

REQUEST FOR PROPOSALS
FOR
**SITE ENVIRONMENTAL CONSULTANT &
ENVIRONMENTAL SITE CLOSURE SERVICES
(PURSUANT TO "TASK ORDERS")**
FOR
SCHOOL FACILITIES PROJECTS

Contract Number GP-0171-L01

Issue Date: Thursday, June 23, 2011

**MANDATORY PRE-PROPOSAL CONFERENCE:
Thursday, July 7, 2011 at 11 AM**

Due Date: Tuesday, August 2, 2011 by 5 PM

At the

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
{See Section 2.0, within, for delivery addresses}

PREPARED BY
THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
ONE WEST STATE STREET
PO BOX 991
TRENTON, NEW JERSEY 08625-0991

**Site Environmental Consultant
and Environmental Site Closure Services
Request for Proposal (RFP)**

The New Jersey Schools Development Authority (the "Authority") is seeking to engage the services of multiple Site Environmental Consultants ("SEC's") to provide Site Environmental Consulting Services and Environmental Site Closure Services. Under this contract the SEC may be required to complete various tasks described in the Scope of Services, Appendix B of the Agreement, Attachment A of this RFP.

The Authority intends to engage a minimum of three (3) SECs. The maximum amount of compensation payable to an SEC will be dependent on the environmental needs and complexity of the assignment. The contract amount is not expected to exceed \$1,000,000 per SEC during the initial term of the Agreement.

The Term of the Agreement shall extend for a period of two (2) years or until all obligations of the SEC to deliver Services pursuant to any Task Order have been performed to the satisfaction of the Authority, whichever is later. Task Orders will be issued to the selected SECs based on their site-specific capabilities, expertise, and performance. Factors that may affect selection of an SEC for a particular assignment may include unique local or district experience, current dollar value of revenue awarded in an attempt to distribute the work, specialized environmental characterization and remediation expertise, and environmental communication acumen.

The Contract term may be extended for one (1) additional year, if such extension is permissible by existing regulations at the time of extension. If such extension occurs, the amount of compensation for the additional year is not expected to exceed \$500,000 per SEC.

SECs responding to this RFP must be pre-qualified by the Authority with at least a \$3,000,000 rating in the civil engineering (P005) or the environmental engineering discipline (P011).

Under this contract, the SEC may be required to work on projects located throughout the State of New Jersey. It is expected that loaded hourly rate fees will be negotiated and standardized for all SECs based on professional staff classifications.

It shall be entirely within the Authority's discretion whether to issue a Task Order to a SEC during the Term of the Agreement. The Authority may issue multiple Task Orders to one or more other SECs (also engaged by the Authority), requiring the performance of Services at the same proposed Site, if it is determined that the assigned SEC does not have unique expertise related to a specific environmental issue. SECs shall be required to

appropriately coordinate their activities with those of any other SECs assigned to perform Services at the same Site.

This REQUEST FOR PROPOSALS consists of the following:

1. Request for Proposal
2. Attachment A: Site Environmental Consultant Services Agreement
3. Attachment B: NJSDA Form 202
4. Attachment C: NJSDA Form B
5. Attachment D: Price Proposal Forms

These documents must be read in their entirety as they define the scope of services and responsibilities of the SEC and the Authority. A firm wishing to submit a Proposal for Site Environmental Consultant Services must review and be thoroughly familiar with all terms and conditions of such documents.

A Mandatory Pre-Proposal Conference will be held for all firms seeking to submit a proposal. Firms are expected to review the RFP Package in advance of the conference and bring a copy to the conference. All firms wishing to submit a proposal **must** attend the pre-proposal conference. Questions and/or concerns relating to the RFP Package and the Agreement may only be addressed at the pre-proposal conference. The conference will be held on **Thursday, July 7, 2011 at 11:00 AM** at:

The New Jersey Schools Development Authority
1 West State Street
Trenton, New Jersey 08625-0991

In the event that the Authority determines, in its sole discretion, that an additional pre-proposal conference needs to be held in order to increase the pool of bidders or to address questions and/or concerns relating to the RFP Package and the Agreement, it shall schedule a subsequent pre-proposal conference and shall provide notice of the subsequent pre-proposal conference to all firms that attended the initial mandatory pre-proposal conference.

Upon award, the selected firm(s) shall execute the Agreement for Site Environmental Consultant Services (the "Agreement"), without modification.

REQUEST FOR PROPOSALS

This contract is primarily limited to environmental review, oversight, and documentation functions. These activities may also include, but are not limited to, the preparation of preliminary assessment reports; environmental screening reports; site investigation and

remedial investigation reports; remedial alternatives analyses and remedial action selection reports (RASR); site conceptual models; multimedia exposure and risk characterization reports; preparation of remedial action work plans (RAWP); and the technical oversight and documentation of remediation work performed by a contractor, i.e., a remedial action report (RAR). In addition, the SEC may be required to provide environmental communications support, environmental litigation support, and attend meetings on behalf of the Authority.

Under the current SDA approach, it is expected that the Design Consultant (architect of record) will be contracted to complete site feasibility tasks such as programming and concept planning; site boundary and topographic surveys, utility availability and capacity analyses; subsurface geotechnical investigations and analyses; cut and fill analyses, wetland delineations and easements; existing building hazardous materials assessments; historical and cultural resource evaluations; demolition specifications; post-demolition surveys; design of environmental engineering controls; and traffic studies.

The SEC will play an integral role in the Program/Concept and Schematic Design phases of the project, particularly as it may relate to the implementation of environmental reviews and remedial action work plans. The SEC may be required to participate in design meetings, review of conceptual and schematic site development plans, remediation technical specifications and bid documents, perform remediation cost and schedule estimating, and review of site feasibility work product completed by the Design Consultant to promote a seamless integration of work.

The SEC shall be responsible for providing professional engineering and environmental consulting services on behalf of the Authority. The SEC under this contract shall designate a Licensed Site Remediation Professional (LSRP) for completion of specific tasks on behalf the Authority. The Authority reserves its right to approve the proposed LSRP designee.

The Scope of Services will be dependent on the unique circumstances of the project under consideration. The services required of the SEC pursuant to this RFP are set forth in the Revised Scope of Services attached as Appendix B to the Agreement, Attachment A to this RFP.

In general, the selected SEC may be required to perform a wide variety of environmental assessments, including due diligence using the recently adopted ASTM All Appropriate Inquiry Standard (ASTM E1527-05), site characterizations, human health and ecological risk evaluations, construction oversight, community outreach, and program support and assistance.

Under this contract, the SEC must demonstrate the capability to perform both LSRP and non-LSRP functions. If land acquisition is required to support a project, it is expected that the Authority will rely on the services of a non-LSRP during its initial environmental due diligence phase, and eventually opt into the LSRP program if a determination is made

to acquire the land in need of remediation. Therefore, the non-LSRP work must be completed in a sufficiently thorough manner to allow a seamless transition to a LSRP, if necessary. If the results of environmental due diligence indicate remediation of the site is not required, the Authority may elect to engage an LSRP earlier in the environmental review process to issue the RAO and attain environmental closure. Otherwise, the LSRP will be retained to ensure remediation of the project site complies with NJDEP requirements.

The SEC will be required to work cooperatively with other contractors and private landowners and local governments pursuant to access agreements. The SEC will be responsible for all work assignments performed under its contract, whether performed by the SEC or by a subcontractor.

The SEC shall not undertake work without receiving a written Authorization to Proceed (ATP). Work completed without a written Authorization to Proceed (ATP) is considered at risk. The SEC shall document remediation costs incurred for remedial actions. Cost data must be accurate, complete, and shall be maintained according to individual tax blocks and lots. If remedial actions extend beyond a lot boundary the SEC shall apportion the remediation costs to the extent possible using volume and/or contaminant mass estimates.

1.0 REQUIREMENTS OF THE SEC

(a) Insurance and Indemnification. A successful SEC shall be required to provide evidence of the insurance coverages required in Section 5.1 of the Agreement, at the time of execution of the Agreement. In addition, proposing SECs should take note of Section 5.12, where provisions for indemnification of the NJSDA reside.

(b) Sales and Use Tax. Also, pursuant to P.L. 2004, c. 57, the Agreement shall provide that the SEC, and any subcontracted firms and any affiliates of the SEC, must collect and submit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., on all their sales of tangible personal property delivered into this State.

(c) Public Works Contractor Registration Act. If applicable, the SEC must be properly registered pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq.

(d) Outsourced Services. As explained more fully in Section 2.11 below, P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)) provides that the NJSDA may not award a contract to a firm that would directly, or through subcontracted firms, perform the required services outside of the United States; that proposing firms must make certain

disclosures; and that the selected firm will be subject to continuing compliance requirements.

(e) Political Contributions. P.L. 2005, c. 51 amended and supplemented N.J.S.A. 19:44A-20.1 *et seq.*, and superseded Executive Order 134 (2004), addresses the effect of political contributions on State contracting. Accordingly, a selected firm will be required to respond in a timely fashion to certification and disclosure requirements that will be stated in the Notice of Award issued by the NJSDA. Additionally, Executive Order No. 117, which is designed to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 ("Chapter 51"), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.

Requirements for Selected Firm. The Firm shall receive a notice of award that will, among other things, notify the Firm that it must submit a Certification and Disclosure of Political Contributions form and Business Entity Disclosure form as provided by NJSDA. Failure to submit these forms in a timely fashion shall be cause for rejection of the Firm.

Firm's Continuing Obligation to Comply with P.L. 2005, c. 51. The Firm shall be required on a continuing basis to disclose and report to NJSDA any contributions made during the contract term by the Business Entity on forms provided by NJSDA, at the time it makes the contribution.

(f) Political Contributions Disclosure. Firms are advised of their responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC"), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3), in the event they receive contracts in excess of \$50,000 from a public entity in a calendar year. It is a firm's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

(g) Anti-Discrimination Requirements. In addition, the SEC 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 there under, including N.J.A.C. 17:27-1 *et seq.* Accordingly, in a notice of award, a firm shall be required to submit to the NJSDA, with its executed Agreement, one of the following three documents:

- (1) appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program;

- (2) a certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4; or
- (3) an initial employee information report (Form AA302) provided by the Affirmative Action Office and completed by the contractor in accordance with N.J.A.C. 17:27-4.

2.0 INSTRUCTIONS FOR SUBMITTING A TECHNICAL PROPOSAL

An SEC shall thoroughly familiarize itself with this RFP to ensure responsiveness in its Technical Proposal. The Technical Proposal must consist of the following:

- 2.1 Cover Letter
- 2.2 Firm Experience - Case Studies
- 2.3 Organization Chart
- 2.4 Resumes of Key Team Members (NJSDA Form 202)
- 2.5 Approach to Providing the Scope of Services
- 2.6 SBE Targets (NJSDA Form B)
- 2.7 Business Registration

All of the above items must be addressed in each Technical Proposal submitted and must follow the order of all questions as posed, and must not exceed forty (40) one-sided 8.5" X 11" pages. Organizational charts, staffing structure, and schedules may be on larger paper. The following items will not count toward the page limits: resumes, required forms, and section dividers. Each Technical Proposal shall be ranked pursuant to the application of the evaluation criteria listed in this RFP to the material in the Proposal and such verification thereof as may be necessary.

Proposal Package Mailing Instructions. The firm must submit five (5) bound copies and one (1) unbound original, and one CD containing a full cover-to-cover PDF copy of the Proposal no later than **5 p.m. on Tuesday, August 2, 2011**, as follows:

If submitting by hand or overnight delivery, at the:

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
1 West State Street – 1st Floor
Trenton, New Jersey 08625-099
Attention: Megan Cox, Division of Procurement
Subject: Site Environmental Consultant and Environmental Site Closure Services
Proposal GP-0171-L01

If submitting by U.S. Mail, address packages to:

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

P.O. Box 991

Trenton, New Jersey 08625-0991

Attention: Megan Cox, Division of Procurement

Subject: Site Environmental Consultant and Environmental Site Closure Services

Proposal GP-0171-L01

Submissions received after the above date and time will not be considered. Faxed or e-mailed Technical Proposals shall not be accepted.

All firms wishing to submit Technical and Fee Proposals must attend the Mandatory Pre-Proposal Conference at the time and place indicated on the cover page to this RFP.

A more detailed description of the items required in the Technical Proposal follows.

2.1 Cover Letter

Present a brief understanding of the NJSDA's needs, as described in the Scope of Services set forth in Appendix B of the Agreement, Attachment A to this RFP. Include in the cover letter any other information relevant to the firm's qualifications, not set forth elsewhere.

2.2 Firm Experience - Case Studies

The SEC shall provide four (4) examples of the SEC's relevant professional experience through four (4) separate representative case studies.

One SEC case study shall include a representative brownfield land development project in New Jersey where environmental conditions of the property were complicated by the presence of soil, groundwater, and vapor intrusion concerns, and the future use of the property was developed for residential or educational purposes. This case study shall include a summary of the remedial action selection process utilized by the SEC to establish that the selected remedy is protective of children's health.

One SEC case study shall include a representative project where comprehensive environmental remediation oversight and documentation services were provided by a proposed project team member, and remediation costs were successfully recovered from a responsible party as a direct result of your project team's oversight and cost recovery litigation support efforts.

One SEC case study shall include a representative project that demonstrates how the LSRP on your project team was able to demonstrate a high standard of professional

integrity in protecting human health and the environment, while simultaneously representing the best interests of its client in the cost effective and timely resolution of environmental matters.

One SEC case study shall include a representative project where the SEC was able to gain trust of the community on a proposed remedial action by presenting complex technical information in a way that was understood by a non-technical audience. This case study should identify the contaminants of concern, a summary of the qualifications of the individual(s), and whether the environmental communication program was subcontracted or resided with the SEC's firm.

The case studies must include basic background information (e.g., dates and location), the scope of services provided, and the outcome of said engagement. The SEC must identify the name and address of the contracting entity and the name, and telephone number of a contact person associated with the contracting entity who is familiar with and able to comment on the SEC's performance of each case study.

2.3 Organization Chart

The organization chart must include all Key Team Members, their titles for this engagement and the SEC they represent. For the purpose of this engagement, a "Key Team Member" is a project manager and appropriate supporting engineers, geologists, environmental scientists, LSRP designee and account executive represented in the Technical Proposal as having a responsible role in the successful completion of an assignment.

2.4 Resumes of Key Team Members

A resume of each Key Team Member must be included in the Technical Proposal (NJSDA Form 202, Attachment B to this RFP). The selected SEC must use all Key Team Members as indicated in its Technical Proposal. For each Key Team Member, the resumes should include, but not be limited to: relevant experience, and any applicable certifications and/or affiliations.

2.5 Approach to Providing the Required Scope of Services

Describe the SEC's approach to the engagement, identifying and discussing your approach to managing work performed by in-house staff and Subconsultants. Describe your quality control process; responsibility for review of project deliverables, reports, drawings, etc. Describe how your firm will effectively manage the administration of the contract from a financial perspective including, but not limited to, invoicing, preparation of detailed invoice cover letters that summarize the work performed during the billing period, and identification of significant changes to the scope that may require future authorizations.

2.6 SBE Targets

The selected SECs shall be required to make good faith efforts to ensure that small business enterprises (SBEs) have the maximum practicable opportunity to participate in the performance of this engagement. A 25% target has been established pursuant to N.J.A.C. 17:13-1.1 et seq. NJSDA Form B, Schedule of Participation for Goods & Services Vendors must be included in the Technical Proposal. Form B is included in Attachment C to this RFP.

2.7 Business Registration

As set forth below in this RFP, pursuant to N.J.S.A. 52:32-44, as amended by P.L. 2004, c. 57, each proposing SEC must provide proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, in its Technical Proposal.

The SEC may not enter into any subcontract with any firm that has not provided proof of the subcontracted firm's valid business registration, the proof of which shall be forwarded to the NJSDA as a condition of contract award. Accordingly, the NJSDA shall require the SEC in a Notice of Award to submit all business registrations of subcontracted firms, along with other contract documentation. Business registrations of proposed subconsultants are not required to be included in a firm's Technical Proposal.

3.0 INSTRUCTIONS FOR SUBMITTING A PRICE PROPOSAL

Firms must complete and return a Price Proposal in the form set forth in Attachment D to this RFP. Proposal must be submitted with the firm's Technical Proposal, **but the Price Proposal must be enclosed in a separately sealed, addressed envelope placed within the Technical Proposal package. FAXED PRICE PROPOSALS WILL NOT BE ACCEPTED.**

It is anticipated that professional services required under this contract will be completed on a time and materials basis, inclusive of administrative, publication and overhead costs. Unit pricing will apply where appropriate. Depending on the services requested, the Authority will retain the flexibility to contract on a firm fixed price or fixed price (labor) plus reimbursable basis.

4.0 SELECTION PROCEDURES

Each proposal will be reviewed to determine responsiveness. Non-responsive Proposals will be rejected without evaluation. Responsive Technical Proposals will be evaluated by a Selection Committee ("Committee") established for this purpose. The evaluation will be based upon the information provided by the firms in response to this RFP, and any

necessary verification thereof. The Selection Committee members will independently score each Firm Proposal in accordance with the following evaluation criteria:

EVALUATION CRITERIA	MAXIMUM POINTS
Qualifications and relevant experience of the proposed project team in managing the environmental review process for a brownfield land development project that is complicated by environmental conditions in need of remediation, the property was developed for residential or educational purposes, and the implemented remedial alternative was protective of children's health.	20
Qualifications and relevant experience of the proposed project team in providing environmental remediation oversight and documentation services in support of cost recovery.	20
Qualifications and relevant experience of the proposed project team in developing remedial action strategies which are protective of human health and the environment under the LSRP program while simultaneously representing the best interests of its client.	20
Qualifications and relevant experience of the proposed project team in the effective public communication of complex environmental data in a way that is understood by a non-technical audience.	20
SEC's Approach to Providing the Required Scope of Services	20
TOTAL:	100

The Selection Committee will consist of five (5) NJSDA staff members. The scores of the Selection Committee members will be aggregated to obtain a Proposal Score for each Firm. A Firm will receive a Proposal Score based on the above-described evaluation criteria. The fifteen (15) Firms receiving the highest Proposal Scores will be placed on a short list.

The short-listed firms will be invited to be interviewed by the Selection Committee. At interview, the Selection Committee will evaluate the short-listed Firms based upon the same evaluation criteria set forth above. The Selection Committee members will independently score each short-listed Firm. The scores of the Selection Committee members will be aggregated to obtain an Interview Score.

The Proposal Score and the Interview Score assigned each short-listed Firm will be added together to obtain the Firm's Final Combined Score.

Following the final ranking, the Price Proposals will be opened and reviewed by the NJSDA. Using the Price Proposals as a guideline, the NJSDA may negotiate compensation that the NJSDA determines to be fair and reasonable.

Notwithstanding anything to the contrary in the above, the NJSDA has no obligation to make an award and reserves the right to waive any non-material defects, reject all Proposals for any reason and terminate the selection process at any time.

Any bidder attempting to contact government officials (elected or appointed), including NJSDA Board members and NJSDA Staff, in an effort to influence the selection process may be immediately disqualified.

ATTACHMENT A

SITE ENVIRONMENTAL CONSULTANT AGREEMENT

{See attached sheets}

AGREEMENT

Between the

**NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY**

And the

CONSULTANT

For

**SITE ENVIRONMENTAL CONSULTANT AND
ENVIRONMENTAL SITE CLOSURE SERVICES**

For the

SCHOOL DEVELOPMENT PROGRAM

CONTRACT NO.: GP-0171-L01

THIS AGREEMENT is made and entered into this ___ day of _____, 2011, (the "Effective Date") between the New Jersey Schools Development Authority (the "Authority") and _____, ("Consultant"), with a principal office location at _____.

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

Contract Number: GP-0171-L01

Project Name: Site Environmental Consultant & Environmental Site Closure Services

in strict and entire conformity with the Terms and Conditions of this Agreement and all Appendices and Attachments hereto and all other documents comprising this Agreement, all of which are hereby made part of this Agreement as fully and with the same effect as if the same had been set forth at length in the body of this Agreement.

Provided that Consultant strictly and completely performs all of the Services specified and all other obligations set forth in this Agreement, and subject only to such increases or decreases as are effectuated by Amendments to the Agreement as provided by the Agreement, the Authority will pay Site Environmental Consultant in accordance with the rates in Appendix C.

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

CONSULTANT

**NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY**

By:
Title:

By:
Title:

Sworn and subscribed to before me
This ____ day of _____, 20__.

By: _____
Name of Affiant

Notary Public of

My commission expires: _____, 20__.

Reviewed and Approved as to form for NJSDA:

By: _____
Name:

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1.0 DEFINITIONS

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

- 1.1 **“Additional Services”** means services other than the Services set forth in the Scope of Services on the Effective Date.
- 1.2 **“Agreement”** means this agreement (and all Appendices) between the NJSDA and the Consultant for the provision of Services as such agreement may be amended from time to time in accordance with the provisions hereof.
- 1.3 **“Amendment”** means an amendment to this Agreement executed by the Parties.
- “Authorization to Proceed”** or **“ATP”** mean a formal written agreement from the Authority to proceed with the work assigned pursuant to a Task Order.
- 1.4 **“Change Order”** means an amendment or change to material terms and conditions of a contract with the NJSDA.
- 1.5 **“Claim”** means a contract claim, demand or assertion by one of the Parties to this Agreement, seeking, as a matter of right, adjustment or interpretation of Contractual Documents, payment of money, extension of time or other relief with respect to the terms of the Contractual Documents and shall also mean other disputes and matters in question between the Parties arising out of or relating to the Contractual Documents. This definition shall not apply to the term “Claim” as used in the Scope of Services.
- 1.6 **“Construction Management Firm”** or **“CM”** means a firm engaged by the Authority to provide construction management services, oversight, direction, coordination and reporting in connection with one or more School Facilities Projects.
- 1.7 **“Consultant”** or **“Site Environmental Consultant”** or **“SEC”** means the firm engaged by the NJSDA for the Services required by this Agreement.
- 1.8 **“Consultant Client Manager”** means that person designated by the Consultant to serve as its representative during the Term.
- 1.9 **“Consultant Performance Evaluation Policy and Procedure”** means NJSDA policies and procedures for evaluating the performance of a Consultant under the Contractual Documents.
- 1.10 **“Contractor”** means a person or firm or engaged by the Authority to undertake construction at a School Facilities Project.
- 1.11 **“Contractual Documents”** means all documents setting forth Consultant and NJSDA obligations and responsibilities and includes, but is not limited to, the RFP, the Proposal, this Agreement, executed Task Orders, any Amendments and addenda, and all exhibits and schedules attached to such documents.

- 1.12 **“Day”** or **“Days”** means a calendar day or days.
- 1.13 **“Deliverables”** means, among other things, Services, including, but not limited to, technical data, plans, specifications, minutes, approvals, recommendations, drawings, reports, computer discs, instruction books, documents, writings, materials, other services or any other thing the delivery of which, however accomplished, is required to be delivered by the Consultant, explicitly or implicitly, by the Contractual Documents, as they may be amended from time to time.
- 1.14 **“Design Consultant”** means the architect, engineer or other licensed Professional Services Consultant engaged by the Authority to provide services, including the design of the Project, oversight of construction for conformance with design, Submittal review and reporting, in connection with the design and construction of the Project, all as more specifically described in the Design Contract, as amended.
- 1.15 **“DOE”** means the New Jersey Department of Education.
- 1.16 **“Effective Date”** means the date on which this Agreement became effective, and for purposes of this Agreement, as that date so identified and set forth on page 1.
- 1.17 **“Final Payment”** means final payment made in accordance with the New Jersey Prompt Payment Act, provided that the requirements of the Contract Documents have been fulfilled. The Final Payment shall include payment for all Work performed under the Contract, including all Retainage held by the Authority, less any amount the Authority is entitled to withhold pursuant to the terms of the Contract Documents.
- 1.18 **“Fiscal Year”** means the fiscal year of the NJSDA, which commences on January 1 of each year and ends on December 31 of the same year.
- 1.19 **“Key Team Member”** means a principal, partner or officer of the firm, or a project executive, project manager, appropriate supporting engineers, geologists, environmental scientists, LSRP designee and account executive identified in the Consultant’s Technical Proposal as having a responsible role in the successful provision of the Services, and who generally spends or is expected to spend 20 percent or more of his/her time providing such Services.
- 1.20 **“NJSDA”** or **“New Jersey Schools Development Authority”** or **“Authority”** means the entity formed pursuant to N.J.S.A. 34:1B-159 as a subsidiary of the Authority for the purpose of implementing provisions of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72. The NJSDA is the Party that has engaged the Consultant pursuant to this Agreement.
- 1.21 **“Notice to Proceed”** means a notice from the NJSDA to the Consultant, engaging the Consultant pursuant to this Agreement.
- 1.22 **“Party”** means a party to this Agreement. The Parties are the NJSDA and the Consultant.
- 1.23 **“Preliminary Task Order Request”** or **“PTOR”** means a request that identifies the preliminary technical scope to be undertaken which is subject to revision based on ongoing discussion between the Authority and the Consultant.
- 1.24 **“Price Proposal”** means the Price Proposal submitted by the Consultant in response to the RFP, which includes hourly rates and proposed field equipment and laboratory project costs.

- 1.25 **“Professional Services Consultants”** means consultants, including the Consultant, which may provide professional services specified in a scope of services pursuant to a contract with the NJSDA.
- 1.26 **“Project”** means the design acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of the School Facility identified herein, including Appendix B hereto, and in the Construction Documents or of any personal property necessary for or ancillary to the School Facility identified herein, and in the Construction Documents.
- 1.27 **“Project Management Firm”** or **“PMF”** means a firm engaged by the Authority to provide overall construction management services, oversight, direction, coordination and reporting in connection with School Facilities Projects.
- 1.28 **“Request for Proposals”** or **“RFP”** means the request issued by the NJSDA for proposals for the provision of the Services.
- 1.29 **“Schedule”** means the time-frames governing the completion of Services.
- 1.30 **“School Development Program”** means the program operated by the NJSDA in order to finance and construct School Facilities Projects pursuant to the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72.
- 1.31 **“School Facilities Project”** means the acquisition, demolition, design, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a School Facility or of any other personal property necessary for or ancillary to any School Facility.
- 1.32 **“School Facility”** means and includes any structure, building or facility used wholly or in part for academic purposes.
- 1.33 **“Scope of Services”** means the scope of services that may be required to be provided by the Consultant, as set forth in Appendix B (Scope of Services), and as set forth in any Task Order assignments.
- 1.34 **“Services”** or **“Site Environmental Consultant & Environmental Site Closure Services”** means the services required to be performed by the Consultant pursuant to the Contractual Documents, set forth in the Scope of Services, or a Task Order Assignment, whether completed or partially completed and includes all other labor, travel, meals, equipment and materials, provided or to be provided to fulfill such obligations.
- 1.35 **“Special Conditions”** means that document attached as Appendix A to this Agreement, and made a part thereof, as such document may be amended from time to time.
- 1.36 **“State”** means the State of New Jersey.
- 1.37 **“Subconsultant”** means the consultant to whom another consultant subcontracts part of the services for which the latter is responsible.
- 1.38 **“Task Order”** means a task order issued by the NJSDA that may require specific Services from the Consultant, as provided in the Scope of Services.

- 1.39 **“Technical Proposal”** means the proposal submitted by the Consultant in response to the RFP.
- 1.40 **“Term”** means the term of this Agreement as set forth in Section 4 hereof.
- 1.41 **“Time and Materials”** means totals shall include all direct costs the SEC intends to recoup through compensation under the Agreement, including, but not limited to, the following: hourly compensation inclusive of fringe benefits, travel expenses, payroll burden, and per diem, all sub-consultant costs, all material costs inclusive of delivery, equipment costs inclusive of mobilization, delivery, fuel usage, on site maintenance, de-mobilization and removal . The Cost Multiplier shall include all indirect costs the SEC intends to recoup through compensation under the Agreement, including, but not limited to the following: profit, overhead office labor base salary / hourly compensation inclusive of fringe benefits, overhead costs, facilities costs, depreciation, and general and administrative costs.
- 1.42 **“Unit of Fiscal Integrity”** means a unit created within the New Jersey State Police and Office of the Attorney General by Section 70 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72.

2.0 RESPONSIBILITIES OF THE CONSULTANT

2.1 General

- 2.1.1 In order to provide the Services required, the Consultant shall be responsible for being thoroughly familiar with all Authority formation and governing documents, internal controls, and operations.
- 2.1.2 The Contractual Documents establish the obligations of the Consultant. The Services described in this Agreement establish the minimum obligations of the Consultant.
- 2.1.3 The services to be provided by the Consultant pursuant to this Agreement shall be performed by the Consultant and its employees and Subconsultants, if any.
- 2.1.4 The Consultant shall be required to utilize the Key Team Members identified in its Technical Proposal. The Consultant shall notify the Authority in advance of any proposed change in its Key Team Members and shall submit to the Authority, for approval, the name and qualifications of proposed substitutions with equal or superior qualifications at no additional cost to the Authority. No changes in Key Team Members shall be permitted without the prior written approval of the Authority.
- 2.1.5 The Authority may review from time to time the Key Team Members of the Consultant. If, in the Authority’s opinion, changes to Key Team Members are necessary, the Consultant will be notified in writing of such need, and the Consultant shall thereupon provide substitutes acceptable to the Authority.
- 2.1.6 The Consultant understands and agrees that any change to this Agreement must be made in writing in the form of an Amendment.
- 2.1.7 Any Services performed by the Consultant, without an Amendment that differ from or are in addition to the Services prescribed by this Agreement shall be done at the Consultant’s own

financial risk. Additional Services, if any, shall be the subject of an Amendment, and shall be compensated in accordance with terms negotiated at the time of Amendment.

- 2.1.8 The Consultant shall make no changes to the Scope of Services without the prior written consent of the Authority and an Amendment. When requesting consent for any such change, the Consultant must simultaneously notify the Authority of any need for additional compensation engendered by such changes; provide a detailed cost break-down of, and justification for, the changes sought; and detail the impact of each change upon its provision of Services. The requirements of this provision are in addition to any other requirements of the Contractual Documents regarding additional compensation.
- 2.1.9 The Consultant shall perform all Services in a good, skillful, and prompt manner. The Consultant shall perform the Services consistent with the level of skill and care ordinarily exercised by members of the Consultant's profession, currently practicing under similar circumstances.
- 2.1.10 Services shall be performed within any applicable Schedule.
- 2.1.11 The Consultant is responsible for the quality, technical accuracy, and timely completion and delivery of all Deliverables. If circumstances will result or may result in a late delivery, it shall be the responsibility and obligation of the Consultant to make the details known immediately to the Authority.
- 2.1.12 The Consultant shall, without additional compensation, cure any errors, omissions, or other deficiencies in the Deliverables. The approval of interim Deliverables shall not relieve the Consultant of fulfilling its obligations under the Contractual Documents. Acceptance or payment for any of the Deliverables shall not be construed as a waiver by the Authority of any of its rights under the Contractual Documents or of any cause of action arising out of the Consultant's performance or non-performance under the Contractual Documents.
- 2.1.13 In the event the Consultant hires, employs or otherwise engages Subconsultants, the Consultant shall be considered the sole Consultant and the sole point of contact with regard to contractual matters under this Agreement. The Consultant assumes sole and full responsibility for the complete performance contemplated by the Contractual Documents, including the performance of all Subconsultants. The Consultant must: (i) where applicable, select only Subconsultants that have been pre-qualified by the Authority, and (ii) obtain the consent of the Authority prior to the engagement of any such Subconsultant.
- 2.1.14 It is expressly understood by the Consultant that approval by the Authority for the subcontracting of any Services under the Contractual Documents shall in no way relieve the Consultant from performing its obligations under the Contractual Documents. The Consultant shall at all times give due attention to the fulfillment of its obligations under the Contractual Documents and shall keep the Services under its control. Consent by the Authority to any subcontracting of any part of the Services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the engagement by the Consultant of the Subconsultant. The Consultant shall be responsible for all Services performed by its Subconsultants, which Services shall conform to the provisions of the Contractual Documents and the requirements of applicable law.
- 2.1.15 For all Services rendered, the Consultant shall, in accordance with generally accepted

accounting principles and practices, maintain weekly payroll, overhead, cost and accounting records, as well as all other records the Consultant may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority and the State Police (or their agents) as to all aspects of the Services provided under the Contractual Documents, whether the Services are performed by the Consultant, its Subconsultant or any other firm. The Consultant shall retain all electronic records for a period of six (6) Fiscal Years following final payment by the Authority or the end of the Fiscal Year in which this Agreement expires, whichever occurs later. After this period, the Consultant may dispose of these records after first offering them (at no cost) to the Authority in writing; the Authority shall have thirty (30) Days within which to accept them.

- 2.1.16 The Consultant agrees that it shall assist and cooperate with the Authority in any legal action or proceeding that is related to or that arises out of or in connection with its performance under the Contractual Documents and in which action or proceeding the Authority and the Consultant are not named as adverse parties. Such assistance shall include, but not be limited to, testifying as an expert witness or preparing exhibits, reports or models. Any Services provided by the Consultant pursuant to this paragraph shall be deemed Additional Services and shall be compensated as such in accordance with terms negotiated at the time of an appropriate Amendment.
- 2.1.17 The Consultant shall designate a Key Team Member at the Consultant's firm, satisfactory to the Authority, as the Consultant Client Manager. So long as the Consultant Client Manager's performance is acceptable, he or she shall remain in charge of the firm's Services, shall represent the Consultant, and be available for general consultation throughout the Term.
- 2.1.18 The Consultant, to the best of its knowledge, information, and belief, shall abide by all applicable local, state, and national regulatory requirements, as well as all regulations imposed by funding sources (auditing requirements, payroll affidavits, etc.), such as may be identified at the time of execution of this Agreement.
- 2.1.19 Business Registration. The Consultant and any Subconsultant provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to N.J.S.A. 52:32-44b, as set forth in Appendix E hereto. The Consultant shall provide written notice to any firm that may become its Subconsultant that it shall not enter into any subcontract with a Subconsultant that has not provided it with proof of such business registration, a copy of which the Consultant shall forward to the Authority, in accordance with N.J.S.A. 52:32-44c. The Consultant shall maintain and submit to the Authority a list of Subconsultants and their addresses, which list must be updated as necessary during the Term. A complete and final version of such list must be submitted to the Authority before final payment for Services shall be made.
- 2.1.20 Payment of Use Taxes. Pursuant to N.J.S.A. 52:32-44g, the Consultant and any Subconsultant of the Consultant, and any affiliate of the Consultant shall collect and submit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., on all their sales of tangible personal property delivered into this State. The Consultant shall provide in each contract with a Subconsultant that each such Subconsultant shall collect and submit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., on all their sales of tangible personal property delivered into this State. For purposes of this section, "affiliate"

shall mean any entity that: (i) directly, indirectly, or constructively controls another entity, (ii) is directly, indirectly, or constructively controlled by another entity, or (iii) is subject to the control of a common entity if it owns, directly or individually, more than 50% of the ownership interest in that entity.

- 2.1.21 Political Contributions. Consultant shall, on a continuing basis, disclose and report to the Authority any “contributions,” as that term is defined in P.L. 2005, c. 51 (formerly Executive Order No. 134 (2004)), made during the Term by it or any “Business Entity,” as that term is defined in P.L. 2005, c. 51, associated with the Consultant, on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made.
- 2.1.22 Political Contributions Disclosure. Consultant comply with its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (“ELEC”), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3), in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Consultant’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.
- 2.1.23 Outsourcing Provisions. In accordance with P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the Consultant shall have a continuing duty to comply with the provisions of P.L. 2005, c. 92, as applicable. If, during the Term, the Consultant or a subcontracted firm, who had on contract award declared that Services would be performed in the United States, proceeds to shift the performance of the Services outside of the United States, the Consultant shall be deemed in breach of the Agreement, which shall be subject to termination for cause, unless the 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.
- 2.1.24 Coordination of Services. At the discretion of the Authority, the SEC may be engaged to prepare design specifications and bid documents for remediation, and development of such specifications and documents shall require coordination with the Design Consultant.

2.2 Final Release

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

3.0 COMPENSATION

3.1 General Provisions

- 3.1.1 Hourly Rates and Unit Costs. The Consultant shall be compensated over the Term of the contract in accordance with the hourly rates and proposed field equipment and laboratory project costs set forth in Appendix C (Compensation – Price Proposal), provided that such compensation shall not exceed \$1,000,000 over the period of the two (2) years of the Term. The Contract term may be extended for one (1) additional year, if such extension is

permissible by existing regulations at the time of extension. If such extension occurs, the amount of compensation for the additional year shall not exceed \$500,000.

- 3.1.2 The Consultant shall be paid after invoices are submitted and approved. Consultant shall be entitled to reimbursement of properly documented postage and copying costs incurred pursuant to a Task Order. Travel expenses shall be recoverable, at the rate applicable to Authority personnel, only when such recovery has been prior approved by the Authority in its sole discretion.
- 3.1.3 Acceptance or approval of, or payment for, any of the Services performed by the Consultant under the Contractual Documents shall not constitute a release or waiver of any Claim the Authority has or may have for latent defects, errors, breaches, or negligence.
- 3.1.4 All payments for Services under the Contractual Documents will be made only to the Consultant, and Consultant assumes sole responsibility for payments due any Subconsultant.
- 3.1.5 Unless otherwise set forth in writing by the Authority, labor rates and proposed field equipment and laboratory costs shall be firm and not subject to increase during the Term.
- 3.1.6 The Authority assumes no responsibility or liability for costs the Consultant incurred prior to the Effective Date, and thereafter only as explicitly set forth in the Contractual Documents.
- 3.1.7 Consultant may include a markup no greater than five percent (5%) for Work performed by a Subconsultant.

3.2 Invoices

- 3.2.1 Detailed invoices for Services shall be submitted monthly on an Authority invoice form, and shall be accompanied by such supporting documentation, as to reimbursements and other items, in accordance with Section 3.2.5 and as may be required by the Authority. Electronic invoices with associated backup are acceptable.
- 3.2.2 Invoices submitted to the Authority must identify this Agreement's contract number.
- 3.2.3 Invoices submitted to the Authority shall be processed and paid only after the Authority reviews and determines that the Services for which payment is sought have been completed at the times and in the manner specified in the Contractual Documents and the executed Task Order. The Authority shall not pay invoices if the Authority determines that the Services for which payment is sought are incomplete or unsatisfactory.
- 3.2.4 Each invoice signed by the Consultant and submitted to the Authority shall be a representation by the Consultant that all payments due to its Subconsultants have been made and that all relevant laws and regulations have been complied with.
- 3.2.5 All invoices shall be accompanied by appropriate detailed backup, documented to ensure billing accurately represents work incurred. The backup documentation shall include a summary of direct and other direct costs assigned to the Task Order. The invoice shall be accompanied by a brief cover letter summarizing the work performed, the work expected to be completed during the next billing period, and shall identify significant changes to the

scope that may require future authorizations. This cover letter shall also identify subcontractor expenses incurred, and shall include a financial summary table identifying total Task Order project cost, Task Order project cost spent to date by invoice billing period, remaining Task Order project budget and Task Order project percent complete.

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

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

4.0 TERM

Unless terminated sooner under Section 6 of this Agreement, the Term of this Agreement shall extend from the Effective Date for a period of two (2) years or until all obligations of the Consultant to deliver Services pursuant to this Agreement have been performed to the satisfaction of the Authority, whichever occurs later. The Contract term may be extended for one (1) additional year, if such extension is permissible by existing regulations at the time of extension, in which case the Term shall extend from the Effective Date through such additional period or until all obligations of the Consultant to deliver Services pursuant to this Agreement have been performed to the satisfaction of the Authority, whichever occurs later.

5.0 GENERAL COVENANTS

5.1 Insurance

- 5.1.1 Before any of the work hereunder is started, the Consultant shall maintain, at its own cost and expense, the following insurance of the types and in the amounts described below, insuring the Consultant, its employees, subconsultants and agents. The Consultant shall obtain this insurance from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and that are "A-7" (or better) rated, as determined by A.M. Best Company. In each policy, the Consultant shall have incorporated a provision requiring written notice to the Authority at least thirty (30) days prior to the cancellation or non-renewal of any insurance required under this Section 5.1. The Consultant shall pay any and all deductibles. Consultant warrants that its insurance carriers are accurately informed regarding the business activities of the Consultant and intends to cover those business exposures. The types and minimum amounts of insurance required are as follows:

- 5.1.1.1 Professional Liability Insurance (Errors & Omissions), with all coverage retroactive

to the Effective Date of this Agreement, covering any wrongful act arising from the professional obligations performed pursuant to this contract, in any amount not less than \$1,000,000 per claim and \$1,000,000 in the annual aggregate. Consultant warrants they will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) days. Consultant 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 hereunder or if coverage is not commercially available for such period of time, then for such shorter period of time as such insurance is commercially available.

- 5.1.1.2 Commercial General Liability Insurance, and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$5,000,000 combined single limit each occurrence and \$5,000,000 general aggregate and shall cover liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with the Services performed under the Contractual Documents. The policy shall name as additional insured the Authority, the Design Consultant, the EDA, the Client School District and the State of New Jersey. In addition, the Consultant may also be required to name other parties as additional insured prior to the initiation of such work. This insurance shall apply as primary insurance with respect to any other insurance afforded to the Authority.
- 5.1.1.3 Pollution Liability: In the event that the Contractor's and Subcontractor's efforts involve Pollution Liability exposure (including asbestos and lead work, hazardous material abatement, transportation and/or disposal), the Contractor 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 in consequence of any service or Work performed on this Project. If the Contractor performs Work and also utilizes the efforts of Subcontractors, insurance coverage must extend to them. The policy shall name the Authority, the Design Consultant, the EDA, the State of New Jersey, the Project School District and their respective directors, officers, members, employees and agents shall be included as Additional Insureds. The insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority. In addition, the Contractor 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.
- 5.1.1.4 Workers' Compensation Insurance and Employers' Liability in accordance with the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Consultant while engaged in the performance of the Services under the Contractual Documents. The Workers' Compensation coverage shall be statutory and the Employer's Liability (including Umbrella coverage) shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease and \$500,000 policy limit for bodily injury by disease.

- 5.1.1.5 Business Automobile Liability Insurance: The Consultant shall, at its sole cost and expense, maintain Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any automobile, including coverage for all owned, non-owned and hired vehicles. The Business Automobile coverage shall be written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage). If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- 5.1.2 Consultant waives all rights against the Authority and its agents for recovery of damages to the extent these damages are covered by the Commercial General Liability, Business Automobile Liability, or Commercial Umbrella Liability insurance maintained by the Consultant. If the policies of insurance purchased by the Consultant as required above do not expressly allow the insured to waive rights of subrogation prior to loss, Consultant shall cause them to be endorsed with a waiver of subrogation as required above.
- 5.1.3 Attached to this Agreement (Appendix E) shall be valid Certificates of Insurance, in form and substance satisfactory to the Authority, evidencing compliance with the insurance requirements set forth herein. A Certificate of Insurance must be submitted to evidence each insurance renewal required by this Section 5. Failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of Consultant's obligation to maintain such insurance.
- 5.1.4 No insurance protection required herein or by the Contractual Documents shall limit the Consultant's obligations under the Contractual Documents and shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of the Contractual Documents or otherwise in law or equity.
- 5.1.5 In the event the Consultant fails or refuses to obtain and/or renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may (i) refuse to make payment of any further amounts due under the Contractual Documents; (ii) refuse to make payments due or coming due under other agreements between the Consultant and the Authority; (iii) suspend performance by the Consultant under this Agreement; or (iv) terminate this Agreement. Any funds retained pursuant to this Section 5.1.4 may be used, at the Authority's discretion, to renew the Consultant's insurance for the periods and amounts as set forth in this Agreement. If the Consultant fails to maintain the insurance as set forth herein, the Authority shall have the right, but not the obligation, to purchase said insurance at the Consultant's expense, and in connection therewith, including without limitation, the Authority's reasonable attorneys fees, on demand. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect Consultant, and such coverage and limits shall not be deemed as a limitation on Consultant's liability under the indemnities granted to the Authority in this Agreement.

5.2 Ownership of Documents

- 5.2.1 In consideration of the Authority's execution of this Agreement and for other good and valuable consideration, all Deliverables, including, but not limited to plans, methods,

drawings, specifications, flow charts, reports, all data, diagrams, samples, tests, surveys, models, material, computer discs, evidence, documentation, and all copyrightable materials, gathered, originated or prepared by the Consultant and its Subconsultants during and in connection with the performance of Services; and all copyrights resulting from Deliverables, and in all renewals and extensions of the copyrights that may be secured now or be hereafter in force and effect are instruments of the Consultant's Services performed under the Contractual Documents and, unless otherwise provided, shall be the sole property of the Authority.

- 5.2.2 The Consultant's promotional and professional (or other) materials shall not include Authority confidential or proprietary information, except with the written consent of the Authority.

5.3 Copyrights and Patents

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

5.4 Confidentiality

- 5.4.1 All data contained in documents supplied by the Authority or by any other party under an Authority contract or otherwise involved in the School Development Program and data gathered by the Consultant in fulfillment of the Contractual Documents and any analyses thereof (whether in fulfillment of the Contractual Documents or not), are to be considered strictly confidential and shall be solely for use in connection with the School Development Program, except to the extent the Authority may identify any such as government documents within the meaning of N.J.S.A. 47:1A-1 et seq.
- 5.4.2 The Consultant shall be required to use utmost care to protect the confidentiality of data by, among other things, requiring in Authority of these confidentiality terms and conditions into its contract(s) with Subconsultants, if any, and requiring personnel assigned to provide Services to sign a confidentiality agreement in a form provided by the Authority. Any release of confidential material in any form by the Consultant, its employees, Subconsultants or assignees will be considered a violation of the Contractual Documents. Penalties for violation of this paragraph include, but are not limited to, termination of this Agreement and/or legal action, without the Authority being liable for damages, costs and/or attorney fees. The Consultant shall be liable for any and all damages arising from its breach of this confidentiality provision.

5.5 Contractual Relationship

- 5.5.1 Nothing in the Contractual Documents shall be construed as creating a contractual relationship between any Subconsultant of the Consultant and the Authority.
- 5.5.2 The Consultant's status shall be that of an independent contractor, not an employee of the Authority. The Consultant agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof. The Consultant shall not, by reason hereof, make any Claim, demand or application to any Authority officer or employee for any right or privilege afforded to an Authority officer or employee, including, but not limited to, workers' compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.
- 5.5.3 The Consultant and any Subconsultants engaged by the Consultant under this Agreement are bound by the terms and conditions of the Contractual Documents.
- 5.5.4 Nothing contained in this Agreement or the Contractual Documents shall create a contractual relationship with a third party or create a cause of action in favor of a third party against either Party. No individual, firm, Authority, or any combination thereof, which supplies materials, labor, services or equipment to the Consultant for the performance of Services shall become thereby a third party beneficiary of the Contractual Documents.
- 5.5.5 The Parties hereby bind themselves, their partners, successors, assigns and legal representatives each to the other Party and the other Contractual Documents.

5.6 Assignment

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

5.7 Mergers, Acquisitions, and Dissolutions

- 5.7.1 If, subsequent to the execution of this Agreement, the Consultant proposes to merge with or be acquired by another firm or in the event of a proposed dissolution by the Consultant, the

Consultant shall immediately notify the Authority and shall submit documentation to the Authority describing the proposed transaction.

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

5.8 Mandatory Compliance With Law

- 5.8.1 The Consultant must comply during the Term with any and all Federal, State and local laws in effect or hereinafter promulgated that apply to performance by the Consultant under the Contractual Documents.
- 5.8.2 Each and every provision required by law to be inserted in the Contractual Documents shall be deemed to have been inserted therein. If any such provision has been omitted or has not been correctly inserted, the Contractual Documents shall be amended, upon application of either Party, to provide for such insertion or correction.
- 5.8.3 If the Authority determines that the Consultant has violated or failed to comply with applicable Federal, State or local laws with respect to its performance under the Contractual Documents, the Authority may withhold payments for such performance and take such action that it deems appropriate until the Consultant has complied with such laws or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 5.8.4 The Consultant's compliance with the legal requirements of this Section 5.8 and any other applicable laws, regulations or codes is mandatory and cannot be waived by the Authority.

5.9 Affirmative Action and Non-discrimination

- 5.9.1 The Consultant and its Subconsultants shall abide by affirmative action rules established by the New Jersey Department of the Treasury at N.J.A.C. 17:27-1.1 et seq. under P.L. 1975, c.

127, the small business set-aside rules for the procurement of goods and services established by the Commerce and Economic Growth Commission at N.J.A.C. 17:14-4.1 et seq. and by Executive Order No. 71 (2003), and the affirmative action program established by the Authority pursuant to Section 48 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72, and any rules and regulations associated therewith.

5.9.2 The Consultant shall not discriminate in employment and shall abide by all anti-discrimination laws, including those contained within N.J.S.A. 10:5-1 et seq., and all rules and regulations issued thereunder. During the performance of this Agreement, the Consultant and its Subconsultants agree as follows:

5.9.2.1 The Consultant and its Subconsultants, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the Consultant and its Subconsultants 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 Consultant and its Subconsultants agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

5.9.2.2 The Consultant and its Subconsultants, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex;

5.9.2.3 The Consultant and its Subconsultants, where applicable, will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Consultant's (and its Subconsultants') commitments under this act [N.J.S.A. 10:5-1 et seq.] and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5.9.3 The Consultant shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., with respect to its employment practices.

5.9.4 The Consultant shall comply with the *MacBride* principles of nondiscrimination in employment, or have no business operations in Northern Ireland, under N.J.S.A. 52:34-12.2.

5.10 Anti-collusion

5.10.1 The Consultant, by executing this Agreement, does hereby warrant and represent that this Agreement has not been solicited, secured or prepared, directly or indirectly, in a manner

contrary to the laws of the State; and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Services by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity, or consideration of any kind, direct or indirect, to any employee, officer, or board member of the Authority.

- 5.10.2 The penalty for breach or violation of this Section 5.10 may, at the sole option of the Authority, result in: (i) the termination of this Agreement without the Authority being liable for damages, costs and/or attorney fees; and/or (ii) a deduction from the payments to be made by the Authority pursuant to this Agreement.

5.11 Conflict of Interest

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

the Authority to treat the offer of any gift or gratuity by the Consultant, its officers or employees, to any person employed by the Authority as grounds for debarment or suspension from submitting proposals and providing work or materials to the Authority.

- 5.11.7 The provisions cited in this Section 5.11 shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with the Consultant under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines that the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

5.12 Indemnification

- 5.12.1 To the fullest extent permitted by law, the Consultant shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority, as well as their respective agents, servants, officers, directors and employees, from and against any loss, damage, injury, cost or expense; and from and against any Claim, demand, liability, lawsuit, judgment, action or other proceeding arising, to arise from, in connection with, or as a result of any of the following:
- 5.12.1.1 the negligent acts or omissions of the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf;
 - 5.12.1.2 the loss of life or property, or injury or damage to the person, body or property of any person or persons whatsoever, that arises or results directly or indirectly from the negligent performance of the Services or delivery of Deliverables by the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf;
 - 5.12.1.3 any gross negligence, default, or breach, of the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf;
 - 5.12.1.4 violation or non-compliance with federal, State, local and municipal laws and regulations, ordinances, building codes (including without limitation the Americans with Disabilities Act and OSHA Environmental Protection Act) arising from the performance or non-performance of, or arising out of conditions created or caused to be created by, the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf; and
 - 5.12.1.5 the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in performing Services.
- 5.12.2 The Consultant's indemnification obligation is not limited by, but is in addition to, the Consultant's insurance obligations contained in this Agreement.
- 5.12.3 The Consultant agrees that any approval by the Authority of the Services performed, and/or reports, plans or specifications provided by the Consultant shall not operate to limit the obligations of the Consultant under the Contractual Documents; and that the Authority

assumes no obligations to indemnify or save harmless the Consultant, its agents, servants, employees, or Subconsultants against all Claims that may arise out of its performance or nonperformance under the Contractual Documents; and that the provisions of this indemnification clause shall in no way limit the Consultant's obligations under the Contractual Documents, nor shall they be construed to relieve the Consultant from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of the Contractual Documents or otherwise at law or equity.

5.12.4 This Section 5.12 shall survive the termination of the Contract.

6.0 TERMINATION AND SUSPENSION

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

6.1 Termination for Convenience of the Authority

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

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

6.1.3 If so terminated, the Consultant shall be entitled only to that proportion of the compensation that the Services actually and satisfactorily performed by the Consultant bear to the total Services to be rendered under the Contractual Documents, less payments previously made.

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

6.1.5 Upon termination for convenience, the Consultant shall furnish to the Authority, free of charge, such close-out reports, documents, and materials as the Authority may reasonably require.

6.2 Termination for Cause

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

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

- 6.2.2 Upon termination by the Authority pursuant to this Section 6.2, the Authority may, without prejudice to any other rights or remedies of the Authority, complete Services by whatever methods the Authority may deem appropriate.
- 6.2.3 In the event this Agreement is terminated for cause pursuant to this Section 6.2, the Authority reserves the right not to make any further payments to the Consultant and may require the Consultant to repay all or a portion of the monies already paid; and the Consultant shall be obligated to take any steps necessary to enable the Authority to complete the Services itself, or for the Authority to engage another Consultant to complete the Services at the Consultant's own expense for the portion that exceeds the amount that would have been paid to the Consultant for completing the Services.
- 6.2.4 No action by the Authority pursuant to this Section 6.2 shall operate to waive or release any Claim the Authority may have against the Consultant under the Contractual Documents.

6.3 Suspension for Convenience of the Authority

- 6.3.1 The Authority shall have the right to defer the beginning, or to suspend the whole or any part, of the Services whenever, in the sole discretion of the Authority, it is necessary or expedient for the Authority to do so. The Authority shall by notice to the Consultant suspend performance of the Services and upon receipt of such notice, unless otherwise directed in writing by the Authority; the Consultant shall immediately discontinue all Services, except as may be deemed necessary by the Authority.
- 6.3.2 In the event of a suspension by the Authority pursuant to this Section 6.3, compensation shall be determined as follows:
 - 6.3.2.1 If the Authority determines that the Services have been suspended for a period cumulatively totaling less than ninety (90) Days, there shall be no additional compensation paid to the Consultant.
 - 6.3.2.2 If the Authority determines that the Services have been suspended for a period cumulatively totaling ninety (90) Days or more, and if the Authority determines that the suspension has resulted from no fault of the Consultant, the Parties shall amend this Agreement to cover the remaining Services to be performed. Such Amendment shall provide a compensation adjustment in an amount deemed proper by the Authority and Consultant after review of the Consultant's submissions relating to the increased costs actually incurred by the Consultant as a direct result of the suspension. No such Amendment will change other Contractual Documents terms.

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

6.4 Authority's Right to Carry Out the Services

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

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

6.5 Unacceptable Services; Duty to Cure Errors and Omissions

6.5.1 The Authority shall give the Consultant written notice as soon as practicable after it becomes aware of an error or omission by the Consultant. If the Authority determines that any Service delivered is unacceptable, in quality, timeliness, or any other condition, due to error, omission or failure to comply with requirements of the Contractual Documents, the Consultant shall correct and revise the unacceptable Services under the Authority's direction at no cost to the Authority. The corrected and revised Services shall be resubmitted to the Authority for approval.

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

7.0 CLAIMS

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

General. All Claims asserted by the Consultant 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. and the New Jersey False Claims Act, N.J.S.A. 2A:32 et seq.

Notice of Claim. The Consultant 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 Consultant. 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.

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.

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 Consultant submits a written objection to the prior step and requests that its Claim proceed to the next step. If at any step in the process a Claim is resolved, the Consultant must sign a full and final release as to any and all matters arising from the Claim.

Step One: The Authority's Review.

The Consultant must provide to the 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 Consultant shall also submit to the Authority all documentation supporting the Consultant's Claim. The documentation provided to the Authority will serve as the basis for evaluation of the Consultant's position regarding the Claim throughout Step One of the administrative process. The Consultant shall submit additional information upon request of the Authority. No formal action will be taken by the Authority unless and until the Authority receives complete Claim documentation from the Consultant.

Authority Review and Decision. At the option of the Authority, a meeting may be scheduled with the Consultant, the Authority and the CM to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within sixty (60) Days of the receipt of the complete supporting documentation or within sixty (60) Days of any meeting with the Consultant, the Authority and the CM, whichever is later. This time limit may be extended by mutual agreement of the Parties, or by the Authority, when additional time is required by the Authority to properly review and respond to the Claim. The Consultant, 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 Consultant 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 Consultant for the subject Claim.

Step Two: Non-Binding Mediation. If the Consultant 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 the Authority's decision, the Consultant may request in writing that any or all outstanding Claims, 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, proceed to non-binding mediation.

Such request shall be sent to the Authority. No Claim will proceed automatically to Step Two and the Consultant must make a specific written request that the Claim be elevated to Step Two for review. The cost of non-binding mediation shall be shared equally by the Consultant and the Authority. The mediator shall be selected by the Authority, with the concurrence of the Consultant. The rules for the mediation shall be agreed to by the Authority, the Consultant and the mediator prior to the start of the mediation. If the Parties fail to agree on the rules for the non-binding mediation, the mediation will not proceed and Step Two review will be deemed completed.

8.0 REPRESENTATIONS

The Consultant hereby represents as follows:

- 8.1 The Consultant is financially solvent, able to pay its debts as they become due and possessed of sufficient working capital to complete the services required and perform its obligations under this Agreement.
- 8.2 The Consultant is able to furnish the workplace, tools, materials, supplies, equipment and labor necessary to complete the Services and perform all of its obligations under the Contractual Documents, and has sufficient experience and competence to do so.
- 8.3 The Consultant is authorized to do business in the State of New Jersey and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Consultant and the Services it will be performing.
- 8.4 The Consultant's execution of and performance under this Agreement are within its duly authorized powers.
- 8.5 The Consultant certifies that it has satisfied itself, from its own investigation, of the conditions to be met, and that it fully understands its obligations and agrees that it will not make any Claim for, or have right to, cancellation or relief from the Contractual Documents without penalty because of its misunderstanding or lack of information.
- 8.6 The Consultant certifies that all representations made by it in any of the Contractual Documents are true, subject to penalty of law. The Consultant understands and agrees that its knowing or intentional violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact may be cause for termination of this Agreement. The Consultant understands and agrees that the Consultant's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact shall serve as a legal bar to the Consultant's enforcement of its rights under the Contractual Documents, including any and all Claims at law or equity.
- 8.7 The Consultant and any firm it has subcontracted has provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to L. 2001, c. 134, as set forth in Appendix E, and the Consultant shall not enter into any subcontract with a firm that has not provided it and the Authority with proof of such valid business registration.

9.0 AUTHORITY'S RIGHTS AND RESPONSIBILITIES

9.1 Authority's Rights

- 9.1.1 The Authority shall have the right to perform Services and to award contracts in connection with same that are not part of the Consultant's responsibilities under this Agreement.
- 9.1.2 The Authority shall have the right, in its sole discretion, to accept or reject personnel provided by the Consultant. The Consultant shall make a timely and prompt resubmittal to provide other personnel to replace any that are rejected by the Authority, both at the initial submittal or upon any subsequent rejection or substitution of personnel.
- 9.1.3 The Authority shall have the right to establish and maintain a Consultant Performance Evaluation Policy and Procedure. The Consultant's performance under this Agreement shall be evaluated by the Authority and shall be a factor used in the technical scoring of the Consultant with respect to any future submission by the Consultant in response to a Request for Proposals by the Authority. This evaluation shall consider, among other things, the Consultant's ability to provide all required Services.
- 9.1.4 The Authority's approval, acceptance, use of or payment for all or any part of Consultant's Services hereunder shall in no way alter the Consultant's obligations hereunder.
- 9.1.5 The Authority and the State Police reserve the right to audit the records of the Consultant and its Subconsultants in connection with all matters related to the Contractual Documents. If, as a result of such audit, the Consultant is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Consultant's invoice amount to an amount considered commensurate with the actual services provided.
- 9.1.6 The Authority and their agents have the right to request, and the Consultant agrees to furnish free of charge, all information and copies of all records, documents or books relating to the provision of Service, which the Authority, or their agents may request. The Consultant shall allow representatives of the Authority and their agent(s) to visit the office(s) of the Consultant periodically, upon reasonable notice, in order to review any information, records, documents or books related to the Contractual Documents or to otherwise monitor any Services being performed.

9.2 Authority's Responsibilities

The Authority shall, on a timely basis, provide the Consultant with such information in its possession and/or control as may reasonably be necessary for the performance of the Services within the agreed upon time frame.

10.0 MISCELLANEOUS

- 10.1 Notices. All notices or other communications required under this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by FedEx or similar guaranteed overnight courier and shall be deemed to have been given on the Day after depositing in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A (Special Conditions). Electronic transmission of information may be required, as may be set forth in the Scope of Services.

- 10.2 Incorporation by Reference. This Agreement incorporates by reference, as if set forth herein, all of the Contractual Documents in their entirety, including but not limited to this Agreement and its appendices; the Request for Proposals and the responses thereto; and any Amendments and any addenda.
- 10.3 Conflict in Terms. In the event of a conflict in terms among the Contractual Documents, the following order shall prevail for purposes of interpretation:
- 10.3.1 Appendix A (Special Conditions)
 - 10.3.2 Appendix B (Scope of Services)
 - 10.3.3 Agreement (excluding Appendices)
 - 10.3.4 Proposals
- 10.4 No Waiver of Warranties or Legal/Equitable Remedies. Nothing in the Contractual Documents shall be construed to be a waiver by the Authority of any warranty, expressed or implied, or any remedies at law or equity, except as specifically and expressly stated in a writing executed by the Authority.
- 10.5 Procedural Requirements. The Consultant shall comply with all written procedural instructions that may be issued from time to time by the Authority.
- 10.6 Governing Law. This Agreement and all other Contractual Documents, and any and all litigation arising therefrom or related thereto, shall be governed by the applicable laws, regulations and rules of the State of New Jersey without reference to conflict-of-laws principles.
- 10.7 Time of the Essence. All time limits as stated in the Contractual Documents are of the essence.
- 10.8 Entire Agreement and Amendments. This Agreement and the other Contractual Documents represent the entire and integrated agreement between the Consultant and the Authority and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement and all other Contractual Documents may be amended only by written instrument signed by both the Consultant and the Authority. Should the Consultant at any time find existing conditions that would make modification in requirements desirable, it shall promptly report such matters to the Authority for consideration.
- 10.9 Severability. In the event that any provision of any Contractual Document shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.
- 10.10 Waiver of Breach. In the event that any provision of any Contractual Document should be breached by any party and thereafter waived by any party, such waiver shall be limited to the particular breach so waived by any party and shall not be deemed to waive any other breach. Any consent by the Authority to a delay in Consultant's performance of any obligation shall apply only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction. And any delay in the Authority's enforcement of any remedy in the event of a breach by the Consultant of any term or condition of the Contractual Documents or any delay in the Authority's exercise of any right under the Contractual Documents shall not be construed as a waiver.
- 10.11 Execution in Counterparts. This Agreement and any other Contractual Document, where applicable, may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

- 10.12 Unit of Fiscal Integrity. The NJ State Police (or its agents) may, at its discretion, investigate, examine and inspect the activities of the Consultant and all other parties involved with the Services. The NJ State Police (or its agents) may require the Consultant or any other party involved with the Services to submit duly verified reports, which shall include such information and be in such form as the NJ State Police (or its agents) may require. In addition to the foregoing, the NJ State Police (or its agents) may investigate, examine, inspect, or audit in any manner and at such times as the NJ State Police deems necessary. The Consultant shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the NJ State Police (or its agents), in its discretion, to investigate, examine, inspect or audit in any manner and at such times as the NJ State Police (or its agents) deems necessary.
- 10.13 Entry Clearance. The Consultant and its personnel and Subconsultants shall be subject to such entry clearance at School Facilities Projects and other locations as may be required, if any, in order to fulfill obligations under the Contractual Documents.

APPENDIX A
SPECIAL CONDITIONS

A.1 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: Ronald F. Carper, Jr.

Consultant:

APPENDIX B

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INTRODUCTION

The following Scope of Services has been updated to reflect the current environmental review process undertaken by the New Jersey Schools Development Authority (the “Authority”) on proposed school development projects. Appendix B of the Agreement between the Authority and the Site Environmental Consultant (SEC) incorporates this Scope of Services.

BASIS AND BACKGROUND FOR SCOPE OF SERVICES

In 2009, the State of New Jersey adopted interim rules under the Site Remediation Reform Act (SRRA). Under SRRA, the New Jersey Department of Environmental Protection (NJDEP) takes on a significantly reduced level of direct oversight with respect to the vast majority of sites in the State in need of remediation, compared to historical practices.

The NJDEP will continue to provide an oversight function on school development projects managed by the Authority. However, they will no longer issue No Further Action letters (NFAs) or review technical documents. Instead, Site Environmental Consultants (SECs), authorized as Licensed Site Remediation Professionals (LSRPs) by NJDEP will be responsible for ensuring that environmental assessment, investigation, and remediation activities are completed according to NJDEP requirements; and they will be responsible for issuing a Remedial Action Outcome letter (RAO), as the closing document for these activities.

These activities may include, but are not limited to, the preparation of preliminary assessment reports; environmental screening reports; site investigation and remedial investigation reports; remedial alternatives analyses and remedial action selection reports (RASR); conceptual site models; multimedia exposure and risk characterization reports; preparation of remedial action work plans (RAWP); and the technical oversight and documentation of remediation work performed by a contractor, i.e., a remedial action report (RAR).

The LSRP will be responsible for the issuance of the RAO, which certifies that environmental investigation and remedial actions were completed in accordance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C); the Technical Requirements for Site Remediation (N.J.A.C. 7:26E), and the Unregulated Heating Oil Tanks (UHOT; N.J.A.C. 7:26F). NJDEP plans to adopt final rules in May 2012.

Under this contract, the Authority is securing SECs that have the capability to perform both LSRP and non-LSRP functions. If land acquisition is required to support a project, it is expected that the Authority will rely on the services of a non-LSRP during its initial environmental due diligence

phase, and eventually opt into the LSRP program if a determination is made to acquire the land in need of remediation. Consequently, the non-LSRP work must be completed in a sufficiently thorough manner to allow seamless transition to an LSRP. If the results of environmental due diligence indicate remediation of the site is not required, the Authority may elect to engage an LSRP to review the results of the due diligence and issue the RAO to attain environmental closure earlier in the project life. Otherwise, the LSRP will be retained to ensure that remediation of the project site complies with NJDEP requirements.

The SEC will be responsible for the completion of the various environmental reviews required under the Kiddie Kollege law of 2007 and any subsequent related amendments or related legislation. This law requires prior approvals to be obtained before construction permits and/or occupancy certificates are issued by the New Jersey Department of Community Affairs (DCA). An RAO or a Remedial Action Work Plan (RAWP), prepared by the LSRP, is required for issuance of a construction permit; and an RAO and certification from the Department of Health and Senior Services (DHSS) are required by DCA as a condition of occupancy.

Under this contract, the SEC may also be required to provide services such as: environmental communication support; remediation cost estimating; expert testimony and cost recovery litigation support; asbestos abatement monitoring, testing, and reporting; attend meetings on behalf of the Authority, complete technical reviews of remedial design specifications and bid documents, and perform remediation oversight and document remediation activities performed by others.

The Design Consultant (under most circumstances) will be responsible for the development of detailed technical specifications and bid documents to support the proposed remedial action and remedial technologies set forth in the Remedial Action Work Plan (RAWP) prepared by the SEC in accordance with N.J.A.C. 7:26E-6.2.

Under this framework, the SEC (as the LSRP for the Authority) will be responsible for affirming that the design meets the remedial action performance objectives set forth in the RAWP. The LSRP will play a key role through the schematic, design development and final design and contract document phases to ensure that design specifications and bid documents effectively integrate remediation requirements into the project schedule and construction phase logistics. At the discretion of the Authority, the Authority may assign the SEC and its LSRP to prepare design specifications and bid documents for remediation.

The Design Consultant will be responsible for the completion of site feasibility tasks that include, but are not limited to: programming and conceptual planning; site boundary and topographic surveys, utility availability and capacity analyses; subsurface geotechnical investigations and analyses; cut and fill analyses, wetland delineations and easements; existing building hazardous materials assessments; historical and cultural resource evaluations; demolition specifications; post-demolition surveys; design of environmental engineering controls; and traffic studies.

Recognizing that each project may present its own unique challenges and complexities, the Authority expects the SEC will need to play an integral role in the Program/Concept and Schematic Design Phases of the Project, particularly as it may relate to the estimated cost and effective

implementation of remedial actions into the property under consideration for construction of a school. This may include, but not be limited to participation in meetings, review of conceptual and schematic site development plans, remediation cost and schedule estimating, and review of site feasibility work product completed by the design consultant.

ISSUANCE OF TASK ORDERS

The Authority will issue Task Orders on a time-and-materials, not-to-exceed basis with a request to complete specific services. The Authority has no obligation under this Agreement to issue any Task Order to the SEC.

It is the Authority's intent to equitably distribute project assignments based on the Authority's evaluation of the site-specific needs of the project, including taking into consideration the unique technical capabilities of a particular consultant. Depending on the services required, the Authority may seek competitive proposals from multiple SECs for a specific task.

The Authority will provide the SEC with a Preliminary Task Order Request (PTOR) that identifies the technical scope of work to be undertaken.

The SEC will submit a written proposal including a proposed scope, schedule, and budget necessary to complete the scope of services requested in the PTOR. The Authority will review, and if found to be acceptable, approve the written proposal. If the written proposal is not acceptable to the Authority, the Authority may elect to negotiate the scope with the SEC, or to seek an additional scope, schedule and budget from another SEC.

Upon approval of the written proposal including scope, schedule, and budget, the Authority will issue a final Task Order and Authorization to Proceed (ATP) to the SEC. Assuming a decision is made by the Authority for the work to proceed, the ATP results in a commitment of funding to the project and represents a written ATP with the scope of services. Work shall not proceed without an executed ATP.

DESCRIPTION OF SCOPE OF SERVICES

This section provides descriptions of the services that may be required as part of the environmental review process.

1.0 ENVIRONMENTAL SCREENING REPORT

The NJDEP developed the Environmental Screening Report ("ESR") as a tool for assessing the likelihood of obtaining the various environmental, historical and cultural, and land use approvals necessary to develop the site as an educational facility.

The ESR is intended to identify potential insurmountable technical and administrative obstacles that may exist on a proposed schools facility project, or in close proximity to the proposed site.

Specifically, it provides an identification of potential fatal flaws that cannot be overcome, and therefore, may serve as a basis for rejecting a particular site from further consideration.

Examples of the technical and administrative factors considered in the ESR include utility availability, known environmental quality concerns and regulatory conflicts, potential compatibility of neighboring land uses and community impacts, historic and cultural and natural resource impacts, and endangered species.

The SEC shall prepare an ESR for submission to the NJDEP as part of the application and approval process for land acquisition by the Department of Education pursuant to N.J.A.C. 6A: 26-7.1. The Authority recommends that the SEC complete and submit a Permit Identification Form to the NJDEP to assist in facilitating the permitting process.

The following sections describe the contents of the ESR.

1.1 Availability of Sewer Service

The SEC shall affirm that the site is located in an approved sewer service area and there is: (1) sufficient capacity to connect to an existing sewage collection line, and the treatment facility has adequate capacity to treat the wastewater for the proposed maximum enrollment, or (2) In the case that the site of the proposed school is in a non-sewered area, the SEC shall indicate the likelihood of the site being suitable for a discharge to ground water from either a package treatment plant or a septic system. The SEC shall produce a "Will Serve Letter" from the local sewerage authority that confirms the availability and willingness to supply a source of potable water for the project. If this survey was completed by the Design Consultant as part of their site feasibility work, the SEC shall reference their findings in the ESR and include a copy of the survey as an Appendix.

If applicable, the affirmation shall also include the status with respect to the locally approved Water Quality Management Plan (WQMP). If the location of the proposed school site is inconsistent with the WQMP the SEC shall include an estimated timetable for approval of a WQMP Amendment by the local, County and State agencies in the ESR.

1.2 Availability of Potable Water Supply

The SEC shall affirm that a local water purveyor serves the proposed School Facilities Project, and there is capacity within the system to service the proposed maximum enrollment. The SEC shall produce a "Will Serve Letter" from the local water purveyor that confirms the availability and willingness to supply a source of potable water for the project. Alternatively, if potable water is not available at the proposed site, provide a statement from a professional engineer or licensed geologist indicating the likelihood that there is sufficient groundwater available to provide for the drilling of potable water wells, and that approvals for withdrawal may be obtained. If this survey was completed by the Design Consultant as part of their site feasibility work, the SEC shall reference their findings in the ESR and include a copy of the survey as an Appendix.

1.3 Identification of Potential Coastal and/or Freshwater Wetlands

The SEC shall affirm the absence/presence of wetlands and if required prepare a Letter of Interpretation (LOI) for submission to NJDEP. The SEC shall review published wetlands information and produce photo-documentation of the wetlands area, including a sketch map outlining the extent of wetlands and a list of potential NJDEP coastal or freshwater wetlands permits necessary to conduct construction activities on the proposed school site. If this survey was completed by the Design Consultant as part of their site feasibility work, the SEC shall reference their findings in the ESR and include a copy of the wetlands survey and accompanying documentation as an Appendix.

1.4 Identification of Streams, Flood Hazard Areas or Other Water Bodies

The SEC shall determine the presence or absence of streams or other water bodies on the proposed site. The SEC shall provide a report that is based on a review of published data, photo documentation on the stream or water body, and include a sketch map showing the 100 and 500 year flood hazard area delineations, if applicable. The ESR shall also indicate if school construction activity would require a stream encroachment permit. If this survey was completed by the Design Consultant as part of their site feasibility work, the SEC shall reference their findings in the ESR and include a copy of the survey and accompanying documentation as an Appendix.

1.5 Identification of Dedicated Open Space

The SEC shall determine if any land-related encumbrances exist on the proposed site, including but not limited to deed restrictions, easements, protective covenants or rights of way. The SEC shall determine if any Green Acres covenants exist based on a review of the municipal and/or county Recreation and Open Space Inventories (ROSI) or documents on file with the NJDEP's Green Acres Program. If this survey was completed by the Design Consultant as part of their site feasibility work, the SEC shall reference their findings in the ESR and include a copy of the survey as an Appendix.

1.6 Identification of Historic and/or Archeological Resources

The SEC shall document the potential presence or absence of historic or archeological resources on or adjacent to the site eligible for inclusion on the New Jersey Register of Historic Places. The SEC shall prepare a report that documents the methods used in the investigation and provides photo documentation on any structures over 50 years old. If historic sites, historic districts, or archeological resources are identified on or adjacent to the site of the proposed school, the SEC shall provide additional documentation including historic background information and maps, and determine whether the need exists for additional evaluation. If this survey was completed by the Design Consultant as part of their site feasibility work, the SEC shall reference their findings in the ESR and include a copy of the survey as an Appendix.

1.7 Identification of Threatened or Endangered Plant or Animal Species

The SEC shall determine the presence or absence of State or Federal threatened or endangered plant or animal species on or immediately adjacent to the proposed site. If this survey was completed by the Design Consultant as part of their site feasibility work, the SEC shall reference their findings in the ESR and include a copy of the survey as an Appendix.

1.8 Assessment of the Potential of Soil and/or Groundwater Quality Concerns

The SEC shall incorporate the substantive findings of the Preliminary Assessment Report (PA) into the ESR. The SEC shall provide an affirmation that a copy of the PA Report was provided to the Design Consultant. If site investigation and/or remedial investigations were completed for the property, the Site Consultant shall incorporate the substantive findings of these investigations into the ESR.

1.9 Investigation of Prior or Current Environmental Enforcement Actions, Site Remediation Activities and Regional Context

The SEC shall complete a search of municipal, county, state, and federal records to determine whether the proposed site, or immediately adjacent sites, are (or were previously) the subject of environmental enforcement actions or remedial actions. It is expected that most of this information may be readily available from a commercial environmental database product and may be extracted from the PA Report if previously completed.

The SEC shall review the NJDEP Known Contaminated Sites List; facilities that report under the Toxic Release Inventory; major facilities permitted for Hazardous Air Pollutants; facilities regulated under the Discharge Prevention Control and Countermeasure Program; hazardous waste treatment, storage and/or disposal facilities; and pipelines transmitting petroleum products and hazardous substances. In addition to any map supplied in a commercial environmental database product, the SEC shall consult NJDEP's GeoWeb geographical information system to affirm the accuracy of the database product. If "orphan properties" are listed in the database product, but were not identified on a map due to incomplete address information, the SEC shall document that visual inspection of the vicinity was conducted in an attempt to reconcile the incomplete information.

1.10 Identification of Adjacent Land Uses

In addition to the above, the SEC shall identify whether the following property uses exist within 500-feet of the proposed site boundary – highway ramps, railroads, airports, high voltage power lines, high pressure utility lines, dumps, agricultural uses (pesticides), cemeteries, junkyards, landfills, chemical plants, refineries, large above ground fuel storage tanks, gasoline service stations, automobile repair shops, dry cleaners, and nail salons.

2.0 ENVIRONMENTAL SERVICES

This section describes the scope of environmental services that a SEC may be requested to perform on behalf of the Authority. These services include, but may not be limited to preliminary assessments, determination of the presence of environmental impacts, delineation of these impacts if they exist, evaluation of possible site remediation options, preparation of remedial action work plans, oversight and documentation of remedial actions, attendance at meetings, and communication of site environmental issues and clean-up programs to community groups and school boards.

2.1 Preliminary Assessment

In November 2005 the EPA updated its requirements for completing Phase 1 ESAs to qualify for landowner liability protections under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). New Jersey has integrated the substantive requirements of EPA's Phase 1 ESA program into its Technical Requirements for Site Remediation, which include the requirement to complete a Preliminary Assessment (PA). A PA is required for every school facilities capital project, regardless of whether land acquisition is necessary to support the project. If a PA was previously completed, the SEC shall determine whether the report can be relied upon, or whether a new report is necessary.

The SEC shall conduct all appropriate inquiry and prepare an environmental report in compliance with N.J.A.C. 7:26E-3.1 and ASTM E-1527-05. The hybrid document required by the Authority is a technical report produced in compliance with ASTM E-1527-05 (Standard Practice for Environmental Site Assessments) and N.J.A.C. 7:26E-3.1. The objective of the Preliminary Assessment ("PA") is to identify potential areas of concern ("AOC") and/or recognized environmental conditions at the site, as well as to establish an appropriate Site Investigation ("SI") scope of work to document soil and groundwater quality. Compliance with the ASTM standard is being required with regards to identifying potential off-site issues that could impact the project. These actions are being implemented to support the future intended use of the property as a school facility.

2.1.1 Preliminary Assessment Report

The SEC shall prepare a PA report, in accordance with the schedule, and in accordance with both substantive and formatting requirements of N.J.A.C. 7:26E. At a minimum the PA report must affirm the following:

- Certification that the inquiry into the property and the resulting report was prepared by a qualified "Environmental Professional" with requisite experience;
- Visual inspections of the property and adjacent properties was completed by the Environmental Professional;

- Identification of the presence of existing groundwater monitoring wells within 200-feet of the property using visual means and/or electronic records available from the NJDEP Bureau of Water Allocation;
- Interviews were completed with past and present owners, operators, occupants, and the prospective purchaser;
- Reviews were completed of historical sources back to the first obvious use of the property including the review of historical Sanborn Fire Insurance Maps, and historical aerial photographs;
- Reviews of available government records were completed;
- An evaluation of commonly known or reasonably attainable information was completed, including the degree of obviousness of the presence of contamination and the ability to detect the presence of such contamination; and,
- If no areas of concern are identified, certification by a LSRP that additional investigation or remediation activities are not warranted, and that a remedial action outcome (RAO) is appropriate.

The SEC shall be responsible for revising the PA Report and/or any associated plans, as required pursuant to review and reasonable comments.

2.2 Site Investigation Activities

Depending on the property under review, the scope of the evaluation can range from limited site investigations to more complex remedial investigations and supporting studies to identify remedial actions and their cost to implement. If requested, the SEC shall in consultation with the Authority develop a Site Investigation Work Plan to comply with the requirements of N.J.A.C. 7:26E-3.1 and to allow preliminary estimates of remedial costs for property acquisition negotiations. The following elements (at a minimum) shall be included in the site investigation.

2.2.1 UST Investigations

Based on the findings of the PA, the SEC shall determine and list the location, capacity, and history of operation of each Underground Storage Tank (UST) (if known). The use of geophysical methods and qualified operators are strongly encouraged, and in most cases necessary, to assist in determining the presence of unregulated underground tanks. The SEC shall develop and submit for approval a sampling program for any UST identified as an Area of Concern (AOC).

2.2.2 Soil and Groundwater Sampling and Analyses

The SEC may be contracted by the Authority to assess soil and groundwater quality, and based on the information available, assist in the development of preliminary remediation cost estimates. The Authority recognizes that access to the subsurface may be limited in certain instances due to the presence of buildings and other structures.

While there is no regulatory requirement to perform a groundwater quality investigation if soil does not contain compounds in excess of NJDEP's Impact to Groundwater soil remediation standards the

Authority may require that, an assessment of groundwater quality be performed in the site investigation phase as a preliminary evaluation of the potential for vapor intrusion concerns. Groundwater samples may be collected via direct push technologies or by installing temporary well points to determine impacts to groundwater. Sufficient groundwater samples shall be collected to preliminarily evaluate groundwater quality and hydrogeologic conditions of the proposed site.

The SEC is responsible for mobilizing all equipment necessary to conduct the investigation and collect the necessary samples as well as providing qualified personnel needed to operate the equipment and record the investigation. The SEC shall be responsible for the quality and accuracy of the information collected and shall provide for the safe and accessible storage of this information. All site investigation costs shall be maintained for possible future cost recovery purposes.

2.2.3 Site Investigation Report, and Responsibility for Subsequent Revisions

The SEC shall prepare a Site Investigation (“SI”) Report, as prescribed in N.J.A.C. 7:26E-3.13 and in accordance with the schedule agreed upon in the task order. The draft SI Report shall be submitted to the Authority in electronic format for review and approval. The SEC is responsible for revising the draft SI Report and/or any associated plans, as required pursuant to review and reasonable comments. Revisions to correct typographic editing errors or omissions by the SEC shall be provided at no additional cost.

2.3 Remedial Investigation Activities

The SEC shall submit for review and approval a Remedial Investigation Work Plan (RIWP) that briefly outlines the proposed remedial investigation for the site addressing soil, groundwater, soil vapor, and/or indoor air quality impacts. As an attachment to the RIWP, the SEC shall include detailed estimates of cost and schedule for implementation of the RIWP.

Remedial Investigation Activities may include collecting and analyzing soil, groundwater, soil gas, air and other media samples necessary to delineate an impacted area in accordance with recognized industry standards and the scope outlined in the work plan. The SEC shall develop a budget for implementing the field work and submit this for review and approval prior to implementing field work.

The SEC is responsible for mobilizing all equipment necessary to conduct the investigation and collect the necessary samples as well as providing qualified personnel needed to operate the equipment and record the investigation. The SEC shall be responsible for the quality and accuracy of the information collected regarding site environmental conditions and shall provide for the safe and accessible storage of this information. All remedial investigation costs shall be maintained for possible cost recovery purposes.

2.3.1 Remedial Investigation Report, and Responsibility for Subsequent Revisions

Based on the implementation of the RIWP, the SEC shall prepare and submit a draft RI Report,

following the format prescribed in N.J.A.C. 7:26E-4.8, to the Authority in electronic format for review and approval. The SEC shall be responsible for revising the draft RI Report and/or any associated plans reasonably requested by the Authority prior to finalizing the draft RI Report in preparation for submission to NJDEP.

2.4 Triad Investigation

The SEC may be contracted to employ alternative or innovative site investigation techniques, such as the USEPA Triad approach.

Prior to implementation of field work under a Triad approach investigation the SEC shall work with the site stakeholders and generate a brief work plan that includes the following information:

- Identification of the site stakeholder team
- Utilization of systematic planning for the development of a conceptual site model utilizing all available data collected to date
- Development of a dynamic work strategy and decision logic
- Implementation of a field based investigation plan that can accommodate real-time data collection
- Identification of appropriate data visualization technology
- Identification of appropriate data integration methodology

The SEC shall submit the findings of the Triad investigation in a report for review and approval by the Authority.

2.5 Environmental Risk Characterization, Receptor Evaluation, and Site Conceptual Model Development Services

The SEC may be contracted to develop remediation strategies that employ human health risk and exposure assessments. This risk evaluation may include the following primary elements: (1) a site characterization; (2) an exposure assessment; (3) a toxicity assessment; and (4) a risk characterization effort to support health protection goals that are compatible with an intended future use of the site for a school.

The site characterization shall include an identification of the chemicals of concern found at the site, and the development of a conceptual site model that defines exposure. If required under SRRA, the SEC shall prepare and submit a conceptual site model to the Authority for approval. This conceptual site model may be graphical, tabular, or in narrative format, but must provide an accurate understanding of complete exposure pathways for the site. This assessment must identify the physical setting and the potential exposed populations.

The exposure assessment must determine or estimate the magnitude, frequency, duration and routes of exposure. The assessment must identify the sources and receiving media; fate and transport considerations in the release media; and the identification of exposure points and exposure routes.

The toxicity assessment shall consider the potential for particular contaminants to cause adverse effects in exposed individuals as well as to provide an estimate of the relationship between the extent of the exposure to a contaminant and the increase likelihood and/or severity of adverse effects. Where appropriate, this assessment shall consider the carcinogenic and non-carcinogenic effects of each chemical, appropriate reference doses and cancer slope factors from recognized sources (e.g. IRIS, HEAST, ATSDR, etc.)

The risk characterization shall be a summary of the toxicity and quantitative exposure assessments consistent with USEPA policy for risk characterization (1995). This guidance may be found at <http://www.epa.gov/ORD/spc/rcpolicy.htm>. Paramount to this characterization is a demonstration that the selected remedy will attain the appropriate site-specific remedial action objectives.

If certain site conditions warrant, the SEC may be contracted to perform a more robust human health risk assessment to support the school construction activities. The scope of any such risk assessment will be developed by the Authority in consultation with the NJDHSS.

If required under SRRA, the SEC shall complete an initial receptor evaluation form for submission to NJDEP.

2.6 Development of Remedial Action Objectives and Performance Standards

The SEC shall develop a list of specific remedial action performance objectives that must be met for the intended future use of the property as a school. Common remedial action objectives and performance standards may include:

- Removal of separate phase hydrocarbon;
- Horizontal and vertical delineation of on-site soil and groundwater impacts;
- Mitigate soil impacts to groundwater;
- Mitigate off-site migration of pollution from on-site sources;
- Mitigate on-site migration (if present) of pollution from off-site sources;
- Mitigate potential vapor intrusion pathways;
- Acquisition of a Remedial Action Outcome (RAO);
- Acquisition of DHSS indoor environment certification;
- Minimize long term operations and maintenance costs; and
- Alternative endpoints for remediation.

2.7 Remedial Action Selection Report

If required, the SEC shall prepare a Remedial Action Selection Report (RASR) that provides sufficient documentation that the remedial actions proposed for the site are protective of human health and the environment, and have been selected after consideration of various factors, including but not limited to: cost, implementability, reliability, effectiveness, and the intended future use of the property for the school facilities projects. Specific guidance for the preparation of a RASR may be found in Subchapter 5 of New Jersey's Technical Requirements for Site Remediation.

The RASR shall include (1) a narrative description of appropriate remedial action objectives that would be consistent with the future intended use of the site for a school, (2) identification and evaluation of an applicable and focused list of soil and groundwater remediation alternatives that satisfy the objectives. The remedial alternatives may be presented as broadly defined measures that by themselves or in combination with other measures will satisfy the applicable objectives for the site; and, (3) an analysis of the applicable evaluation criteria - effectiveness, implementability, and cost. Other factors including potential impacts of the remediation to the local community, the degree of permanence of the remedial action, and potential injury to natural resources may also be considered.

2.7.1 Effectiveness

The effectiveness evaluation focuses on three factors: (1) the overall protection of human health and the environment; (2) the potential short-term and long-term effectiveness in handling estimated areas or volumes of impacted media (soil and groundwater) and meeting the remedial action objectives of mitigating direct and indirect exposure and discharges to sensitive downgradient receptors; and, (3) the proven performance and reliability with respect to the reduction of toxicity, mobility, and volume of contaminants and conditions at the site.

2.7.2 Implementability

This criterion encompasses the technical and logistical, and administrative feasibility of implementing the remedial action. The site-related aspects of implementability may include, but are not limited to: site work accessibility; final structural integrity of the site during and after remediation; ability to obtain the necessary permits for remedial actions; community acceptance; availability of necessary resources, equipment, and skilled workers to implement the remedy.

The determination that an alternative is not technically feasible and is not available will usually preclude it from further consideration unless steps can be taken to change the conditions responsible for the determination. Typically, this type of "fatal flaw" would have been identified during the technology screening, and the infeasible alternative would not have been assembled. Negative factors affecting administrative feasibility may involve coordination steps to lessen the negative aspects of the alternative, but will not necessarily eliminate an alternative from consideration.

2.7.3 Consistency with Applicable Laws and Regulations

This criterion encompasses the regulatory feasibility of implementing the remedial action. The selected remedial alternative must be consistent with applicable laws and regulations. Specifically, the selected remedy must satisfy NJDEP's Technical Requirements for Site Remediation (N.J.A.C. 7:26E-1 et. seq.), in addition to the feasibility of acquiring stream encroachment permits, soil erosion and sediment control permits, local construction permits, and general stormwater permits. These criteria must be considered with respect to each alternative evaluated.

2.7.4 Cost

Estimates of capital and operation and maintenance (O&M) costs associated with each alternative shall be presented. The cost estimates used in the alternative screening process may originate from several sources of information. Commercial cost estimating guides, such as Means Site Work Cost Data, generic unit costs derived from other publications, vendor contacts and actual cost data from similar sites subjected to remedial actions in New Jersey are recommended. If requested by the Authority, the SEC shall complete a net present value analysis of the capital and O&M costs using an interest rate of 4% and 30 years for any long term stewardship obligation that may be associated with an engineering control.

2.7.5 Remedial Action Selection Report Deliverable

The following table of contents is presented as an acceptable format for a Remedial Action Selection Report (RASR) submitted to the Authority:

- I. Executive Summary
- II. Introduction
 - A. Purpose and Scope
 - B. Brief Site Description
 - C. Content of RASR
- III. Appropriate and Relevant Remedial Action Objectives
 - A. Soil
 - B. Groundwater
 - C. Indoor Air Quality
 - D. Identification of Constituents of Concern
 - E. Applicable Remediation Criteria
- IV. Focused Evaluation of Remedial Alternatives
 - A. Applicable Evaluation Criteria
 - 1. Effectiveness
 - 2. Implementability and Consistency with Project Schedule
 - 3. Consistency with Applicable Laws and Regulations
 - 4. Potential impacts to the Local Community
 - 5. Potential for Natural Resource Injury
 - B. Identification, Evaluation, and Selection of Site Specific Remedial Alternatives
 - 1. Identification and Screening of Site Specific Remedial Alternatives
 - 2. Evaluation of Applicable and Relevant Remediation Technologies
 - C. Preliminary Engineering Evaluation
 - 1. Remedial Alternatives that Satisfy RAOs.
 - 2. Capital and O&M Cost Analyses.
 - D. Results of the Evaluation
- V. Recommendation for Remedial Action

2.7.6 Development of Preliminary Remediation Cost Estimates

The SEC may be asked to develop preliminary cost estimates for appropriate remedial actions for submission separately. The cost estimate shall assume that all remedial action is conducted in accordance with applicable local, State and Federal regulatory and code requirements. The cost estimates shall include a breakdown of anticipated Project Management costs associated with completing each such remedial action. If requested by the Authority, the remediation cost estimates shall include a net present value analysis (if long term operations and maintenance of engineering and institutional controls are needed), as well as an estimate of engineering fees to obtain necessary permits and approvals.

2.8 Remedial Action Work Plan

The SEC shall prepare and submit for review and approval a Remedial Action Work Plan (RAWP) in accordance with the applicable provisions N.J.A.C. 7:26E. This RAWP shall include, but not be limited to:

- A summary of the report or a copy of the findings/recommendation section of the Remedial Investigation Report (RIR) and Remedial Action Selection Report (RASR);
- The identification of all applicable remedial action performance objectives to be satisfied;
- A description of the selected remedial action and the remedial technology to be conducted;
- A building decontamination and demolition plan. If requested, this plan shall be developed in consultation with the Design Consultant.
- A scaled site map that clearly identifies the area(s) proposed for remediation. This map shall include: the location of remedial treatment units, where applicable; the volume and mass of each environmental medium to be remediated; the vertical and horizontal extent of area to be remediated, to the extent practicable; the location, depth and concentration of contaminants in excess of the remediation standard; sample locations, depths and parameters for post-construction samples;
- A quality assurance project plan (QAPP) including proposed sampling and analytical methods, where requested;
- A health and safety plan that is compliant with OSHA 1910.120 requirements;
- A descriptive soil management plan that includes specific erosion and sedimentation control measures to be undertaken, including the management of fill material and top soil importation and exportation;

- A plan that defines the roles and responsibilities requirements for performance testing of passive and/or active sub-slab vapor mitigation systems that may be required. This plan shall be developed in consultation with the Design Consultant.
- A plan that describes the testing and management of concrete and masonry that may be recycled. This plan shall be developed in consultation with the Design Consultant;
- A plan that describes the requirements and cost estimate for the development of any groundwater Classification Exception Area (CEA)
- A plan that describes dust and odor control and monitoring measures;
- An identification of all remedial action permits required for the remedial activities;
- A description of site restoration plans. This plan shall be developed in consultation with the Design Consultant;
- A description of procedures for dismantling and removal of remedial structures and equipment from the site, if applicable; and
- A cost estimate for any building demolition and site remedial actions. These costs shall be estimated in consultation with the Design Consultant.
- The SEC shall prepare a project management plan that includes a scope, schedule, and budget for its LSRP to affirm that the site remediation design documents prepared by the Design Consultant meet the remedial action performance objectives set forth in the RAWP. The plan shall accompany the RAWP and be provided to the Authority under separate cover.
- The plan shall include (1) attendance at three remediation design meetings at various milestones (schematic, design development, and 95% completion of final design and contract document development); (2) a plan to monitor and report to the Authority on the design progress at the three milestones; (3) preparation of design progress meeting minutes; and (4) a plan to review contract documents for conflicts, incomplete information, and constructability prior to bidding.

Two hard copies of the RAWP shall be provided. One complete color copy of the report in a “cover-to-cover” PDF format shall be emailed to the Authority and provided on a CD. Engineering drawings prepared using AutoCAD software shall be emailed to the Authority in PDF, DWG and DWF format, or posted on the SEC’s secure FTP site in DWG and DWF format for the Authority to download. Revisions to this report shall not be considered an additional service.

2.9 Remedial Action Oversight

The SEC may be contracted to provide either full-time or part-time construction monitoring staff to

ensure that the remedial actions performed on the Site by the remediation contractor are documented in compliance with the plans and specifications. The SEC may be contacted to provide qualified staff to be available to perform soil and/or groundwater sampling and contract laboratory analyses as necessary to confirm post-excavation results of remedial soil removal operations.

The SEC may be contracted to maintain daily progress logs and issue weekly status reports on the progress of remedial actions at the Site as required by the task order.

2.10 Remedial Action Report and Progress Reports

The SEC may be contracted to comply with post-Remedial Action requirements, including all progress reporting requirements and the preparation of a Remedial Action Report, deed notice documents, and applicable remedial action permits in accordance with the applicable provisions of N.J.A.C. 7:26E. The SEC may be required to prepare or approve as-built drawings and/or technical specifications prepared by others that define the extent of engineering controls in accordance with the applicable provisions of N.J.A.C. 7:26E.

Two hard copies of the RAR shall be provided. One complete color copy of the report in a “cover-to-cover” PDF format shall be emailed to the Authority and provided on a CD. Engineering drawings prepared using AutoCAD software shall be emailed to the Authority in PDF, DWG and DWF format, or posted on the SEC’s secure FTP site in DWG and DWF format for the Authority to download. Revisions to this report shall not be considered an additional service.

2.11 Environmental Communication Plan and Support Services

The SEC may be contracted to assist with environmental outreach and communication. This assistance may include the development of fact sheets in consultation with the Authority, community mailers, preparation of Open House materials, and attendance at Open House presentations.

One-page fact sheets shall summarize information regarding the history of the site; the environmental, health and safety impacts of the site constituents; a description of the remediation activities; the safety, health and environmental impacts of the remediation activities; a clarification of the roles and responsibilities of the parties involved; a schedule of activities; and a telephone number to call for more information. Other readily available publications, such as constituent-specific toxicological data from ATSDR, may also be appropriate.

2.12 Environmental Remediation Cost Recovery Support Services

While environmental cost recovery actions may be limited, the SEC shall clearly document remediation costs incurred for the remedial actions. Cost data must be accurate, complete, and consistent from the beginning to the end of the project, and shall be tracked according to individual tax blocks and lots. If remedial actions extend to a contiguous lot, the SEC shall apportion the remediation costs to the extent possible using volume and/or contaminant mass calculations. The Authority may request quarterly summaries of remediation activities and costs incurred. These costs shall be presented in a tabular format in consultation with the Design Consultant

Photo-documentation, complete field notes, written notification to property owners, and provisions to allow property owners to obtain split samples for analysis are recognized methods to prevent claims of “spoliation of evidence.” In addition to field documentation, the need exists for engineering and scientific reporting that provides sufficient documentation that a proposed remedial action is protective of human health and the environment, allows for possible cost allocation and insurance recovery, and was selected after consideration of various factors identified in the remedial action selection process.

The SEC may be contracted to prepare a report that summarizes project cost documentation for potential cost recovery purposes.

2.13 Development of Environmental Quality Summaries for School Districts

The SEC may be contracted to develop brief summaries of environmental investigation work completed on a particular project, including work yet to be performed. These summaries shall be prepared for School District officials at specific milestones during the site feasibility and site development phase of the work. Key milestones include the completion of the site investigation report, remedial investigation report, remedial action selection report, and remedial action work plan. The objective of these summaries is to provide the District with key information relative to the remedial action objectives for the site, as well as to inform the District of any long term stewardship obligations associated with maintaining institutional and engineering controls on the property.

2.14 Development of Health and Safety Guidance for Visitors and Inspectors

Employee compliance with site health and safety requirements is the obligation of the employer. According to OSHA’s Hazard Communication Standard (29 CFR 1910.1200), an obligation exists for employers to inform employees about the chemical hazards that they may encounter in the workplace. It includes provisions for employee training, labeling of hazardous chemicals, maintaining material safety data sheets, and developing a written hazard communication plan.

The SEC may be contracted to develop informational fact sheets that summarize environmental quality at the site. These fact sheets would outline the management practices visitors, construction inspectors, and other regulatory officials must adhere to. The SEC may be asked to summarize the existing health and safety requirements that their employees are required to follow, present brief orientations to site visitors describing the health and safety issues associated with the site. This may also include the identification of various exclusion zones that may exist, and specific procedures to follow in case of an emergency.

2.15 Property Acquisition Environmental Cost Estimate Report

The PAECER serves to summarize environmental conditions for current site property owners, based on preliminary assessments and site investigations (when available) for a specific property or multiple properties with the same owner. In consultation with the Authority, the SEC shall develop the report from an analysis of studies conducted at the property to be acquired. Cost estimates shall

be based on professional experience for projects of similar scope and complexity.

The SEC shall prepare a Property Acquisition Environmental Cost Estimate Report (PAECER) for each property proposed for land acquisition and/or condemnation. The report shall include an estimate of the remedial cost to be borne by the Authority to remediate the site in order to build the proposed school facilities project.

The PAECER shall contain a brief summary of the environmental investigations conducted at the Site. The report shall contain a site plan showing the location of each AOC, soil sampling locations, monitoring wells, and all other significant items on the Site. This report shall contain a tabular summary, in accordance with NJDEP requirements, showing the results of the soil and/or ground water sampling on the Site. The report shall contain the SEC's recommendations for remedial actions, if any.

The report shall also include itemized cost estimates for specific soft costs (such as environmental investigation and reporting, design, permits, fees, oversight, post excavation sampling, long term stewardship obligations) and for the hard costs (such as soil or groundwater remedial actions, engineering control installation, asbestos abatement, and UST removal), which may be required to complete the remedial actions recommended for the Site. These line item cost estimates shall include an estimated schedule to complete the remediation.

The SEC shall prepare the report based on the use of the site for educational purposes.

The SEC shall prepare an Environmental Summary Memorandum (ESM) for each PAECER. This one-page summary is required by law to alert the property owner that there may be environmental concerns associated with this property. The ESM must be consistent with the format in the samples provided as Exhibit 1 to the Scope of Services. Assistance by the Authority will be available for the selection of the most appropriate ESM for the subject property.

The report shall also include as a separate attachment costs estimates for building demolition and site clearing on the Site. These cost estimates shall include both hard and soft costs associated with demolition, including demolition engineering plans, specifications, permits, utility disconnects, and contractor costs. This attachment shall also include an estimate of the cost of any necessary off-site remediation. These cost estimates shall include an estimated project schedule for clearing and building demolition.

The PAECER shall be prepared in a format, with accompanying attachments, suitable for presentation to the current property owners. The content of the PAECER shall be consistent to the Remedial Action Selection Report above.

Suggested Outline of the PAECER:

1. Executive Summary
2. Introduction
 - 2.1 Purpose, Scope, and Project Description

- 2.2 Brief Physical Site Description
- 2.3 Brief Description of AOCs
- 3. Summary of Soil and Groundwater Sampling Data
- 4. Identification of Appropriate and Relevant Remedial Action Objectives
- 5. Identification of Remedial Alternatives
- 6. Focused Evaluation and Preliminary Cost Estimate of Remedial Alternatives to Satisfy Remedial Action Objectives for Use of the Site as a School
- 7. Recommendation for Remedial Action

Cost estimates should reflect cost to satisfy NJDEP technical requirements, and assumptions must to be outlined. Two hard copies of each PAECER shall be provided. One complete color copy of the report in a “cover-to-cover” PDF format shall be emailed to the Authority. Revisions to this report shall not be considered an additional service.

2.16 Potential Expert Witness Testimony

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

2.17 Meetings

The SEC shall develop a program to support the Authority at meetings. For the purposes of cost estimating the SEC shall assume a minimum of four (4) 2-hour meetings. Travel time to and from meetings is not reimbursable without express consent of the Authority.

Depending on the subject matter to be discussed at the proposed meeting, the Task Order Consultant shall propose a staffing plan to support the project meetings.

3.0 DELIVERABLES

Unless otherwise specified, the SEC shall provide one (1) electronic and two (2) hard copy of each draft deliverable for review and comment. One complete color copy of the report in a “cover-to-cover” PDF format shall be transferred digitally to the Authority. Engineering drawings prepared using AutoCAD software shall be transferred digitally to the Authority in PDF, DWG and DWF format. The Authority requires that all documents be submitted in a technically defensible, clear and concise manner. The Authority will consider a document as deficient if it does not meet this requirement. Revisions to any draft deliverable shall not be considered an additional service if the revisions to the work product are necessary to meet NJDEP requirements or to correct any deficiency identified by the Authority or the NJDEP.

All draft deliverables shall contain a cover page marked “DRAFT,” and where appropriate, each

deliverable shall include plans, figures, tables, and, if requested, color photographs. All narrative reports shall include a brief and concise executive summary, table of contents, and appropriate certification pages prepared for certification.

“Final deliverables” shall be complete documents with executed certification pages where appropriate. All Final deliverables shall contain a cover page marked “FINAL,” and shall include plans, figures, tables, and color photographs. Final deliverables shall be burned to a CD to be provided to the authority and transferred digitally in a single cover-to-cover PDF format. Final engineering drawings prepared using AutoCAD software shall be included on the CD and also emailed to the Authority in PDF, DWG and DWF format, or posted on the SEC’s secure FTP site in DWG and DWF format for the Authority to download.

Copies of analytical data shall be provided in a format compatible with NJDEP requirements.

Upon completion, and if required pursuant to a Task Order, the SEC shall provide one electronic final copy of each deliverable, and the minimum number of printed copies of each deliverable according to the following schedule.

Report Title	No. of Printed Final Copies
Environmental Screening Report	5
Preliminary Assessment Report	2
Preliminary Assessment Site Investigation Report	2
Remedial Investigation Work Plan	2
Remedial Investigation Report	2
Human Health Risk Characterization Report	2
Remedial Action Selection Report	2
Remedial Action Work Plan	2
Environmental Communications Plan	2
Environmental Quality Summary for School District	2
Health and Safety Guidance Summary for Visitors and Inspectors	2
Remedial Action Report	2
Property Acquisition Environmental Cost Estimate Report	2

Format of Final Submissions Cover Page: all reports and CD labels shall include the following:

- Project Name
- Location
- District
- DOE number
- Task Order number (unique to consultant and phase of project) and Title
- Consultant name, address
- Date
- Lot and Block numbers

EXHIBIT 1

Environmental Summary Memorandum (ESM)

{See the Attached Sheets}

APPENDIX C

COMPENSATION – PRICE PROPOSAL

{See the Attached Sheets}

- C. The Consultant further certifies that there have been no changes in circumstance, conditions or status of the Consultant's prequalification with the NJSDA since the latest prequalification application was filed by the Consultant with the NJSDA.
- D. The Consultant certifies that, if applicable, any change in the information provided by the Consultant in its prequalification application currently on file with the NJSDA will be immediately reported to the NJSDA.
- E. The Consultant certifies that, if applicable, it shall immediately notify the NJSDA and the Unit of Fiscal Integrity (PO Box 063, Trenton, NJ 08625) if any director, partner, officer, employee of the Consultant or any shareholder owning 5% or more of the Consultant's stock:
 - 1. Is the subject of investigation involving any violation of criminal law or other federal, state, or local law or regulation by any governmental agency; or
 - 2. Is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
 - 3. Is convicted of any crime under state or federal law, or of any disorderly persons offense or misdemeanor involving a business-related offense.
- F. The Consultant hereby waives any objection it might otherwise raise permitting the Unit to investigate, examine and inspect all activities related to the Agreement pursuant to Public Law 2000, Chapter 72, Section 70. The Consultant further releases and holds harmless the Unit, the NJSDA, and the State of New Jersey. All statements contained in the Consultant's Technical Proposal and Price Proposal and in this waiver and consent are true and correct, and made with full knowledge that the NJSDA and the State of New Jersey rely upon the truth of the statements contained in this affidavit in awarding the Agreement.

Sworn and subscribed to before me

this _____ day of _____, 20__.

Signature of Principal

Notary Public of

Print Name of Principal

My commission expires: _____, 20_____.

(NO DISCRIMINATION)

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

(PREVAILING WAGE)

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

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

Sworn and subscribed to before me

this _____ day of _____, 20__.

Signature of Principal

Notary Public of

Print Name of Principal

My commission expires: _____, 20__.

APPENDIX E

INSURANCE CERTIFICATES

{See the Attached Sheets}

APPENDIX F

OTHER DOCUMENTATION

{See the Attached Sheets}

- 1. BUSINESS REGISTRATION**
- 2. PL 2005, CHAPTER 51 APPROVAL**
- 3. EO129 CERTIFICATION**
- 4. SBE FORMS**

ATTACHMENT B

NJSDA FORM 202

Example Format

KEY TEAM MEMBER RESUMES

{This form should be photocopied as necessary}

KEY TEAM MEMBER NAME: _____

Proposed Project Role:

Years of Experience:

Years with Firm:

Technical Specialties:

Professional History:

Education:

Professional Registrations & Affiliations:

Representative Project Experience & Qualifications:

ATTACHMENT C

NJSDA Form B

{See attached sheets}

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SBE FORM A - SCHEDULE OF SBE PARTICIPATION FOR CONSULTANT SERVICES
 NJSDA Procurement Analyst:

CONTRACT NO: _____ SERVICES: _____ PRIME FED ID NO.: _____
 CONTRACT AMOUNT: \$ _____ STATEWIDE PROCUREMENT DATE OF AWARD: _____

Name of SBE	SBE Category (1, 2, or 3)	** MBE	** WBE	Address, Telephone Number & Contact Person	Type of Services Provided	Final Subcontract Amount*	Projected Start/Completion Dates*	Proposed % of Total Contract Value	Final % of Total Contract Value*
TOTALS (of subcontract amount* and percentage of Total Contract Value)									

* This information must be submitted after issuance of a Notice of Award, within the time-frame specified in the Notice.

CONSULTANT (Print Name) _____ PREPARED BY (Print Name) _____ PRIME'S SBE LIAISON (Print Name) _____
 CONSULTANT'S ADDRESS _____ SIGNATURE & TITLE _____ TELEPHONE (Include Area Code) _____

NOTE: A 25% target has been established pursuant to N.J.A.C.17:14 et seq. The three SBE categories are as follows:
 Category 1: SBEs with gross revenue not exceeding \$500,000
 Category 2: SBEs with gross revenue not exceeding \$5,000,000
 Category 3: SBEs with gross revenue not exceeding \$12,000,000

ATTACHMENT D

PRICE PROPOSAL

{See attached sheets}

Example Proposal Roster - Project Roster to be Completed by Firm ** (PROVIDE IN SEPARATE SEALED ENVELOPE)******

Name	Category	Staff Category	Hourly Rate
SENIOR PROFESSIONAL STAFF (more than 15 years relevant experience, license, firm practice leader)			
	I	Program Manager / Principal in Charge	
	I	Licensed Site Remediation Professional (LSRP)	
	I	Licensed Professional Engineer (PE)	
	I	Licensed Professional Geologist	
	I	Certified Industrial Hygienist (CIH)	
	I	Expert Testimony (Litigation Support, Depositions)	
	I	Expert Testimony (Court Appearance)	
Average Rate	I		
MID-LEVEL SUPPORT STAFF (more than 10 years relevant experience)			
	II	Project Manager	
	II	Project Geologist/Hydrogeologist	
	II	Project Engineer	
	II	Project Scientist	
	II	Risk Assessor/Toxicologist	
	II	CADD/GIS Operator	
Average Rate	II		
TECHNICAL STAFF (less than 10 years relevant experience)			
	III	Environmental Scientist	
	III	Geologist/Hydrogeologist	
	III	Engineer	
	III	Health & Safety Personnel	
	III	Asbestos, Pb, PCB Sampling Technician	
	III	Biologist - Ecologist	
	III	Field Sampling Personnel	
Average Rate	III		