

***REQUESTS FOR QUALIFICATIONS***

***For***

***BROKER SERVICES FOR THE BUSINESS AND REAL ESTATE  
PROPERTY AND CASUALTY INSURANCE PROGRAM***

**Contract No.: GP-0173-R01**

**Issued: Wednesday, June 8, 2011**

**Mandatory Electronic Notice of Intent to Participate:  
Monday, June 20, 2011 by 5 PM**

**Due Date: Wednesday, July 20, 2011 by 5 PM**

***BROKER SERVICES FOR THE BUSINESS AND REAL ESTATE  
PROPERTY AND CASUALTY INSURANCE PROGRAM***

**REQUEST FOR QUALIFICATIONS**

**INTRODUCTION**

The New Jersey Schools Development Authority (“NJSDA”) presently maintains two separate insurance programs for its Business and Real Estate activities. Based upon the fluctuating inventory of real estate owned (REO) properties, the anticipated cost of insurance (inclusive of commission) is in the range of \$800,000. The NJSDA is seeking to engage a Broker with the expertise to design a combined program that provides the broadest coverage at the most cost effective price. The selected Broker shall be responsible for the placement and service of the NJSDA’s Business and Real Estate Property and Casualty Insurance Program commencing on December 14, 2011 at 12:01 a.m. In addition, the selected Broker may be consulted to assess and/or procure additional risk and insurance needs as deemed necessary by the NJSDA.

This RFQ is the first of a two-step process outlined below:

1. Request for Qualifications (“RFQ”): A bidder must first respond to the items listed under RFQ Submittal listed below.
2. Request for Proposals (“RFP”): The SDA will issue an RFP to firms that are shortlisted through the RFQ process.

This BROKER SERVICES REQUEST FOR QUALIFICATIONS consists of the following:

1. Request for Qualifications
2. Attachment A: Broker Services Agreement
3. Attachment B: Key Team Member Resume (NJSDA Form 202)

The Contract term will be three (3) years. The Contract term may be extended for one (1) additional year, if such extension is permissible by existing regulations at the time of extension.

These documents must be read in their entirety as they define the scope of services and submission requirements of the Broker. A firm wishing to provide a submittal for the Business and Real Estate Property and Casualty Insurance Program must review and be thoroughly familiar with these documents.

**The NJSDA shall not hold a traditional pre-proposal conference for this procurement. All firms wishing to submit a qualifications proposal must sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Megan Cox at [mcox@njsda.gov](mailto:mcox@njsda.gov) no later than 5 PM on Monday, June 20, 2011.**

Firms may submit questions to the NJSDA by sending them by email to Megan Cox at [mcox@njsda.gov](mailto:mcox@njsda.gov) no later than **5 PM on Monday, June 20, 2011**. The questions and answers shall be provided electronically to each firm that submitted a timely e-mail Notice of Intent to Participate.

**Qualifications Proposal must be received by Wednesday, July 20, 2011**

**No Later Than 5:00 PM at**

**New Jersey Schools Development Authority**

**1 West State Street**

**(Wells Fargo Bank Building)**

**P. O. Box 991**

**Trenton, New Jersey 08625-0991**

Firms are not authorized to make any submissions or approach any insurance companies or underwriters at this time in connection with this RFQ or the proposed insurance placement, and are specifically prohibited from doing so. Failure to comply with these requirements may cause disqualification from this process.

Upon award, the selected firm shall execute the Agreement for Broker Services (the "Agreement"), without modification.

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.

## **1.0 RFQ SUBMITTAL**

Firms responding to the RFQ shall thoroughly familiarize themselves with the RFQ to ensure responsiveness in their Qualifications Proposal. All of the below items must be addressed in the Qualifications Proposal in the same order as stated below. The Qualifications Proposal is to consist of the following:

1. Cover Letter – Understanding of the Engagement
2. Firm Experience - Case Studies
3. Organization Chart
4. Resumes of Key Team Members (NJSDA Form 202)
5. Approach to Providing the Required Scope of Services
6. Business Registration

**Qualifications Proposal Mailing Instructions.** The firm must submit one (1) original and 3 (three) copies of the Qualifications Proposal no later than **5 PM on Wednesday, July 20, 2011**, as follows:

**If submitting by hand or overnight delivery, at the:**

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
1 West State Street – 3rd Floor  
Trenton, New Jersey 08625-0991**  
**Attention: Megan Cox, Division of Procurement**  
**Subject: BROKER SERVICES FOR THE BUSINESS AND REAL ESTATE  
PROPERTY AND CASUALTY INSURANCE PROGRAM  
Contract #GP-0173-R01**

**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: BROKER SERVICES FOR THE BUSINESS AND REAL ESTATE  
PROPERTY AND CASUALTY INSURANCE PROGRAM  
Contract #GP-0173-R01**

**Faxed or e-mailed submissions shall not be accepted.**

1.1 Cover Letter – Understanding of the Engagement

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 RFQ. Include in the cover letter any other information relevant to the Firm’s qualifications, not set forth elsewhere.

1.2 Firm Experience - Case Studies

Firm experience shall be assessed through a brief summary of the firm’s experience with construction, real estate development, public entities and risk transfer strategies, through **three (3) specific case studies**. The case studies must address examples of the proposing firm’s past provision of services of the type and scale outlined in the Scope of Services. Thus, the case studies must concisely set forth the basic background information (e.g., dates and location), the scope of services provided, and results of said engagement. A sampling of materials specifically and directly utilized in the program must accompany each case study, **provided such material is non-confidential and may appropriately be subject to later release as a “public document.”** The case studies must describe the effectiveness of the program, and the methodology used to measure such effectiveness. The firm must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity who is familiar with and able to comment on the firm’s performance on each program. The summary of general experience must be approximately 500 words or less; the narrative for the case study approximately 1,000 words or less.

### 1.3 Organization Chart

The organization chart must include all Key Team Members and their titles for this engagement. In the event the proposing firm is a “joint venture,” the proposing firm must indicate from which participating firm each Key Team Member originates. In the event the proposing firm engages a subconsultant as a Key Team Member, the firm they represent must be identified. For the purpose of this engagement, a “Key Team Member” is a principal, partner or officer of the firm, account executive, claims consultant, or risk consultant represented in the Qualifications Proposal as having a responsible role in the successful completion of the required Services.

### 1.4 Resumes of Key Team Members

Describe how you would staff the engagement, and indicate your understanding of the Authority and its insurance program. Identify the individuals who will be involved and the primary role and responsibilities of each key team member, as well as the principal/senior officer who will serve as the engagement leader. Please provide resumes for these individuals including years of employment in your organization and total years of **insurance and/or** risk management consulting experience. Form 202 is included in Attachment B to this RFQ.

### 1.5 Approach to Providing the Required Scope of Services

Firms must explain in detail their specific approach to providing **each** of the Services specifically required in the Scope of Services. Identify your firm’s primary industry segments and the percentage of business in each segment.

### 1.6 Business Registration

**Pursuant to N.J.S.A. 52:32-44, as amended by P.L. 2004, c. 57, each proposing firm must provide proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury (the “Division of Revenue”), in its Submittal.**

Any subcontracted firm must provide the firm selected as a Consultant with a copy of its business registration, which the Consultant must forward to the NJSDA. No firm selected as a Consultant may enter into any subcontract with a firm that has not provided proof of valid business registration to the selected firm, for forwarding to the NJSDA. The NJSDA shall duly file all business registrations with the other procurement documents relating to the contract. **Business registrations of proposed subconsultants, if any, are NOT required to be included in a firm’s Submittal.**

Firms may obtain New Jersey Business Registration assistance by going on-line to [www.state.nj.us/treasury/revenue/gettingregistered.shtml](http://www.state.nj.us/treasury/revenue/gettingregistered.shtml) or by calling the New Jersey Department of Treasury at (609) 292-1730. Please be advised, however, that business registrations are mailed generally within seven to ten days, so firms should plan accordingly.

## 2.0 SELECTION PROCEDURES

Each Qualifications Submittal will be reviewed to determine responsiveness. Non-responsive Submittals will be rejected without evaluation. Responsive Qualifications Submittals will be evaluated by a Selection Committee ("Committee") consisting of three (3) NJSDA staff members. Such evaluation will be based upon the information provided by the firms in response to this RFQ. The Selection Committee members will independently score each Firm in accordance with the following evaluation criteria:

	Maximum Points
Understanding of the Engagement	20
Firm Experience with: * Public Entities * Business Administration and Real Estate Insurance * Risk Management	30
Experience of Key Team Members with: * Public Entities * Risk Management * Claims handling * Safety and loss control * Business Administration and Real Estate Insurance	20
Approach to Providing the Required Scope of Services	30
Total:	100

The scores of the Selection Committee members will be aggregated to obtain a Qualifications Submittal Score for each Firm.

## 3.0 INTERVIEWS

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

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

**Interviews** that must include, at a minimum, all Key Team Members listed in the RFQ, are currently scheduled for **Wednesday, July 27, 2011 and/or Thursday, July 28, 2011** at the NJSDA Main Office, 1 West State Street, Trenton, NJ 08625. **All Firms must participate in the interview process to be considered for the short list.**

### 3.1 REQUEST FOR PROPOSALS

The NJSDA intends to short list three (3) firms that shall receive a Request for Proposals (“RFP”). The RFP will outline the process for insurance market allocation and include a detailed underwriting submission based upon the exposures and coverages identified as part of this insurance program. The short listed firms shall:

- (a) Review the Coverage Specifications attached to the RFP and confirm that the Broker agrees to the Specifications as the minimum requirements.
- (b) All proposed insurers shall be licensed to write coverage in the State of NJ and have an A.M. Best rating of A- VII or better.
- (c) Provide complete and detailed cost quotation(s) that include the premium, coverage (including any coverage enhancements from the coverage specified in the RFP), and all substantive terms and conditions.
- (d) The insurance coverage required consists of Real Property, Business Personal Property, Commercial General Liability, Hired and Non-Owned Automobile, Workers’ Compensation, Umbrella Liability, Public Officials’ Liability and Employment Practice Liability.

### 4.0 PRE-AWARD REQUIREMENTS

After determination of the highest ranked firm, the NJSDA shall request the following information prior to the award of the contract:

(a) **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.

(b) **Outsourced Services Special Provisions.** Under P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the NJSDA shall not award a contract to a bidder that submits a bid proposal to perform services, or to subcontract with a firm to perform services, outside the United States, unless certain conditions is met. If, during the term of the contract, the Consultant or 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, unless the Director of the NJSDA Division of Procurement and Contract Services shall have first determined in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

(c) **Anti-Discrimination Requirements.** In addition, 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 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, a copy of 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 NJSDA and completed by the contractor in accordance with N.J.A.C. 17:27-4.

**\*The original of this document shall be provided to the New Jersey Department of Treasury. Please see following link for details. [http://www.state.nj.us/treasury/contract\\_compliance/pdf/aa302ins.pdf](http://www.state.nj.us/treasury/contract_compliance/pdf/aa302ins.pdf)**

**ATTACHMENT A**

**BROKERS SERVICES AGREEMENT**

*(Please see attached sheets)*

ATTACHMENT A

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***AGREEMENT***

*Between the*

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

*And the*

**BROKER**

*For*

**BUSINESS AND REAL ESTATE  
PROPERTY AND CASUALTY INSURANCE PROGRAM**

**CONTRACT NO.: GP-0173-R01**

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

WITNESSETH that Broker, 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-0173-R01

Project Name: Broker Services for the Business and Real Estate Property and Casualty Insurance Program

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 Broker 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 Broker shall receive compensation as set forth in Appendix C of this Agreement.

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

**BROKER**

**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

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 to be performed by the Broker which are in addition to the Scope of Services, which Additional Services shall be described and compensated as set forth in an Amendment.
- 1.2 **“Agreement”** means this agreement (and all appendices) between the Authority and the Broker 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 Authority and the Broker.
- 1.4 **“Authority”**, “New Jersey Schools Development Authority”, or “NJSDA” means the public body corporate and politic established in, but not of, the Department of Treasury pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:17G-1 et seq. The Authority is the Party that has engaged the Broker pursuant to the Contract.
- 1.5 **“Claim”** means a 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 **“Broker”** means the firm engaged by the Authority under this Agreement to provide Services to the Authority.
- 1.7 **“Broker Client Manager”** means that person designated by the Broker to serve as its representative during the Term.
- 1.8 **“Broker Performance Evaluation Policy and Procedure”** means the Authority’s policies and procedures for evaluating the performance of a Broker.
- 1.9 **“Broker Services for Business and Real Estate Property and Casualty Insurance Program”** means the services required to be performed by the Broker pursuant to the Contractual Documents, and includes all labor, materials and equipment provided or to be provided to fulfill such obligations.
- 1.10 **“Contractual Documents”** means all documents setting forth the obligations and responsibilities of the Broker and the Authority that includes, but is not limited to, the Request for Proposals, the Technical Proposal, this Agreement, the Scope of Services, any Amendments and addenda.
- 1.11 **“Day”** means calendar Day.
- 1.12 **“Deliverables”** means, among other things, technical data, plans, specifications, minutes, approvals,

recommendations, drawings, reports, computer discs, instruction books, documents, writings, materials, services or any other thing the delivery of which, however accomplished, is required of the Broker, explicitly or implicitly, by the Contractual Documents.

- 1.13 “Effective Date”** means the date upon which this Agreement has been fully executed by all Parties, as indicated above.
- 1.14 “Fiscal Year”** means the fiscal year of the Authority, which commences on January 1 of each year and ends on December 31 of the same year.
- 1.15 “Key Team Member”** means a principal, partner or officer of the firm, or a project executive, project manager, senior principal, identified in the Broker’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.
- 1.16 “Notice to Proceed”** means a form of notice issued by the Authority to the Broker directing the Broker to commence performing its responsibilities pursuant to this Agreement.
- 1.17 “Office of Fiscal Integrity” or “State Police”** means the New Jersey State Police or such other designee of the Attorney General performing the functions and duties of the Office of Fiscal Integrity in School Construction within the Office of the Attorney General pursuant to N.J.S.A. 18A:7G-43, as amended.
- 1.18 “Price Proposal”** means the proposal of the policy premium, including commissions, submitted by the Broker in response to the RFP.
- 1.19 “Parties”** means the Authority and the Broker, which are the parties to this Agreement.
- 1.20 “Request for Proposals” or “RFP”** means the request issued by the Authority for proposals for Broker Services, including a request for a Technical Proposal and a request for a Price Proposal.
- 1.21 “Scope of Services”** means the Scope of Services required to be performed by the Broker in accordance with the Contractual Documents, as more fully set forth in Appendix B to this Agreement. The Scope of Services may be amended, from time to time, in accordance with the provisions of this Agreement.
- 1.22 “School Construction Program”** means the program operated by the Authority in order to finance and construct School Facilities Projects pursuant to the Educational Facilities Financing and Construction Act, P.L. 2000, c.72, as amended.
- 1.23 “School Facilities Project”** means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a School Facility or of any other personal property necessary for or ancillary to any School Facility.
- 1.24 “School Facility”** means and includes any structure, building or facility used wholly or in part for academic purposes.
- 1.25 “Services”** means the services performed by the Broker pursuant to the Contractual Documents, and includes all other labor, materials and equipment provided or to be provided to fulfill such obligations.

Unless the context indicates otherwise, "Services" shall mean and refer to Broker Services.

- 1.26 **"Special Conditions"** means that document attached as Appendix A to this Agreement, and made a part hereof, as such document may be amended from time to time.
- 1.27 **"State"** means the State of New Jersey.
- 1.28 **"SubBroker"** means the entity with which a Broker or other subBroker subcontracts to perform Services for which the Broker is ultimately responsible.
- 1.29 **"Technical Proposal"** means the Technical Proposal submitted by the Broker in response to the RFP.
- 1.30 **"Term"** means the term of this Agreement, as set forth in Section 4.0.

## **2.0 RESPONSIBILITIES OF THE BROKER**

### **2.1 General**

- 2.1.1 In order to provide the Services and Deliverables required, the Broker 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 Broker. The Services and Deliverables described in this Agreement establish the minimum obligations of the Broker.
- 2.1.3 The Services and Deliverables to be provided by the Broker pursuant to this Agreement shall be performed by the Broker, its employees, and SubBrokers, if any.
- 2.1.4 The Broker shall be required to utilize the Key Team Members identified in its Technical Proposal. The Broker 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, at his or her option, review from time to time the Key Team Members of the Broker. If the Authority determines that changes to Key Team Members are necessary, the Broker will be notified in writing of such need, and the Broker shall thereupon provide substitutes acceptable to the Authority.
- 2.1.6 The Broker 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 Broker, without an Amendment, beyond the Scope of Services shall be done at the Broker'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. Such Amendment shall be executed prior to the performance of any Additional Services.
- 2.1.8 Changes to the Scope of Services require the prior written consent of the Authority and an Amendment. When requesting consent for any such changes, the Broker must simultaneously notify the Authority of any increase or decrease in compensation associated with 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 and Deliverables. The requirements of this provision are in addition to any other requirements of the Contractual Documents regarding additional compensation.
- 2.1.9 The Broker shall perform all Services in a good, skillful, and prompt manner. The Broker shall perform the Services and provide all Deliverables consistent with the level of skill and care ordinarily exercised by members of the Broker's profession, currently practicing under similar circumstances.
- 2.1.10 Services shall be performed within any applicable Schedule.

- 2.1.11 The Broker 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 Broker to make the details known immediately to the Authority.
- 2.1.12 The Broker shall, without additional compensation, cure any errors, omissions, or other deficiencies in the Deliverables. The approval of interim Deliverables shall not relieve the Broker 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 Broker's performance or non-performance under the Contractual Documents.
- 2.1.13 In the event the Broker hires, employs or otherwise engages SubBrokers, the Broker shall be considered the sole Broker and the sole point of contact with regard to contractual matters under this Agreement. The Broker assumes sole and full responsibility for the complete performance contemplated by the Contractual Documents, including the performance of all SubBrokers. The Broker must: (i) where applicable, select only SubBrokers that have been pre-qualified by the Authority, and (ii) obtain the consent of the Authority prior to the engagement of any such SubBroker.
- 2.1.14 It is expressly understood by the Broker that approval by the Authority for the subcontracting of any Services under the Contractual Documents shall in no way relieve the Broker from performing its obligations under the Contractual Documents. The Broker 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 Broker of the SubBroker. The Broker shall be responsible for all Services performed by its SubBrokers, 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 Broker shall, in accordance with generally accepted accounting principles and practices, maintain overhead, cost and accounting records, as well as all other records the Broker may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority and the NJ State Police (or their agents) as to all aspects of the Services provided under the Contractual Documents, whether the Services are performed by the Broker, its SubBroker or any other firm. The Broker 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 Broker 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 Broker 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 Broker 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 Broker 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 Broker shall designate a Key Team Member at the Broker's firm, satisfactory to the Authority, as the Broker Client Manager. So long as the Broker Client Manager's performance is acceptable, he or she shall remain in charge of the firm's Services, shall represent the Broker, and be available for general consultation throughout the Term.
- 2.1.18 The Broker, 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 Broker and any SubBroker 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 F hereto. The Broker shall provide written notice to any firm that may become its SubBroker that it shall not enter into any subcontract with a SubBroker that has not provided it with proof of such business registration, a copy of which the Broker shall forward to the Authority, in accordance with N.J.S.A. 52:32-44c. The Broker shall maintain and submit to the Authority a list of SubBrokers 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 Broker and any SubBroker of the Broker, and any affiliate of the Broker 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 Broker shall provide in each contract with a SubBroker that each such SubBroker 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. Consistent with the requirements of P.L. 2005, c. 51, N.J.S.A. 19:44A-20.1 et seq., as amended ("Chapter 51")(formerly Executive Order No. 134 (2004), the Broker shall, on a continuing basis, have the obligation to disclose and report to the Authority any "contributions" made during the Term of the Agreement by the Broker or any "Business Entity" associated with the Broker on the "Disclosure of Political Contribution" form provided by the Authority, at the time such contribution is made. As part of this obligation, the selected firm shall be required to comply with Executive Order No. 117, which was issued to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. Executive Order No. 117 builds on the provisions of Chapter 51, which limits contributions to certain political

candidates and committees by for-profit business entities that are, or seek to become, State government contractors.

- 2.1.22 Political Contributions Disclosure. Broker shall 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-20.27 (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 Broker’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](http://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 Broker shall have a continuing duty to comply with the provisions of P.L. 2005, c. 92, as applicable. If, during the Term, the Broker or a SubBroker, 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 Broker shall be deemed in breach of the Agreement, which shall be subject to termination for cause, unless the Senior Director of the Authority’s Division of Procurement & Contract Services 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.

## **2.2 Final Release**

The Broker’s acceptance of final payment shall constitute a final release from and waiver of all the Broker’s Claims except for: (i) those Claims the Broker 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 Broker 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 Lump Sum. The Broker shall be compensated over the Term of the Agreement by the Lump Sum set forth in Appendix C.
- 3.1.2 The compensation specified in Appendix C shall compensate the Broker in full for all Services rendered pursuant to the Contractual Documents.
- 3.1.3 The Broker shall be paid as invoices are submitted, subject to the provisions of Section 3.2.
- 3.1.4 In the event Additional Services are required pursuant to an Amendment, the Broker shall be paid on a monthly basis in accordance with the agreed upon reasonable compensation for such Additional Services.
- 3.1.5 The Broker shall be paid after invoices are submitted and approved. Acceptance or approval of, or payment for, any of the Services performed by the Broker 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.

- 3.1.6 All payments for Services under the Contractual Documents will be made only to the Broker, and Broker assumes sole responsibility for payments due any SubBroker.
- 3.1.7 Unless otherwise set forth in writing by the Authority, the lump sum (Appendix C) shall be firm and not subject to increase during the Term.
- 3.1.8 The Authority assumes no responsibility or liability for costs the Broker incurred prior to the Effective Date, and thereafter only as explicitly set forth in the Contractual Documents.

### **3.2 Invoices**

- 3.2.1 Invoices for Services shall be submitted on a form approved by the Authority or, if directed by the Authority, shall be submitted electronically via a dedicated website or web page. Invoices shall be accompanied by such supporting documentation as may be required by the Authority.
- 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. 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 Broker and submitted to the Authority shall be a representation by the Broker that all payments due to its SubBrokers 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 to ensure billing accurately represents work incurred.

### **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 Manufacturer has made the necessary corrections/deliveries, or (ii) return the relevant invoice to the Broker, 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 Broker's obligation to furnish the items required under the Contractual Documents. In the event the Broker 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 three (3) years or until all obligations of the Broker 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 at the Authority's option, 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 Broker 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 Prior to undertaking any work under this Agreement, the Broker, at no expense to the Authority, shall obtain and provide to the Authority evidence of a policy or policies of insurance as enumerated below.

5.1.2 The Broker shall maintain, and/or cause their subBrokers to maintain, at their own cost and expense, the following insurance coverages/policies insuring the Broker, its employees, subBrokers and agents. The Broker 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-VII" (or better) rated, as determined by A. M. Best Company. In each policy, the Broker shall have incorporated a provision, in accordance with the laws of the State of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Broker warrants that if the insurer or coverage is not subject to the provisions requiring (30) day prior notification, that it will notify the Authority in writing of any cancellation or non-renewal of any insurance coverage required under this Section. Any and all deductibles shall be paid by the Broker. The Broker warrants that its insurance carriers are accurately informed regarding the business activities of the Broker and intend to cover those business exposures. All insurance policies, exclusive of Professional Liability and Workers' Compensation, shall name the Authority as Primary Additional Insured and will include a Waiver of Subrogation. In addition, the Broker may also 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. The types and minimum amounts of insurance required are as follows:

5.1.2.1 Professional Liability Insurance (Errors & Omissions). The Broker shall maintain Professional Liability Insurance with coverage retroactive to the Effective Date, sufficient to protect the Broker from any liability arising from the Services and professional obligations performed pursuant to this Agreement in an amount not less than \$3,000,000 per claim and \$3,000,000 in the aggregate for all operations conducted. The Broker warrants they will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) days. The Broker warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of services performed pursuant to this Agreement.

5.1.2.2 Commercial General Liability Insurance. The Broker shall maintain Commercial General Liability Insurance (CGL), and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$5,000,000 for each occurrence, \$5,000,000 aggregate limit for products/completed operations and \$5,000,000 general aggregate limit. CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include 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 Services performed under this Agreement. The EDA, the Authority, the State of New Jersey and their respective directors, officers, members, employees and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Broker may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

5.1.2.3 Worker's Compensation Insurance. The Broker shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Broker while engaged in the performance of the Services under this Agreement. Workers' Compensation coverage shall be statutory and the Employers' liability limits (including Umbrella coverage) shall not be less than \$1,000,000 per accident for bodily injury by accident and \$1,000,000 for each employee for bodily injury by disease and \$1,000,000 policy limit for bodily injury by disease.

5.1.2.4 Business Automobile Liability Insurance. The Broker 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.

5.1.3 Certificates of Insurance. Attached to this Agreement as Appendix E shall be valid insurance certificates, executed by a duly authorized representative of each insurer, in form and substance satisfactory to the Authority, evidencing compliance with the insurance requirements. An insurance certificate must be submitted to evidence each insurance renewal required by this Section. Failure of the Authority to demand such certificates or other evidence of full compliance with the insurance requirements set forth herein or failure of the Authority to identify a deficiency in the insurance provided shall not be construed as a waiver of the Broker's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this Agreement at the Authority's sole option. The Broker shall provide certified copies of all insurance policies, including any and all amendatory endorsements, within ten (10) Days of the Authority's written request for such policies.

- 5.1.4 **Liability in Excess of Coverage.** By executing this Agreement, the Broker expressly agrees that any insurance protection required herein or by the Broker's Documents shall in no way limit the Broker's obligations under this Agreement or the Broker's Documents and shall not be construed to relieve the Broker from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of this Agreement or the Broker's Documents or otherwise in law or equity. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect the Broker, and such coverage and limits shall not be deemed as a limitation on the Broker's liability under this Agreement.
- 5.1.5 **Right to Remedy.** If the Broker fails to obtain and/or maintain the insurance as required in this Section, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at the Broker's sole expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between the Broker and the Authority; (iv) suspend performance by the Broker under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section may be used, at the Authority's discretion, to renew or purchase the Broker's insurance for the periods and amounts as set forth in this Agreement. In the event the Authority purchases said insurance the Authority may, at its discretion, reduce the Broker's Compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees.
- 5.1.6 **Additional Insurance.** The Broker shall also provide such additional types of insurance in such amounts as the Authority shall reasonably require. In the event that any such additional insurance is required, the Broker shall deliver certified copies of each policy to the Authority within ten (10) days of the Authority's written request for such insurance.
- 5.1.7 **Waiver of Subrogation.** The Broker waives all rights of subrogation and recovery against the Authority, agents or employees of the Authority to the extent these damages are covered by the CGL, Business Automobile Liability or Commercial Umbrella Liability Insurance obtained by the Broker. If the policies of insurance purchased by the Broker as required above do not expressly allow the insured to waive rights of subrogation prior to loss, the Broker shall cause them to be endorsed with a waiver of subrogation as required herein.
- 5.1.8 Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be declared to and approved by the Authority and written using ISO endorsement CG 03 00 (or a substitute providing equivalent terms and conditions). The Broker shall not be permitted to have a SIR larger than \$100,000 unless it obtains the express, written consent of the Authority to the larger SIR. **FAILURE TO COMPLY WITH SECTION 5.1.8 IS A MATERIAL BREACH OF CONTRACT.**

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

## 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 Broker and its SubBrokers 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 Broker's Services performed under the Contractual Documents and, unless otherwise provided, shall be the sole property of the Authority.
- 5.2.2 The Broker'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 Broker 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 Broker 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 Broker 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 and information supplied by the Authority or by any other party under an Authority contract or otherwise involved in the School Construction Program and data gathered by the Broker in fulfillment of the Contractual Documents and any analyses thereof (whether in fulfillment of the Contractual Documents or not), are strictly confidential and shall be solely for use in connection with the School Construction Program, except to the extent the Authority may identify any such as disclosable government records within the meaning of N.J.S.A. 47:1A-1 et seq.
- 5.4.2 The Broker 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 SubBrokers, 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 Broker, its employees, SubBrokers 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 Broker 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 SubBroker of the Broker and the Authority.
- 5.5.2 The Broker's status shall be that of an independent contractor, not an employee of the Authority. The Broker 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 Broker 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 Broker and any SubBrokers engaged by the Broker 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, corporation, or any combination thereof, which supplies materials, labor, services or equipment to the Broker 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 Broker 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 Broker's rights under the Contractual Documents without the prior written consent of the Authority shall not relieve the Broker 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 Broker 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 Broker agrees to continue to perform all of its obligations as set forth in this Agreement. The Broker 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 Broker proposes to merge with or be

acquired by another firm or in the event of a proposed dissolution by the Broker, the Broker 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 merger, acquisition or dissolution or terminate this Agreement for cause. The Authority will notify the Broker of its decision within thirty (30) Days of receipt by the Authority of documentation from the Broker describing the proposed transaction.
- 5.7.3 If the Authority approves a merger or acquisition, the Broker shall submit to the Authority: (i) corporate resolutions prepared by the Broker 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 Broker shall submit to the Authority: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the principal parties of a joint venture to dissolve the corporation, partnership or joint venture, respectively; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures, 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 Broker 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 Broker 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 Broker 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 Broker has complied with such laws or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 5.8.4 The Broker'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 Broker and its SubBrokers 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 Broker shall not discriminate in employment and shall abide by all anti-discrimination laws, including those set forth in New Jersey's Law Against Discrimination, N.J.S.A. 10-5.1, et seq., and all rules and regulations promulgated thereunder. During the performance of this Term Contract, the Broker agrees as follows:
- 5.9.2.1 The Broker and its SubBrokers, 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, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Broker 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, gender identity or expression, disability, nationality 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 Broker agrees 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 Broker and its SubBrokers, 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, gender identity or expression, disability, nationality or sex;
- 5.9.2.3 The Broker and its SubBrokers, where applicable, will send to each labor union or representative of workers with which he has 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 Broker's (and the SubBroker's) commitments under New Jersey's Law Against Discrimination, 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 Broker 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 Broker 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 Broker, 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 In the event of a breach or violation of this Section 5.10, the Authority may, at its sole option: (i) terminate this Agreement without the Authority being liable for damages, costs and/or attorney fees; and/or (ii) deduct from amounts otherwise payable by the Authority pursuant to this Agreement.

## **5.11 Conflict of Interest**

- 5.11.1 The Broker 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 Broker transacts, or offers or proposes to transact, business; or (ii) any member of the immediate family (defined by N.J.S.A. 52:13D-13i) of any such Authority officer or employee; or (iii) any partnership, firm or corporation with which such Authority officer or employee is employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- 5.11.2 The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee from the Broker shall be reported in writing forthwith by the Broker to the State Attorney General and the State Ethics Commission.
- 5.11.3 The Broker 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 Broker 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 State Ethics Commission, 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 Broker 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 Broker 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 Broker 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 Broker, 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 Broker under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines or Code of Ethics that the State Ethics Commission and the NJSDA have promulgated or may promulgate.

## **5.12 Indemnification**

- 5.12.1 To the fullest extent permitted by law, the Broker 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 Broker, its agents, servants, officers, employees, SubBrokers or any other person acting at the Broker'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 Broker, its agents, servants, officers, employees, SubBrokers or any other person acting at the Broker's request, subject to its direction, or on its behalf;
  - 5.12.1.3 any gross negligence, default, or breach, of the Broker, its agents, servants, officers, employees, SubBrokers or any other person acting at the Broker's request, subject to its direction, or on its behalf;
  - 5.12.1.4 violation of or non-compliance with federal, State, local and municipal laws and regulations, ordinances, building codes (including without limitation the Americans with Disabilities Act, the Occupational Safety and Health Act ("OSHA") and the Environmental Protection Act) in connection with the performance or non-performance of, or arising out of conditions created or caused to be created by, the Broker, its agents, servants, officers, employees, SubBrokers or any other person acting at the Broker's request, subject to its direction, or on its behalf; and
  - 5.12.1.5 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 Broker's indemnification obligation is not limited by, but is in addition to, the Broker's insurance obligations contained in this Agreement.

5.12.3 The Broker agrees that any approval by the Authority of the Services performed, or Deliverables provided by the Broker shall not operate to limit the obligations of the Broker under the Contractual Documents; and that the Authority assumes no obligations to indemnify or save harmless the Broker, its agents, servants, employees, or SubBrokers against any 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 Broker's obligations under the Contractual Documents, nor shall they be construed to relieve the Broker 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 Broker failure to perform the Services in a satisfactory manner.

### **6.1 Termination for Convenience of the Authority**

6.1.1 Performance by the Broker 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 written "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 Broker shall be entitled only to that proportion of the compensation that the Services actually and satisfactorily performed by the Broker 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 Broker to establish an amount of compensation for the Broker's costs incurred in the close-out of the Contractual Documents.

6.1.5 Upon termination for convenience, the Broker 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 Broker: (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 SubBrokers for materials or labor in accordance with the

respective agreements between the Broker and the SubBrokers; (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 impair the ability of the Broker 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 Broker 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 Broker and may require the Broker to repay all or a portion of the monies already paid; and the Broker shall be obligated to take any steps necessary to enable the Authority to complete the Services itself, or for the Authority to engage another Broker to complete the Services at the Broker's own expense for the portion that exceeds the amount that would have been paid to the Broker 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 Broker 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 give written notice to the Broker of such suspension of performance of the Services and upon receipt of such notice, unless otherwise directed in writing by the Authority; the Broker shall immediately discontinue all Services, except as may be deemed necessary by the Authority or his/her.
- 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 Broker.

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 Broker, 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 Broker after review of the Broker's submissions relating to the increased costs actually incurred by the Broker 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 Broker, the Authority may, at its sole option, suspend all payments to the Broker. 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 Broker 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 Broker the cost of correcting such failure, including compensation for other Professional Services Broker additional services made necessary by such failure. If the payments then or thereafter due the Broker are not sufficient to cover such amount, the Broker 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 Broker 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 Broker written notice as soon as practicable after it becomes aware of an error or omission by the Broker. 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 Broker 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 Broker shall be liable to Authority for all damages to Authority caused by Broker errors or omissions. The Broker 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 Broker against the Authority shall be governed by the following provisions.

7.1 **General.** The parties agree that this contract shall be deemed to be governed by and in accordance with the New Jersey Tort Claims Act, N.J.S.A. 59:1.1, et seq., 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. (collectively "the Acts"), such that a claim against the NJSDA shall be treated in the same manner as a claim against the State of New Jersey under the Acts. All notice, claims and limitations periods set forth in the Acts shall apply to claims by the Broker against the NJSDA

7.2 **Notice of Claim.** The Broker 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 Broker. 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.

7.3 **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.

7.4 **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 Broker 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 Broker must sign a full and final release as to any and all matters arising from the Claim.

7.5 **Step One: The Authority's Review.**

7.5.1 The Broker must provide to 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 Broker shall also submit to the Authority all documentation supporting the Broker's Claim. The documentation provided to the Authority will serve as the basis for evaluation of the Broker's position regarding the Claim throughout Step One of the administrative process. The Broker 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 Broker.

7.5.2 **Authority Review and Decision.** At the option of the Authority, a meeting may be scheduled with the Broker and the Authority 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 Broker and the Authority, 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 Broker, 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 Broker 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 Broker for the subject Claim.

- 7.6 Step Two: Non-Binding Mediation.** If the Broker 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 Broker 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 and proceed to non-binding mediation. Such request shall be sent to the Authority. No Claim will proceed automatically to Step Two and the Broker 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 Broker and the Authority. The mediator shall be selected by the Authority, with the concurrence of the Broker. The rules for the mediation shall be agreed to by the Authority, the Broker 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 Broker hereby represents as follows:

- 8.1** The Broker 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 Broker 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 Broker 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 Broker and the Services it will be performing.
- 8.4** The Broker's execution of and performance under this Agreement are within its duly authorized powers.
- 8.5** The Broker 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 Broker certifies that all representations made by it in any of the Contractual Documents are true, subject to penalty of law. The Broker 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 Broker understands and agrees that the Broker'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 Broker's enforcement of its rights under the Contractual Documents, including any and all Claims at law or equity.

- 8.7** The Broker 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 Broker 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 Broker'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 Broker. The Broker 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 Broker Performance Evaluation Policy and Procedure. The Broker's performance under this Agreement shall be evaluated by the Authority and shall be a factor used in the technical scoring of the Broker with respect to any future submission by the Broker in response to a Request for Proposals by the Authority. This evaluation shall consider, among other things, the Broker'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 Broker's Services hereunder shall in no way alter the Broker's obligations hereunder.
- 9.1.5 The Authority and the State Police reserve the right to audit the records of the Broker and its SubBrokers in connection with all matters related to the Contractual Documents. If, as a result of such audit, the Broker is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Broker'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 Broker 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 Broker shall allow representatives of the Authority and their agent(s) to visit the office(s) of the Broker 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 Broker 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 Broker 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 Broker 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 Broker and the Authority. Should the Broker 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 Broker'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 Broker 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 Office of Fiscal Integrity.** The State Police (or its agents) may, at its discretion, investigate, examine and inspect the activities of the Broker and all other parties involved with the Services. The State Police (or its agents) may require the Broker 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 State Police (or its agents) may investigate, examine, inspect, or audit in any manner and at such times as the State Police deems necessary. The Broker shall include in any and all contracts with SubBrokers a provision requiring such SubBrokers 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.

**APPENDIX A**

**SPECIAL CONDITIONS**

A.1 Notices shall be addressed as follows:

Authority: New Jersey Schools Development Authority  
1 West State Street  
Trenton, NJ 08625  
Attention: Karon Simmonds

Broker:

## **APPENDIX B**

### **SCOPE OF SERVICES**

The Broker shall provide a full range of services to the NJSDA, as dictated by the changing needs of the NJSDA. Due to the complex nature of the NJSDA's risk profile and competing priorities, the specific areas of participation and involvement anticipated at this time are listed below. However, this list is being provided as a guide and should not be construed as being all inclusive or limit the actual tasks to be performed by the Broker in any way.

#### **1. Property and Casualty Insurance Placement and Policy Management**

- (a) The Broker is required to provide brokerage services necessary to effectively place insurance coverage included within the NJSDA's insurance program.
- (b) The Broker shall negotiate with all insurers in good faith and represent all questions, issues, requests, and concerns raised by the Authority and its representatives with regards to insurance coverage.
- (c) The Broker shall regularly monitor and analyze the financial status of the Insurer and ascertain the Insurer's capability to continue to handle the NJSDA's Property and Casualty Insurance program.
- (d) The Broker shall review all documentation, including, but not limited to, insurance policies, insurer agreements, and insurance certificates, to make certain that all coverage set forth in the Proposal is, in fact, obtained, that all documentation reflects the intent of the Authority.
- (e) The Broker shall provide documentation that they are licensed by the New Jersey Department of Banking and Insurance to write this class of business.
- (f) The Broker must deliver a binder of coverage for the insurance program commencing on December 14, 2011 at 12:01 a.m. Binders of coverage to effect renewal coverage in the subsequent years of this contract term shall be provided prior to the expiration of the coverage.
- (g) The Broker shall provide the NJSDA with insurance policies for the NJSDA's Property and Casualty Insurance Program within 60 days after receipt from the insurers.
- (h) The Broker shall provide a Stewardship Report on an annual basis.

#### **2. Claims Handling / Management Services**

- (a) The Broker shall closely monitor all of the NJSDA's Property and Casualty Insurance claims to ensure that such claims are handled promptly and properly. The Broker shall manage all claims to their conclusion.
- (b) The Broker shall advocate any aspect of claims management for the NJSDA's insurance coverage with the insurers and assist with disputed claims or those having significant impact or severity.
- (c) The Broker shall assist the NJSDA and its employees with claims and coverage inquiries.
- (d) The Broker shall review claims analysis and loss history with the NJSDA on an as requested basis.

#### **3. Risk Management Broker Services**

- (a) Provide assistance, as requested by the Authority, in identifying and analyzing the NJSDA's exposure to loss as part of the NJSDA's insurance and risk management assessment, prioritizing significant exposures to risk and providing recommendations to eliminate or minimize risk and the possible placement of insurance coverage as agreed upon by the NJSDA.

**APPENDIX C**

**COMPENSATION – PRICE PROPOSAL**

*{See Attached Sheets}*



by the Broker with the Authority.

- D. The Broker certifies that, if applicable, any change in the information provided by the Broker in its prequalification application currently on file with the Authority will be immediately reported to the Authority.
- E. The Broker certifies that, if applicable, it shall immediately notify the Authority and the State Police if any director, partner, officer, employee of the Broker or any shareholder owning 5% or more of the Broker'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 Broker hereby waives any objection it might otherwise raise permitting the State Police to investigate, examine and inspect all activities related to the Agreement pursuant to Public Law 2000, Chapter 72, Section 70, as amended. The Broker further releases and holds harmless the State Police, the Authority, and the State of New Jersey. All statements contained in the Broker's Technical Proposal and Fee Proposal and in this waiver and consent are true and correct, and made with full knowledge that the Authority and the State of New Jersey rely upon the truth of the statements contained in this affidavit in awarding the Agreement.

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 COLLUSION)

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

(NO DISCRIMINATION)

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

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 CERTIFICATE(S)**

*{See Attached Sheets}*

**APPENDIX F**

**OTHER DOCUMENTATION**

*{See Attached Sheets}*

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

**ATTACHMENT B**

**NJSDA FORM 202**

**Example Format**

**KEY TEAM MEMBER RESUME**

{This form should be photocopied as necessary}

**KEY TEAM MEMBER NAME:** \_\_\_\_\_

**Proposed Engagement Role:**

**Years of Insurance and/or Risk Management Consulting Experience:**

**Years with Firm:**

**Technical Specialties:**

**Professional History:**

**Education:**

**Professional Registrations & Affiliations:**

**Representative Engagement Experience & Qualifications (including the name of the engagement, the size, scope, your role and months/years involved in the engagement):**