury by Accident
$1,000,000	Bodily Injury by Disease - Policy Limit
$1,000,000	Bodily Injury by Disease - Each Employee

15.9.2 Commercial General Liability Insurance shall be provided on an "occurrence" basis under a master liability policy. Certificates of Insurance will be provided to the Design-Builder and all tiers of enrolled Subconsultants/Subcontractors reflecting the following Limits of Liability:

$2,000,000	Bodily Injury and Property Damage Liability Combined Single Limit each occurrence (per Region)
$5,000,000	General Aggregate Limit (per Region) reinstated annually
$5,000,000	Products/Completed Operations Aggregate (per Region)
$2,000,000	Personal Injury and Advertising Injury
$50,000	Fire Damage Legal Liability
$5,000	Medical Expense
$2,000,000	Railroad Protective Liability

Commercial General Liability Insurance coverage and terms shall include, but shall not be limited to, the following:

(a) Occurrence Basis;
(b) Products;
(c) Completed Operations (six-year term after Project Final Completion);
(d) Contractual
(e) Independent Contractor's Liability;
(f) Personal Injury;
(g) Explosion, Collapse, and Underground (X,C,U) exclusions deleted; and
(h) Designated Premises Only

15.9.3 Excess Liability Insurance shall be provided under a master liability policy. Certificates of Insurance will be provided to the Design-Builder and all tiers of enrolled Subconsultants/Subcontractors reflecting the following Limits of Liability:

$300,000,000	per occurrence
$300,000,000	aggregate

15.10 Builder's Risk Coverage.

15.10.1 Builder's Risk shall provide "All Risk" coverage on a replacement cost basis subject to standard exclusions, property limitations and conditions. Such insurance shall include the interests of the Authority, the Design-Builder, and any enrolled Subconsultant/Subcontractor of any tier providing direct labor on the Schools Facilities Project, with the following terms:

Primary Limit:$200,000,000

15.10.2 The Builder's Risk policy shall not provide coverage against loss by theft or disappearance of any materials (unless the materials are to be incorporated into the School Facilities Project), tools or equipment of the Design-Builder or of any enrolled subcontractor of any tier, or of any other person furnishing labor or materials for the School Facilities Project.

15.11 Insurance Certificates and Policies. Each enrolled Design-Builder and all tiers of enrolled Subconsultants/Subcontractors shall receive Certificates of Insurance evidencing the General Liability and Excess Liability coverage. The related policies shall be available for review by the Design-Builder upon request to the RMU. The Design-Builder and its Subconsultants/Subcontractors shall be bound by the terms of coverage as contained in such insurance certificates and/or policies.

15.12 Design-Builder and Subconsultant/Subcontractors' OCIP Responsibilities. The Design-Builder and its Subconsultants/Subcontractors of any tier enrolled in OCIP shall cooperate with OCIP Management in the administration and operation of OCIP. Such responsibilities and cooperation shall include, but not necessarily be limited to, the following:

15.12.1 Ensuring that no enrolled Subconsultant/Subcontractor shall commence on-site Services or Work at the Project Site until it has received Subcontractor approval from the Authority as set forth in Section 6.3.1 of this Agreement.

15.12.2 Compliance with all applicable safety program, administrative, and claims procedures, as outlined in the respective manuals.

15.12.3 Promptly providing requested contract, operations, safety, and insurance information.

15.12.4 Promptly responding to OCIP Management or OCIP insurer requests for claims, payroll, or other information.

15.12.5 Attending periodic meetings regarding administration, claims review, or safety.

15.12.6 Completing all OCIP forms required by OCIP Management or the Manual.

15.13 Supplemental Insurance Requirements of the Design-Builder and Subconsultants/Subcontractors. Prior to undertaking any Services or Work under this Agreement, the Design-Builder shall maintain, and/or cause its Subconsultants/Subcontractors to maintain, at their own cost and expense evidence of a policy or policies of insurance as enumerated below The Design-Builder and its Subconsultants/Subcontractors shall be responsible for maintaining such coverages after Final Completion and during the warranty period for the Project.

15.13.1 The following are the exposures, on-Site and off-Site, for which the Design-Builder and its Subconsultants/Subcontractors must obtain insurance coverage in addition to OCIP insurance requirements:

(a) Professional Liability Insurance (Errors & Omissions). The Design-Builder shall maintain Professional Liability Insurance with coverage retroactive to the Effective Date, sufficient to protect the Design-Builder from any liability arising from the Services and professional obligations performed pursuant to this Agreement in an amount not less than $3,000,000 per claim and $3,000,000 in the aggregate for all operations conducted. The Design-Builder's shall require its Subconsultants to maintain similar Professional Liability Insurance in an amount not less than $1,000,000 per claim and $1,000,000 in the aggregate for all operations conducted.

(a) The Design-Builder warrants it will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) Days.

(b) The Design-Builder warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of pollution conditions, asbestos related claims, testing, monitoring, measuring operations or laboratory analysis in connection with the Services performed pursuant to the Agreement.

(b) Pollution Liability. In the event that the Design-Builder's efforts involve a Pollution Liability exposure (including asbestos and lead work), the Design-Builder is required to maintain, or cause to be maintained, Pollution Liability insurance and, if necessary, Commercial Umbrella Insurance, with minimum limits of $5,000,000 per occurrence and $5,000,000 aggregate which protects the insureds from any and all claims that may arise out of or as a consequence of any Services or Work performed on this Project. Where the Design-Builder and/or its Subconsultants/Subcontractors are solely consultants, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy. If the Design-Builder performs Services and Work and also utilizes the efforts of Subconsultants and Subcontractors, insurance coverage must extend to them.

(c) Off-Site and On-Site Business Automobile Liability. Business Automobile Liability, and, if necessary, Commercial Umbrella Insurance covering the operations, maintenance and use, loading and unloading of all owned, hired, and non-owned vehicles used for or in connection with the Project. The limits of liability shall not be less than $1,000,000 combined single limit each accident. Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for covered autos endorsement, CA 99 48, shall be provided, and the Motor Carrier Act endorsement (MCS-90) shall be attached.

The policy shall include, as additional insureds, using ISO Designated Insured endorsement CA 20 48 (or a substitute form providing equivalent coverage), the Authority, the EDA, the New Jersey Department of Education, the State, the Bridging Architect, and the Project School District, and their respective directors, officers, members, employees and agents. The Design-Builder agrees to name other parties as additional insureds as required prior to the initiation of its work.

(d) Off-Site Workers' Compensation and Employer's Liability. Workers' Compensation Insurance in accordance with the laws of the State of New Jersey and any other state or federal jurisdiction as is required to protect the Design-Builder's employees or any of its Subconsultants/Subcontractors

engaged in the performance of Services or Work on the Project. This policy shall include Employer's Liability protection with a limit of liability of not less than the following:

Bodily Injury by Accident	$500,000 each accident
Bodily Injury by Disease	$500,000 each employee
Bodily Injury by Disease	$500,000 policy limit.

(e) Off-Site Commercial General Liability. Commercial General Liability Insurance, written as broad as the standard coverage form in use in the State of New Jersey as of the Effective Date of this Agreement. This insurance shall not be circumscribed by any endorsements limiting the coverage. The policy shall include coverage for contractual liability, products, completed operations and any explosion, collapse and underground (X,C,U) operations. Limits of liability shall not be less than $1,000,000 Bodily Injury and Property Damage combined single limit for each occurrence, with excess or umbrella coverage with the same terms and conditions as the underlying coverage in an amount such that the primary and excess/umbrella coverage equals $1,000,000. The policy shall either be endorsed to exclude the Project, or, if the policy includes the Project, such coverage must be endorsed as Excess and/or Difference in Conditions ("DIC") of OCIP coverage, and the cost thereof shall not be charged to or paid by the Authority.

(f) Off-Site/On-Site Contractors' Equipment. The Design-Builder shall purchase and maintain the Design-Builder's property insurance covering construction machinery, whether or not the capital value of the machinery has been included in the Contract, equipment, and tools used by the Design-Builder in the performance of the Services or Work. Such coverage shall be written on a policy form at least equivalent to that provided by a "Contractor's Equipment Floater," as such is customarily defined within the insurance industry. The Design-Builder shall notify all tiers of its Subconsultants/Subcontractors of their obligation to insure any machinery, equipment and tools used by the Subconsultants/Subcontractors in the performance of the Services or Work.

15.13.2 As provided in this Section 15.13, notwithstanding enrollment in OCIP, the Design-Builder and its Subconsultants/Subcontractors of every tier providing direct labor on the Project must, upon enrollment in OCIP, attach to the required enrollment forms, certificates of valid insurance evidencing current coverage for the On-Site and Off-Site exposures enumerated below. These exposures are not covered by OCIP. Insurance binders are not acceptable as proof of insurance coverage.

15.13.3 Such coverage must be purchased and maintained from insurance companies authorized to transact the business of insurance in the State of New Jersey and are rated "A-7" or better by A.M. Best Company.

15.13.4 In each policy, the Design-Builder shall have incorporated a provision, in accordance with the laws of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Design-Builder warrants that if the insurer, or coverage, is not subject to statutory or other provisions requiring thirty (30) Day prior notification of cancellation or non-renewal, it will, in any event, provide notice to the Authority immediately upon receipt of any notice of cancellation or non-renewal of any insurance coverage required under this Section.

15.13.5 The Design-Builder warrants that its insurance carriers are accurately informed regarding business activities of the Design-Builder and intend to insure those business exposures.

15.13.6 For purposes of this Section, “Off-Site” shall include, but not necessarily be limited to, the Design-Builder’s regularly established workplace, plant, factory, office, shop, warehouse, yard, or other property, even if such operations are for training of apprentices or for fabrication of materials to be used at the Project Site.

15.13.7 All insurance policies, exclusive of Professional Liability, Workers’ Compensation and Contractors Equipment, shall name the Authority, NJEDA, the State, CM, Bridging Architect, the Project School District and their respective officers, employees and agents as Additional Insureds. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority. In addition, the Design-Builder may be required to name other parties as Additional Insureds prior to the initiation of such work, and shall comply with all laws,

ordinances, rules and regulations of Federal, State, county and municipal authorities in the performance of said Work.

15.14 Exclusions. All exclusions added by endorsement to the aforementioned insurance shall be disclosed to the Authority.

15.15 Self-Insured Retention. Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be declared to and approved by the Authority and written using ISO endorsement CG 03 00 (or a substitute providing equivalent terms and conditions). The Design-Builder shall not be permitted to have a SIR larger than $100,000 unless it obtains the express, written consent of the Authority to the larger SIR. **FAILURE TO COMPLY WITH SECTION 15.15 IS A MATERIAL BREACH OF CONTRACT.**

15.16 Claims-Made Basis. If any of the aforementioned insurance is written on a "claims made basis," the Design-Builder warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years after the date of Final Payment by the Authority and the Design-Builder will provide Certificates of Insurance evidencing continuance of coverage with the original claims made retroactive date. Within the Certificate of Insurance, in the blocks designated "Policy Number," in addition to the policy number, the Design-Builder shall insert a note "claims made retroactive date ___/___/___" (with the date inserted).

15.17 Higher Coverage. In the event that the Design-Builder provides better coverage or higher limits of insurance to other clients, the Design-Builder shall extend the same coverage and/or limits to the Authority.

15.18 Certificate of Insurance. Attached as Appendix D to this Agreement shall be a valid Certificate of Insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. A Certificate of Insurance must also be submitted and appended hereto to evidence each insurance renewal required by this Section 15.0. Failure of the Authority to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Design-Builder's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this contract at the Authority's option. The Design-Builder shall provide certified copies of all insurance policies required within ten (10) Days of the Authority's written request for such policies.

15.19 No Recourse. There shall be no recourse against the Authority, the State or the Project School District for payment of premiums or other amounts with respect to the insurance required by this Section.

15.20 Disclaimer. The Design-Builder and each of its Subconsultants and Subcontractors is responsible to ensure that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage, at their own expense, that they deem advisable, whether or not specified herein.

15.21 Liability in Excess of Coverage. By executing this Agreement, the Design-Builder expressly agrees that any insurance protection required herein or by the Construction Contract shall in no way limit the Design-Builder's obligations under this Agreement and shall not be construed to relieve the Design-Builder 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 this Agreement or otherwise in law or equity.

15.22 Right to Remedy. If the Design-Builder fails to obtain and/or maintain the insurance as required by this Section 15.0, fails to 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) purchase insurance at the Design-Builder's expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between the Design-Builder and the Authority; (iv) suspend performance by the Design-Builder under this Agreement; or (iv) terminate this Agreement. Any funds retained pursuant to this Section 15.0 may be used, at the Authority's discretion, to renew or purchase the Design-Builder's insurance for the periods and amounts as set forth in this Agreement. In the event that the Authority purchases said insurance, the Authority may, at its discretion, reduce the Design-Builder's compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect the Design-Builder, and such coverage and limits shall not be deemed as a limitation on the Design-Builder's liability under this Agreement.

15.23 Subcontractors/Subconsultants Ineligible for OCIP.

15.23.1 Types of Ineligible Subcontractors/Subconsultants. Subcontractors/ Subconsultants of the types set forth below, or that solely provide the types of work or services enumerated below, shall not be eligible for enrollment in the OCIP (hereinafter cited as "Ineligible Subcontractors/Subconsultants"). The Authority may, at its sole discretion, exclude other types of Subcontractors/Subconsultants from enrollment in the OCIP. The following shall be Ineligible Subcontractors/Subconsultants:

(a) Professional Services Consultants;
(b) Suppliers (that do not perform or subcontract installation);
(c) Vendors;
(d) Guard & security services;
(e) Janitorial services;
(f) Truckers (including trucking to the Schools Facilities Project where delivery or removal of materials is the only scope of work performed);
(g) Other temporary project services;
(h) Demolition;
(i) Lead, asbestos, & hazardous materials abatement;
(j) Off-site fabricators; and
(k) Material Dealers

15.23.2 Insurance Requirements of Ineligible Subcontractors/ Subconsultants. Unless otherwise directed by the Authority, the Design-Builder shall require all Ineligible Subcontractors/ Subconsultants to purchase and maintain at their own expense the insurance coverages set forth below. Prior to permitting an Ineligible Subcontractors/Subconsultants to perform any Services or Work, the Design-Builder must furnish the RMU with certificates of insurance together with declaration pages, in a form satisfactory to the Authority, showing that the Ineligible Subcontractors/ Subconsultants has complied with this Section 15.23. Insurance binders are not acceptable as proof of insurance coverage.

15.23.3 Such coverage must be purchased and maintained from insurance companies authorized to transact the business of insurance in the State of New Jersey and are rated "A-7" or better by A.M. Best Company. In each policy, the Design-Builder shall have incorporated a provision, in accordance with the laws of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Design-Builder warrants that if the insurer, or coverage, is not subject to statutory or other provisions requiring thirty (30) Day prior notification of cancellation or non-renewal, it will, in any event, provide notice to the Authority immediately upon receipt of any notice of cancellation or non-renewal of any insurance coverage required under this Section.

15.23.4 The Design-Builder warrants that its insurance carriers are accurately informed regarding business activities of the Design-Builder and intend to insure those business exposures.

15.23.5 The coverages enumerated below shall protect the Design-Builder, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Project Management Firm and/or Construction Manager, the Bridging Architect, and the Client School District, and their respective directors, officers, members, employees and agents against claims of or relating to personal and bodily injury (including death) to persons or damage to property which may arise from or in connection with the performance of the Services or Work (whether performed On-site or Off-site) by the Ineligible Subcontractor/Subconsultant, its employees, officers, agents, subcontractors or other individuals or entities for whom the Ineligible Subcontractor/Subconsultant may be contractually or legally responsible while performing Services or Work. The required coverages are as follows:

(a) Professional Liability Insurance (Errors & Omissions). The Design-Builder shall maintain Professional Liability Insurance with coverage retroactive to the Effective Date, sufficient to protect the Design-Builder from any liability arising from the Services and professional obligations performed pursuant to this Agreement in an amount not less than $3,000,000 per claim and $3,000,000 in the aggregate for all operations conducted. The Design-Builder's shall require its Subconsultants to maintain similar Professional Liability Insurance in an amount not less than $1,000,000 per claim and $1,000,000 in the aggregate for all operations conducted.

The Design-Builder warrants they will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) Days.

The Design-Builder warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of pollution conditions, asbestos related claims, testing, monitoring, measuring operations or laboratory analysis in connection with the Services performed pursuant to the Agreement.

(b) Commercial General Liability. Commercial General Liability insurance is to be written as broad as the standard coverage form currently in use in the State of New Jersey, and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include

coverage for contractual liability, products, completed operations and any explosion, collapse and underground (X,C,U) operations. Limits of liability shall not be less than $5,000,000 combined single limit with excess or umbrella coverage with the same terms and conditions as the underlying coverage in an amount such that the primary and excess/umbrella coverage equals $5,000,000.

(c) Pollution Liability. In the event that the Subconsultants/ Subcontractors efforts involve a Pollution Liability exposure (including asbestos and lead work, hazardous material abatement, transportation and/or disposal), the Design-Builder is required to maintain, or cause to be maintained, Pollution Liability insurance and, if necessary, Commercial Umbrella Insurance, with minimum limits of $5,000,000 per occurrence and $5,000,000 aggregate which protects the insureds from any and all claims that may arise out of or as a consequence of any Services or Work performed on this Project. Where the Design-Builder and/or its Subconsultants/Subcontractors are solely consultants, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy. If the Design-Builder performs Services and Work and also utilizes the efforts of Subconsultants and Subcontractors, insurance coverage must extend to them.

(d) Off-Site/On-Site Contractors Equipment. The Subconsultants/Subcontractors shall purchase and maintain Contractor's property insurance covering construction machinery, whether or not the capital value of which has been included in the Contract, equipment, and tools used by the Subconsultants/Subcontractors in the performance of Services or Work. Such coverage shall be written on a policy form at least equivalent to that provided by a "Contractor's Equipment Floater," as such is customarily defined within the insurance industry. The Subconsultants/Subcontractors shall notify all tiers of Subconsultants/Subcontractors of their obligation to insure any machinery, equipment and tools used by the subcontractors in the performance of Work. The Subconsultants/Subcontractors shall indemnify, defend, and hold the Corporation and its officers, agents, and

employees harmless from any such loss, theft, or disappearance.

(e) Business Automobile Liability. The Subconsultants/ Subcontractors shall carry Business Automobile Liability Insurance covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than $1,000,000 combined single limit each accident.

(f) Workers' Compensation, Employer's Liability. Workers' Compensation Insurance in accordance with the laws of the State of New Jersey and any other state or federal jurisdiction as is required to protect the employees of the Subconsultants/Subcontractors or any subcontractor who will be engaged in the performance of the Services or Work. This policy shall include Employer's Liability protection with a limit of liability of not less than $500,000, as follows:

(a) Bodily Injury by Accident	$500,000 each accident
(b) Bodily Injury by Disease	$500,000 each employee
(c) Bodily Injury by Disease	$500,000 policy limit

15.23.6 Endorsement and Waivers. The Commercial General Liability Policy, Automobile Liability Policy, Pollution Liability and Excess/Umbrella Policies required to be provided by the Subconsultants/Subcontractors shall contain or be endorsed to contain the following provisions:

(a) The Design-Builder, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Project Management Firm or Construction Manager, the Bridging Architect, and the Project School District, and their respective directors, officers, members, employees and agents shall be covered as additional insureds.

(b) For any claims related to the Project, the Ineligible Subconsultants/Subcontractors' insurance coverage shall be primary insurance with respect to the Design-Builder, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Project Management Firm or Construction Manager, the Bridging Architect, and the

Project School District, and their respective directors, officers, members, employees and agents and Design-Builder warrants that coverage shall be required to continue for a minimum of two years notwithstanding the fact that the Ineligible Subconsultants/Subcontractors has departed from the School Facilities Project site. Any insurance or self-insurance maintained by the Authority, the State or the Project School District, and their respective directors, officers, members, employees and agents, shall be excess of the Ineligible Subconsultants/Subcontractors' insurance, and shall not contribute with it.

(c) Any failure on the part of the Ineligible Subconsultants/Subcontractors to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of the Ineligible Subconsultants/Subcontractors or others, any foreclosure related to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the Design-Builder, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Project School District, and their respective directors, officers, members, employees and agents.

(d) The Ineligible Subconsultants/Subcontractors' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

15.23.7 Disclaimer. Ineligible Subconsultants/Subcontractors shall be responsible for ensuring that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage that they deem advisable, whether or not specified herein.

15.23.8 No Recourse. There shall be no recourse against the Authority, the State or the Project School District for payment of premiums or other amounts with respect to the insurance required of Ineligible Subconsultants/Subcontractors hereunder.

15.23.9 Right to Remedy. If an Ineligible Subconsultants/Subcontractors fails to provide insurance as required herein, the Authority shall have the right, but not the obligation, to purchase such insurance.

In such event, the Design-Builder's GMP shall be reduced by the amount paid for such insurance.

16.0 GENERAL COVENANTS

16.1 Ownership of Documents

16.1.1 The Authority and the Design-Builder acknowledge that during the course of, and as a result of, the performance of the Design-Builder's Services, the Design-Builder or its Subconsultants will create written materials, plans, drawings, specifications, computer files, or other tangible manifestations of the Design-Builder's efforts under this Agreement and the Design-Build Contract Documents, including architectural work, as that term is defined in the Architectural Works Copyright Protection Act of 1990 (hereinafter individually or collectively referred to as "Work Product"). All Work Product furnished or prepared by the Design-Builder and/or its Subconsultants shall at all times be the property of the Authority, and may be used by the Authority to complete the Project in the event that the Authority elects to terminate or cancel this Agreement pursuant to any provision hereof or for any other purpose set forth in Section 16.1.4 below. The Authority's ownership of the Work Product shall commence immediately upon the Effective Date of this Agreement, and shall commence regardless of payment by the Authority of any compensation to the Design-Builder, and regardless of delivery of any such Work Product to the Authority.

16.1.2 The Design-Builder hereby assigns to the Authority sole ownership of any copyrights or other intellectual property rights created or existing under state or federal law in any and all Work Product prepared by the Design-Builder or its Subconsultants pursuant to this Agreement.

16.1.3 All Work Product (including the original, one (1) set of electronic copies, and two (2) sets of hard copies thereof) shall be returned to the Authority upon the termination or expiration of this Agreement, except that the Design-Builder may, subject to any confidentiality obligations under this Agreement, retain one or more record sets of the Work Product.

16.1.4 All Work Product may be referred to freely by the Authority for the purpose of appending any addition to and integrating the same with the Project, performing any alterations or repairs of any portion of the Project or designing or constructing other similar school facilities, buildings or projects whenever and wherever the Authority shall desire; provided however, that the Design-Builder shall not thereafter be responsible for any misuse, alteration or interpretation of such Work Product. Work Product shall not be used on any other project by the Design-Builder.

16.1.5 The Design-Builder shall be liable to, and hereby agrees to indemnify and hold harmless the Authority, the State of New Jersey, the Project School District, the Bridging Architect and CM, from and against all claims made against any of them for infringement of any copyright or patent arising out of the Work Product prepared or furnished by the Design-Builder in the performance of this Agreement.

16.1.6 If the Design-Builder is terminated under this Agreement and the Authority retains a substitute design professional to complete the Work Product, the Design-Builder shall have no liability to the Authority for modifications to the Work Product made by others.

16.2 Copyrights and Patents

16.2.1 If the Design-Builder 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-Builder shall assume all costs, including attorney's fees, arising from its use of patented or copyrighted designs, materials, equipment, devices, or processes for this Project.

16.2.2 The Design-Builder shall defend, indemnify and hold harmless the Authority and the State from any and all claims for infringement by reason of the use of any patented design, device, material, equipment 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, including attorney's fees, that it may incur by reason of an infringement at any time during the performance, or after the acceptance, of the Services and Work.

16.3 Confidentiality

16.3.1 All data contained in Documents supplied by the Bridging Architect, the Authority, the Project School District or any other party involved in the Project, and after the execution of this Agreement, any data gathered by the Design-Builder in fulfillment of this Agreement and any analyses thereof (whether in fulfillment of this Agreement or not), are to be considered confidential and shall be solely for use in connection with the Project. Notwithstanding, the Authority will comply with all applicable laws with regard to releasing such information which has been properly requested pursuant to such laws.

16.3.2 The Design-Builder shall not disclose to any third party the contents of the information, reports, findings, analyses, surveys, data or any other materials generated or produced in performance of this Agreement and the Design-Build Contract Documents, or provide copies of same, without the prior, written consent of the Authority, except where disclosure of such materials is legally required by order of court or administrative agency, whether State or Federal, in which case the Design-Builder shall provide immediate notice to the Authority of such order.

16.3.3 The Design-Builder is required to use reasonable care to protect the confidentiality of the Project data by, among other things, requiring incorporation of this Section 16.3 into its contract(s) with Subcontractors and Subconsultants. Any use, sale or offering of this data in any form by the Design-Builder, its employees, Subcontractors, Subconsultants or assignees will be considered a material breach of this Agreement. The Design-Builder shall be liable for any and all damages arising from its breach of this confidentiality provision, including damages, costs and/or attorneys fees. The Authority shall also have the right to terminate this Agreement for cause in the event of a breach of this confidentiality provision without the Authority being liable for damages, costs and/or attorney's fees.

16.3.4 Any publicity and/or public announcements pertaining to the Project shall not be made until and unless the Design-Builder obtains the prior, written approval of the Authority.

16.3.5 The Design-Builder's promotional and professional (or other) materials shall never include the Authority's confidential or proprietary information.

16.4 Contractual Relationship

16.4.1 Nothing in this Agreement shall be construed as creating a contractual relationship between the Authority and any Subcontractors, Subconsultants or suppliers of the Design-Builder.

16.4.2 The Design-Builder's status shall be that of an independent contractor, not an employee of the Authority. The Design-Builder 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-Builder 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, worker's compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.

16.4.3 The Design-Builder shall include in all of its Subcontractor and Subconsultant contracts a requirement that each Subcontractor or Subconsultant is bound by the terms and conditions of this Agreement and the Design-Build Contract Documents.

16.4.4 Nothing contained in this Agreement shall create a contractual relationship with a third party or create a cause of action in favor of a third party against the Design-Builder 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-Builder for this Project thereby becomes a third party beneficiary of this Agreement.

16.4.5 The Authority and the Design-Builder hereby bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement.

16.5 Assignment

16.5.1 The Design-Builder shall not assign or transfer its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority. Any assignment or transfer of the Design-Builder's rights under this Agreement without the prior, written consent of the Authority shall not relieve the Design-Builder of any duty, obligation or liability assumed by it under this Agreement.

16.5.2 In the event the Authority approves an assignment, the Design-Builder shall submit to the Authority: (i) corporate resolutions prepared by the Design-Builder and the new entity ratifying this Agreement; (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 and acceptance of all rights, duties and obligations of this Agreement without limitation by the new entity; and (vi) any other information which the Authority may require.

16.5.3 Notwithstanding anything to the contrary, under no circumstance shall the Design-Builder assign its right to receive money under this Agreement for any purpose or to any person whatsoever without the prior, written approval of the Authority.

16.5.4 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. In such case, the Design-Builder agrees to continue to perform all of its obligations as set forth in this Agreement. The Design-Builder 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.

16.6 Mergers, Acquisitions, and Dissolutions

16.6.1 If, subsequent to the execution of this Agreement, the Design-Builder proposes to merge with or be acquired by another firm, or in the event of a proposed dissolution by the Design-Builder, the Design-Builder shall immediately notify the Authority and shall submit, in advance, documentation to the Authority describing the proposed merger, acquisition or dissolution.

16.6.2 The Authority, in its sole discretion, may approve the proposed merger, acquisition or dissolution or terminate this Agreement for cause. The Authority will notify the Design-Builder of its decision within thirty (30) Days of receipt by the Authority of documentation from the Design-Builder describing the proposed merger, acquisition or dissolution.

16.6.3 In the event the Design-Builder seeks the Authority's approval of a proposed merger or acquisition, the Design-Builder shall submit to the Authority: (i) corporate resolutions prepared by the Design-Builder and the new entity ratifying this Agreement; (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 that hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s) for the new entity; (v) acknowledgment and acceptance of all rights, duties and obligations of this Agreement without limitation by the new entity; and (vi) any other information which the Authority may require.

16.6.4 In the event the Design-Builder seeks the Authority's approval of a dissolution, the Design-Builder 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) any new or changed Federal Employer Identification Number(s); (iii) acknowledgment of the assumption of all rights, obligations and duties of this Agreement without limitation by the new parties; and (iv) any other information which the Authority may require.

16.7 Mandatory Compliance With Law

16.7.1 The Design-Builder must comply with all applicable Legal Requirements. To the extent variances from such Legal Requirements are required, the Design-Builder and the Authority shall cooperate to pursue such variances in the interests of the Project.

16.7.2 The Design-Builder shall be knowledgeable of the Legal Requirements applicable in the jurisdiction in which the Project is located, and the Design-Builder agrees to comply with such Legal Requirements, including without limitation, (i) the Americans with Disabilities Act, (ii) insurance industry standards, surveys and other information provided by the Authority, and (iii) development covenants and conditions and easements applicable to the Site on which the Project is located, regardless of whether the Authority has furnished the Design-Builder with the foregoing information.

16.7.3 Each and every provision required by law to be inserted into this Agreement and the Design-Build Contract Documents by this Agreement shall be deemed to have been inserted therein. If any such provision has been omitted or has not been correctly inserted, the Design-Build Contract Documents shall be amended, upon application of either Party, to provide for such insertion or correction.

16.7.4 If the Authority determines that the Design-Builder has violated or failed to comply with any applicable Legal Requirements with respect to its performance under this Agreement and the Design-Build Contract Documents, the Authority may withhold payments for such performance and take such action that it deems appropriate until the Design-Builder has complied with such Legal

Requirements or has remedied such violation or non-compliance to the satisfaction of the Authority.

16.7.5 The Design-Builder's compliance with applicable Legal Requirements is mandatory and cannot be waived by the Authority.

16.7.6 The Design-Builder shall ensure that its payments to vendors, Subcontractors and Subconsultants are made in compliance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1 and -2, and the provisions of N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41, and all other applicable laws concerning prompt payment to Subcontractors and Subconsultants.

16.7.7 The Design-Builder and each of its Subcontractors shall comply with the New Jersey Prevailing Wage Act Laws of 1963, Chapter 150 (N.J.S.A. 34:11-56.25 et seq.), and all amendments thereto.

16.8 Affirmative Action and Non-discrimination

16.8.1 The Design-Builder and its Subcontractors and Subconsultants shall abide by the affirmative action program established by the Authority pursuant to Section 6 and 36 of the legislation creating the New Jersey Schools Development Authority, P.L. 2007, c. 137, and any rules associated therewith, as may be amended from time to time, including, but not limited to, N.J.A.C. 19:39-1.1 to -4.1.

16.8.2 The Design-Builder shall submit to the Authority, after notification of award but prior to execution of this Agreement, one of the following three documents: (i) documentation (e.g., a Letter of Approval) sufficient to show that the contractor is operating under an existing Federally-approved or sanctioned affirmative action program; (ii) a Certificate of Employee Information Report approval issued in accordance with N.J.A.C. 17:27-4; or (iii) an Employee Information Report (Form AA-302) in accordance with N.J.A.C. 17:27-4. The Design-Builder shall not enter into a subcontract unless the subcontractor has submitted to said contractor one of the three documents required in this paragraph above, unless such subcontractor has four or fewer employees.

16.8.3 The Design-Builder shall abide by, and shall include language in all subcontracts with Subcontractors and Subconsultants requiring that all Subcontractors and Subconsultants abide by, the following requirements of this Section 16.8.

16.8.4 The Design-Builder 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-Builder, its Subcontractors and its Subconsultants agree as follows:

16.8.4.1 The Design-Builder and its Subcontractors and Subconsultants 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-Builder, or Subcontractor or Subconsultant 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-Builder and its Subcontractors and Subconsultants agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

16.8.4.2 The Design-Builder, and its Subcontractors and Subconsultants, will in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder or Subcontractor or Subconsultant, 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.

16.8.4.3 The Design-Builder and its Subcontractors and Subconsultants 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 advising the labor union or workers' representative of the Design-Builder's (and its Subcontractor’s and Subconsultant’s) commitments under this Agreement and referenced statutes and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

16.8.4.4 The Design-Builder and its Subcontractors and Subconsultants shall comply with the regulations promulgated by the State Treasurer pursuant to 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.

16.8.4.5 The Design-Builder and its Subcontractors and Subconsultants agree to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. l7:27-5.2, 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 & Equal Employment Opportunity in Public Contracts (hereinafter, the "Division") pursuant to N.J.A.C. l7:27-5.2, as amended and supplemented from time to time.

16.8.4.6 The Design-Builder and its Subcontractors and Subconsultants agree to inform, in writing, appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities and 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.

16.8.4.7 The Design-Builder and its Subcontractors and Subconsultants agree to revise any of its testing procedures, if necessary, to ensure that all personnel testing conforms to 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.

16.8.4.8 In conforming with the applicable employment goals, the Design-Builder and its Subcontractors and Subconsultants agree to review all of their 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, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

16.8.4.9 The Design-Builder and its Subcontractors and Subconsultants shall furnish to the Division such reports or other documents as may be requested from time to time in order to carry out the purposes of the Division's regulations, and shall furnish to the Authority such reports and other documents, in the manner and form requested, as may be required to carry out the purposes of the Authority's regulations.

16.8.4.10 The Design-Builder and its Subcontractors and Subconsultants, agrees to make good faith efforts when hiring or scheduling workers in each construction trade, to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by Sections 16.8.4.11 and 16.8.4.12 below, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3. The Design-Builder and its Subcontractors and Subconsultants agree that a good faith effort shall include compliance with the following procedures:

16.8.4.11 If the Design-Builder or its Subcontractor or Subconsultant has a referral agreement or arrangement with a union for a construction trade, the Design-Builder or its Subcontractor or Subconsultant shall, within three business days of the contract award, seek assurances from the union that the union will cooperate with the Design-Builder or its Subcontractor or Subconsultant as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time. If the Design-Builder or its Subcontractor or Subconsultant is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the Design-Builder or its Subcontractor or Subconsultant shall agree to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the Design-Builder's or Subcontractors' or Subconsultants' prior experience with a construction trade union, regardless of whether the union has

provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the Design-Builder or its Subcontractor or Subconsultant agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under Section 16.8.4.12 below; and the Design-Builder or its Subcontractor or Subconsultant further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

16.8.4.12 If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of Section 16.8.4.11 above, or if the Design-Builder or a Subcontractor or Subconsultant does not have a referral agreement or arrangement with a union for a construction trade, the Design-Builder or the Subcontractor or Subconsultant agrees to take the following actions consistent with the applicable county employment goals:

(a) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers

(b) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(c) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the Design-Builder or its Subcontractor or Subconsultant has a referral agreement or arrangement with a union for the construction trade;

(d) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State training and employment service and other approved referral sources in the area until

such time as the workforce is consistent with the employment goal;

(e) If it is necessary to lay off any of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et seq.;

(f) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

1. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, Design-Builder or its Subcontractor or Subconsultant shall determine the qualifications of such individuals and if the Design-Builder's, or Subcontractor's or Subconsultant's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, the Design-Builder or the Subcontractor or Subconsultant shall determine that the individual at least possesses the requisite skills, and experience as recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the Design-Builder, Subcontractor or Subconsultant shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of Section 16.8.4.13 below.

2. If the Design-Builder's or Subcontractors' or Subconsultants' workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

3. If, for any reason, the Design-Builder or Subcontractor or Subconsultant determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the Design-Builder or Subcontractor or Subconsultant shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the Authority compliance officer and to the Division;

(g) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

16.8.4.13 The contractor or subcontractor agrees that nothing contained in Section 16.8.4.12 above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to Section 16.8.4.12 above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey workers ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of Section 16.8.4.12 above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

16.8.5 Monitoring and Enforcement of Workforce Affirmative Action Compliance and Procedures.

16.8.5.1 The Design-Builder's employee liaison designated in accordance with N.J.A.C. 19:39-2.1(a) shall meet, when requested, with the Authority's workforce compliance inspector to ensure compliance with this section and the contractor's affirmative action plan.

16.8.5.2 The Authority's compliance inspector shall conduct on-site visits and/or attend project meetings and, at reasonable times and in a reasonable manner, may enter the Design-Builder's business facility or construction project site for the purpose of determining whether the Design-Builder is complying with its affirmative action plan and is otherwise in compliance with the procedures set forth in this chapter.

16.8.5.3 The Authority's compliance inspector may investigate to determine if there is a violation of this subchapter or the Design-Builder's affirmative action plan. If the workforce compliance inspector determines there is substantial probability that a violation is occurring, he or she may issue a written alert notice to the Design-Builder. The written alert notice shall explain in sufficient detail the alleged violation.

16.8.5.4 If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the Authority's workforce compliance inspector issuing the notice within three business days after it is received by the Design-Builder, the workforce compliance inspector shall issue a violation notice to the Design-Builder. Said violation notice shall explain, in sufficient detail, the facts of the continuing violation.

16.8.5.5 After issuing a notice of violation, the Authority's workforce compliance inspector shall notify the alleged violator that it shall submit, within seven business days, a written statement explaining why it is not in violation of this subchapter or the affirmative action plan or an explanation of how it will correct any such violation. The written statement shall be reviewed by the SDA's workforce compliance inspector and the Director. If the Director determines that the violator has not adequately explained why it is not in violation or determines that the violation is continuing to occur, then said Director shall conduct an investigatory conference to determine whether there is a violation and/or if corrective measures must be taken. The conference may

also be conducted to discuss and resolve issues before taking any action pursuant to Section 16.8.8 below, and/or N.J.A.C. 19:39-3.2. Such investigatory conference shall be conducted within 30 business days of the contractor's submission of its written statement. The Director may conduct interviews and request from appropriate parties the submission of additional information as is considered necessary to determine whether the alleged violation has occurred.

16.8.6 Set Asides and Goals for Small Business Entities on Authority Projects

16.8.6.1 At the time of each school facilities project advertisement, the Authority shall announce the SBE requirements for the contract, and the Design-Builder shall be required to make a good faith effort to comply fully with the SBE subcontracting goals.

16.8.6.2 The good faith efforts of the Design-Builder to meet the SBE goal on the Projects shall include, but not be limited to, the following measures:

(a) Sending solicitation letters to SBE firms registered with the Commerce, Economic Growth and Tourism Commission and to pre-qualified SBE firms on a list that is available from the SDA's website at www.njsda.gov;

(b) Making follow-up telephone calls to firms solicited in (a) above, and keeping a log of such calls and responses;

(c) Breaking the work into smaller subcontracts, to make it easier for SBE firms to compete;

(d) Contacting community groups, including, but not limited to, groups listed by the SDA for this purpose, for assistance in identifying SBE firms;

(e) Placing advertisements in local newspapers, construction trade letters, magazines, or special publications aimed at SBEs;

(f) Negotiating in good faith with interested SBE subcontractors, so as not to disqualify a prospective subcontractor without good cause; and

(g) Assisting potential SBE subcontractor firms by acting as a reference for the subcontractor, or by referring the subcontractor to the surety agent or bank officer of the contractor or consultant to satisfy bonding, insurance, or credit requirements.

16.8.6.3 If the Authority's Director of Contractor and Workforce Compliance determines that a contractor has failed to comply with its good faith obligations to meet the specified SBE subcontracting goal, he or she may pursue any of the sanctions available pursuant to Section 16.8.8 below, and/or N.J.A.C. 19:39-3.2.

16.8.7 Affirmative Action and Small Business Compliance.

16.8.7.1 The Design-Builder shall designate an employee who shall serve as a liaison with the Authority's workforce compliance inspector and who shall be responsible for coordinating the firm's affirmative action program, maintaining all records required by this chapter and submitting the forms required by this chapter through the Authority's website, or as otherwise directed, to the Authority's designated employee or representative

16.8.7.2 The Design-Builder, after notification of award, but prior to the Authority's execution of this Agreement, shall submit to the Authority an SBE Form B and an SBE Form C

16.8.7.3 The Design-Builder shall complete and submit the following forms available from the Authority, at the times indicated, and in the manner and form (whether hard-copy or electronic) specified by the Authority:

(a) An SBE Form A, together with all SBE Forms C, at the time of bid or at any other time specified by the Authority prior to the Authority's execution of a construction contract;

(b) An initial project workforce report, Form AA-201, upon notification of award, and prior to the Authority's execution of a construction contract;

(c) A subcontractor projection report, Form 201A, within seven business days of the Notice to Proceed issued to the

construction contractor by the Authority, and as updated during the duration of the contract;

(d) A monthly project workforce report, Form AA-202, submitted in electronic form no later than the seventh business day of each month for the duration of the contract; and

(e) A certified payroll report within 10 days of the end of each pay period.

16.8.8 Sanctions

16.8.8.1 If the Authority determines that the Design-Builder is in violation of the Authority's affirmative action regulations, or the terms of this Agreement, or its affirmative action plan, the Authority shall enforce the aforesaid obligations and the requirements of the affirmative action plan by any or all of the following actions:

(a) Reduce the Design-Builder's performance evaluation;

(b) Reduce the Design-Builder's project rating on subsequent bid proposals;

(c) Reduce the Design-Builder's compensation by a maximum of one and one-half percent of the contract price if the contractor is found not to have in good faith satisfied the hiring requirements set forth in the contract, because the SDA cannot and will not pay for contractual services that are not performed or contractual obligations that are not met. This reduction in the contract price may be effectuated either by the withholding of all or part of future payments to the Design-Builder or by a reduction in the amount of retainage otherwise due for release to the contractor under the contract;

(d) Pursue any of the sanctions available under N.J.A.C. 19:38A-4, including revocation of the Design-Builder's pre-qualification and/or suspension or debarment from SDA contracting; and/or

(e) Terminate this Agreement.

16.8.9 Subcontractor Replacement on School Facilities Projects.

16.8.9.1 The Design-Builder shall not replace an SBE subcontractor, except where such contractor is in breach of its subcontract and the SDA has provided the contractor its prior written consent to the replacement.

16.8.9.2 A request for replacement shall be in writing, on forms specified by the Authority, and must be accompanied by complete justification for the request. The Design-Builder must have the written approval of the Director, or his or her designee, before such a replacement can be made, regardless of the reason for the replacement.

16.8.9.3 The Design-Builder shall make a good faith effort to find another SBE to perform at least the same amount of work as had been allocated to the original SBE subcontractor.

16.9 Anti-Trust

16.9.1 The Design-Builder, 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 or Work 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.

16.9.2 The penalty for breach or violation of this Section 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.

16.10 Anti-collusion. By executing this Agreement, the Design-Builder hereby warrants and represents that (1) this Agreement has not been executed in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; (2) that the Design-Builder's bid for the Project was genuine and not collusive or a sham; (3) that the Design-Builder has not directly or indirectly induced or solicited any other individual or firm to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any individual or firm or anyone else to put in a false or

sham bid; (4) that the Design-Builder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the Design-Builder or of any other individual or firm or to fix any overhead, profit, or cost element of such bid price; (5) that all statements of the Design-Builder are true; and (6) that the Design-Builder has not directly or indirectly, submitted a bid price or any breakdown thereof, divulged information or data relative thereto, paid any fee in connection therewith to any corporation, partnership, company, association, organization, bid depository, or any member or agent thereof.

16.11 Conflicts of Interest

16.11.1 The Design-Builder 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-Builder 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.

16.11.2 The solicitation from the Design-Builder of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee shall be reported in writing forthwith by the Design-Builder to the State Attorney General and the Executive Commission on Ethical Standards.

16.11.3 The Design-Builder 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-Builder 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-13g. Any relationship subject to this provision shall be reported in writing 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.

16.11.4 The Design-Builder 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.

16.11.5 The Design-Builder 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-Builder or any other person.

16.11.6 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-Builder, its officers or employees, to any person employed by the Authority as grounds for debarment or suspension from submitting proposals and providing Services, Work or materials to the Authority.

16.11.7 The provisions cited in this Section shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with the Design-Builder 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.

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

16.12 Risk of Loss Assumed by the Design-Builder

16.12.1 Until Substantial Completion, the Design-Builder shall bear the risk of loss or damage to the permanent construction, temporary construction, and materials, whether the Design-Builder has received payment for such construction or materials.

16.12.2 The Design-Builder shall bear the risk of claims by third parties made against the Design-Builder or the Authority, on account of injuries

(including wrongful death), loss, or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Services or Work. The risk of claims, whether or not actually caused by or resulting from the performance of the Services or Work or out of or in connection with the Design-Builder's operations or presence at or in the vicinity of the Project Site or on Authority premises, and whether such injuries, loss, and damages are sustained, applies at any time both before and after Final Completion.

16.12.3 The Design-Builder shall bear the risk of loss or damage to any property of the Design-Builder, and of claims made against the Design-Builder or the Authority for loss or damage to any property of lessors, , Subconsultants, Subcontractors, suppliers, workers, and others performing the Work or Services. Said risk is assumed during all times prior to removal of the property from the Site.

16.13 Indemnification

16.13.1 To the fullest extent permitted by law, the Design-Builder shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority, CM, the Bridging Architect and the Project School District, as well as their respective agents, servants, officers, directors and employees, from and against any loss, damage, injury, cost or expense including interest, attorney's fees and other expenses, and from and against any claim, demand, liability, lawsuit, judgment, action or other proceeding arising from, in connection with, or as a result of any of the following:

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

16.13.1.2 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 acts or omissions by the Design-Builder, its agents, servants, officers, employees, Subcontractors, Subconsultants or any other person acting at the Design-Builder's request, subject to its direction, or on its behalf;

16.13.1.3 any gross negligence, default, or breach, of the Design-Builder, its agents, servants, officers, employees, Subcontractors,

Subconsultants or any other person acting at the Design-Builder's request, subject to its direction, or on its behalf; and

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

16.13.2 The Design-Builder's indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Agreement.

16.13.3 The Design-Builder agrees that any acceptance by the Authority of the Services or Work performed, and/or reports, plans or Specifications provided by the Design-Builder shall not operate to limit the obligations of the Design-Builder under this Agreement and that the Authority assumes no obligations to indemnify or hold harmless the Design-Builder, its agents, servants, employees, vendors, suppliers, Subcontractors or Subconsultants against any claims that may arise out of its performance or nonperformance under this Agreement. The Design-Builder also agrees that the provisions of this indemnification clause shall in no way limit the Design-Builder's obligations under this Agreement, nor shall they be construed to relieve the Design-Builder from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of this Agreement or otherwise at law or equity.

16.13.4 The provisions of this Section 16.13 shall survive the expiration or termination of this Agreement.

17.0 SUSPENSION OF SERVICES OR WORK

17.1 Authority's Right to Suspend Services or Work. The Authority shall have the right to defer the Commencement Date or to suspend the whole, or any part, of the Services and/or Work required under this Agreement 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-Builder suspend performance of the Services and/or Work and upon receipt of such notice, unless otherwise directed

in writing by the Authority, the Design-Builder shall immediately discontinue all Services and/or Work, except as necessary to properly secure the Project.

17.2 Compensation. In the event of a suspension by the Authority pursuant to this Section, Compensation shall be determined as follows:

17.2.1 If the Authority determines that the Services or Work have been suspended for a period cumulatively totaling less than forty-five (45) Days, there shall be no additional compensation paid to the Design-Builder.

17.2.2 If the Authority determines that the Services and/or Work have been suspended for a period cumulatively totaling forty-five (45) Days or more, and if the Authority determines that the suspension has resulted from no fault of the Design-Builder, the Parties shall amend this Agreement to provide an adjustment to the GMP in an amount deemed proper by the Authority and the Design-Builder after a review of the Design-Builder's submissions relating to the increased costs actually incurred by the Design-Builder as a direct result of the suspension. No such adjustment to the GMP will change any of the other terms of this Agreement.

17.2.3 When the Authority has determined that a suspension is the fault of the Design-Builder, the Authority may, at its sole option, suspend all payments to the Design-Builder. Payment may be reinstated by the Authority upon completion of the Services and/or Work in accordance with the other provisions of this Agreement, provided 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 18.2, or carry out the Work and/or Services as provided for in Section 18.3.

17.3 Requirement to Secure the Site Upon Suspension of the Work. In the event that a suspension of Work is ordered under this Section, the Design-Builder shall perform all Work necessary to ensure the safety of the public, the Authority, the employees and guests of the Project School District, and to secure all of the completed and partially completed Work.

18.0 DEFAULT AND TERMINATION

Nothing contained in this Section shall limit the right of the Authority to recover any and all costs and damages resulting from the Design-Builder’s failure to perform the Services or Work in a satisfactory manner.

18.1 Events of Default

18.1.1 The Design-Builder shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions ("Events of Default"), following notice and opportunity to cure (if applicable), as specified in Section 18.1.2.

(a) The Design-Builder fails to either (i) promptly begin the Services or Work under the Design-Build Contract Documents, or (ii) prosecute the Services or Work in accordance with the Project Schedule;

(b) The Design-Builder fails to perform the Services or Work in accordance with the Design-Build Contract Documents;

(c) The Design-Builder refuses to remove and replace rejected materials or unacceptable Work;

(d) The Design-Builder disregards or otherwise fails to comply with all applicable Legal Requirements;

(e) The Design-Builder fails to perform its obligations pursuant to the E-Rate program under Section 3.15, above;

(f) The Design-Builder refuses or otherwise fails to properly staff the Project;

(g) The Design-Builder fails, absent a valid dispute, to make payments to vendors, suppliers, Subcontractors or Subconsultants for materials, labor or services in accordance with the respective agreements between the Design-Builder and its vendors, suppliers, Subcontractors and/or Subconsultants;

(h) The Design-Builder fails to maintain or produce any Design-Builder Deliverables or other records required by the Design-Build Contract Documents to be so maintained or produced;

(i) The Design-Builder fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of this Agreement;

(j) The Design-Builder fails to obtain and properly maintain the level of insurance coverages outlined in this Agreement;

(k) The Design-Builder fails to obtain and properly maintain the level of bonding outlined in this Agreement;

(l) The Design-Builder assigns or transfers its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority;

(m) The Design-Builder makes any misrepresentation or conceals any material fact;

(n) The Design-Builder 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-Builder to perform its obligations under this Agreement;

(o) The Design-Builder fails to discharge or obtain a stay of any judgment or order for the payment of money arising out of the prosecution of the Services or Work (provided that for purposes hereof, posting of a bond in the amount of 124% of such judgment or order shall be deemed an effective stay);

(p) The Design-Builder fails to comply with a Directive or Contract Change Directive issued by the Authority;

(q) The Design-Builder fails to perform Services or Work as required under this Agreement or the Design-Build Contract Documents; or

(r) The Design-Builder otherwise violates or breaches this Agreement, the Design-Build Contract Documents or any material provision or term thereof.

18.1.2 The Authority shall provide the Design-Builder and its surety with written notice of the Design-Builder's default ("Notice of Default"). For all such Events of Default except those contained in subsections 18.1.1 (m) and 18.1.1 (n) (and any such default that by its nature cannot be cured), the Design-Builder may, within seven (7) Days of receipt of the Notice of Default, commence correction of such default, neglect or violation, with diligence and promptness, fully curing the same within the time prescribed by the Authority, if any, within the Notice of Default. If the Design-Builder's default is

capable of cure, but by its nature, cannot be cured within seven (7) Days, such additional period of time shall be allowed as may reasonably be necessary to cure the default, provided that the Design-Builder or its surety commences such cure within such seven (7) Day period and thereafter diligently prosecutes such through completion. Failure of the Design-Builder to commence correction of its default, neglect or violation within seven (7) Days of receipt of the Notice of Default, or to cure the same within the time prescribed by the Authority, shall allow the Authority to issue a Notice for Termination for Cause as per Section 18.2 of this Agreement.

18.2 Termination for Cause

18.2.1 If any default described in Section 18.1 above is not subject to cure or is not cured within the period specified in 18.1.2, the Authority may terminate this Agreement for cause. Any such Termination for Cause shall be effected by delivery of a "Notice of Termination for Cause" to the Design-Builder and its surety specifying the extent to which the Services and/or Work under this Agreement are terminated and the date upon which such termination shall become effective.

18.2.2 Upon Termination for Cause by the Authority pursuant to this Section, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Services and Work that were required to be performed by the Design-Builder by whatever methods the Authority may deem appropriate.

18.2.3 In the event this Agreement is terminated for cause pursuant to this Section 18.2, the Authority reserves the right not to make any further payments to the Design-Builder and may require the Design-Builder to repay all or a portion of the monies already paid. The Design-Builder, at its own expense, shall be obligated to take any steps necessary to enable the Authority to complete the Services and/or Work itself, or for the Authority to engage another contractor, design professional or design-builder to complete the Services and/or Work. Such steps may include, but are not limited to, the prompt delivery to the Authority of all Deliverables, Documents and Work Product identified herein and/or related to the Project. If the payments then or thereafter due the Design-Builder are not sufficient to cover the Authority's cost to complete the Services and/or Work itself or engage another contractor, design professional or design-builder to complete the Services and/or Work

, the Design-Builder shall pay the difference to the Authority upon demand.

18.2.4 No action by the Authority pursuant to this Section shall operate to waive or release any claims that the Authority may have against the Design-Builder under this Agreement.

18.3 The Authority's Right to Complete the Services and Work

18.3.1 If the Design-Builder fails to perform any obligation imposed under this Agreement and the Design-Build Contract Documents 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-Builder the cost of correcting such failure, including Compensation for any additional work or services of other contractors and/or Professional Services Consultants engaged as a result of such failure. If the payments then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to the Authority upon demand.

18.3.2 Any action by the Authority under this Section shall be without prejudice to the Authority’s rights under this Agreement and shall not operate to release the Design-Builder from any of its obligations under this Agreement or the Design-Build Contract Documents.

18.4 Termination for Convenience of the Authority

18.4.1 Performance by the Design-Builder of its obligations under the Design-Build Contract Documents may be terminated by the Authority in whole or in part, whenever the Authority, in its sole discretion, determines that such termination is in its best interest. Such a termination shall be called a “Termination for Convenience.”

18.4.2 Any such Termination for Convenience shall be effected by delivery of a "Notice of Termination for Convenience" specifying the extent to which the Services and/or Work under this Agreement are terminated and the date upon which such termination becomes effective.

18.4.3 Upon such Termination for Convenience, the Design-Builder shall be entitled to Compensation for the Services and Work actually and satisfactorily performed by the Design-Builder, less payments previously made. The Design-Builder shall also be entitled to the reasonable costs and expenses attributable to such Termination for Convenience.

18.4.4 Upon a Termination for Convenience, the Design-Builder shall furnish to the Authority, free of charge, such closeout reports, Documents, and materials as may be reasonably required by the Authority. Materials purchased by the Design-Builder for the Project that have not yet been incorporated into the Work may, at the option of the Authority, be purchased from the Design-Builder at the actual cost and delivered to a prescribed location or otherwise disposed of as mutually agreed.

18.4.5 Within sixty (60) Days of the effective termination date, the Design-Builder shall submit to the Authority claims for any costs that were incurred but that are not subject to payment pursuant to this Section 18.4 or any other provision of the Contract Documents. No claim will be allowed for anticipated profits on Services or Work that have not been performed. The Design-Builder's failure to submit a claim to the Authority within sixty (60) Days of the effective termination date shall constitute a waiver of any and all claims pursuant to this Section 18.4.

19.0 CLAIMS

All Claims by the Design-Builder against the Authority shall be governed by the following provisions.

19.1 General. All Claims asserted by the Design-Builder against the Authority 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.

19.2 Notice of Claim. The Design-Builder shall file notice of its Claim on a form provided by the Authority, which form shall be completed in its entirety and signed by the Design-Builder. Incomplete forms will be rejected and have 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 provided within the time limits established by N.J.S.A. 59:13-5.

19.3 False Claims Liability. The Design-Builder shall be held liable and subject to all penalties and damages under the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq, for any false or fraudulent Claim submitted to the Authority.

19.4 Review of Claims. The administrative process for review of Claims is sequential in nature and mandatory. The Authority's Claims procedure is composed of the following steps:

Step One: Review by the Authority
Step Two: Non-binding Mediation

Completion of the two (2) steps of Claims review is a mandatory prerequisite to the initiation of litigation by either Party.

19.5 Compliance with Claim Review Procedure. Each Claim will begin its review at Step One. A Claim will not proceed to the next step unless the Design-Builder submits a written objection to the prior step and requests that its Claim proceeds to the next step. If at any step in the process a Claim is resolved, the Design-Builder must sign a full and final release as to any and all matters arising from the Claim.

19.6 Step One: The Authority's Review.

19.6.1 The Design-Builder must provide to CM and the Authority the required forms as required by this Section to comply with the New Jersey Contractual Liability Act in order to begin the Authority's administrative process for the review of Claims. The Design-Builder shall also submit to the Authority all documentation supporting the Design-Builder's Claim. The documentation provided to the Authority will serve as the basis for evaluation of the Design-Builder's position regarding the Claim throughout Step One of the administrative process. The Design-Builder shall submit additional information upon request by the Authority. No formal action will be taken by the Authority unless and until the Authority receives complete Claim documentation from the Design-Builder.

19.6.2 Authority Review and Decision. At the option of the Authority, a meeting may be scheduled with the Design-Builder, the Authority and CM to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within thirty (30) Days of the receipt of the required forms and all supporting documentation or within thirty (30) Days of any meeting with the Design-Builder, the Authority and CM, whichever is later. This time limit may be extended by mutual agreement of the Parties. The Design-Builder, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing.

If the Design-Builder neither accepts nor rejects in writing the Authority's decision within fifteen (15) Days, the Claim will be considered withdrawn from the administrative process and there will be no further administrative remedy available to the Design-Builder for the subject Claim.

19.7 Step Two: Non-Binding Mediation. If the Design-Builder rejects in writing the decision of the Authority, there is no further automatic administrative review of the Claim. Within fifteen (15) Days after issuance of a Certificate of Occupancy or Certificate of Acceptance for this Project, the Design-Builder may request in writing that any or all outstanding Claims regarding this Project, which include any or all Claims that have been processed through Step One of the Claim resolution process, and that were neither withdrawn nor considered withdrawn from the process be submitted to Step Two, non-binding mediation. Such request shall be sent to the Authority and shall specifically identify which Claim(s) are to be submitted to Step Two. Any Claim not specifically identified shall be deemed withdrawn. No Claim will proceed automatically to Step Two and the Design-Builder must make a specific written request that the Claim be elevated to Step Two. Step Two will not be available until after the issuance of a Certificate of Occupancy or Certificate of Acceptance, unless an earlier time for submission of the Claim to Step Two is agreed to by the Design-Builder and the Authority. The cost of non-binding mediation shall be shared equally by the Design-Builder and the Authority. The mediator shall be selected by the Authority, with the concurrence of the Design-Builder. The rules for the mediation shall be agreed to by the Authority, the Design-Builder and the mediator prior to the start of the mediation. The mediation will not proceed, however, if the Parties fail to agree on the rules for the mediation, in which case Step Two will be deemed complete.

20.0 REPRESENTATIONS

The Design-Builder hereby represents as follows:

20.1 The Design-Builder is financially solvent, can pay its debts when due, and possesses sufficient working capital to complete the Services and Work required and perform its obligations under this Agreement and the Design-Build Contract Documents.

20.2 The Design-Builder is professionally qualified to act as the Design-Builder for the Project, and has the capability and experience, including sufficient qualified and competent personnel, to efficiently and timely perform the Services and Work. The Design-Builder will continuously furnish sufficient personnel to perform the Services and Work in a timely and proper manner.

20.3 The Design-Builder is experienced, 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-Builder and the Services and Work it will be performing. The Design-Builder shall ensure that all of its employees, vendors, suppliers, Subcontractors and Subconsultants performing Services and Work for this Project have such licenses and certificates.

20.4 The Design-Builder's execution of this Agreement and its performance hereunder is within its duly authorized powers.

20.5 The Design-Builder certifies that it has investigated the conditions of the Project and that it fully understands the conditions of the Project and its obligations pursuant thereto. The Design-Builder agrees that it will not make any Claim for, or be entitled to, cancellation or relief from the Design-Build Contract Documents without penalty because of its misunderstanding or lack of information related to the conditions of the Project and its obligations pursuant thereto.

20.6 The Design-Builder certifies that all representations made by it in this Agreement or any of the Design-Build Contract Documents are true, subject to penalty of law. The Design-Builder 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-Builder understands and agrees that the Design-Builder'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-Builder's enforcement of its rights under this Agreement and the Design-Build Contract Documents, including any and all Claims at law or equity.

20.7 The Design-Builder is currently pre-qualified as a General Contractor by the Authority, and properly registered pursuant to The Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. (L. 1999, c. 238).

20.8 The Design-Builder and all of its Subcontractors and Subconsultants have provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to L. 2001, c. 134. The Design-Builder shall not enter into any subcontract with a Subcontractor or Subconsultant that has not provided it and the Authority with proof of such valid business registration.

20.9 The Design-Builder assumes full responsibility to the Authority for the acts and omissions of its officers, employees, Subcontractors, Subconsultants, and others employed or retained by it in connection with Work performed and Services provided for the Project.

20.10 The representations and warranties enumerated in this Section operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required by this Agreement or by law.

21.0 THE AUTHORITY'S RIGHTS

21.1 The Authority shall have the right to perform work related to the Project and to award contracts in connection with the Project that are not part of the Design-Builder's responsibilities under this Agreement or the Design-Build Contract Documents.

21.2 The Authority shall have the right, in its sole discretion, to accept or reject employees and personnel proposed by the Design-Builder to work on the Project. The Design-Builder shall make a timely and prompt resubmittal to provide other employees or personnel to replace any that are rejected by the Authority, both in the initial proposal or any subsequent rejection or substitution of personnel.

21.3 The Authority shall have the right to remove any of the Design-Builder's employees from the Project at any time during the Term of this Agreement if that employee is deemed by the Authority 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-Builder shall promptly submit the name and qualifications of a replacement.

21.4 The Authority shall have the right to evaluate the Design-Builder's performance pursuant to the Authority's Performance Evaluation Policy and Procedures. The Authority shall also have the right to consider the Design-Builder's evaluation as a factor used in the technical ranking of the Design-Builder with respect to any submission by the Design-Builder in response to future Requests for Proposals issued by the Authority.

21.5 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-Builder for any damages sustained by the Authority from any Services or Work performed by the Design-Builder when such damage is occasioned by the negligent act, error, omission or willful misconduct of the Design-Builder.

21.6 The Authority's acceptance, use of or payment for all or any part of the Design-Builder's performance hereunder or in connection with the Project shall in no way alter the Design-Builder's obligations under this Agreement.

21.7 The Authority and any other State inspecting or oversight agencies having jurisdiction reserve the right to audit (or have their agents audit) the records of the Design-Builder in connection with all matters related to this Agreement. If, as a result of such audit, the Design-Builder is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Design-Builder's Invoice amount to an amount considered commensurate with the actual Services provided or Work performed.

21.8 The Authority or any other State inspecting or oversight agencies have the right to request, and Design-Builder agrees to furnish free of charge, all information and copies of all records, documents or books the Authority or any other State inspecting or oversight agencies may request of the Design-Builder and its Subcontractors and Subconsultants. The Design-Builder and its Subcontractors and Subconsultants shall allow representatives of the Authority or any other State inspecting or oversight agencies to visit the office(s) of each periodically, upon reasonable notice, in order to review any information, records, Documents or books related to this Agreement or to otherwise monitor any Services or Work being performed by the Design-Builder and its Subcontractors and Subconsultants pursuant to this Agreement and the Design-Build Contract Documents

22.0 MISCELLANEOUS

22.1 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 Federal Express or similar guaranteed overnight courier and shall be deemed delivered on the day after the notice or other communications was deposited in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A.

22.2 Incorporation by Reference. This Agreement incorporates by reference, as if set forth herein, all of the Documents constituting this Agreement in their entirety, including but not limited to, the Design-Build Contract Documents, the Design Manual, the NJSDA Safety Manual, any appendices to this Agreement, and the RFP and any Amendments or addenda thereto.

22.3 Conflict in Terms. In the event of a conflict, discrepancy or inconsistency between or among the Design-Build Contract Documents, interpretation will be based on the following descending order of priority:

1. This Agreement, and any Change Orders hereto
2. Appendix A (Special Conditions)
3. The Supplemental Conditions
4. The Specifications
5. The Bridging Architect’s Documents

(a) Drawings – Large Scale
(b) Drawings – Small Scale

In the event there is any conflict between and among the requirements contained in this Agreement, the Design-Builder will provide the higher quality level of service and Work or meet the higher standard, as determined by the Authority in its sole discretion. In the event that the Design-Builder's Construction Documents conflict, the Authority in its sole discretion shall resolve the conflict and direct the Design-Builder to perform pursuant to the Authority's interpretation of the conflict.

22.4 Changes to Agreement. Any change to this Agreement must be made in writing in the form of a Change Order executed by the Design-Builder and the Authority. Any Services and/or Work performed by the Design-Builder without a Change Order or Contract Change Directive that differ from, or are in addition to, the Services and/or Work required by this Agreement, shall be done at the Design-Builder's own financial risk.

22.5 No Waiver of Warranties or Legal/Equitable Remedies. Nothing in this Agreement 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 by the Authority.

22.6 State Sales Tax. Materials, supplies or services for exclusive use in erecting the structures or buildings or otherwise improving, altering or repairing the School Facility pursuant to the Design-Build Contract Documents are exempt from New Jersey State sales tax. Purchases or rentals of equipment are not exempt from any tax under the State Sales Tax Act.

22.7 Procedural Requirements. The Design-Builder shall comply with all written procedural instructions that may be issued from time to time by the Authority.

22.8 Governing Law. This Agreement, 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.

22.9 Forum and Venue. Any legal action to resolve a dispute or Claim filed under the terms of this Agreement shall be brought only in a state court in the State of New Jersey.

22.10 Time is of the Essence. All time limits as stated in this Agreement are of the essence.

22.11 Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

22.12 Waiver of Breach. In the event that any provision of this Agreement should be breached by either party and such breach is thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach. Any consent by the Authority to a delay in the Design-Builder's performance of any obligation shall apply only to the particular obligation or transaction to which it relates, and it shall not apply to any other obligation or transaction. Any delay in the Authority's enforcement of any remedy in the event of a breach by the Design-Builder of any term or condition of this Agreement or any delay in the Authority's exercise of any right under this Agreement shall not be construed as a waiver.

22.13 Negotiated Agreement. This Agreement was negotiated between the Parties and shall be construed in accordance with its plain meaning, without giving any effect to any implication or inference arising from the fact that it may have been drafted by or on behalf of any party to this Agreement.

22.14 Peer Review. The Authority may, at its sole discretion, provide all or a portion of the Documents or other items prepared by the Design-Builder to other professionals for review and comment.

22.15 Execution in Counterparts. This Agreement, 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.

22.16 State Inspector General. The Office of the State Inspector General, or any other State inspecting or oversight agency may, at its discretion, investigate, examine and inspect the activities of the Design-Builder and all other parties involved with the Project relating to the design, construction and financing of the 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 Office of the State Inspector General, or any other State inspecting or oversight agencies may require the Design-Builder or any other party involved with the Project to submit duly verified reports which shall include such information and be in such form as they may require. In addition to the foregoing the Office of the State Inspector General, or any other State inspecting or oversight agencies may investigate, examine, inspect, or audit in any manner and at such times as they may deem necessary. The Design-Builder shall include in any and all contracts with Subcontractors or Subconsultants a provision requiring such Subcontractors and Subconsultants to permit the Office of the State Inspector General, or any other

State inspecting or oversight agencies, in their discretion, to investigate, examine, inspect or audit in any manner and at such times as they may deem necessary.

22.17 Security Clearance. The Design-Builder and its personnel, and its Subconsultants, Subcontractors, and their personnel, shall be subject to such security clearance at the Project as the Authority may require.

APPENDIX A

SPECIAL CONDITIONS

A.1 Project School District: _____

A.2 Project Description:

Name, Address, Lot, Block of Intended Facility

NJSDA Contract No. _____

A.3 Schedule: _____ Days

A.4 Substantial Completion shall be achieved no later than ___ calendar Days after the Commencement Date.

A.5 Construction Management Firm (CM):

A.6 Commissioning Agent Firm (CxA):

A.7 Other Professional Services Consultants:

A.8 Other Special Conditions:

A.9 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: _____

Design-Builder:

Attention:_____

APPENDIX B

INSURANCE CERTIFICATES
&
BUSINESS REGISTRATION CERTIFICATE

(See attached sheets)

APPENDIX C

DESIGN-BUILDER'S EMPLOYEES, SUBCONTRACTORS AND SUBCONSULTANTS

(See attached sheets)