

AGREEMENT
BETWEEN
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
AND

FOR
CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ (the “Effective Date”) between the New Jersey Schools Development Authority (the “Authority”), having an office located at 1 West State Street, Trenton, New Jersey 08625-0991, and _____ (“Construction Manager” or “CM”), a _____ corporation with its principal place of business at _____.

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

Contract Number: _____

Project Name: _____

in strict conformity with this Agreement, which includes the following terms and conditions, as well as Appendices “A” through “F” and any other attachments hereto or matters incorporated herein by reference.

Provided that CM strictly, completely and timely performs all of the Services specified and all other obligations set forth in this Agreement and subject only to such increases or decreases expressly permitted by this Agreement, the Authority will pay CM the sum of _____ (\$_____).

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

[SIGNATURES ON THE FOLLOWING PAGE]

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

CM FIRM

**NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY**

By:
Title:

By:
Title:

Sworn and subscribed to before me

Reviewed and Approved

This ____ day of _____, 20__:

By: _____
Name:

Notary Public of _____

My commission expires: _____, 20__.

Distribution: Authority Central File, Authority Consultant Selection File and CM.

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APPENDICES

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1.0 DEFINITIONS

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

- 1.1 "Additional Services" means services to be performed by CM at the Authority's written request which are in addition to the Basic Services that CM is required to perform. These Additional Services are set forth in Section 5.0.
- 1.2 "Agreement" means the Agreement between the Authority and CM consisting of this document and all exhibits, appendices, attachments and amendments thereto and whatever has been expressly incorporated herein by reference.
- 1.3 "Amendment" means a written modification to this Agreement executed by the Authority and CM.
- 1.4 "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders, decisions, decrees, executive orders and resolutions of all national, administrative, state, county, municipal, and other governing bodies relating to the Project or the performance of this Agreement.
- 1.5 "Approved CCE" means the most recent CCE that has been adjusted by the Design Consultant and either reconciled to the CCE for a prior phase, or if not so reconciled to the prior CCE, otherwise approved or accepted by the Authority in writing.
- 1.6 "Authority" or "New Jersey Schools Development Authority" or "N.J.S.D.A." 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 CM pursuant to this Agreement.
- 1.7 "Authority's Affirmative Action Program" means the requirements and procedures established by the Authority pursuant to Section 6 and 36 of the legislation creating the New Jersey Schools Development Authority, P.L. 2007, c. 137, and any rules associated therewith, as may be amended from time to time, including, but not limited to, N.J.A.C. 19:39-1.1 to -4.1.
- 1.8 "Authority's Expedition Database" means the Primavera Expedition Database created and maintained by the Authority.
- 1.9 "Authority's Program" means the initial description of the Authority's objectives for the Project, including, but not limited to, Project Budget, time criteria, schedule, space requirements and relationships, special equipment and systems and Site requirements.

- 1.10 “Basic Services” means the services to be performed by CM pursuant to this Agreement as set forth in Section 4.0.
- 1.11 “Certificate of Payment” means a certification to be prepared by CM verifying the actual amount owed to the Contractor in connection with the Contractor’s periodic requests for payments. The document shall be submitted to the Authority simultaneously with CM’s Progress Payment Report.
- 1.12 “Change Order” means a written order by the Authority directing or authorizing a Change in the Work of the Contractor executed by the Authority and the Contractor and shall include required adjustments, if applicable, to the Contractor’s Contract Price and/or its Construction Time.
- 1.13 ”Change Order Log” means a written, updated summary prepared by the CM tracking the status of the Contractor’s Contract Change Requests (CCRs), Construction Change Directives (CCDs) and Change Orders. This Change Order Log shall be included as part of CM’s Monthly Report to the Authority.
- 1.14 “Change Order Report” means the monthly written reports by CM to the Authority listing all approved Change Orders by number, a brief description of the Change Order Work, the cost established in the Change Order and the percent of completion of the Change Order Work. The Change Order Report shall also include similar information for potential Change Orders of which CM may then be aware.
- 1.15 “Claim” means a written demand, disputed by the Authority, for a time extension, monetary compensation and/or another form of relief.
- 1.16 “Commencement Date” or “Contractor’s NTP Date” means the date set forth in the Notice to Proceed issued to the Contractor on which the Contractor shall begin performing its Work pursuant to the Construction Documents.
- 1.17 “Commissioning Authority” or “CxA” means the person, persons or firm engaged by the Authority to provide total building commissioning of the Project.
- 1.18 ”Construction Change Directive” or “CCD” means a written order by the Authority to the Contractor directing or authorizing some change to the Construction Documents for which there has been no determination by the Authority as to the Contractor’s entitlement to Compensation and/or a Construction Time extension. If, ultimately, there is an agreement on Compensation and/or a Construction Time extension, for a CCD, a Change Order shall be issued by the Authority to the Contractor resolving the CCD.
- 1.19 “Construction Contract” means the Agreement, including exhibits, appendices, attachments and amendments, between the Authority and the Contractor governing the construction of the Project. The Construction Contract includes all the Construction Documents.

- 1.20 “Construction Cost Estimate” or “CCE” means the estimated cost to construct the Project prepared by the Design Consultant with input from the Authority, which amount does not include the cost of permits, acquisition of land, Site development, furnishings, contingencies, professional fees for design consultants and other consultants, financing costs, and all other similar types of costs.
- 1.21 “Construction Documents” means the Construction Contract executed between the Authority and the Contractor, together with the General Conditions, Supplementary Conditions, Plans, Specifications, Scope of Work, the Request for Qualifications and/or the Request for Proposals, instructions to Bidders and Addenda, price and technical proposals, Change Orders, other amendments, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials. This term is intended to have the same meaning as the term “Contract Documents” found in the Construction Contract’s General Conditions.
- 1.22 “Construction Manager” or “CM” means the person, persons or firm engaged by the Authority, pursuant to this Agreement, to provide construction management services as defined herein.
- 1.23 “Construction Milestones” mean the dates identified on the Contractor’s Construction Schedule by which the Contractor must complete certain critical activities in the construction of the Project.
- 1.24 “Construction Phase” means that phase of the Project during which the Contractor constructs the Project.
- 1.25 “Construction Time” means the number of calendar days within which the Contractor is required to achieve Substantial Completion of its Work under the Construction Contract, as amended. The Construction Time is calculated from the Contractor’s Commencement Date.
- 1.26 “Contract Change Request” or “CCR” means a written request by the Contractor for a Change to the Construction Contract. A Contract Change Request does not authorize the Contractor to perform the requested change, but may trigger the issuance of either a Change Order or a Construction Change Directive by the Authority.
- 1.27 “Contractor” means that person or firm or those persons or firms engaged by the Authority to build the Project pursuant to its Construction Contract.
- 1.28 “Contractor Deliverables” means any documents required to be produced by, or Work product generated by, the Contractor pursuant to the Construction Contract.
- 1.29 “Contractor’s Contract Price” means the compensation amount stated in the Construction Contract, as it may be adjusted in accordance with the Construction Documents, representing the total amount payable by the Authority to the Contractor for performance of the Contractor’s Work.

- 1.30 “Contractor’s Invoice” means a request for payment submitted by the Contractor to the Authority requesting payment for a portion of the Contractor’s Work completed during the stated billing period.
- 1.31 “Contractor’s Submittal Schedule” or “Submittal Schedule” means the Contractor’s detailed schedule of its required Project Submittals, as required under the terms of the Construction Contract. Once accepted by the Authority, it will be used to monitor the progress of Contractor’s submittals.
- 1.32 "CM Claim" means a written demand by CM seeking, as a matter of right, adjustment or interpretation of this Agreement, payment of money, extension of time or other form of relief with respect to the terms of this Agreement, and shall also mean other disputes and matters in question between the Parties arising out of or relating to this Agreement. A CM Claim will cease to be a Claim upon resolution thereof, including resolution by withdrawal, noncompliance with procedural requirements, release, waiver, or an amendment to this Agreement signed by the Parties.
- 1.33 “CM’s Commencement Date” means the date identified in the initial written Notice to Proceed issued to CM by the Authority directing CM to commence performance of its duties, obligations and responsibilities pursuant to this Agreement.
- 1.34 “CM’s Daily Log” or “Daily Log” means a daily report to be incorporated into the Authority’s Expedition Database and which shall include: (i) the Work accomplished each day; (ii) the identity and adequacy of the Contractor’s and any Subcontractor's personnel and equipment on Site each day, including identifying specific building areas upon which the Work was performed and the specific trade related activity performed; (iii) the availability of necessary materials and supplies each day; (iv) the weather conditions for each day; (v) any problems encountered each day, including, but not limited to, those which could result in Project delay or increased Project cost or Claims; (vi) any equipment failures or breakdowns; (vii) any jobsite accidents or injuries; (viii) any safety issues; (ix) any observations that would indicate that the Contractor’s Work is noncompliant; (x) all other events, circumstances, or occurrences impacting the Project’s cost, schedule or quality; and (xi) any other similar relevant data as the Authority may reasonably expressly require of CM in writing.
- 1.35 "CM Deliverables" means any written, electronic or tangible data materials or things to be gathered, assembled, generated and/or supplied by CM under the terms of this Agreement, including, but not limited to, Work Product.
- 1.36 CM’s Notice to Proceed" or “CM’s NTP” means a written notice from the Authority to CM directing CM to commence performing its responsibilities pursuant to this Agreement.

- 1.37 “CM’s Project Manager” means that person designated by CM in writing to serve as CM’s representative for the project and this Agreement, and who shall have non-exclusive authority to bind CM in all matters relating to this Agreement.
- 1.38 “CM’s Submittal Log” or “Submittal Log” means the written summary prepared and updated by CM tracking the status of each Submittal by the Contractor required by the Construction Contract and the Submittal review process. CM’s Submittal Log shall be included as part of CM’s required Monthly Report to the Authority.
- 1.39 "Day" means calendar day, unless otherwise specifically defined in this Agreement.
- 1.40 “DCA” means the New Jersey Department of Community Affairs.
- 1.41 "Design Consultant" means the architect, engineer or other licensed Professional Services Consultant engaged by the Authority to provide services, including the design of the Project, oversight of construction for conformance with design, Submittal review and reporting, in connection with the design and construction of the Project, all as more specifically described in the Design Contract, as amended.
- 1.42 "Design Consultant’s Contract" or “Design Contract” means the Agreement, including all exhibits, attachments, appendices and amendments, between the Authority and the Design Consultant for the Project.
- 1.43 “Design Manual” means the edition of the NJSDA’s 21st Century Schools Design Manual required to be used by the Design Consultant per the Design Contract.
- 1.44 “Directive to Contractor” means a written order by the Authority directing the Contractor to perform Work under the Construction Documents. A Directive by the Authority requires the Contractor to perform the directed Work, even if there remains a dispute as to whether the Work described in the Directive constitutes a Change in the Contractor’s Work or warrants additional Construction Time or monetary compensation.
- 1.45 “Director” means the Authority’s Director of Contract and Workforce Compliance, Director of Vendor Services and Risk Management Unit, and Director of Furniture, Fixtures, Technology and Equipment. “DOE" means the New Jersey Department of Education.
- 1.46 “Document” means any written or graphic matter, however produced or reproduced, of any kind or description, including originals, marked copies and drafts, and including, but not limited to, correspondence, letters, memoranda, notes, notations, transcripts, notes, books, pamphlets, or articles, requisitions, resolutions, certificates, opinions, reports, studies, analyses, evaluations, contracts, licenses, agreements, financial statements, ledgers, checks, books or records of accounts, statistical records, lists, tabulations, summaries, charts, graphs, maps, surveys, plans, drawings, specifications, schedules, sound recordings, photographs, computer disks, faxes and electronic mail, and papers and things similar to any of the foregoing.

- 1.47 “E-Rate Program” means the Schools and Libraries Program administered by the Universal Service Administrative Company under the direction of the Federal Communications Commission to assist schools in obtaining affordable telecommunications and Internet access.
- 1.48 “EDA” means the New Jersey Economic Development Authority, created pursuant to P.L. 1974, c. 80, as amended (N.J.S.A. 34:1B-1 et seq.) or any successor thereto.
- 1.49 “ELEC” means the New Jersey Election Law Enforcement Commission established pursuant to N.J.S.A. 19:44A-5, et seq.
- 1.50 "Effective Date" means the date upon which this Agreement has been fully executed by all Parties, as indicated above.
- 1.51 “Extended Services” means additional Basic Services that CM is required to perform as a result of a delay in Project construction or for other reasons, but not for reasons or delay caused or contributed to by CM’s fault, neglect or breach of this Agreement.
- 1.52 “Final Completion” means that point in time on the Project when the Project is 100% complete and: (i) all requirements of the Construction Documents have been correctly completed, (ii) all items on the Punchlist have been correctly performed, and (iii) a Certificate of Occupancy, or a Certificate of Acceptance, as applicable, has been issued by DCA.
- 1.53 ”Final Construction Cost Estimate” or “Final CCE” means the CCE for the School Facilities Project as prepared by the Design Consultant at the completion of the Project’s Design Development Phase and accepted by the Authority.
- 1.54 "Key Team Member" means a principal, partner or officer of CM, or a project executive, Project Manager, assistant project manager, superintendent, project engineer, scheduler, estimator, or other individuals identified in CM’s response to the Authority’s RFP and/or RFQ that has a responsible role in the successful completion of the Project and this Agreement, and who generally spends or is expected to spend 20 percent (20%) or more of his/her time on any phase of the Project.
- 1.55 “Legal Requirements” means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, court orders, court judgments, decrees, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the Contractor’s performance of the Work under the Construction Documents, including, but not limited to, current versions of the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools Under Construction or Being Planned for Construction ("Best Practice Standards"), the Occupational Safety and Health Act of 1970, the Soil, Erosion and Sediment Control Act, as well as any requirements of any local or national Authorities having Jurisdiction over the Project, as applicable.

- 1.56 “Monthly Report” means a written report created monthly by CM and submitted to the Authority in hard copy and electronic form, and entered into the Authority’s Expedition Database, within ten (10) Days immediately following the end of the month for which the report is prepared. The report shall include, but not be limited to, a construction cost summary report and cash-flow forecast, the monthly Construction Schedule update prepared by the Contractor and provided to CM, a detailed narrative describing Project progress, the causes and extent of any Project delays, other current issues, critical activities, adequacy of the Work, site manpower of the Contractor, percentage of Work completed, updated Contractor Submittal Log, updated RFI Log, updated Change Order Log, and any Construction Milestone changes. Each Monthly Report shall include current and potential problems deemed of sufficient importance by CM to require Authority monitoring or action during the forthcoming month and a recommended course of action to achieve resolution of each of these problems. The Monthly Report shall also include a minimum of 12 digital photographs and associated electronic files indicating Project status. In addition, the Monthly Report shall include the status of the Contractor's compliance with applicable Affirmative Action, Safety and Security Plans, State Prevailing Wage requirements and any and all other information reasonably needed to fully inform the Authority and the Design Consultant of the status of the Project and the performance of the Contractor.
- 1.57 “Parties” means the signatories to this Agreement, i.e., the Authority and CM.
- 1.58 "Performance Evaluation Policy and Procedure" means the policies and procedures developed or to be developed by the Authority for evaluating the performance of professional services consultants, contractors, etc.
- 1.59 “Preconstruction Phase” means that phase of the Project before the Contractor commences construction of the School Facility and during which time the Project Design, Construction Documents and other necessary documents for the construction of the Project are prepared and Project bids are solicited, received and evaluated.
- 1.60 “Product data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system proposed for use in some portion of the Work
- 1.61 "Professional Services Consultants" means consultants, including CM, providing professional services related to the Project and associated with research, development, design, construction administration, alteration, or improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These consultants may provide services, including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, submittal review, testing, preparation of operating and maintenance manuals, and other related services.

- 1.62 "Professional Services Consultant Agreements" means the Agreements between the Authority and Professional Services Consultants in connection with the Project and, unless expressly stated, otherwise elsewhere in this Agreement, shall include this Agreement.
- 1.63 "Progress Payment Report" means a written report by the CM to the Authority and the Design Consultant prepared by CM after meeting with the Contractor, on or about the 25th of each month of its performance and reflecting CM's evaluation of the Contractor's Invoice and CM's determination of whether such Invoice accurately reflects the progress and value of the Contractor's Work. The Progress Payment Report shall make appropriate adjustments to such Contractor Invoice and state the Contractor's total Contract Price, previous payments to Contractor, current payment requested, retainage and actual amounts owed to Contractor for the current billing period. Included in this Progress Payment Report shall be the CM's Certificate of Payment.
- 1.64 "Project" means the design acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of the School Facility identified herein, including Appendix B hereto, and in the Construction Documents or of any personal property necessary for or ancillary to the School Facility identified herein, and in the Construction Documents.
- 1.65 "Project Budget" or "Budget" means the total amount of money earmarked by the Authority for the design and construction of the Project.
- 1.66 "Project Directories" means all information, including, but not limited to, names, company affiliations, business address, telephone numbers (land line and cellular) necessary to allow proper communication among all persons involved in the Project. The "Project Directories" are to be prepared by CM.
- 1.67 "Project Labor Agreement" or "PLA" means the Agreement negotiated and executed by the Authority, the New Jersey Building Trades Council, the Local Unions and the Contractor pertaining to the subject Project.
- 1.68 "Project Manager" means the Authority's employee representative for the Project who administers the Contract and manages the Project on behalf of the Authority. The Authority's Project Manager shall have that authority specified in the Levels of Operating Authority Policy which document can be found on the Authority's website: www.njsda.gov/RP/PoliciesAndRegulations/Operating_Authority.html.
- 1.69 "Project Schedule" means the Contractor's schedule, as submitted to and accepted by the Authority and CM. This Project Schedule shall be used to monitor the progress of the Work, subject to periodic updates contemplated under the Construction Contract.
- 1.70 "Project School District" means the school district in which the Project is located. The District is identified in Appendix B of this Agreement.

- 1.71 "Project Team" means the team(s) identified by the Authority for a Project. Such team(s) may consist of, but not be limited to, representatives of the Project School District, the Authority, the Design Consultant, CM, the Contractor, other agency representatives, such as DOE or DCA, and any other Professional Services Consultants engaged by the Authority in connection with the Project.
- 1.72 "Punchlist" means the list of incomplete or defective Work of the Contractor to be performed or remedied by the Contractor. Punchlist(s) shall be prepared by the CM in conjunction with the Design Consultant and the Authority prior to the issuance of the Certificate of Substantial Completion. The Punchlist shall not include items that are necessary to be completed in order to secure a temporary Certificate of Occupancy.
- 1.73 "Remedial Action Work Plan" or "RAWP" means the written documentation prepared and certified by licensed qualified environmental and/or engineering firms to satisfy New Jersey Technical Requirements for Site Remediation (N.J.A.C. 7:26E-6.2.). The RAWP will include, among other things, a summary of findings and recommendations generated by any Remedial Investigation Report, an identification of areas of concern, and a detailed description of the remedial action to be conducted and the remedial technology to be employed on the Site.
- 1.74 "Request for Information" or "RFI" means a written request by the Contractor to CM for additional information about, or clarification of, the Construction Documents. No changes to the Construction Contract may be implemented by the response to such RFIs and CM shall strive to achieve a turnaround time on all such RFI's of fourteen (14) Days, where feasible, and make every effort to avoid Project delay due to the Contractor not having the requested information when needed. If the Construction Contract requires a shorter turnaround time, CM shall comply therewith.
- 1.75 "Request for Information Log" or "RFI Log" means a written report or summary prepared by CM and updated monthly tracking the status of all Contractor RFIs. Such updated RFI Log is to be included in CM's Monthly Report to the Authority
- 1.76 "Request for Proposals" or "RFP" means a written request issued by the Authority for proposals from Professional Services Consultants for services described therein.
- 1.77 "Request for Qualifications" or "RFQ" means a written request issued by the Authority for qualifications from Professional Services Consultants.
- 1.78 "Safety Manual" means the latest edition of NJSDA's Safety Manual available at the time the Construction Contract is executed.
- 1.79 "Sample" means physical examples that illustrate materials, equipment or workmanship, and establish standards by which the Contractor's Work will be judged
- 1.80 "Schedule" means a Critical Path Method ("CPM") schedule prepared and submitted by the Contractor to the CM and Authority for acceptance, wherein the Contractor

identifies all critical and certain non-critical activities, including Construction Milestones, and the projected and actual time periods for completing such activities and Construction Milestones. The approved Schedule shall constitute the official Project Schedule.

- 1.81 "Schedule of Values" shall mean an itemized list prepared by the Contractor that establishes the value allocated to the various portions of the Contractor's Work and supported by such substantiating data as the Authority may require. If accepted by the Authority, this Schedule of Values shall be used exclusively as a basis for the Contractor's Invoices and only for this purpose. If the Construction Contract does not contemplate use of such a Schedule of Values to determine the Contractor's compensation, CM shall comply with alternate compensation criteria set forth in the Construction Contract.
- 1.82 "School Facility" means and includes any structure, building or facility used wholly or in part for academic purposes, and any property, structure or area ancillary or appurtenant thereto.
- 1.83 "Services" or "CM Services" means the services to be performed by CM in accordance with this Agreement. Such services shall include, but not be limited to, CM Deliverables and Work Product.
- 1.84 "Shop drawings" means drawings, diagrams, schedules and other data prepared specifically for the Work by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Contractor's Work.
- 1.85 "Site" means the site(s) proposed or selected for the physical location of the Project.
- 1.86 "Specifications" means a written description prepared by the Design Consultant setting forth the detailed, technical and functional characteristics of, or the discrete design for, an item of material, equipment or Work to be incorporated into the construction, or a requirement of the Work to be performed under the Construction Contract. The Specifications may include a statement of any of the Authority's requirements and may provide for inspection, testing or the preparation of a construction item before procurement.
- 1.87 "State" means the State of New Jersey.
- 1.88 "Subconsultant" means a Professional Services Consultant with whom another Professional Services Consultant subcontracts for the performance of all or part of the services for which the latter is responsible. This term also includes any consultant retained by a Subconsultant, regardless of tier.
- 1.89 "Subcontractor" means the party to whom a Contractor or another Subcontractor subcontracts part or all of the work for which such Contractor or other Subcontractor is responsible. "Subcontractor" shall also include subcontractors of any tier.

- 1.90 "Submittal" means documents or other tangible items required by the Construction Documents to be prepared and submitted by the Contractor for review by the CM, Design Consultant or the Authority. Examples of such submittals include, but are not limited to, shop drawings, product data and samples.
- 1.91 "Submittal Log" or "CM's Submittal Log" means the report generated and maintained by the CM of all Contractor Submittals on this Project.
- 1.92 "Substantial Completion" means that point in time on the Project when all of the following have occurred: (i) all essential requirements of the Construction Documents have been performed so that the purpose of the Construction Documents is accomplished; (ii) a Certificate of Occupancy or Temporary Certificate of Occupancy has been issued by the Department of Community Affairs; (iii) the Punchlist has been created; the Contractor has delivered to the Authority the key(s) and/or code(s) for operation of the elevators; (v) there are no material omissions or technical defects or deficiencies, as identified by the Authority; and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.
- 1.93 "Substantial Completion Date" means the date the Contractor is required to achieve Substantial Completion as identified in the Construction Documents.
- 1.94 "Temporary Certificate of Occupancy" means the document issued to the Authority's Contractor by the Department of Community Affairs (DCA).
- 1.95 "Term" means the term of this Agreement as set forth in Appendix B of this Agreement.
- 1.96 "Uniform Construction Code" or "Code" means the New Jersey Uniform Construction Code, as set forth in N.J.A.C.5:23-1 et seq., including the International Building Code and all applicable Sub-codes, as amended from time to time.
- 1.97 "Unit of Fiscal Integrity" means that unit within the Office of the Attorney General created by Section 70 of the Educational Facilities Construction and Financing Act, L. 2000, c. 72, or its successor entity.
- 1.98 "Work" or "Contractor's Work" means all work to be performed by the Contractor and its Subcontractors and suppliers, including providing all material, equipment, tools and labor, necessary to complete the construction of the Project, as described in and reasonably inferable from the Construction Documents.
- 1.99 "Work Product" means all written or electronic information and materials gathered, generated, prepared or supplied by CM or its Subconsultants in connection with CM's performance of its obligations under this Agreement, as more specifically defined in Section 10.2.1 of this Agreement.

2.0 RELATIONSHIP OF THE PARTIES AND OTHER ENTITIES

2.1 The Authority and CM

2.1.1 Relationship. CM agrees to proceed with the Project on the basis of confidence, trust, good faith and fair dealing and shall fully cooperate with the Design Consultant and the Authority in furthering the Authority's Project interests.

2.1.2 Standard of Care. CM covenants with the Authority to, at all times, furnish its Services, including, but not limited to, CM Deliverables and Work Product, in a manner fully consistent with the terms of this Agreement and the highest standards of skill, expertise, ability, judgment and diligence exercised by nationally recognized members of the construction management profession for projects of comparable size and complexity, and in accordance with applicable federal, state and local laws, codes, rules and regulations.

2.1.2.1 Further, and without limitation, CM shall perform its Services in:

- (a) an expeditious, efficient, economical and timely manner;
- (b) a manner consistent with the interests of the Authority, including, but not limited to, the Authority's interest in a quality and economical Project and the Authority's interest in the Contractor's timely and fully compliant performance of its Work; and
- (c) a manner such as to avoid undue hindrance, interference, disruption, interruption or delay to the Project's completion or increased construction costs. CM agrees and acknowledges that the Authority is relying upon, and shall be entitled to rely upon, CM so performing the Services required of CM by this Agreement and upon CM's experience and expertise in the construction industry in general and as a construction manager in particular.

2.1.2.2 CM represents and warrants to the Authority that:

- (a) CM is qualified to act as the CM on this Project and perform the Services required of CM under this Agreement;
- (b) CM has the capability and experience, including sufficient qualified and competent management and supervisory personnel, to efficiently and timely perform all of its Services called for under this Agreement; and
- (c) CM shall, for the life of this Agreement, continuously furnish such sufficient qualified and competent management and supervisory personnel to perform CM's Services hereunder;
- (d) CM is financially solvent and possesses sufficient working capital to timely, competently and efficiently complete its Services hereunder;

- (e) CM shall comply with all Applicable Laws in rendering its Services hereunder; and
 - (f) CM assumes full and complete responsibility to the Authority for all acts, errors and omissions of its officers, directors, employees, Subcontractors, suppliers, and Subconsultants and all others, directly or indirectly, retained by CM or them in connection with the Services to be performed by CM hereunder. CM shall designate, in writing, a Project Manager, who, at all times, shall be responsible for the coordination and proper performance of all Services to be provided by CM hereunder and shall have full authority to accept instructions, make decisions, communicate for, and act on behalf of, CM.
- 2.1.3 Authority's Authorized Representative. Unless expressly provided to the contrary elsewhere in this Agreement, CM shall, subject to the limitations provided herein, act as the Authority's authorized representative with respect to the Preconstruction Phase and Construction Phase of the Project.
- 2.1.4 Limitation of CM's Authority. CM shall not have any authority to bind the Authority for the payment of any costs or expenses or grant time extension to the Contractor without the express, prior, written approval of the Authority. CM shall have authority to act on behalf of the Authority only to the extent expressly provided herein and in the Construction Contract, which is incorporated herein by reference. In the event of an emergency affecting the safety of persons, the Project or adjacent property, CM, without special instruction or authorization from the Authority, shall act immediately and reasonably in order to prevent or minimize any such threatened damage, injury or loss. CM's authority to act on behalf of the Authority shall be modified only by a written amendment to this Agreement signed by both Parties.
- 2.1.5 Authority's Approval or Disapproval of CM's Services. The Authority shall, when well founded, have the right to reasonably disapprove, by written notice stating the reasons therefore, any portion or aspect of CM's Services. In the event that any of CM's Services are so disapproved, CM shall, when so requested in writing by the Authority, promptly proceed with revisions or improvements to its Services in an effort to satisfy the Authority's objections. CM acknowledges that any review or approval by the Authority of the CM's Services or the Authority's failure to disapprove or object to any aspect of CM's Services shall not relieve CM of its responsibility to properly and timely perform all such Services. If CM contends that any such disapproval and direction for change by the Authority is unreasonable, it, if so inclined, may assert a Claim for any resultant extra compensation and/or a time extension in accordance with applicable Claims procedures set forth herein. Both the Authority and CM shall exercise good faith efforts to amicably resolve such differences.

2.2 The Authority and Design Consultant

- 2.2.1 Design Consultant Relationship. The Authority shall engage, or has already engaged, a Design Consultant to provide all required architectural, engineering and design services for the Project. CM shall coordinate its scope of Services with that of the Design Consultant so as to avoid any duplication of services or conflict. The Authority shall make a good faith effort to cause the Design Consultant to timely provide those services reasonably requested by CM and included within the Design Consultant's scope of services under the Design Contract. Similarly, CM shall provide those services reasonably requested by the Authority and/or the Design Consultant and included within CM's scope of Services under this Agreement. Upon written request of CM, the Authority shall furnish to CM a copy of the Design Contract and, in any event, CM shall be charged with knowledge of its contents to the extent that they have any bearing or potential bearing on the scope of CM's duties and responsibilities. The Design Contract shall not be modified without written notification to CM.
- 2.2.2 Limitations. Nothing in this Agreement shall be construed to mean that CM assumes any of the responsibilities or duties of the Design Consultant. The Design Consultant is solely responsible for the design requirements and the design criteria of the Project and shall perform in accordance with the Design Contract. However, CM's services shall be rendered compatibly and in cooperation with the services provided by the Design Consultant under the Design Contract. It is intended that the services of the Design Consultant and CM's Services shall be complementary. CM will be entitled to reasonably rely upon the Design Consultant for the proper performance of services undertaken by the Design Consultant pursuant to the Design Contract.
- 2.2.3 Representation of No Solicitation. CM warrants and represents to the Authority that: (a) no person, firm, entity or organization has, directly or indirectly, been employed or retained by CM to solicit or secure this Agreement upon an agreement, promise or understanding for payment of a commission, percentage, brokerage, or contingent fee and CM has not, and will not, pay any such commission, percentage, brokerage, or contingent fee; and (b) neither in exchange for assistance in CM's procurement of this Agreement or otherwise in connection herewith, shall CM, directly or indirectly, give anything of value, either as compensation, gift or gratuity, to any agent, representative, officer or employee of the Authority or to any officer or employee of the State of New Jersey or to any other person, firm or organization.

2.3 The Authority and the Contractor

- 2.3.1 Contractor Relationship. The Authority shall engage a Contractor to construct the Project. The Authority shall cause the Contractor to perform any Work reasonably requested by CM in writing and required of the Contractor by the Construction Contract.

2.3.2 Limitations. Nothing in this Agreement shall be construed to mean that CM assumes any of the responsibilities or duties of the Contractor. The Contractor will be solely responsible for construction means, methods, techniques, sequences and procedures used in the construction of the Project and for the safety of its personnel, property, and its operations and for performing in accordance with the Construction Contract.

3.0 THE CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

3.1 CM's Services

3.1.1 In general, and without limiting the scope of CM's Project responsibilities as more specifically described elsewhere in this Agreement, CM shall, as the Authority's Project administrator, consultant and adviser, furnish, on a daily, continuous, competent, non-negligent, efficient and economical basis, Project administration, scheduling, coordination, management, monitoring, supervision, inspection and oversight and shall thereby diligently endeavor to:

- (a) verify and confirm that the Project, as designed, is free from defects, feasible and efficiently and economically constructable and consistent with the quality, economical, scheduling and safety objectives of the Authority;
- (b) verify and confirm the Work of the Contractor strictly complies with the terms of the Construction Contract, including the scheduling commitments therein and is free from defects;
- (c) analyze and advise the Authority concerning Claims by the Contractor and Design Consultant for extra compensation and/or additional time;
- (d) inform and advise the Authority of Project problems and issues and promptly recommend to the Authority feasible and economical remedial measures;
- (e) guard the Authority against (1) unnecessary expense or infeasible and/or impractical Project design, (2) defective or nonconforming Work of the Contractor, (3) overpayment of the Contractor, and (iv) any unnecessary increase in the Authority's Project cost or duration;
- (f) continually examine the potential for, and promptly advise the Authority of, any perceived methods of cost savings in the Project's design or construction without diminishing Project quality;
- (g) document the performance of the Project participants; and
- (h) protect and promote all aspects and facets of the Authority's interests in the Project and ensure that the Authority receives all that it is entitled to receive under the Construction Contract and Design Contract.

- 3.1.2 The specifics of CM's Project obligations, as set forth elsewhere in this Agreement, are not intended to restrict or diminish these general obligations of CM. CM is responsible for the quality, technical accuracy, and timely completion and delivery of all of its Services, including CM Deliverables and Work Product. The Authority's approval of interim CM Deliverables and Work Product shall not in any way relieve CM of its obligation to strictly and completely fulfill all of its obligations under this Agreement.
- 3.1.3 Acceptance of, or payment for, any of CM's Services, including CM Deliverables and Work Product shall not be construed as, or argued by CM as constituting, a waiver, release or modification by the Authority of any of its rights and entitlements under this Agreement or of any cause of action arising out of CM's performance or non-performance under this Agreement.
- 3.1.4 CM shall be familiar with the details of the Construction Documents, which are incorporated herein by reference, and the extent to which they impact upon CM's scope of Services hereunder. To the extent that such Construction Documents refer to a duty or responsibility of CM not specifically referenced herein, such duty of responsibility is incorporated herein as if fully set forth herein at length. Further, CM shall be familiar with the obligations and rights of the Contractor, as set forth in the Construction Contract, insofar as they impact upon CM's obligations set forth herein and where this Agreement describes some right or obligation of the Contractor in a manner which conflicts with the Construction Contract, the Construction Contract shall control and any such inconsistency shall not warrant an award to CM of additional time or compensation.
- 3.2 Errors and Omissions. CM shall, without additional compensation, promptly cure any errors, omissions, or other deficiencies in CM Deliverables. Any costs, direct and indirect, reasonably incurred by the Authority to correct any errors or omissions or their reasonably foreseeable consequences will be deducted from the payments otherwise due then or thereafter due CM. If the payments then or thereafter due CM are not sufficient to cover such remediation costs incurred by the Authority, CM shall, within ten (10) Days of its receipt of the Authority's written demand, pay the difference to the Authority. The Authority, in this regard, will take appropriate steps to mitigate any expenses it may incur in exercising its rights under this Paragraph. If CM fails to timely pay the Authority in this regard, the Authority shall be entitled to interest.
- 3.3 Design Manual. CM shall review and be familiar with the requirements of the Design Manual. CM shall review all Work of the Contractor and the services of the Design Consultant on the Project for compliance with the procedures described in the Design Manual.
- 3.4 CM Staffing. CM shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an efficient, expeditious and economical manner consistent with the interests of the Authority, including the

Authority's desire for quality construction at a price within the Authority's budget and completion within the Authority's specified time constraints.

- 3.5 Key Team Members. Absent the Authority's written consent, CM shall utilize the Key Team Members, including its Project Manager, identified in its response to the Authority's RFP and/or RFQ for this Project. The Authority has the right to reject any such Key Team Member if, in its reasonable opinion, such Key Member is failing to properly perform or, in the reasonable opinion of the Authority, lacks the necessary background and experience. All substitutions proposed by CM must be approved in advance by the Authority in writing and such approval shall not be unreasonably withheld. CM shall provide written notice to the Authority in the event CM proposes to replace, add or remove any Key Team Member. The new Key Team Member must have equal or superior qualifications to the Key Team Member CM proposes to replace. CM shall submit to the Authority, for approval, the name and qualifications of all proposed Key Team Member substitutions. Any approval by the Authority of any Key Team Member shall not be construed as an admission by the Authority of such Key Member's competence and CM shall not argue to the contrary in connection with any dispute between the Parties.
- 3.6 Changes to Key Team Members. The Authority may, at its option, review from time to time CM's Key Team Members. If, in the Authority's reasonable opinion, changes to Key Team Members are necessary, the Authority shall so notify CM in writing and, absent CM's written waiver of such requirement, provide the justification for such ordered replacement. Upon receipt of said notice, CM shall submit to the Authority, for approval, the name and qualifications of proposed Key Team Member substitutions. No changes to Key Team Members shall be permitted without the prior, written approval of the Authority, which shall not be unreasonably withheld.
- 3.7 Contractor Deliverables. CM is responsible for the coordination and timely delivery to the Authority of all Contractor Deliverables that are required by this Agreement or the Construction Contract to be coordinated or reviewed by CM for approval or comment before delivery to the Authority. The Authority's approval of interim Contractor Deliverables shall not in any way relieve CM of its obligation to fulfill all of its obligations under this Agreement. Acceptance of, or payment for, any of the Contractor Deliverables shall not be construed as, or argued by CM as constituting, a waiver or release by the Authority of any of its rights under this Agreement or of any cause of action arising out of CM's performance or non-performance under this Agreement.
- 3.8 Performance of Subconsultants. CM may hire a Subconsultant on this Project only with the prior, written consent of the Authority. Further, no Subconsultant may retain a Subconsultant absent the prior, written approval of the Authority. No Subconsultant, shall be retained on terms inconsistent with the requirements of CM under this Agreement. It is expressly understood by CM that approval by the Authority of the subcontracting of any Services under this Agreement shall not relieve CM from its full responsibility for all of its obligations under this Agreement

and CM represents that it will not argue to the contrary. CM shall continue to be contractually and otherwise responsible to the Authority for the proper performance of all Services and obligations required of CM by this Agreement, inclusive of those performed by any Subconsultant. Consent by the Authority to the hiring of a Subconsultant shall not be construed to be an approval of the Subconsultant's contract or any of its terms, but shall operate only as an approval of the hiring of the Subconsultant. CM shall oversee and be fully responsible and liable to the Authority for all Services performed by any Subconsultant, and CM shall cause all of its Subconsultants' Services to strictly conform to the provisions of this Agreement. The failure of any Subconsultant to strictly adhere to the terms of this Agreement may, in the Authority's discretion, be cause for termination of this Agreement. All Subconsultant agreements, regardless of tier, shall contain a provision acknowledging that any failure of a Subconsultant to properly perform its obligations thereunder, shall also, without waiving or diminishing the Authority's rights against CM or CM's liability to the Authority, give rise to a direct claim against such Subconsultant by the Authority, as an intended third party beneficiary, for breach of Subconsultant's contract and, if the circumstances warrant, for negligence and professional malpractice.

- 3.9 Professional Advice and Support. CM shall advise and make timely, appropriate, suitable, accurate and proper recommendations to the Authority regarding, and facilitate resolution of, any issue that will have an impact on the cost, schedule, compliance or successful delivery of the Project, including, but not limited to, safety, performance, compliance, environmental issues, approvals, personnel, procedures, payment, changes, training, document management, labor issues, constructability, quality control, building commissioning, and all other customary construction management tasks. CM shall promptly analyze any Contract Change Requests (CCRs) and claims submitted by the Contractor or the Design Consultant to the Authority and, if requested in writing by the Authority, promptly provide to the Authority, in writing, its detailed analysis and recommendations as to resolution thereof.
- 3.10 Accounting Requirements. For all Services rendered, CM shall, in accordance with generally accepted accounting principles and practices, maintain detailed, complete and accurate records of the Services performed and the cost thereof, including, but not limited to, time records, weekly payroll, overhead, cost and accounting records, as well as all other records CM may customarily maintain in its business. Such records, pertaining to all aspects of CM's Services, including, but not limited to, CM Deliverables and Work Product provided under this Agreement, regardless of whether the Services, CM Deliverables or Work Product are performed by CM or any Subconsultant, shall be maintained and made available for inspection by the Authority or any other State Agency on reasonable prior, written notice and during CM's regular business hours. All agreements with CM's Subconsultants, regardless of tier, shall impose this obligation on such Subconsultants and CM shall take timely, appropriate and effective steps to ensure its Subconsultants' compliance. CM shall maintain all such Project records for a period of, at least, five (5) years or such longer time period as may be required by Applicable Laws, or CM's or its

Subconsultant's current document retention policy, during which time they shall continue to be available for inspection and copying by the Authority and its agents and representatives.

- 3.11 Field Office Furniture, Supplies & Equipment. Contractor will provide a field office, telephones and other temporary facilities as required by the Construction Contract. CM, at its sole expense, shall provide any additional office supplies and equipment reasonably necessary to manage the Project. This CM-provided equipment shall include, but not be limited to, digital video camera (one per trailer), digital camera (one per trailer), copiers, computers, software, printers (one for every two computers), facsimile machines, and similar items. If not provided by the Contractor, CM shall provide for local and long-distance telephone service and internet provider service at its own expense. CM, at its own expense, shall also provide for any wireless communication devices (i.e., cell phone, PDA's, Blackberry, etc.), high-speed data lines or other additional communication services that are reasonably necessary to properly and efficiently manage the Project. If required, in writing, by the Authority, CM shall provide a list of field-office requirements to the Design Consultant for inclusion in the bidding documents. The list shall be developed for approval by the Authority.
- 3.12 Reproduction Costs. CM shall reproduce all tangible CM Deliverables and Work Product, including, but not limited to, reports, logs, charts, schedules, submittal drawings, and similar items required to be produced by CM pursuant to this Agreement at CM's own expense. The exact number of copies required will be as reasonably determined by the Authority.
- 3.13 Hazardous Materials. If CM suspects, learns of or discovers the existence of previously undetected asbestos, radon, lead, PCB's or other hazardous material at the Project, CM shall, immediately and in writing, report its findings to the Authority and assist in determining and implementing an appropriate course of action to safely and legally remove or eliminate such hazardous material from the Project.
- 3.14 Other Subconsultants and Contractors. The Authority may, in its sole discretion, engage one or more construction consultant(s), contractors or other Professional Services Consultants during the construction process. The services, duties, and responsibilities of any construction consultant, contractor or other Professional Services Consultant shall be described in an agreement between the Authority and such construction consultant, contractor or other Professional Services Consultant that will be furnished to CM upon written request, and CM is obligated to coordinate its Services hereunder with those of all such construction consultants, contractors or other Professional Services Consultants.

4.0 BASIC SERVICES

4.1 Preconstruction Phase Services

CM shall provide the following Preconstruction Services as Basic Services if Preconstruction Phase Services are requested by the Authority in the RFP/RFQ for this Project.

- 4.1.1 Commencement of Preconstruction Phase. The Preconstruction Phase, together with CM's obligation to provide Basic Services under this Agreement, will commence upon issuance of the CM's Notice to Proceed by the Authority.
- 4.1.2 Review of Authority's Program. CM acknowledges that it has carefully and thoroughly reviewed the Authority's Program to determine the requirements of the Project as such requirements may impact the Services to be provided by CM under this Agreement, and any uncertainty on the part of CM in that regard has been the subject of a written inquiry and satisfactory written response by the Authority and/or Design Consultant.
- 4.1.3 Consultation. If CM is retained by the Authority prior to the Construction Documents reaching 95% completion, CM shall participate in regular meetings with the Authority and Design Consultant to discuss and review the development of the Construction Documents. The objective of such consultation is the development of an overall strategy for bidding and constructing the Project, taking into account completion time, cost and potential disruption or interference with the Authority's business activities at or near the Project Site.
- 4.1.4 Review of Construction Documents. Upon the Construction Documents reaching 95% completion, as determined by the Authority in consultation with the Design Consultant, CM shall review the Construction Documents and provide written comments and recommendations to the Authority, in report form, analyzing the design, Site use and improvements and the selection of materials, building systems, and equipment, including, but not limited to, comments on, construction feasibility, constructability, schedule, compliance with the Design Manual, possible adverse effects of labor or material shortages, time requirements for procurement, coordination of the Work, installation and construction completion, bidding strategy and other factors related to construction cost, including estimates of alternative designs, building systems, equipment or materials and possible economies. If, instead, the CM is engaged by the Authority, in writing, prior to the Construction Documents reaching 95% completion, CM shall also review and analyze the Construction Documents during their development and provide written comments and recommendations to the Authority as heretofore described in this Section. If any of CM's suggestions in this regard are accepted for incorporation into the Construction Documents, CM shall carefully review the revised Design Documents and determine, and advise the Authority, in writing, as to whether CM's accepted suggestions were correctly incorporated. By performing reviews and making recommendations as described in this Section, CM shall not be acting in a

manner so as to assume responsibility or liability, in whole or in part, for any aspect of the Project design, design requirements, design criteria or the substance or contents of the Construction Documents. CM's actions in making such reviews and recommendations, as provided herein, are to be advisory only to the Authority and to the Design Consultant.

- 4.1.5 Site-Utilization/Logistics/Staging Plan. CM shall develop a Site-Utilization/Logistics/Staging Plan ("Site Utilization Plan") for the entire Project site in which CM shall identify areas available for Contractor to accommodate all means and methods for completion of the Project, to ensure protection of adjacent buildings, to limit and manage impacts to the Site, to maintain the continuity of school operations and illustrate impacts and potential impacts to the Site. CM shall provide this Site Utilization Plan to the Authority for review and approval in both visual and narrative form and shall modify this Plan, as necessary, to obtain the Authority's written approval. Once approved, CM shall keep the Site Utilization Plan current and the Site Utilization Plan shall be included in the Authority's Expedition Database.
- 4.1.6 Value Engineering. CM shall promptly review the Project design and the Construction Documents and suggest, in writing, ways to achieve a savings of time or money for the Project by revising certain parts of the Project design and/or Construction Documents, such as, without limitation, revisions to the mechanical systems, roofing systems, finishes, energy management systems, lighting and power systems, and site work, as well as maintainability and operability considerations. Such CM suggestions shall provide an estimate of the proposed savings in construction cost and/or Construction Time.
- 4.1.7 Long-Lead Time Items. CM shall recommend to the Authority and the Design Consultant a schedule for procurement of long-lead time items and shall help expedite the delivery of such items.
- 4.1.8 Notices and Advertisements. CM shall assist the Authority in preparing and placing necessary notices and advertisements related to the Authority's solicitation of bids for the Project.
- 4.1.9 Delivery of Bid Documents. CM shall expedite the delivery of bid documents to the bidders. CM shall obtain the bid documents from the Design Consultant and arrange for their printing, binding, wrapping and delivery to the bidders. CM shall maintain a confidential list of bidders receiving such bid documents.
- 4.1.10 Pre-bid Conference. In addition to the Authority and Design Consultant, CM shall participate in any pre-bid conferences with prospective bidders as required in writing by the Authority. These conferences shall be forums for the Authority, CM, and Design Consultant to explain the Project requirements to the bidders, including, but not limited to, the schedule requirements, time and cost control requirements, access requirements, the Authority's administrative requirements and technical requirements and shall also serve as an opportunity

to respond to inquiries by prospective bidders. Minutes of all such pre-bid conferences shall be prepared by CM and, if appropriate, provided to all prospective bidders via formal addenda.

4.1.11 Information to Bidders. With the Design Consultant, CM shall develop and coordinate procedures to timely provide answers to bidders' questions. All such answers shall be in the form of addenda prepared by the Design Consultant.

4.1.12 Addenda. CM shall receive from the Design Consultant a copy of all addenda generated by the Design Consultant. CM shall review such addenda for

4.1.12.1 constructability,

4.1.12.2 for impact on the Project Budget and CCE,

4.1.12.3 scheduling and time of construction, and

4.1.12.4 for clarity.

4.1.12.5 CM shall promptly provide written comments and recommendations to the Authority related to CM's review of such addenda. Upon final approval of such addenda by the Authority and the Design Consultant, CM shall distribute a copy thereof to each prospective bidder.

4.1.13 Bid Opening and Analyzing Bids. CM shall timely assist the Authority in the bid opening and, upon receipt of the bids, shall evaluate the bids for responsiveness and price and evaluate the responsibility of all bidders. CM shall make written recommendations to the Authority concerning the bids and the award of the Construction Contract. CM shall promptly prepare a summary of the bid results. Where alternate bids are required, CM shall explain the impact of the Authority's adopting such alternates on the total bid price and the ranking of the bidders. CM's review of the bids shall include an assessment of whether the bid is unbalanced and, if so, to what extent and at what risk to the Authority. CM shall make recommendations to the Authority regarding:

a) rejection of a bid proposal due to non-conformity or the bidder's non-responsibility;

(b) rejection of a bid proposal for any other reason;

(c) rejection of all bid proposals;

(d) selection of Alternates; and

(e) contract award.

4.1.14 Construction Contract. CM shall timely assist the Authority in the assembly, delivery and execution of the Construction Contract.

- 4.1.15 Acceptability of Subcontractors. CM shall promptly advise the Authority, in writing, on the acceptability of Subcontractors and material suppliers proposed by the Contractor.
- 4.1.16 Permits. CM shall timely assist the Authority in obtaining building permits and any special permits, except for permits required to be obtained directly by the Contractor. CM shall timely verify that the Authority has paid applicable fees and assessments. CM shall timely assist the Authority and Design Consultant in filing documents required for the approval of governmental authorities having jurisdiction over the Project.
- 4.1.17 Professional Services Consultants. CM shall assist the Authority in selecting, retaining and coordinating certain necessary Professional Services Consultants.

4.2 **Construction Phase Services**

- 4.2.1 Administrative and Management Services. At all times during the Project's Construction Phase, CM shall maintain a continuous presence on the Project Site through the provision of experienced and qualified personnel to perform CM Services under this Agreement. CM shall provide administrative, management and related Services, as required, to monitor, verify, secure and direct the strict compliance of the Contractor with the Construction Contract and the Authority's objectives for cost, schedule and quality and, where applicable, coordinate the Work of, and promptly resolve disputes between, multiple Project contractors.
- 4.2.2 Commencement of Construction Phase. The Construction Phase will commence with the award of the Construction Contract and, together with CM's obligation to provide Basic Services under this Agreement, will end thirty (30) Days after final payment has been made to the Contractor, except that CM shall participate in the Warranty Inspection, as set forth in Section 4.10.8 of this Agreement, and will assist the Authority in resolving any Warranty issues.
- 4.2.3 Pre-Construction Conference. In consultation with the Authority, the Authority's Project Manager and Design Consultant, CM shall schedule and conduct a Pre-construction Conference with the Contractor after the Construction Contract is signed. The agenda for the Pre-Construction Conference shall include, but not be limited to, a review of the Construction Documents, Subcontractors, key personnel, scheduling, Project staffing, contract administration procedures, Project requirements, procedures for processing field decisions, Submittals, substitutions, invoices and Change Orders and other pertinent issues consistent with Specification Section 01200 "Preconstruction Conference," as amended or superseded by the Construction Contract. The CM shall schedule and conduct the Pre-Construction Conference within ten (10) Days of the Effective Date of the Construction Contract or such different date as the Construction Contract may require.

- 4.2.4 Construction Documents' Errors and Omissions. CM shall, in writing, promptly report to the Authority and the Design Consultant, any errors, inconsistencies, defects or omissions that it discovers in the Construction Documents or which have been alleged by the Contractor.
- 4.2.5 Quality Assurance/Quality Control ("QA/QC") Program. CM shall review the Contractor's Quality Assurance/Quality Control Program, recommend, in writing, its approval or rejection to the Authority, and monitor Contractor's compliance with the Program. Once approved, CM shall endeavor to ensure that the Work accomplished meets or exceeds the approved QA/QC Program. In the event that the Contractor fails to comply with its QA/QC Program, CM shall notify the Authority, in writing, and assist the Authority in determining and implementing a course of action to address the Contractor's failure to comply with the QA/QC Program. CM's actions to verify the Contractor's compliance with the QA/QC Program requirement shall not relieve the Contractor of its obligation to establish a QA/QC Program which fully satisfies the requirements of the Construction Contract related to QA/QC.
- 4.2.6 Compliance with Applicable Laws. CM shall monitor the Contractor for compliance with Applicable Laws, as required for the construction of the Project, specifically including, but not limited to, the requirements of the New Jersey Uniform Construction Code, the National Electrical Code, the International Building Code, the Occupational Safety and Health Administration, Soil, Erosion and Sediment Control Act, if applicable, and any other applicable codes, and shall promptly notify the Authority in writing of Contractor's failure to comply with such requirements. The general status of such compliance by the Contractor and actions that have been taken to resolve any failure to comply shall be included in CM's Monthly Report to the Authority.
- 4.2.7 Permits, Bonds and Insurance. CM shall verify that the required permits, bonds, and insurance have been obtained and paid for by the Authority, the Contractor, the Design Consultants, the Subcontractors, and the Professional Services Consultants and Subconsultants. Such CM verification shall not relieve the Contractor, the Authority, Subcontractors, the Design Consultant, Professional Services Consultants or Subconsultants of their responsibility to fully comply with their agreements regarding permits, bonds or insurance for this Project.
- 4.2.8 On-Site Management and Construction Phase Communication Procedures. CM shall be the overall facilitator and coordinator of the Project and shall communicate between and among the Contractor, CM, Design Consultant, the Authority and/or other Professional Services Consultants. CM shall provide and maintain a management team on the Project Site to provide continuous daily Construction Contract administration and oversight. CM shall establish adequate procedures for such Project coordination and communication and shall manage and monitor the implementation and execution of such procedures.

- 4.2.9 Progress Meetings. CM shall schedule and administer weekly construction Progress Meetings throughout the progress of the Work in accordance with Specification Section 01220 “Project Meetings,” as amended or superseded by the Construction Contract. Within three (3) Days of the progress meetings, CM shall prepare and distribute detailed meeting minutes to the Authority and all other parties attending the meeting. All attendees receiving such minutes shall be asked in the CM’s transmittal to advise CM, in writing and within three (3) Days of receipt, of any perceived error or omission in the minutes being transmitted by CM.
- 4.2.10 Construction Schedule. Within four (4) days after the Contractor’s Commencement Date, the Contractor shall submit to CM for review and acceptance, a Milestone schedule for execution of the Work. CM shall review the Milestone Schedule and provide comment to the Authority, in writing, as to its acceptability within four (4) days of receipt. Within fourteen (14) days after initial submission of the accepted Milestone Schedule, the Contractor shall submit to the CM a detailed construction schedule in CPM format, per the terms of the Construction Contract and compatible with the Authority’s Expedition database. Within seven (7) days of receipt, CM shall analyze the Contractor’s proposed Construction Schedule and comment, in writing, as to its acceptability. If this Schedule is required to be revised by the Contractor, CM shall, within seven (7) days of its receipt, analyze such revised Construction Schedule and timely provide its written comments and recommendations for acceptance or rejection. Once finally approved, the Construction Schedule shall constitute the official “Project Schedule” and will be used by CM to monitor the progress of the Contractor’s Work. The Contractor shall submit Project Schedule Updates to the CM on the 10th day of each month. CM, within five (5) Days of its receipt of such Project Schedule Updates, shall review them to ensure strict compliance with the approved Project Schedule and Construction Milestones. In the event that CM’s review of the Project Schedule Updates indicates that Contractor will not meet the Construction Milestones, CM shall immediately alert the Authority, in writing, and assist the Authority in determining and implementing an appropriate course of action. If the Contractor is required to produce a recovery schedule, CM, within five (5) Days of receipt of such recovery schedule, shall review, provide written comments and recommend, in writing, to the Authority its approval or rejection. CM, ultimately, shall advise the Contractor in writing of the Authority’s position regarding its Project Schedule Updates and any recovery schedule that may have been submitted
- 4.2.11 Labor Relations. CM shall monitor overall labor relations and, if applicable, ensure that the requirements of the Authority’s Project Labor Agreement (PLA) are fully met. CM shall be responsible for receiving and maintaining copies of all Letters of Assent executed by the Contractor and any Subcontractors performing Work that falls within the terms of the PLA. In the event of a labor dispute affecting the Project, CM shall immediately notify the Authority’s Labor Relations Unit in writing and assist the Authority in determining and implementing the appropriate course of action.

- 4.2.12 Inspection and Testing Professional Services Consultants. CM shall be responsible for providing technical inspection and testing for the Project. CM shall, as needed, engage duly qualified Professional Services Consultants necessary to provide the technical inspection and testing required by the Construction Contract. CM shall direct, oversee and coordinate with these Professional Services Consultants. CM shall require that, and monitor to ensure that, all testing and technical inspection by the Professional Services Consultants engaged by CM conforms to the requirements of Specification Section 01410 "Testing Laboratory Services," as amended or superseded by the Construction Contract. CM shall receive a copy of all inspection and testing reports from the Professional Services Consultants and shall provide a copy of such reports to the Authority, Contractor and Design Consultant. CM shall review the inspection and testing reports prepared by the Professional Services Consultants and shall advise the Authority regarding the inspection and testing performed and the results of such inspection and testing.
- 4.2.13 Approvals by Regulatory Agencies. CM shall coordinate transmittal of documents to regulatory agencies for review and shall promptly advise the Authority, in writing, of potential problems and suggest solutions regarding completion of such reviews.

4.3 **Cost Monitoring**

- 4.3.1 For the Term of the Project, CM shall review and advise the Authority as to the Project Budget, the CCE, the validity of the Contractor's proposed Schedule of Values and the actual costs of construction. As part of this cost monitoring, CM shall, in writing, provide the Authority with timely information as to the anticipated total cost of the Project, including changes and amendments to the Work or Services. As part of its Monthly Report required by Section 4.7.9(2) of this Agreement, CM shall provide a construction cost summary and cash-flow forecast.
- 4.3.2 CM shall review and analyze the proposed Final CCE prepared by the Design Consultant at the conclusion of the Design Development Phase of the Project and any proposed subsequent adjustment to said Final CCE, and provide, in writing, comments to the Authority as to its feasibility and the need for any revisions.
- 4.3.3 CM's evaluations of the Project Budget and CCE represent CM's best judgment as a person or entity having substantial experience with the construction industry and construction costs. It is recognized that neither CM nor the Authority has control over the cost of labor, materials or equipment, over the Contractor's method of determining bid prices or over competitive bidding, market or negotiating conditions. Accordingly, CM cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project Budget or the CCE. CM, however, has an obligation to manage the Project so as to control

costs, when possible, and to advise the Authority, in writing, of ways to control Project costs.

- 4.3.4 CM shall monitor the CCE, including all updates and revisions thereto, and shall, in writing, promptly advise the Authority whenever actual or projected construction costs deviate from the estimated costs set forth in the CCE and state the reasons therefor, if determined.
- 4.3.5 CM shall notify the Authority, in writing, whenever the CCE or actual or projected construction costs may exceed the Project Budget and shall endeavor to timely provide cost reduction recommendations, corrective alternatives or adjustments to remedy the situation.

4.4 **Contractor Compliance Services**

CM shall provide compliance management services, which shall include, but not be limited to, monitoring and reporting to the Authority, in writing, on the Contractor's compliance with the following programs:

- 4.4.1 Affirmative Action Program. CM shall review and monitor the Contractor's compliance with the requirements of the Authority's Affirmative Action Program. CM shall report, in writing, to the Authority any failure by the Contractor to meet the requirements of the Affirmative Action Program and assist the Authority in determining and implementing an appropriate course of action to remedy the Contractor's failure to meet the requirements of the Affirmative Action Program. The general status of the Contractor's compliance with the Affirmative Action Program and actions that have been taken to resolve Contractor's failure to comply with the program shall be included in CM's Monthly Report to the Authority.
- 4.4.2 Prevailing Wage Act. CM shall monitor the Contractor's compliance with the State Prevailing Wage Act and promptly report in writing to the Authority any failure of the Contractor or any of its Subcontractors to meet the requirements of that Act, including the obligation to timely submit its and all Subcontractors' certified payrolls, and any actions taken or needed to be taken in order to resolve any such failure to comply. Additionally, the general status of the Contractor's compliance with the State Prevailing Wage Act and all efforts to correct the Contractor's or its Subcontractor's failure to comply with the State Prevailing Wage Act shall be included in CM's Monthly Report to the Authority.
- 4.4.3 Safety Plan. CM shall receive and review Contractor's Safety Plan for consistency with the Authority's requirements and policies based upon, but not limited to, the latest version of the Authority's Safety Manual and all governmental safety codes, rules, regulations and requirements, such as OSHA. CM shall then recommend to the Authority, in writing, approval or disapproval of the Contractor's Safety Plan. Once a Safety Plan is approved, CM shall review and monitor compliance with the Safety Plan. CM shall immediately

report in writing to the Authority any failure by the Contractor to meet the requirements of the Safety Plan and shall assist the Authority in determining and implementing an appropriate course of action to remedy the Contractor's failure to meet the requirements of the Safety Plan. The general status of the Contractor's compliance with the Safety Plan and actions that have been taken to resolve any failure to meet those requirements shall be included in CM's Monthly Report to the Authority. If, at anytime, however, CM deems any part of the Work on the Project Site unsafe, CM may immediately require the Contractor to stop performance of the Work or to immediately take any other appropriate corrective measures.

- 4.4.4 Security Plan. CM shall receive and review Contractor's Security Plan for consistency with the Authority's requirements and policies and the Construction Contract. CM shall, within ten (10) Days of its receipt, recommend to the Authority approval or disapproval of the Contractor's Security Plan. If the Contractor's Security Plan is rejected by the Authority, the Contractor shall revise and resubmit its Security Plan to the CM until it is accepted. Once a Security Plan is approved, CM shall review and monitor the Security Plan and shall report in writing to the Authority any failure by the Contractor to meet the requirements of the Security Plan. In the event of a failure by the Contractor to meet the requirements of the Security Plan, CM shall assist the Authority in determining and implementing an appropriate course of action to remedy the Contractor's failure to meet the requirements of the Security Plan. The general status of the Contractor's compliance with the Security Plan and actions that have been taken to resolve any failure to meet the Security Plan requirements shall be included in CM's Monthly Report to the Authority.
- 4.4.5 Contractor Photos. CM shall ensure that within forty-eight (48) hours of the issuance of the Notice to Proceed to the Contractor or such different time period as may be set forth in the Construction Contract, the Contractor shall take as many digital photographs as may be necessary to fully record and document existing Site conditions. In no event shall the number of such photographs be less than twenty-four (24). The Contractor shall submit these initial photographs to the CM within seven (7) Days of the Notice to Proceed. The CM shall ensure that the Contractor shall submit with its monthly Invoice a minimum of twelve (12) digital photographs documenting in detail the progress of its Work during the prior month for which the Contractor's Invoice is submitted. All required photographs shall be noted with the date and time the photograph was taken, the name of the Project, description of the photograph and information identifying directional information (e.g. "looking north"). Within five (5) Days of receiving a Certificate of Substantial Completion, the Contractor is required to take a minimum of twenty-four (24) digital photographs, which shall be submitted to the CM within ten (10) Days of the Contractor's receipt of a Certificate of Substantial Completion. All digital photographs taken by the Contractor over the course of the Project shall be taken from locations approved by the CM and submitted to the CM by the Contractor in digital electronic form and two (2) sets of prints. CM shall monitor the Contractor's compliance with this Contractor

obligation to take photographs and promptly report to the Authority, in writing, any violation.

4.4.6 Contractor Videos. CM shall ensure that within five (5) Days of receiving a Certificate of Substantial Completion, the Contractor shall make a video recording, in DVD format, of the Project, which shall be submitted to the CM within ten (10) Days of the Contractor's receipt of a Certificate of Substantial Completion. CM shall monitor this activity and ensure that the video is taken and submitted in strict conformance with the requirements of the Construction Contract.

4.4.7 Contractor's Webcam. The Contractor is required, at the time of commencement of its Work and continuing until Substantial Completion of the Project, to supply, install and maintain a video camera ("Webcam") with connection to an internet website that displays the video output from the Webcam. Installation of the Webcam and related components, location of the Webcam mounting, and orientation of the Webcam view of the Project Site must be pre-approved in writing by CM and the Authority's Project Manager. If at any time until Substantial Completion, the CM determines that the Contractor should relocate the mounting of the Webcam, or otherwise re-orient the view of the Webcam, CM shall promptly so advise the Authority in writing and, if agreed to by the Authority, in writing, so direct the Contractor in writing.

4.5 **Progress Payments**

4.5.1 Contractor Progress Payments. CM shall meet with the Contractor on or about the 25th of each month to review the Contractor's Invoice and determine whether the amount requested accurately reflects the progress of the Contractor's Work and the Contractor's monetary entitlement. CM shall make appropriate adjustments to each Contractor Invoice and shall prepare and forward to the Authority and the Design Consultant a written Progress Payment Report certifying the amounts determined by the CM to be actually due to the Contractor. CM shall include in this Progress Payment Report a Certificate of Payment signed by CM in accordance with Section 4.5.2 below. The CM's Progress Payment Report shall state the total Contractor's Contract Price, payments to date, current payment requested, retainage, actual amounts owed to the Contractor for the current pay period and any right of the Authority to withhold payment, in whole or in part, or impose payment reductions, as may be allowed and justified under the Construction Contract and Applicable Laws. .

4.5.2 Certificate of Payment. CM's Certificate of Payment shall constitute a representation to the Authority, based on CM's determinations at the Site and on data comprising the Contractor's Invoice, that, to the best of CM's knowledge, information and belief, the Work has progressed to the point indicated in the Contractor's Invoice and the quality of the Work is in accordance with the Construction Contract. Such Certificate of Payment shall constitute a further representation by CM to the Authority that all required paperwork related to

such Contractor Invoices has been submitted and properly completed by the Contractor and that the Contractor has provided an acceptable Project Schedule or Project Schedule Update.

4.6 Contractor's and Design Consultant's Claims

4.6.1 Claims. CM shall track and coordinate all Contractor and Design Consultant's Claims, and the review and investigation thereof. With respect to any such Claim, CM shall assist the Authority in gathering and/or preparing all necessary documentation for the Authority's review and evaluation of such Claim, including, where deemed appropriate or advisable by CM, taking photographs or videotapes of relevant Site conditions and/or activities. If the Authority so requests in writing, CM shall, in conjunction with the Authority and the Design Consultant, prepare a written analysis of the Claim of a strictly advisory nature, and shall cooperate with the Authority: a) in the presentation of the Authority's defense, counterclaim or other position with respect to any such Claim; and b) at administrative hearings and conferences related to any such claim. CM shall provide its own legal representation at its own expense with respect to any such Claim made against CM. All such CM Services reasonably and efficiently provided pursuant to such a written request by the Authority shall be deemed Additional Services and CM shall be compensated therefor in accordance with the compensation terms set forth elsewhere herein.

4.6.2 Mediation and Litigation. CM, at the written request of the Authority, shall assist and cooperate with the Authority in dealing with all Claims against the Authority and, shall attend any public or private hearing, mediation, or legal proceeding that is related to or arises out of or in connection with the Project and in which action or proceeding the CM is not a named party. CM's assistance and cooperation with the Authority in and attendance at any public or private hearing, mediation or legal proceeding under this paragraph will constitute an Additional Service.

4.7 Document Control and Information Management

4.7.1 Management Information Systems. CM shall be required to input all Project data daily into the Authority's Expedition Database and provide the Authority with the data in an electronic format, upon written request. Such data shall include, but not be limited to, RFIs, CCRs, CCDs, Change Orders, Submittals, Contractor's Invoice information, construction reports, field reports, meeting minutes, Daily Logs, noncompliance notices, punchlists, close-out documents and initial Claims data (date submitted, amount of claim, etc.).

4.7.2 Job Records and Documentation. CM shall establish and maintain all Construction Phase records and technical documentation, consistent with the Authority's file documentation system. Such records or technical documentation may include, but are not limited to, project correspondence, the Contractor's daily reports, the Design Consultant's Field Reports, design plans, drawings,

specifications, Submittals, all permits and approvals, samples, Contractor's Invoice information, bids, contracts, schedules, tests, inspections, payroll records, safety records and claims-related documentation. CM shall maintain such records for the Term of the Project and make them available and easily accessible to the Authority. Upon final completion of the Project, and before Final Payment will be made to the CM, all documents, files and records shall be turned over to the Authority in hard copy and electronic formats.

- 4.7.3 Project Directories. CM shall produce and issue "Project Directories," which shall consist of all information, including, but not limited to, names, company affiliations, business address, e-mail addresses, telephone and fax numbers (land line and cellular) necessary to allow proper communication among all persons involved in the Project.
- 4.7.4 Requests for Information (RFI). Within forty-eight (48) hours of its receipt from the Contractor of any RFI, CM shall input them into the Authority's Expedition Database and distribute each to the appropriate person(s) for resolution, including the Design Consultant. CM shall receive comments and/or information resolving the RFI from the appropriate person(s) and deliver such information back to the Contractor within twenty-four (24) hours of receipt. CM shall keep an updated RFI Log to track each question as well as the timeliness of the response, and shall report to the Authority monthly on the status of all RFIs. This RFI Log of CM shall be included as part of CM's Monthly Report to the Authority as required by Section 4.7.9(2) of this Agreement. A response to an RFI does not constitute a Change Order and, therefore, does not effect a Change to the Contractor's Work. If the Construction Contract requires a shorter turnaround time on Contractor RFI's, CM shall ensure that such shorter time frame is met.
- 4.7.5 Submittals. CM shall collaborate with and obtain from the Design Consultant a comprehensive listing, by the major divisions of the Construction Specification Institute (CSI) format, of all Submittals required of the Contractor pursuant to the Construction Contract.
- 4.7.6 Submittal Schedule. The CM shall review the proposed Contractor's Submittal Schedule, which is due within thirty (30) Days of the Contractor's Commencement Date, and, within seven (7) Days of its receipt, provide to the Authority its written comments and recommendations for its acceptance or rejection. The Authority shall accept, provide comments to, or reject the Contractor's Submittal Schedule within fourteen (14) Days of its receipt. Once accepted by the Authority, the Contractor's Submittal Schedule shall be used by the Authority and the CM to monitor the Contractor's progress in providing Submittals in a timely manner to avoid delays to the Work. If the Construction Contract requires a shorter approval time than indicated in this Section, CM shall ensure compliance with such shorter time frame.

- 4.7.7 Submittal Log. CM shall receive, date stamp, catalogue and process all Submittals, including, but not limited to, shop drawings, test reports, samples and product data. CM shall review all Submittals and, within seven (7) days of receipt, reject incomplete, erroneous or unresponsive Submittals. CM shall coordinate Submittals with information contained in related documents, including the Construction Documents, and shall examine the Submittals for consistency and coordination with the Construction Documents and such other related documents. For those Submittals not rejected by CM, CM shall, within seven (7) days of receipt, provide written comments to the Design Consultant and the Authority regarding the Submittal and the Submittal's effect, if any, on matters of cost, scheduling and time of construction and the Submittal's consistency with the Construction Documents. CM shall transmit each Submittal with CM's written comments to the Design Consultant for approval or rejection. CM shall prepare and maintain an updated Submittal Log to track the status of each Submittal required by the Construction Contract and the Submittal review process. This Submittal Log shall be included as part of CM's Monthly Report to the Authority as required by Section 4.7.9(2) of this Agreement. However, the Contractor's requests for "equal" substitutions shall be accepted or rejected within ten (10) days of receipt of any such request, unless a greater turnaround time is permitted under the Construction Documents.
- 4.7.8 Submittal Turnaround. CM shall manage this Submittal review process in order to achieve a 14-day turnaround time to return Submittals to the Contractor, except in the case of Contractor requests for "equal" substitutions, which shall be responded to within ten (10) days of receipt. If a shorter turnaround time is required under the Construction Contract, such shorter time shall control.
- 4.7.9 CM's Daily Logs and CM's Monthly Reports. In addition to the documentation requirements described in other Sections of this Agreement, CM shall develop the following accurate and detailed written records of the progress of the Project during the Construction Phase:
- 1) CM's Daily Log. CM shall prepare a Daily Log in the Authority's Expedition Database. Specifically, the Daily Log shall include:
 - (i) the Work accomplished each day;
 - (ii) the identity and adequacy of the Contractor's and any Subcontractor's personnel and equipment on Site each day, including identifying specific building areas upon which the Work was performed and the specific trade related activity performed;
 - (iii) the availability of necessary materials and supplies each day;
 - (iv) the weather conditions for each day;
 - (v) any problems encountered each day, including, but not limited to, those which could result in Project delay or increased Project cost;

- (vi) any equipment failures or breakdowns;
- (vii) any jobsite accidents or injuries;
- (viii) any safety issues;
- (ix) any observations that would indicate that the Contractor's Work is noncompliant; and
- (x) any other similar relevant data as the Authority may expressly require in writing.

2) CM's Monthly Report. CM shall provide to the Authority a written Monthly Report, submitting five (5) hard copies and one electronic copy, using the Authority's Expedition Database where appropriate. Such Monthly Report shall be submitted to the Authority within ten (10) Days immediately following the end of the month for which the report is prepared. The Monthly Report shall include, but not be limited to:

- (a) a construction cost summary report and cash-flow forecast,
- (b) the Contractor's monthly Construction Schedule Update,
- (c) a detailed narrative describing Project progress, any current issues, critical activities, adequacy of the Work, site manpower of the Contractor, percentage of Work completed, etc.
- (d) an updated CM Submittal Log,
- (e) an updated CM RFI Log,
- (f) an updated CM Change Order Log,
- (g) any Construction Milestone changes
- (h) a minimum of twelve (12) digital photographs taken by the Contractor at locations designated by the CM, and associated electronic files indicating Project status
- (i) a detailed narrative describing the status of the Contractor's compliance with applicable Affirmative Action, Safety and Security Plan obligations, as well as State Prevailing Wage requirements.

Each Monthly Report shall include current and potential problems deemed of sufficient importance by CM to require special Authority monitoring or action during the forthcoming month and a recommended course of action to achieve resolution of each of these problems.

4.8 Inspections

- 4.8.1 Code Inspection Scheduling. CM shall assist the Contractor in the scheduling of inspections to ensure that the Work fully complies with all applicable codes, rules, standards, regulations, laws and the Construction Contract.
- 4.8.2 Tracking of Inspection Report Items. CM shall assist in scheduling, and be present for, all Code Inspections performed by the State Division of Codes and Standards of the New Jersey DCA, and CM shall track and enter into the Authority's Expedition Database all such inspection dates and any Inspection Reports documenting the results of such inspections, whether generated by DCA officials, or generated by alternate inspecting entities pursuant to the provisions of Sections 4.8.3 and 4.8.4 below. CM shall track any conditions or items identified in the Inspection Reports as incomplete, noncompliant with code, or otherwise in need of further attention from the Contractor, by documenting such items in hard copy and electronic form, and entering such items into the Authority's Expedition Database. CM shall assist the Contractor in following up on such incomplete, noncompliant or open items or conditions to ensure the completion of any action steps necessitated by such items or conditions and the resolution of any outstanding issues identified by the Inspection Reports.
- 4.8.3 Code Inspection. In the event that CM is notified by the Office of Local Code Enforcement of the State Division of Codes and Standards of the New Jersey DCA that such agency shall be unable to conduct a Uniform Construction Code inspection within three (3) business days of the date for which the Contractor requested the same, as is required under N.J.A.C. 5:23-2.18, CM shall, if so directed by the Authority in writing,, conduct the inspection, using a New Jersey licensed architect or engineer. CM shall promptly notify the Contractor, in writing, that Work may not proceed in a manner that would preclude the inspection until CM's inspection has been completed. The inspection shall be documented by CM in a written report with photographs included in a form approved by the DCA. Such CM inspection report shall be subject to review and approval by a DCA inspector. CM shall be reimbursed for such inspection as an Additional Service pursuant to the terms set forth in this Agreement.
- 4.8.4 Coordination of Special Inspections. CM shall coordinate any special inspections of systems or materials such as concrete inspections, welding and bolting, EIFS and the like, regardless whether the inspectors performing the special inspections are engaged by the CM or directly by the Authority. CM shall track, pursuant to Section 4.8.2 above, all open, incomplete or noncompliant items identified in any reports generated from such special inspections.
- 4.8.5 Quality Control General Inspections. CM shall review daily all work-in-progress for general compliance with the Construction Contract and to guard the Authority against any defects. CM shall notify the Design Consultant and Authority, in writing, of any Work not in conformance with the

Construction Contract and shall, consistent with the terms of the Construction Contract, propose corrective action. With the Authority's prior review and written approval, CM shall reject any nonconforming Work and transmit to the Authority and Contractor a written notice of nonconforming Work.

- 4.8.6 Correction of Nonconforming Work. CM shall, in writing, require timely correction by the Contractor of nonconforming Contractor Work and shall advise the Authority, in writing, as to whether such corrective action has been taken and whether such action corrected or is correcting the nonconforming Work. If nonconforming Work remains uncorrected for more than thirty (30) Days from receipt of notice by the Authority of the nonconforming work, CM shall recommend to the Authority that the next progress payment be reduced by an amount equivalent to the entire value of the nonconforming work, as if the nonconforming Work were 0% complete, CM shall maintain a continuing list of nonconforming Work as determined by CM, the Authority or the Design Consultant, and CM shall include such lists in CM's Monthly Report..
- 4.8.7 Limitations on CM Authority. Except for inconsequential variations, CM is not authorized to change, revoke, alter, enlarge, relax or release any requirements of the Construction Contract or to approve or accept any portion of the Work not fully and strictly conforming to the requirements of the Construction Contract. Communication between CM and Contractor with regard to the quality of the Work shall not be construed as binding CM or the Authority or as releasing the Contractor from performing strictly in accordance with the terms of the Construction Contract. CM will not be responsible for, nor control, the means, methods, techniques, sequences and procedures of construction for the Project. CM shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees or any other persons performing portions of the Project Work, unless such persons are directly employed by CM. No action taken by CM shall relieve the Contractor from its obligation to perform the Work in strict conformity with all of the requirements of the Construction Contract, and in strict conformity with Applicable Laws.
- 4.8.8 Substantial Completion, Punchlist and Correction of Defective Work. The CM, with input from the Design Consultant, shall determine the date that the Contractor achieves Substantial Completion for the Project. Once the Contractor believes it has reached Substantial Completion of the Project, but for preparation of the Punchlist, CM shall inspect the Project in conjunction with the Design Consultant in order to determine if, in fact, Substantial Completion, as defined in the Construction Contract, has been achieved. If the Design Consultant and CM determine that Substantial Completion has, in fact, been achieved, but for preparation of the Punchlist, the Design Consultant, with input from CM, the Authority and the Project School District, shall prepare a Punchlist. Once the Punchlist is complete, CM shall consolidate and distribute to the Contractor a Certificate of Substantial Completion with the Punchlist attached. As the Contractor corrects the defective or incomplete Work on the Punchlist, the Design Consultant, with input from CM, shall generate, monitor and maintain an

updated Punchlist, and ensure and verify that the Contractor corrects the incomplete or defective Work, as required by the Construction Contract.

- 4.8.9 Final Inspection and Final Completion. CM shall assist the Design Consultant in determining the date of Final Completion of the Project. The Authority, with input from Design Consultant, CM and the Project School District, shall issue a Certificate of Final Completion. Final Completion means that point in time on the Project when the Project is 100% complete and: (i) all requirements of the Construction Documents have been fully and strictly satisfied, (ii) all items on the Punchlist have been properly performed, and (iii) a Certificate of Occupancy, or a Certificate of Acceptance, as applicable, has been issued by DCA. Following the issuance of a Certificate of Substantial Completion for the Project and the CM's determination that the Punchlist Work has been completed, the Design Consultant shall evaluate the Work and notify the Authority when the Work is ready for final inspection. The Design Consultant shall, in conjunction with the Project School District and the Authority, conduct a final inspection of the Work to verify that all Punchlist Work has been completed and that all nonconforming and/or deficient Work has been properly corrected or remedied.

4.9 **Changes to the Construction Contract**

- 4.9.1 Coordination of Revisions to the Construction Contract. CM shall review and, in writing, comment upon and provide recommendations to the Authority concerning any proposed revisions or changes to the Construction Contract.
- 4.9.2 Contract Change Requests Initiated by the Contractor. CM shall track and monitor all Contract Change Requests (CCRs) initiated by the Contractor. CM shall review each CCR for timeliness, validity, reasonableness and impact on the Project's cost and completion by performing a detailed written estimate, consistent with Specification Section 01080 "Change Order Procedures," as amended or superseded by the Construction Contract, assemble and evaluate information concerning the CCR and, with the input of the Design Consultant, promptly provide a written analysis and recommendation to the Authority regarding the CCR within seven (7) days of the submission of the CCR. CM shall assist the Authority in negotiating with the Contractor any time and/or cost modifications resulting from the CCR.
- 4.9.3 Change Orders. At the Authority's written direction, CM shall prepare and issue to the Contractor appropriate Change Order documents. CM shall provide to the Design Consultant copies of all approved Change Orders. CM shall track the progress of all Change Orders and ensure timely processing thereof. CM shall maintain an updated Change Order Log to track the status of CCRs, CCDs and Change Orders. This Change Order Log shall be included as part of CM's Monthly Report to the Authority, as required by Section 4.7.9(2) of this Agreement. All Change Orders must be executed by the Authority in order to be effective.

- 4.9.4 Authority-Initiated Changes. CM shall promptly prepare all CCDs and Proposal Requests initiated by the Authority and provide them to the Contractor for a timely response. In response to any such Authority-initiated CCD or Proposal Request, CM shall obtain from the Contractor a detailed Proposal setting forth the price and time adjustments, if any, necessary to perform the proposed changed Work. CM shall prepare a detailed written estimate of the cost of the change to compare to the Contractor's written Proposal and to provide to the Authority for review. CM shall review the Contractor's Proposal, shall discuss the proposed changes with the Contractor, and shall determine the Contractor's basis for the price and time proposed to perform the Work. CM shall, within seven (7) days of receipt of the Contractor's Proposal, make written recommendations to the Authority regarding Contractor's Proposal to perform the changed work identified in the CCD or Proposal Request.
- 4.9.5 Differing Site Conditions. Whenever the Contractor timely notifies CM that a differing site condition, as defined in the Construction Contract, has allegedly been encountered at or contiguous to the Project Site, CM shall promptly notify the Design Consultant and the Authority in writing. Assuming that the Design Consultant concludes that, in fact, a differing Site condition has been encountered and it is determined that the Contractor's Claim in this regard was completely compliant with all applicable procedural requirements for asserting or processing such Claims and has not waived any such Claim, CM shall receive from the Design Consultant and transmit to the Contractor all information necessary to specify any design changes required to be responsive to the differing site condition and, if necessary, shall prepare a Change Order.
- 4.9.6 Change Order Reports. During the Construction Phase, CM shall monthly prepare and distribute Change Order Reports. The Report shall list all approved Change Orders by number, a brief description of the Change Order Work, the cost established in the Change Order and the percent of completion of the Change Order Work. The Report shall also include similar information for potential Change Orders of which CM may be aware.

4.10 **Project Closeout**

- 4.10.1 Start-Up Testing and Training. CM shall prepare and issue a written start-up and occupancy plan for the Project ("Start-up Plan") and shall submit such plan to the Design Consultant and Authority for approval. The Start-up Plan shall include, but not be limited to: (1) all start-up testing and training required to comply with the Authority's standards for commissioning; and (2) Design Consultant requirements for start-up of the Project. CM shall, together with the Design Consultant and the maintenance personnel from the Project School District, observe the Contractor's inspection of utilities, operational systems and equipment for readiness, and assist in the Contractor's initial start-up and testing. CM shall coordinate operational testing and staff training, including, but not limited to: (1) preparing a start-up program to test, start and bring the Project to an operational level; (2) witnessing the test of all equipment to determine its

compliance with codes, plans and specifications; (3) planning and assisting in the training of the Project School District's operating staff and ensuring that all maintenance and operating manuals, as well as video recordings - in the Project School District's maintenance personnel's desired format - of the training sessions are distributed; (4) supervising initial operations under the control of a start-up engineer; and (5) assisting in the coordination of the Commissioning Authority's work as outlined in ASHRAE Guideline 0-2005, Appendix F: Roles and Responsibilities. CM shall submit a written report to the Authority upon the completion of these activities and append it to its Monthly Report identified in Section 4.7.9(2) of this Agreement.

- 4.10.2 As-Built Drawings. CM shall monitor the Contractor's timely preparation and updating of "as-built" drawings and shall review, in a manner and at such times as specified in the Construction Contract, the Contractor's final submission to the Design Consultant of a complete set of "as-built" drawings in both hard copy and electronic format. CM shall be responsible for verifying that the Contractor has adequately prepared a Site survey consistent with the Authority's Land Title Conveyance Survey Requirements as part of the required "as-built" documents. CM shall monitor the completion of the record drawings by the Design Consultant pursuant to the Design Manual and ensure proper turnover of those record drawings to the Authority and other appropriate entities.
- 4.10.3 Project Close-out Submission Checklist. CM shall, in conjunction with the Design Consultant, create a Project close-out submission checklist. CM shall assist the Authority in obtaining all required documentation, certifications and other deliverables required of the Contractor under the Construction Contract and identified on such checklist.
- 4.10.4 Insurance Transfer. Prior to Final Completion, CM shall assist, and/or coordinate with the Authority's Risk Management Unit, in transferring the Project from the Authority's builder's risk insurance policy to the Project School District's insurance program. When and where required, CM shall also coordinate with the Authority's Risk Management Unit regarding any other insurance-related matters or issues.
- 4.10.5 Final Payments. Once the Authority has issued a Certificate of Final Completion for the Project, CM shall review the final Contractor's Invoice and either approve it or return it to the Contractor for appropriate corrections. Upon receipt of an acceptable final Contractor's Invoice, CM shall submit the Final Invoice to the Authority with a written recommendation that the Authority approve and pay it.
- 4.10.6 Performance Evaluations. CM shall prepare written evaluations of the Contractor's performance consistent with the Authority's Performance Evaluation Policy and Procedure, which will be made available to CM upon its written request. CM shall assist and cooperate with the Authority in undertaking any proceedings or actions resulting from such evaluations.

- 4.10.7 Warranty Issues. CM shall assist in the resolution of all warranty issues identified before or after Final Payment to Contractor.
- 4.10.8 Warranty Inspection. Approximately eleven (11) months after Final Payment to the Contractor, CM shall conduct, in conjunction with the Design Consultant and the Authority, a warranty inspection at the Project Site and the Contractor's Work. CM shall thereafter promptly submit a written report to the Authority setting forth the findings of the inspection. CM shall, upon completion by the Contractor of any effort to correct deficiencies, latent defects or warranty work discovered during the warranty inspection, re-inspect the Work and submit a final written report to the Authority.
- 4.10.9 Operation and Maintenance Materials. CM shall obtain from the Contractor operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. CM shall deliver this information to the Authority and shall provide a copy thereof to the Design Consultant.
- 4.10.10 Coordination of IT Systems and Other professional Consultants. CM shall oversee, coordinate the work of, and cooperate with, the IT Systems Integrator and any other Professional Services Consultant(s) engaged to install and provide information technology services, telecommunications and/or computer services to the Project and/or engaged pursuant to the E-Rate Program.
- 4.10.11 Coordination of Furniture, Fixtures, Technology and Equipment Vendors. CM shall oversee, coordinate the work of, and cooperate with the Authority's Furniture, Fixtures, Technology and Equipment Department ("FFTE Department") and any furniture, fixtures, technology and equipment supplier engaged by the Authority ("FFTE Vendor") to install furniture, fixtures and equipment within the Project.
- 4.10.11.1 CM Coordinator. CM shall designate an employee to serve as a coordinator ("CM Coordinator") for the delivery, receipt and installation of those items of furniture, fixtures, technology and equipment ("FFTE") procured directly by the Authority. The selection of the CM Coordinator shall be subject to the approval of the Authority's Project Manager. In the event the CM Coordinator is replaced or removed for any reason, CM shall, within five (5) days of such replacement or removal, notify the Authority's Director of the FFTE Department of such replacement or removal, and shall furnish the name and contact information of the new CM Coordinator.
- 4.10.11.2 Authority's FFTE Receiving Software. CM shall, as directed by the staff of the Authority's Furniture, Fixtures, Technology and Equipment Department ("FFTE Department"), become familiar with and utilize any electronic software or database selected by the Authority and used by the FFTE Department to assist in the ordering, processing, tracking and receiving of FFTE ("FFTE Receiving Software"). CM shall provide all

FFTE communications and submissions described in this Section 4.10.11 in both hard copy and electronic format, utilizing the FFTE Receiving Software as directed by the FFTE Department representatives.

- 4.10.11.3 Submission of Form 170 and 170IT. Ten months prior to the anticipated date for Substantial Completion, the CM Coordinator shall prepare for submission NJSDA Forms 170 and 170IT, which forms are available on the Authority's website. The CM Coordinator shall fill out the required forms, noting thereon the anticipated date for Substantial Completion, and shall attach the required documentation listed on each such form (including, but not limited to, 1/4 and 1/8-scale plans showing furniture layouts, color sample boards approved by the Client School District, electrical drawings, riser diagrams, Data/Telecommunications Plans, Approved IT Plans, and Final Technology Specifications supplied in hard copy and electronic format provided on DVD) and shall submit the completed forms and required attachments to the Project Manager and the Director of the FFTE Department ("FFTE Director").
- 4.10.11.4 Receipt of Purchase Orders. Approximately two months prior to the anticipated date for Substantial Completion, as noted by the CM Coordinator in the Forms 170 and 170IT, the CM Coordinator shall receive from the Authority's FFTE Department copies of all purchase orders for FFTE, along with target delivery dates for the FFTE identified in each purchase order, and the name of the Authority's FFTE Department staff member identified as the contact on each such purchase order (the "FFTE Contact"). Such target delivery dates shall be based upon the Substantial Completion date indicated by the CM Coordinator on the Form 170 and Form 170IT previously submitted to the FFTE Department.
- 4.10.11.5 Creation of FFTE Binder. The Coordinator shall organize the copies of purchase orders received from the FFTE Department, along with all corresponding attachments, into a binder for the Project (the "FFTE Binder") which FFTE Binder shall organize the purchase orders in alphabetical order by manufacturer name.
- 4.10.11.6 Correspondence with Vendors. Upon receipt of purchase orders from the Authority's FFTE Department, the CM Coordinator shall become responsible for corresponding with the vendors holding such purchase orders (the "FFTE Vendors"), in order to confirm the time and date for delivery of such FFTE materials, and to confirm site location and ensure site accessibility for the scheduled deliveries.
- 4.10.11.7 Coordination of Schedule. The CM Coordinator shall be responsible for coordinating the Project Schedule with the FFTE delivery dates received from the Authority's FFTE Department. To that end, the CM Coordinator shall inform the FFTE Vendors of any anticipated changes

- in the proposed delivery dates caused by any changes in the Project Schedule (whether caused by delays or project acceleration). In addition, the CM Coordinator shall advise the Authority's FFTE Department of any anticipated changes in the FFTE delivery schedules, as soon as any such potential change in the FFTE delivery date is identified.
- 4.10.11.8 Timely Delivery. The Authority's Project Manager and CM Coordinator, along with the FFTE Contact, shall strive to ensure timely delivery of the FFTE to the project site. However, it is also critical to ensure that FFTE is not delivered too early to a project site as there are a number of negative ramifications that can stem from such actions (i.e. damage, theft, labor relations problems, etc.). As such, FFTE should not be delivered to the project site until a Certificate of Occupancy ("CO") or Temporary Certificate of Occupancy ("TCO") has been obtained.
- 4.10.11.9 Confirmation of Readiness and Elevator Availability. Two weeks prior to the anticipated date of substantial completion, the CM Coordinator shall provide the FF&E Contact with a confirmation that all rooms are cleaned, free of debris and ready to accept FF&E and that the elevator(s) are available for use by the vendor(s). In addition the Coordinator shall call each vendor(s) to confirm the delivery date for each purchase order.
- 4.10.11.10 Delays in Readiness. Five days prior to expected delivery, the CM Coordinator shall contact and confirm site readiness with each FFTE Vendor. If site readiness or accessibility is delayed, the CM Coordinator must immediately inform the FFTE Vendor(s) and the NJSDA's FFTE Contact listed on the purchase order as well as the Authority Project Manager.
- 4.10.11.11 CM's Obligations on Delivery. On the day of the delivery, the CM Coordinator will receive all FFTE, confirming delivery against the FFTE purchase orders, and making any appropriate submissions or entries utilizing the Authority's FFTE Receiving Software. The CM Coordinator shall verify quantities, note on the delivery paperwork and bills of lading any shortfalls, backorders and/or damages, and shall signoff and safeguard all delivered furniture. If there are any shortfalls, back orders and/or damages, the Coordinator shall prepare an exception list detailing each missing, backordered or damaged item, and noting the room number/location for each such item. The CM Coordinator shall prepare and immediately transmit the exception list in both paper and electronic format (utilizing the FFTE Receiving Software, as appropriate) to the designated FFTE Contact listed on the purchase order.
- 4.10.11.12 Placement of Items and Room Conversion Chart. While the delivery is in progress the CM Coordinator shall supervise the placement of furniture to the correct location as stated on the purchase order. If room numbers for the Project change from the room numbers noted in prior

versions of the construction documents, the CM Coordinator shall provide a Room Conversion Chart to each FFTE Vendor(s) prior to their scheduled delivery.

4.10.11.13 Spotted Delivery. All FFTE Items will be procured for “spotted delivery,” meaning that the FFTE Vendors will be responsible for delivery, assembly and installation of the FFTE, as well as placement of the FFTE as per the Project drawings, and removal from the Site of all packing materials, discards and trash generated from delivery. Should an FFTE Vendor refuse to comply with the spotted delivery terms as listed above, please contact the designated FFTE Contact immediately and prior to the acceptance of any FFTE.

4.10.11.14 Delivery Documentation in FFTE Binder. Upon completion of FFTE deliveries, the CM Coordinator shall fax a copy of the delivery documents, along with a completed NJSDA FFTE Delivery Transmittal Form to the Authority’s FFTE Director, and shall make any and all appropriate notations and submissions using the Authority’s FFTE Receiving Software. In addition, the CM Coordinator shall incorporate copies of the purchase orders, original delivery documentation and any supporting materials in the FFTE Binder. This binder shall serve as the project closeout documentation that will be handed over to the district as part of the closeout process.

5.0 ADDITIONAL SERVICES

CM shall provide the following Additional Services only upon the written request, and in the sole discretion of, the Authority. This list of Additional Services is not exclusive and the Authority is not obligated to require these Additional Services.

- 5.1 Development of the Authority’s Program;
- 5.2 Assistance in establishing, during the Pre-construction Phase of the Project, an overall budget or CCE for the Project;
- 5.3 Surveys, Site evaluations, legal descriptions and aerial photographs;
- 5.4 Artistic renderings, models and mockups of the Project or any part of the Project or the Work;
- 5.5 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work;
- 5.6 Interior design and related services including procurement and placement of furniture, furnishings, artwork and decorations;
- 5.7 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss;

- 5.8 Repairing, replacing, correcting or completing defective or incomplete Work of the Contractor;
- 5.9 Providing services related to future facilities;
- 5.10 Providing services to verify the accuracy of drawings or other information furnished by the Authority;
- 5.11 Providing consultation concerning replacement of the Contractor's Work damaged by fire or other cause during construction, except where the CM may be held responsible for such damage, and furnishing services required in connection with the replacement of such Work; or
- 5.12 Providing services made necessary by the termination or default of the Design Consultant or the Contractor.

6.0 EXTENDED SERVICES

- 6.1 In the event the Term of this Agreement is extended due to a delay or other reason beyond the control of CM, the Authority may direct, in writing, that CM provide Extended Services. In performing any such Extended Services, CM shall be compensated only for the actual hours worked during the delay period, as set forth in Appendix B to this Agreement. CM shall not be entitled to be compensated for any delay caused or contributed to by CM's fault or failure to properly perform under this Agreement. On the contrary, CM shall be liable to the Authority for any and all extra costs, damages, liability or losses incurred by the Authority as a, direct or indirect, result of delays caused, in whole or in part, by CM's fault, neglect, or breach of this Agreement.
- 6.2 No compensation shall be provided to CM for Extended Services, unless the Authority authorizes CM, in advance, to provide Extended Services in writing and CM submits with its monthly invoice: 1) the actual hours worked and costs incurred by CM during the delay period, including the hours worked and costs incurred by Subconsultants attributable to the delay, 2) the dates of the delay period; 3) total amount of compensation being requested; and 4) the alleged cause of such delay. In the event CM believes that a delay has occurred which will cause CM to provide Extended Services, CM shall notify the Authority, in writing, within ten (10) Days of commencement of such a delay and, in the absence of such timely, written notice, the Claim shall be deemed forever waived and released by CM.
- 6.3 Irrespective of whether CM makes any request for additional compensation under this Section, CM shall, within ten (10) days of knowledge of the event, notify the Authority in writing of any event of which may cause any delay in the completion of the Project or may extend the Term of this Agreement.
- 6.4 Other than as expressly provided in this Section, the Authority shall not be liable to CM for any damages or additional compensation as a result of delay, whether caused by the Authority or any other person or entity.

7.0 AMENDMENTS TO THIS AGREEMENT

- 7.1 Amendments to this Agreement. Any change to this Agreement shall be made by written amendment executed by CM and the Authority. Any Services performed by CM that differ from, or are in addition to, the Services set forth in this Agreement, shall be performed at CM's own financial risk, unless such an amendment has been executed by CM and the Authority and authorizes such charged or additional work. However, if the terms of a Change Order cannot be agreed upon, the Authority, in its discretion, may direct, in writing, that such a change be implemented on terms acceptable to the Authority and with the right of CM to pursue a Claim against the Authority for additional time and/or compensation in accordance with the terms and conditions of this Agreement.
- 7.2 Changes in CM's Basic Services and Compensation. The Authority, without invalidating this Agreement, may direct changes in CM's Basic Services. In the event that the Authority directs such a change in writing, CM shall promptly notify the Authority as to whether the change increases or decreases CM's entitlement to compensation or to the Term of this Agreement, or both. If so, CM shall provide to the Authority: 1) a detailed cost breakdown of, and justification for, how the change increased or decreased CM's compensation; and 2) a detailed explanation of precisely how each change impacts the Term of this Agreement. Any monetary compensation to CM sought for, or on account of, Project delay shall only be warranted if compensable hereunder as Extended Services.
- 7.3 Compensation. If the scope of CM's Basic Services or the Term of this Agreement is changed due to no fault of CM, CM's compensation shall be adjusted equitably, subject to any express limitations set forth elsewhere in this Agreement, including Section 6.0, "Extended Services." CM shall give notice of a proposed change in its compensation ("Change Notice") due to any change in the scope of the Basic Services or the Term of this Agreement within thirty (30) Days of the occurrence of the event or condition giving rise to such proposed change. Within thirty (30) Days of the issuance of the Change Notice, CM shall submit to the Authority a written proposal indicating the proposed change in compensation as a result of the change in the scope of the Basic Services or the change in the Term of this Agreement shall be provided by CM to the Authority. The amount of the change in compensation to be paid CM shall be determined on the basis of CM's actual costs. A failure of CM to strictly comply with this 30-day period for issuing the Change Notice shall result in a waiver and release of any claim for increased compensation relating to the event or condition at issue.
- 7.4 Authorization. Changes in CM's Basic Services and entitlement to additional compensation or a change in Term of this Agreement shall be made by a written amendment to this Agreement executed by the Authority and CM. The amendment shall be executed by the Authority and CM prior to CM performing the services required by the Amendment. CM shall proceed to perform the Services required by the Amendment only after receiving written notice from the Authority directing CM to proceed.

8.0 COMPENSATION

8.1 Amount of Compensation and General Provisions

- 8.1.1 CM shall be compensated for its Services as provided in Appendix C.
- 8.1.2 The cost of direct expenses incurred shall be included in the lump-sum amount as identified in Appendix C to this Agreement.
- 8.1.3 In the event that the Authority expressly directs, in writing, or through a formal Amendment, the performance by CM of Additional Services, CM shall include the cost of Additional Services in its monthly invoice. Each CM invoice shall separately identify the amount requested for Additional Services. CM will be compensated for Additional Services as provided in Appendix C to this Agreement. Compensation for Additional Services will be capped at 1.9 times actual salary (exclusive of customary payroll burdens and benefits) for CM staff and cost-plus 5% for Additional Services performed by Subconsultants. The Authority shall have the right to challenge the reasonableness of the time expended by CM or any CM Subconsultants.
- 8.1.4 In the event that the Authority expressly directs, in writing, or through a formal Amendment, that CM provide Extended Services, CM shall include the cost of the Extended Services in its final invoice. The Authority shall have the right to challenge the reasonableness of the time expended by CM or any CM Subconsultants. The final invoice shall separately identify the amount requested for Extended Services. CM will be compensated for Extended Services as provided for in Appendix C to this Agreement. Compensation for Extended Services will be capped at 1.6 times actual salary (exclusive of customary payroll burdens and benefits) for CM staff, and cost-plus 5% for Extended Services performed by Subconsultants. Payment for Extended Services will be made in the final payment to CM. The Authority shall have the right to challenge the reasonableness of the time expended by CM or any CM Subconsultants.
- 8.1.5 Acceptance or approval of, or payment for, any of the Services performed by CM under this Agreement shall not constitute a release or waiver of any Claim the Authority has or may have against CM or any CM Subconsultants, including, but not limited to, Claims for errors, omissions, breach, or negligence.
- 8.1.6 All payments by the Authority for Services under this Agreement will be made only to CM. CM is solely responsible for payments due to any of its Subconsultants.
- 8.1.7 Unless otherwise expressly set forth in writing by the Authority, CM's prices for Basic Services, as set forth in this Agreement, shall be firm and not subject to increase during the Project.

- 8.1.8 The Authority assumes no responsibility and no liability for costs incurred by CM prior to execution of this Agreement and thereafter unless explicitly set forth in this Agreement or a written amendment hereto signed by the Authority.

8.2 Invoices

- 8.2.1 On the fifth business day of each month, CM shall submit to the Authority an invoice, in a form reasonably acceptable to the Authority and signed by CM, requesting payment for those CM Services performed during the previous month, and in amounts which are proportionate to the ratio the monthly payment for the cost of the Contractor's Work bears to the total estimated cost of the Work. Such invoice shall properly differentiate all Basic Services, Additional Services and/or, if a Final Invoice, Extended Services, if any, for which CM seeks payment. Each invoice shall include all data supporting the amounts requested and any other documentation reasonably requested by the Authority in writing. The invoice shall also identify unresolved Claims by CM which CM intends to pursue.
- 8.2.2 Invoices submitted to the Authority by CM must identify the Authority's contract number and the Project name.
- 8.2.3 Invoices submitted by the CM 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 time and in the manner specified in this Agreement, as amended. Invoices will not be paid by the Authority if the Authority determines that the Services for which payment is sought by CM are incomplete or non-compliant or the Invoice is materially non-compliant.
- 8.2.4 Payments and payment withholdings will conform to the applicable requirements of N.J.S.A. 2A:30A-2 and N.J.S.A. 52:32, et seq., i.e., payment shall be due within thirty (30) days of the billing date, assuming that CM's invoice was timely and otherwise properly submitted. The periods for making payment or for providing notice to the Contractor that the Authority will withhold funds shall be extended if authority for payment by the Authority's Board of Directors is required. The Authority reserves the right to refuse payment in the amount specified in the invoice to the extent that CM fails to provide complete and sufficient documentation in support of the amounts claimed, including proof that it has timely paid its Subconsultants.
- 8.2.5 Each invoice signed by CM and submitted to the Authority for payment shall be a representation by CM that the services for which payment is sought were, in all respects, fully compliant with CM's obligations hereunder and all payments due its Subconsultants have been made and that all Applicable Laws have been complied with by CM and that there are no payment disputes with any of CM's Subconsultants.

- 8.2.6 The CM shall receive payment from the Authority by one of the following electronic payment methods: (1) the Automated Clearing House (“ACH”) payment system, or (2) wire transfer. Any fees or costs associated with the use of either of the listed electronic payment methods shall be solely the CM’s responsibility. The CM may obtain the documents required to use either electronic payment method from the Authority’s website. The CM shall provide to the Authority all documents necessary to use the electronic payment method selected before any payment will be made to the CM by the Authority
- 8.2.7 In the case of a dispute between the Authority and CM as to whether an amount is owed for certain CM Services, or as to whether an amount has been reasonably withheld by the Authority or offset by Authority Claims against CM, the Authority shall pay all amounts that are not in dispute, but shall not be required to pay the amount that is in dispute until the Parties settle or otherwise resolve such dispute. As to any payment withholding, the Authority shall comply with all applicable provisions of N.J.S.A. 2A:30A-2. CM shall continue to perform all of its obligations under this Agreement notwithstanding any such payment dispute.
- 8.2.8 In the event CM improperly fails to pay its Subconsultants in a timely manner and in accordance with the requirements of N.J.S.A. 2A:30A-2 and the Authority is in full compliance with its obligations regarding timely payment of sums due CM, the Authority may, but is not obligated to, make payments directly to each Subconsultant or by means of two-party checks. Neither the Authority’s discretion provided for in the preceding sentence nor the Authority’s actual making of such payments to CM’s Subconsultants will give rise to any liability of the Authority for making such payments and will not create any contractual relationship between the Authority and any Subconsultant. Payments by the Authority to CM’s Subconsultants will not constitute acceptance of the adequacy of any services performed by CM or its Subconsultants.
- 8.2.9 If CM submits any false or fraudulent Invoice to the Authority for payment, CM shall be held liable and subject to all penalties and damages under New Jersey’s False Claims Act, N.J.S.A. 2A:32C-1, et seq.

8.3 **Withholding of Payment**

- 8.3.1 If the Authority reasonably determines that any Services provided by CM for which payment is requested are incomplete or non-compliant, or if the Authority reasonably determines that the CM Deliverables and Work Product have not been delivered at the time and in the manner and form specified in this Agreement or are otherwise non-compliant, the Authority will either: (i) retain for payment the relevant invoice (or portion thereof) until such time as CM has made the necessary corrections/deliveries, or (ii) return the relevant invoice to CM, who shall resubmit the invoice once all of the Services have been

completed or corrected or the Deliverables have been corrected and/or delivered. Notice of such payment withholding and the precise basis therefor shall be communicated to CM within twenty (20) days of the Authority's receipt of CM's invoice in accordance with N.J.S.A. 2A:30A-2(b) or such greater period of time as such statute may permit.

8.3.2 The Authority's withholding of any sums pursuant to this Section shall not be construed as, or constitute in any manner, a waiver by the Authority of CM's obligation to timely furnish fully compliant Services, including, but not limited to, CM Deliverables and Work Product required under this Agreement. In the event CM fails to timely furnish the compliant Services, inclusive of CM Deliverables and Work Product required by this Agreement, the Authority shall have, in addition to the sums withheld in accordance with this Section, all rights and remedies provided by law, equity and elsewhere.

8.3.3 In addition to any other right to withhold payments under this Agreement or Applicable Laws, the Authority shall have the right to withhold from payments due CM such sums as necessary to protect the Authority against any loss or damage or liability which, directly or indirectly may result, or has in fact resulted, by reason of: (a) any willful misconduct or wanton or negligent act, error or omission by CM, any CM Subconsultant, or any of their officers, directors, members, employees, representatives or agents; (b) CM's breach of any of its material obligations under this Agreement; (c) reasonable evidence that CM, inexcusably, will not complete the Services required by this Agreement within the Term of this Agreement; and (d) CM's inexcusable inability or failure to competently complete any Services required by this Agreement. Further, the Authority shall have the right to set off against a CM invoice any out-of-pocket expense or loss incurred on account of any negligent performance of CM's obligations hereunder, CM's intentional misconduct or CM's breach of this Agreement.

9.0 COMMENCEMENT DATE AND TERM

9.1 Commencement Date. Commencement date for CM's Basic Services shall be the date set forth in the CM Notice to Proceed issued by the Authority.

9.2 Term. The Term of this Agreement is set forth in Appendix B to this Agreement.

10.0 GENERAL COVENANTS

10.1 Insurance

10.1.1 Owner Controlled Insurance Program Coverage. The Authority has implemented a School Facilities Projects Owner Controlled Insurance Program ("OCIP") in accordance with N.J.S.A. 18A:7G-44. The terms and conditions of this Section 10.1, addressing OCIP and CM insurance requirements, shall apply during the Term of this Agreement. OCIP will provide General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage.

Through OCIP, the Authority shall provide coverage to CM and eligible Subconsultants of every tier providing on-site services on the Project, except as otherwise provided herein. Firms providing temporary labor services and leasing companies are to be treated as Subconsultants for OCIP enrollment purposes. The Authority shall pay all premiums associated with OCIP, including deductibles or self-insured retention, unless otherwise provided in this Agreement.

- 10.1.2 CM and Subconsultant Insurance Requirements. Although OCIP provides broad coverage and high limits, it is not intended to, nor does it, meet all of the insurance needs of CM and its Subconsultants. In addition to coverage provided by OCIP, an enrolled CM shall be responsible for providing proof that it and its Subconsultants have retained, at a minimum, the insurance coverage set forth in Section 10.1.12 below.
- 10.1.3 Risk Management Unit. OCIP management shall be handled by the Authority's Risk Management Unit and OCIP Administration Services Provider (collectively, the "RMU"). All OCIP questions are to be directed to the RMU.
- 10.1.4 Mandatory Enrollment. Enrollment in OCIP is mandatory, but not automatic. CM shall be required to notify the RMU of all Subconsultants of every tier providing labor on the School Facilities Project and follow enrollment procedures as provided by the Authority in the SDA OCIP Insurance Procedures Manual (the "Manual"). Any failure on the part of CM to comply with this notification requirement may negate coverage under OCIP, and CM shall bear all risk associated with any such lack of coverage.
- 10.1.5 Coverage Term. The term of OCIP coverage shall extend and terminate as follows:
 - 10.1.5.1 Coverage of CM. General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage of CM shall extend to and terminate upon Final Completion of the Project, as defined herein.
 - 10.1.5.2 Coverage of Subconsultants. General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage provided to any Subconsultant shall extend to and terminate upon the earlier of: (i) Final Completion of the Project, defined herein or (ii) the completion of the Subconsultant's work at the Project.
- 10.1.6 Authority's Right to Terminate
 - 10.1.6.1 Right to Terminate OCIP. The Authority, at any time, has the right to terminate or to modify OCIP or any portion thereof. To exercise such right, the Authority shall provide thirty (30) Days advance written notice of termination or material modification to CM and all Subconsultants covered by OCIP. In such event, CM and Subconsultants shall be required to obtain such replacement insurance coverage as may be specified by the

Authority. Certificates of Insurance evidencing that such replacement insurance coverage has been obtained shall be provided to the Authority prior to the effective date of the termination or modification of OCIP coverage. The Authority shall reimburse CM for the reasonable cost of such replacement insurance coverage. CM shall be required to invoice the Authority for the reasonable cost of such replacement insurance obtained by CM and Subconsultants.

10.1.6.2 Right to Terminate Enrollment. The Authority has the right to terminate enrollment of CM or any of its Subconsultants in OCIP or any portion thereof at any time. To exercise such right, the Authority shall provide thirty (30) Days advance written notice of termination to CM. In such event, CM or Subconsultant shall be required to obtain such replacement insurance coverage as may be specified by the Authority. Certificates of Insurance evidencing that such replacement insurance coverage has been obtained shall be provided to the Authority prior to the effective date of the termination of coverage of CM or Subconsultant under OCIP. The Authority shall reimburse CM and Subconsultants for the reasonable cost of such replacement insurance coverage. CM or Subconsultant shall be required to invoice the Authority for the reasonable cost of such replacement insurance coverage. Notwithstanding anything to the contrary, in the event this Agreement is Terminated for Convenience or Terminated for Cause, OCIP coverage shall terminate as set forth in the Notice of Termination for Convenience or Notice of Termination for Cause, as appropriate.

10.1.7 Waiver of Subrogation. CM waives all rights of subrogation and recovery against the Authority, the Contractor, the Design Consultant, any Professional Services Consultants, agents or employees of the Authority and Subconsultants of all tiers to the extent of any loss or damage suffered during construction, including damage to any property or equipment insured under OCIP. CM shall require all Subconsultants of all tiers enrolled in OCIP to include in their contracts with CM the same waiver of their rights to subrogation and recovery.

10.1.8 No Release. The provision of OCIP by the Authority shall in no way be interpreted as relieving CM of any other responsibility or liability under this Agreement or any applicable law, statute, regulation, including, but not limited to, the indemnification obligations under Section 10.14.

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

10.1.9.1 Workers' Compensation and Employer's Liability Insurance shall be provided for CM and Subconsultant employees working on the Project

site, in accordance with applicable state laws. Separate policies will be provided reflecting the following coverage and limits of liability:

Workers' Compensation Applicable Statutory Benefits

Employer's Liability

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

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

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

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

- (a) Occurrence Basis;
- (b) Products;
- (c) Completed Operations (a minimum six-year term after Project Final Completion);
- (d) Contractual Liability specifically designating the indemnity provision of this Contract as an insured contract;
- (e) Independent Contractor's Liability;
- (f) Personal Injury;
- (g) Explosion, Collapse, and Underground (X,C,U) exclusions deleted; and
- (h) Designated Premises Only.

10.1.9.3 Excess Liability Insurance shall be provided under a master liability policy. Certificates of Insurance will be provided to CM and all tiers of enrolled Subconsultants reflecting the following Limits of Liability:

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

- 10.1.10 Insurance Certificates and Policies. Each enrolled CM and all tiers of enrolled Subconsultants shall receive Certificates of Insurance evidencing the General Liability and Excess Liability coverage. The related policies shall be available for review by CM upon written request to the RMU. CM and its Subconsultants shall be bound by the terms of coverage as contained in such insurance certificates and/or policies.
- 10.1.11 CM and Subconsultants' OCIP Responsibilities. CM and Subconsultants of all tiers enrolled in OCIP shall cooperate with the Authority and the RMU in the administration and operation of OCIP. Such responsibilities and cooperation shall include, but not necessarily be limited to, the following:
- 10.1.11.1 Ensuring that no enrolled Subconsultant shall commence Work at the Project site until it has received prior approval from the RMU.
 - 10.1.11.2 Compliance with all applicable safety program, administrative, and claims procedures, as outlined in the respective manuals.
 - 10.1.11.3 Promptly providing requested contract, operations, safety, and insurance information.
 - 10.1.11.4 Promptly responding to RMU or insurance company requests for claims, payroll, or other information.
 - 10.1.11.5 Attending periodic meetings regarding administration, claims review, or safety.
 - 10.1.11.6 Completing all OCIP forms required by the RMU or applicable manual.
- 10.1.12 Supplemental Insurance Requirements of CM and Subconsultants. As provided in Section 10.1.2, notwithstanding enrollment in OCIP, CM and its Subconsultants of every tier providing labor on the Project must, upon enrollment in OCIP, attach to the required enrollment forms, certificates of valid insurance evidencing current coverage for the On-site and Off-site exposures enumerated below. These exposures are not covered by OCIP. Insurance binders are not acceptable as proof of insurance coverage. Such coverage must be purchased and maintained from insurance companies authorized to transact the business of insurance in the State of New Jersey and are rated "A-7" or better by A.M. Best Company. In accordance with the laws of New Jersey, the Certificates of Insurance and insurance policies must provide for thirty (30) Days written notice to the Authority prior to a change in coverage and/or cancellation of coverage of any policy. For purposes of this Section 10.1.12, "Off-Site" shall include, but not necessarily be limited to, CM's regularly established workplace, plant, factory, office, shop, warehouse, yard, or other property, even if such operations are for training of apprentices or for fabrication of materials to be used at the Project site. The following are the exposures on-

site and off-site for which CM and Subconsultants must obtain insurance coverage in addition to OCIP insurance requirements.

10.1.12.1 Professional Liability Insurance. Professional Liability Insurance (Errors & Omissions), with all coverage retroactive to the Effective Date of this Agreement, covering any claims arising from wrongful or negligent errors, acts, or omissions in the performance of professional services pursuant to this Agreement, in an amount not less than \$3,000,000 per claim and \$3,000,000 in the annual aggregate. CM 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 or if coverage is not commercially available for such period of time, then for such shorter period of time as such insurance is commercially available. CM warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of pollution conditions, asbestos related claims, testing, monitoring, measuring operations or laboratory analysis in connection with the Services performed pursuant to the Agreement. CM shall require its Subconsultants to maintain similar Professional Liability Insurance in an amount not less than \$1,000,000 per claim and \$1,000,000 in the aggregate for all operations conducted.

10.1.12.2 Off-Site and On-Site Business Automobile Liability. Business Automobile Liability, and, if necessary, Commercial Umbrella Insurance covering the operations, maintenance and use, loading and unloading of all owned, hired, and non-owned vehicles used for or in connection with the Project. The limits of liability shall not be less than \$1,000,000 combined single limit each accident. Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for covered autos endorsement, CA 99 48, shall be provided, and the Motor Carrier Act endorsement (MCS-90) shall be attached. The policy shall include, as additional insureds, using ISO Designated Insured endorsement CA 20 48 (or a substitute form providing equivalent coverage), the Authority, the EDA, the New Jersey Department of Education, the State, the Design Consultant, and the Project School District, and their respective directors, officers, members, employees and agents. CM agrees to name other parties as additional insureds as required prior to the initiation of its work.

10.1.12.3 Off-Site Workers' Compensation and Employer's Liability. Workers' Compensation Insurance in accordance with the laws of the State of New Jersey and any other state or federal jurisdiction as is required to protect the employees of CM or any Subconsultant engaged in the performance of work on the Project. This policy shall include Employer's Liability protection with a limit of liability of not less than the following:

(a) Bodily Injury by Accident \$500,000 each accident

- | | |
|------------------------------|-------------------------|
| (b) Bodily Injury by Disease | \$500,000 each employee |
| (c) Bodily Injury by Disease | \$500,000 policy limit. |

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

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

10.1.13 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). CM 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 10.1.13 IS A MATERIAL BREACH OF CONTRACT.**

10.1.14 If any of the aforementioned insurance is written on a “claims made basis”, the CM 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 CM 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, CM shall insert a note "claims made retroactive date ___/___/___" (with the date inserted).

- 10.1.15 In the event that the CM regularly provides better coverage or higher limits of insurance to other similar clients, CM shall extend the same coverage and/or limits to the Authority, at no additional cost.
- 10.1.16 Certificate of Insurance. Attached to this Agreement as Appendix E shall be a valid Certificate of Insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. A Certificate of Insurance must also be submitted and appended hereto to evidence each insurance renewal required by this Section 10.1. Failure of the Authority to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of CM's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this contract at the Authority's option. CM shall provide certified copies of all insurance policies required within ten (10) days of the Authority's written request for such policies
- 10.1.17 No Recourse. There shall be no recourse against the Authority, the State or the Project School District for payment of premiums or other amounts with respect to the insurance required by this Section.
- 10.1.18 Disclaimer. CM and each Subconsultant is responsible to ensure that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage, at their own expense, that they deem advisable, whether or not specified herein.
- 10.1.19 By executing this Agreement, CM expressly agrees that any insurance protection required herein or by the Construction Contract shall in no way limit CM's obligations under this Agreement and shall not be construed to relieve CM from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of this Agreement or otherwise in law or equity.
- 10.1.20 Right to Remedy. If CM fails to obtain and/or maintain the insurance as required in this Section 10.1.12, 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 CM's expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between CM and the Authority; (iv) suspend performance by CM under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section 10.1.12 may be used, at the Authority's discretion, to renew or purchase CM'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 CM's compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect CM and such coverage and limits shall not be deemed as a limitation on CM's liability under this Agreement.

10.2 Ownership of Documents

- 10.2.1 In consideration of the Authority's execution of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by CM, CM hereby irrevocably grants, assigns and transfers to the Authority all of CM's right, title and interest of any kind in and to the following: all plans, ideas, methods, drawings, specifications, flow charts, data, diagrams, samples, tests, surveys, models, material, computer discs, evidence, documentation, and all copyrightable materials gathered, originated or prepared by CM and its Subconsultants during the performance of the Services (the "Work Product"), in all copyrights resulting from the Work Product, and in all renewals and extensions of the copyrights that may be secured now or be hereafter in force and effect.
- 10.2.2 Ownership of all Work Product by the Authority shall commence immediately upon the Effective Date of this Agreement regardless of payment by the Authority of any compensation to CM therefor and regardless of the delivery of any of the Work Product to the Authority. Upon written request, all Work Product shall be delivered by CM to the Authority in a timely manner, clearly marked, identified and in good order.
- 10.2.3 The Authority has the right to reproduce, publish or otherwise use, and authorize others under contract with the Authority to use, any of the Work Product for any purpose without the approval of, and without any additional compensation to, CM. The Authority shall have such right even in the event this Agreement is terminated for any reason.
- 10.2.4 CM shall be permitted to retain a copy of all Work Product for its own files. Absent the prior, written consent of the Authority, neither CM, nor any Subconsultant of CM, shall use any of the Work Product for any other project or for CM's promotional and professional (or other) materials.
- 10.2.5 Neither CM, nor any CM Subconsultant shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Authority or its Design Consultant. The Drawings, Specifications and other documents prepared by the Authority's Design Consultant, and copies thereof furnished to CM, are for use solely with respect to this Project. They are not to be used by CM on other projects without the specific written consent of the Authority.

10.2.6 CM shall incur no liability as a result of the Authority's use of the Work Product other than in connection with the Project. CM shall have no legal responsibility to the Authority arising out of the Authority's use of the Work Product for any project other than this Project, unless CM has been employed as CM on any other project and relies on the Work Product for such project, in which case this Section shall not apply.

10.3 **Copyrights and Patents**

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

10.3.2 CM shall defend, indemnify and hold harmless the Authority, the Design Consultant and the State and their respective officers, directors, shareholders, employees, servants, agents and representatives from any and all claims for infringement by reason of the use of any patented design, device, material, equipment or process, or any trademark, copyright, trade secret or any other material protected in any manner from use or disclosure, and shall indemnify the Authority, the Design Consultant and the State and their respective officers, directors, shareholders, employees, servants, agents and representatives for any costs, expenses and damages, including attorney's fees, that it may incur by reason of an infringement at any time during the performance, or after the acceptance, of the Services.

10.4 **Confidentiality**

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

10.4.2 CM shall not disclose to any third party the contents of the information, reports, findings, analyses, surveys, data or any other materials generated or produced in performance of this Agreement, or provide copies of same, without the prior, written consent of the Authority, except where disclosure of such materials is required by Applicable Laws in which case CM shall provide immediate notice to the Authority of such order.

10.4.3 CM is required to use reasonable care to protect the confidentiality of the Project data by, among other things, requiring incorporation of this Section into its

contract(s) with all Subconsultants, if any. Any use, sale or offering of this data in any form by CM, its officers, directors, shareholders, employees, Subconsultants or assignees will be considered a material breach of this Agreement. CM shall be liable for any and all damages arising from its breach of this confidentiality provision, including damages, costs and/or attorneys fees. The Authority shall also have the right to terminate this Agreement for cause in the event of a breach of this confidentiality provision without the Authority being liable for damages, costs and/or attorney's fees.

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

10.5 Contractual Relationship

- 10.5.1 Nothing in this Agreement shall be construed as creating a contractual relationship between any Subconsultants (regardless of tier) of CM and the Authority. However, the Authority is to be deemed a Third Party Beneficiary of all Project agreements with any Subconsultants of CM.
- 10.5.2 CM's status shall, at all times, be that of an independent contractor, not an employee of the Authority. CM 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. CM will not, by reason hereof, make any claim, demand or application to any Authority officer or employee for any right or privilege afforded to an Authority officer or employee, including, but not limited to, workers' compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.
- 10.5.3 CM shall include in all of its Subconsultants' contracts a requirement that the Subconsultant is bound by the terms and conditions of this Agreement.
- 10.5.4 Nothing contained in this Agreement shall create a contractual relationship with a third party or create a cause of action in favor of a third party against CM or the Authority. It is further intended that no individual, firm, corporation, or any combination thereof, which supplies materials, labor, services or equipment to CM for the performance of the Services becomes thereby a third party beneficiary of this Agreement.
- 10.5.5 The Authority and CM hereby bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement.

10.6 Assignment

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

- 10.6.2 In the event the Authority approves, in writing an assignment by CM, CM shall submit to the Authority: (i) corporate resolutions prepared by CM and the new entity ratifying this Agreement; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s); (v) acknowledgment and acceptance of all rights, duties and obligations of this Agreement without limitation by the new entity; and (vi) any other information which the Authority may reasonably require of CM in writing.
- 10.6.3 Notwithstanding anything to the contrary, under no circumstance shall CM assign its right to receive money under this Agreement for any purpose or to any person whatsoever without the prior, written approval of the Authority. The payments received by CM are to be regarded as trust funds, under N.J.S.A. 2A:44-148, and, as such, used strictly for the purpose of discharging obligations incurred on this Project.
- 10.6.4 The Authority may elect, in its sole discretion, to assign this Agreement to any other State agency, authority or other State instrumentality, or any local or municipal instrumentality, at any time during the Term of this Agreement. In such case, CM agrees to continue to perform all of its obligations as set forth in this Agreement. CM 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, in writing, to effect such assignment.

10.7 Mergers, Acquisitions, and Dissolutions

- 10.7.1 If, subsequent to the execution of this Agreement, CM proposes to merge with or be acquired by another firm or in the event of a proposed dissolution by CM, CM shall immediately notify the Authority in writing and shall submit, in advance, documentation to the Authority describing the proposed transaction.
- 10.7.2 The Authority, in its sole discretion, may approve the proposed transaction or terminate this Agreement for cause. The Authority will notify CM of its decision within thirty (30) Days of receipt by the Authority of documentation from CM describing the proposed details of the transaction.
- 10.7.3 In the event the Authority approves a merger or acquisition, CM shall submit to the Authority: (i) corporate resolutions prepared by CM and the new entity ratifying this Agreement; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s); (v) acknowledgment and acceptance of all rights, duties and obligations of this Agreement without limitation by the new

entity; and (vi) any other information which the Authority may reasonably require in writing.

- 10.7.4 In the event the Authority approves a dissolution, CM shall submit to the Authority: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the principal parties of a joint venture to dissolve the corporation, partnership or joint venture, respectively; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) any new or changed Federal Employer Identification Number(s); (iv) acknowledgment of the assumption of all rights, obligations and duties of this Agreement without limitation by the new parties; and (v) any other information which the Authority may reasonably require in writing.

10.8 Mandatory Compliance with Law

- 10.8.1 CM must comply with any and all Applicable Laws in effect or hereinafter promulgated that apply to performance by CM under this Agreement. To the extent variances from such Applicable Laws are required, CM and the Authority shall cooperate to pursue such variances in the interests of the Project.
- 10.8.2 CM must review all documents that have been prepared and furnished by the Authority relevant to the Project and shall comply with all requirements contained therein.
- 10.8.3 Each and every provision required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision has been omitted or has not been correctly inserted, this Agreement shall be amended, upon application of either Party, to provide for such insertion or correction.
- 10.8.4 If the Authority determines that CM has violated or failed to comply with Applicable Applicable Laws, the Authority may withhold payments for such violation or failure and take such action that it deems appropriate until CM has complied with such Applicable Laws or has remedied such violation or non-compliance to the reasonable satisfaction of the Authority.
- 10.8.5 CM's compliance with Applicable Laws is mandatory and cannot be waived by the Authority.
- 10.8.6 CM shall insure that its payments to vendors and Subconsultants are made in compliance with the New Jersey Prompt Payment Law, N.J.S.A. 2A:30A-1 and -2, and the provisions of New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32, et seq., to the extent applicable, and all other Applicable Laws concerning or related to the prompt payment of CM's Subcontractors or Subconsultants.
- 10.8.7 CM shall fully and strictly comply with all legal prohibitions and reporting and disclosure requirements regarding political contributions, including, but not limited to, N.J.S.A. 19:44A-20.13, 14, 15, 18, 19 & 27 and Governor Jon S.

Corzine's Executive Order No. 117, which became effective on November 15, 2008.

10.9 Affirmative Action and Non-Discrimination

- 10.9.1 CM and its Subconsultants shall abide by the affirmative action program established by the EDA pursuant to Section 48 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72, and any rules associated therewith, including, but not limited to, N.J.A.C. 19:39-1.1, et seq.
- 10.9.2 CM shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq. and all rules and regulations issued thereunder. During the performance of this Agreement, CM and its Subconsultants agree as follows:
- 10.9.2.1 CM and its Subconsultants, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, CM and its Subconsultants will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, 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. CM and its Subconsultants agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 10.9.2.2 CM and its Subconsultants, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of CM or its Subconsultants, 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.
- 10.9.2.3 CM and its Subconsultants, where applicable, will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of CM's (and its Subconsultant's) commitments under this Agreement and referenced statutes and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 10.9.2.4 CM and its Subconsultants, where applicable, shall comply with the regulations promulgated by the State Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 *et seq.*) as amended and supplemented from time to time, and with the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., with respect to its employment practices.
- 10.9.2.5 CM and its Subconsultants agree to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the State Treasury Department's Division of Contract Compliance & EEO pursuant to N.J.A.C. 17:27-5.2 and promulgated by the Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time.
- 10.9.2.6 CM and its Subconsultants agree to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, gender identity or expression, disability, nationality and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- 10.9.2.7 CM and its Subconsultants agree to revise any of its testing procedures, if necessary, to ensure that all personnel testing conforms to the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- 10.9.2.8 CM and its Subconsultants agree to review all of its procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, gender identity or expression, disability and nationality and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- 10.9.2.9 CM shall submit to the Authority, after notification of the award of this Agreement, but prior to execution, one of the following three (3) documents: (1) Letter of Federal Affirmative Action Plan Approval; (2) Certificate of Employee Information Report; or (3) Employee Information Report Form AA302.

10.9.3 CM and its Subconsultants shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and the Authority shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

10.10 Anti-collusion/ Anti-Trust

10.10.1 CM, by submitting its response to the Authority's RFP and/or RFQ and by executing this Agreement, does hereby warrant and represent that this Agreement has not been solicited, secured or prepared, directly or indirectly, in a manner contrary to the laws of the State, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Services by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity, or consideration of any kind, direct or indirect, to any employee, officer, or board member of the Authority.

10.10.2 Anti-Trust. By executing this Agreement, the CM hereby warrants and represents that (1) this Agreement has not been executed in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; (2) that the CM's bid for the Project was genuine and not collusive or a sham; (3) that the CM has not directly or indirectly induced or solicited any other individual or firm to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any individual or firm or anyone else to put in a false or sham bid; (4) that the CM has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the CM or of any other individual or firm or to fix any overhead, profit, or cost element of such bid price; (5) that all statements of the CM are true; and (6) that the CM has not directly or indirectly, submitted a bid price or any breakdown thereof, divulged information or data relative thereto, paid any fee in connection therewith to any corporation, partnership, company, association, organization, bid depository, or any member or agent thereof.

10.10.3 The penalty for breach or violation of this Section 10.10 may, at the sole option of the Authority, result in: (i) the termination of this Agreement without the Authority being liable for damages, costs and/or attorney fees, and/or (ii) a deduction from the payments to be made by the Authority pursuant to this Agreement of the full amount of such commission, percentage, brokerage or contingent fee, in addition to any penalties prescribed by law.

10.11 Conflict of Interest

10.11.1 CM 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 CM 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.

- 10.11.2 The solicitation from CM of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee shall be reported in writing forthwith by CM to the State Attorney General and the Executive Commission on Ethical Standards.
- 10.11.3 CM 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 CM to, any Authority officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the Authority; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such Authority officer or employee is employed or associated, or in which such Authority officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee and upon a finding that the present or proposed relationship presents neither an actual conflict of interest, nor the potential for, or appearance of, such a conflict of interest.
- 10.11.4 CM 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.
- 10.11.5 CM shall not cause or influence, or attempt to cause or influence, any Authority officer or employees to use or attempt to use such officer's or employee's official position to secure unwarranted privileges or advantages for CM or any other person.
- 10.11.6 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 CM, its officers or employees, to any person employed by the Authority as grounds for debarment or suspension from submitting proposals and providing Services or materials to the Authority.
- 10.11.7 The provisions cited in this Section shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with CM under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines that the Executive

Commission on Ethical Standards may promulgate under the provisions contained herein.

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

10.12 Affidavit Concerning Gifts to Authority Employees and Agents

The Contractor shall not give any gifts of any nature, nor any gratuity in any form whatsoever, nor loan any money or anything of value to any Authority employee or relative thereof. The Contractor shall not rent or purchase any equipment or supplies of any nature whatsoever from any Authority employee or relative thereof. Similarly, such gifts, gratuities, loans, rentals or purchases shall not be given to or made from any agent of the Authority during the period of time that such agent is performing any function related in any way to the Project. Before receiving final payment, the Contractor shall execute, under oath, any affidavit, on forms provided by the Authority, stating under oath that it has given no such prohibited gift, gratuities, or loans nor made any such prohibited rentals or purchases.

10.13 Disclosure of Political Contributions

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

- 10.13.2 Political Contributions ELEC Filing. The Contractor shall comply with its responsibility to file an annual disclosure statement on political contributions with ELEC in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Contractor's responsibility to determine if filing is necessary.

10.14 Indemnification

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

- 10.14.1.1 the negligent acts or omissions of CM, its agents, servants, officers, employees, Subconsultants or any other person acting at CM's request, subject to its direction, or on its behalf;
 - 10.14.1.2 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 by CM, its agents, servants, officers, employees, Subconsultants or any other person acting at CM's request, subject to its direction, or on its behalf;
 - 10.14.1.3 any gross negligence, default, or contract breach, of CM, its agents, servants, officers, employees, Subconsultants or any other person acting at CM's request, subject to its direction, or on its behalf;
 - 10.14.1.4 violation of or non-compliance with Applicable Laws (including without limitation the Americans with Disabilities Act and OSHA Environmental Protection Act) arising from the performance or non-performance of, or arising out of conditions created or caused to be created by CM, its agents, servants, officers, employees, Subconsultants or any other person acting at CM's request, subject to its direction, or on its behalf; and
 - 10.14.1.5 the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in CM's performance of its Services.
- 10.14.2 CM's indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Agreement.
- 10.14.3 CM agrees that any approval by the Authority of the Services performed, and/or reports, plans or specifications provided by CM shall not operate to limit the obligations of CM under this Agreement and that the Authority assumes no obligations to indemnify or hold harmless CM, its agents, servants, employees, or Subconsultants against any claims that may arise out of its performance or nonperformance under this Agreement. CM also agrees that the provisions of this indemnification clause shall in no way limit CM's obligations under this Agreement, nor shall they be construed to relieve CM from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of this Agreement or otherwise at law or equity.
- 10.14.4 The provisions of this Section shall survive the expiration or termination of this Agreement.

11.0 TERMINATION AND SUSPENSION

Nothing contained in this entire Section shall limit the right of the Authority to recover any and all costs and damages resulting from CM's failure to perform its Services in a manner consistent with all requirements of this Agreement.

11.1 Termination for Convenience of the Authority

- 11.1.1 Performance by CM of its obligations under this Agreement may be terminated by the Authority in accordance with this Section in whole or in part, whenever the Authority, in its sole discretion, determines that such termination is in its best interest. Such a termination shall be called a "Termination for Convenience".
- 11.1.2 Any such Termination for Convenience shall be effected by delivery of a "Notice of Termination for Convenience" specifying the extent to which the Services under this Agreement are terminated and the date upon which such termination becomes effective.
- 11.1.3 Upon such Termination for Convenience, CM shall be entitled only to compensation for fully compliant Services actually performed by CM, less payments previously made to CM. The CM shall also be entitled to the reasonable costs and expenses attributable to such Termination for Convenience.
- 11.1.4 Upon a Termination for Convenience, CM shall furnish to the Authority, free of charge, such closeout reports, documents, and materials as may be reasonably required by the Authority.

11.2 Termination for Cause

- 11.2.1 Without prejudice to any other available remedy, the Authority may terminate this Agreement if CM: (i) disregards or otherwise fails to comply with Applicable Laws; (ii) refuses or otherwise fails to properly staff the Project; (iii) fails to make timely payments to Subconsultants for materials or labor or services in accordance with the respective agreements between CM and the Subconsultants; (iv) fails to maintain or timely produce any CM Deliverables, Work Product or other records required by this Agreement to be so maintained or produced; (v) causes, in whole or in part, delayed Project completion or more costly performance of the Work through its breach of this Agreement or its fault, or neglect or the fault, or neglect of its Subconsultants; (vi) fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the timely implementation of this Agreement; (vii) fails to obtain and properly maintain the level of insurance coverages outlined in this Agreement; (viii) assigns or transfers its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority; (ix) makes any material misrepresentation or conceals any material fact; or (x) commences or has commenced against it any action under the United States Bankruptcy Code or any state or federal insolvency law, the commencement of which, in the Authority's judgment, may effectively impair the ability of CM to perform its obligations under this Agreement; (xi) fails to timely provide any Services required under this Agreement; or (xii) is guilty of a substantial violation of this Agreement. Such a termination shall be called a "Termination for Cause."

- 11.2.2 Any such Termination for Cause shall be effected by delivery to CM of a "Notice of Termination for Cause" specifying the extent to which the Services under this Agreement are terminated, the rationale therefor, and the date upon which such termination becomes effective.
- 11.2.3 For all such grounds of Termination for Cause except those contained in subsections 11.2.1(ix) and 11.2.1(x) and those as to which a cure is not feasible, CM may avoid termination if, within seven (7) Days of receipt of the Notice of Termination for Cause, it commences an effective means of correction of such default, neglect or violation, with diligence and promptness, fully curing same within the time, if any, prescribed by the Authority within the Notice of Termination or within any extension to such cure period subsequently approved in writing by the Authority. Failure of CM to commence an effective means of correction of its default, neglect or violation within seven (7) Days of receipt of the Notice of Termination for Cause, or to cure the same within the time prescribed by the Authority, shall result in a warranted and justified termination of this Agreement for cause. Assuming that no effective cure is timely commenced by CM, the Authority shall confirm in writing to CM the fact of its termination.
- 11.2.4 Upon termination for cause by the Authority pursuant to this Section, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Services that were required to be performed by CM by whatever methods the Authority may reasonably deem appropriate.
- 11.2.5 In the event this Agreement is terminated for cause pursuant to this Section, the Authority reserves the right not to make any further payments to CM and may require CM to repay all or a portion of the monies already paid. CM, at its own expense, shall be obligated to take any steps necessary to enable the Authority to complete the Services itself, or for the Authority to engage another construction manager to complete the Services. Such steps may include, but are not limited to, the prompt delivery to the Authority of all Deliverables, documents and Work Product identified herein and/or related to the Project. If the payments then or thereafter due CM are not sufficient to cover the Authority's cost to complete the Services itself or by means of another construction manager, CM shall pay, within ten (10) days, to the Authority the difference between what the Authority would have paid CM and the Authority's actual expense to complete, in addition to any other re-procurement expense, inclusive of professional fees incurred, inclusive of monies paid to the Design Consultant and The Authority's legal counsel and the Authority's own administrative or in-house expenses. If the Authority is required to file a legal action against CM in order to recover monies owed by CM on account of its termination for cause, CM shall be liable to the Authority for all legal fees so incurred, as well as all other litigation costs incurred. Further, CM shall be liable to The Authority for interest on all monies due and owing from CM to the Authority under this Section or any other Section thereof of this Agreement.

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

11.3 Suspension of Services

- 11.3.1 The Authority shall have the right to defer the Commencement Date or to suspend the whole, or any part, of the Services required under this Agreement whenever, in the sole discretion of the Authority, it is necessary or expedient for the Authority to do so. The Authority shall, by written notice to CM, suspend performance of the Services and upon receipt of such notice, unless otherwise directed in writing by the Authority, CM shall immediately discontinue all Services, except as necessary to properly secure the Project.

- 11.3.2 In the event of a suspension by the Authority pursuant to this Section, compensation, if any, shall be determined as follows:

- 11.3.2.1 If the Authority determines that the Services have been suspended for less than forty-five (45) Days, there shall be no additional compensation paid to CM.

- 11.3.2.2 If the Authority determines that the Services have been suspended for a period totaling forty-five (45) Days or more, and if the Authority determines that the suspension has resulted from no fault of CM or any of its Subconsultants, the Parties shall amend this Agreement to provide a compensation adjustment in an amount equal to the reasonable, direct, foreseeable and out-of-pocket cost actually incurred by CM due solely to the suspension period exceeding forty-four (44) Days, taking into account CM's duty to mitigate such costs. No such Amendment will change any of the other terms of this Agreement. In no case will CM be entitled to recover lost profit or unabsorbed or under-absorbed home office overhead due to such a suspension in excess of 44 Days.

- 11.3.3 When the Authority has determined that a suspension is, in whole or in part, the fault of CM, the Authority may, at its sole option, suspend all payments to CM. Payment may be reinstated by the Authority upon completion of the Services in accordance with the other provisions of this Agreement, 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 11.2, above, or carry out the Services as provided for in Section 11.4 below.

11.4 Authority's Right to Carry Out the Services

- 11.4.1 If CM fails to perform any obligation imposed under this Agreement, and fails, within seven (7) Days after receipt of written notice from the Authority, to commence and continue correction of such failure with diligence and promptness, the Authority may take steps to remedy such failure, at CM's sole

expense, without prejudice to any other remedy the Authority may have. In such case, an appropriate written notice shall be issued by the Authority deducting from the payments then or thereafter due CM the cost of correcting such failure, including compensation for any additional services of other Professional Services Consultant(s), including legal counsel, or contractor(s) engaged as a result of such failure. If the payments then or thereafter due CM are not sufficient to cover such amount, CM shall, within ten (10) days, promptly pay the difference to the Authority upon written demand. A failure to timely honor such payment demand shall entitle the Authority to interest, and, if the Authority files suit to collect, the Authority shall be entitled to recover its litigation costs, inclusive of its counsel fees.

11.4.2 Any action by the Authority under this Section shall be without prejudice to the Authority's rights under this Agreement or applicable law and shall not operate to release CM from any of its obligations under this Agreement.

12.0 CLAIMS

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

12.1 All CM Claims asserted against the Authority shall be subject to 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.

12.2 CM shall file notice of its CM Claim on a form provided by the Authority, which form shall be completed in its entirety and signed by CM. Incomplete forms will be rejected and of no effect. Submission of completed notice forms shall constitute compliance with the notice provisions of the New Jersey Contractual Liability Act if such notices are given within the time limits established by N.J.S.A. 59:13-5. CM must file the necessary forms as required by this Section to comply with the New Jersey Contractual Liability Act and in order to begin the administrative process for the review of claims by the CM.

12.3 Review of CM Claims. The administrative process for review of CM Claims is mandatory and sequential in nature and composed of the following steps:

- Step One - Review and Decision by the Authority
- Step Two - Non-binding Mediation

A legal action may only be filed by CM after this two-step administrative process has been exhausted or waived in writing by the Authority.

12.4 Each claim will begin its review at Step One. A CM Claim will not proceed to the next step unless, if at any step in the process a dispute is resolved, CM must sign an unconditional release of the Authority to the State of New Jersey and its employees,

agents and representatives, as to any and all matters arising from CM's involvement in the Project, inclusive of, but not limited to, the resolved claim.

- 12.5 The Authority shall have the right, within ten (10) Days of its receipt of the required Claim forms, to demand, in writing, that CM provide information from CM reasonably needed for the Authority to fully and properly evaluate the merits of CM's Claim and such information shall be promptly provided by CM. At the option of the Authority, a meeting may be scheduled with CM to discuss the CM's Claim. The Authority shall render its decision regarding CM's Claim in writing within thirty (30) Days of receipt of the necessary Claim forms and all information reasonably requested of CM or within thirty (30) Days of any meeting with CM, to review CM's Claim, whichever is later. This time limit may be extended by mutual written agreement of the Parties. CM, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject such decision in writing. If CM neither accepts nor rejects in writing the Authority's decision within fifteen (15) days, the CM Claim will be considered conclusively waived and withdrawn from the administrative process and there will be no further administrative remedy available to the CM for the subject CM Claim.
- 12.6 Within sixty (60) Days after issuance of a Certificate of Occupancy or Certificate of Acceptance for this Project, CM shall request, in writing, that any or all outstanding CM Claims regarding this Project, i.e., those not resolved by means of mandatory Step No. 1 of the administrative process, shall be submitted to Step No. 2, non-binding mediation. This time period may be extended in writing by the Authority, if such extension is signed prior to the expiration of this 60-Day period. Such request shall be sent to the Authority. Step No. 2 review will not be available until after the issuance of a Certificate of Occupancy or Certificate of Acceptance, unless an earlier time for submission of the dispute to Step Two is agreed to by CM and the Authority in writing. The cost of non-binding mediation shall be shared equally by CM and the Authority. The mediator shall be selected by the Authority, with the written concurrence of CM. The rules for the mediation shall be agreed to by the Authority, the CM 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

13.0 REPRESENTATIONS

CM hereby represents as follows:

- 13.1 CM is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the Services required under this Agreement.
- 13.2 CM is professionally qualified to act as CM for the Project, and has the capability and experience, including sufficient qualified and competent personnel, to efficiently and timely perform the Services. CM will continuously furnish sufficient personnel to perform the Services in a timely and proper manner.

- 13.3 CM is experienced, authorized to do business in the State of New Jersey, is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Project and CM, and has and shall maintain any and all licenses, permits and authorizations necessary to act as CM for the Project and to perform the Services required hereunder.
- 13.4 CM's execution of this Agreement and its performance hereunder is within its duly authorized powers.
- 13.5 CM certifies that it has investigated the conditions of the Project and that it fully understands the conditions of the Project and its obligations pursuant thereto. CM agrees that it will not make any CM Claim for, or be entitled to, cancellation or relief from this Agreement without penalty because of its misunderstanding or lack of information related to the conditions of the Project and its obligations pursuant thereto.
- 13.6 CM certifies that all representations made by it in any of the documents constituting this Agreement are true, subject to penalty of law. CM understands and agrees that its 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 for cause. CM understands and agrees that CM'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 CM's enforcement of its rights under this Agreement, including any and all CM Claims at law or equity.
- 13.7 CM is currently pre-qualified by the Authority, and properly registered pursuant to The Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. (L. 1999, c. 238).
- 13.8 CM and any Subconsultant have provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to L. 2001, c. 134. CM shall not enter into any subcontract with a Subconsultant that has not provided it and the Authority with proof of its valid business registration.
- 13.9 CM assumes full responsibility to the Authority for the acts and omissions of its officers, employees, subcontractors, Subconsultants, and others employed or retained by it in connection with the performance of the Services for this Project.
- 13.10 The representations and warranties enumerated in this Section operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required of CM by this Agreement or by Applicable Laws.

14.0 AUTHORITY'S RIGHTS AND RESPONSIBILITIES

14.1 Authority's Rights

- 14.1.1 The Authority shall have the right to perform Services related to the Project and to award contracts in connection with the Project that are not part of CM's responsibilities under this Agreement.
- 14.1.2 The Authority shall have the right, in its sole discretion, to accept or reject personnel proposed by CM. CM shall make a timely and prompt re-submittal to provide other personnel to replace any that are rejected by the Authority, both in the initial proposal or any subsequent rejection or substitution of personnel.
- 14.1.3 The Authority shall have the right to remove any of CM's or its subconsultants' employees from the Project at any time during the Term of this Agreement if that employee is reasonably deemed by the Authority not to be of the level of competence or ability required under this Agreement, or if said CM employee is for any reason found to be unsuitable to perform pursuant to this Agreement, as determined by the Authority in its sole discretion. In such case, CM shall promptly submit the name and qualifications of a replacement for the Authority's written approval.
- 14.1.4 The Authority shall have the right to evaluate CM's performance pursuant to the Authority's Performance Evaluation Policy and Procedures. The Authority shall also have the right to consider CM's evaluation as a factor used in the technical ranking of CM with respect to any submission by CM in response to future Requests for Proposals issued by the Authority. The Authority's action in this regard shall be immune from any Claim of any type or nature by CM or any of CM's Subconsultants. If any Subconsultant of CM makes any such Claim, CM shall defend, indemnify and hold the Authority harmless with respect thereto. If the Authority has to commence a legal action in order to enforce its rights under this Section, it shall be entitled to recover all expenses so incurred, including, but not limited to, its reasonable counsel fees.
- 14.1.5 The Authority may, during the Term of this Agreement, engage another entity to assume certain of the Authority's day-to-day responsibilities for the Project. In such event, the Authority shall notify CM, in writing, that such entity has been engaged and in such notice shall set forth the reporting requirements of CM with respect to such entity.
- 14.1.6 The Authority's approval, acceptance, use of, or payment for, all or any part of CM's Services hereunder or in connection with the Project shall in no way alter CM's obligations under this Agreement.
- 14.1.7 The Authority, the EDA, the Unit of Fiscal Integrity or any other State inspecting or oversight agencies reserve the right to audit (or have their agents audit) the records of CM in connection with all matters related to this Agreement. If, as a result of such audit, CM is discovered, for any reason, to owe any money or refund to the Authority, the Authority may, without limitation, reduce CM's invoice amount to an amount considered commensurate with the actual Services provided.

14.1.8 The Authority, the Unit of Fiscal Integrity or any other State inspecting or oversight agencies have the right to request in writing, and CM agrees to furnish free of charge, all information and copies of all records, documents or books the Authority and the Unit of Fiscal Integrity or any other State inspecting or oversight agencies may request of CM and its Subconsultants. CM and its Subconsultants shall allow representatives of the Authority, the Unit of Fiscal Integrity or any other State inspecting or oversight agencies to visit the office(s) of each periodically, upon reasonable notice, in order to review any information, records, documents or books related to this Agreement or to otherwise monitor any Services being performed by CM and its Subconsultants pursuant to this Agreement.

14.2 Authority's Responsibilities

14.2.1 The Authority shall establish and update an overall Budget and a CCE for the Project.

14.2.2 The Authority shall designate in writing a representative authorized to act on the Authority's behalf with respect to the Project, i.e., its Project Manager. This representative shall have that authority specified in the Levels of Operating Authority Policy which document can be found on the Authority's website: www.njsda.gov/RP/PoliciesAndRegulations/Operating_Authority.html and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

14.2.3 Notwithstanding any actions of the Authority or its Project Manager, CM's responsibility for the undertaking and completion of the Project shall be as set forth in this Agreement.

14.2.4 Prompt written notice shall be given by the Authority to CM and Design Consultant if the Authority becomes aware of any fault or defect in the Project or nonconformance with the Construction Contract.

14.2.5 The Authority reserves the right to perform construction and operations related to the Project with the Authority's own forces and to award contracts in connection with the Project which are not part of CM's responsibilities under this Agreement. CM shall promptly notify the Authority, in writing, if any such independent action will interfere with CM's ability to perform CM's responsibilities under this Agreement.

14.2.6 Information or services under the Authority's control, which are reasonably needed by CM to properly discharge its obligations hereunder and which are not CM's contractual responsibility, shall be furnished by the Authority to CM with reasonable promptness.

14.2.7 The Authority shall promptly furnish all required reviews and approvals or other appropriate action with respect to all Submittals, samples, estimates, schedules, Budgets, and other items submitted and/or proposed by CM.

- 14.2.8 The Authority shall send to CM and shall require the Design Consultant to send to CM copies of all notices and communications sent to or received by the Authority or the Design Consultant relating to the Project and as to which CM ought to be made aware.
- 14.2.9 The Authority shall furnish CM with two (2) sets of the Construction Contract, as they become available, including two (2) sets of approved plans and specifications, as well as two (2) sets of any related documents, and any other Professional Services Consultant Agreement(s). CM is charged with knowledge of the Construction Documents and the description therein of CM's duties and obligations and the Contractor's activities, which CM is responsible to monitor.
- 14.2.10 The services, information and reports required in this Section shall be furnished at the Authority's sole expense.

15.0 MISCELLANEOUS

- 15.1 Notices. All notices, requests 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 to this Agreement.
- 15.2 Incorporation by Reference. This Agreement incorporates by reference, as if set forth herein, all of the documents constituting this Agreement in their entirety, including, but not limited to, this Agreement and its appendices (A-F), the RFP and/or RFQ and the responses thereto, any Amendments and any addenda and the Construction Documents.
- 15.3 Conflict in Terms. In the event of any conflict, discrepancy or inconsistency among the documents constituting this Agreement, interpretation will be based on the following descending order of priority:
1. This Agreement, and any Amendments hereto.
 2. Appendix A (Special Conditions, if any)
 3. Construction Documents
 4. Appendix B (Project Description and Term)
 5. Request For Proposals and/or Request for Qualifications
 6. Appendix C (Compensation)
 7. Appendix E (Certificate(s) of Insurance)
 8. Appendix F (Other Documentation)
- 15.4 No Waiver of Warranties or Legal/Equitable Remedies. Nothing in this Agreement shall be construed to be a waiver by the Authority of any warranty, expressed or implied, or any remedies at law or equity, except as specifically and expressly stated in a writing executed by the Authority.

- 15.5 Procedural Requirements. CM shall promptly comply with all written procedural instructions that may be issued from time to time by the Authority.
- 15.6 Governing Law. This Agreement, and any and all litigation arising therefrom or related thereto, shall be governed by the applicable laws, regulations and rules of the State of New Jersey without reference to conflict-of-laws principles.
- 15.7 Forum and Venue. The Parties may only bring a legal action to resolve a dispute or Claim arising from this Agreement in a state court in the State of New Jersey.
- 15.8 Time is of the Essence. All time limits stated in this Agreement are of the essence.
- 15.9 Entire Agreement. This Agreement represents the entire and integrated agreement between CM and the Authority and supersedes all prior negotiations, representations or agreements, either written or oral.
- 15.10 Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.
- 15.11 Waiver of Breach. In the event that any provision of this Agreement is breached by either Party and such breach is thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach. Any written consent by the Authority to a delay in CM's performance of any obligation shall apply only to the particular obligation or transaction to which it relates, and it shall not apply to any other obligation or transaction. Any delay in the Authority's enforcement of any remedy in the event of a breach by CM of any term or condition of this Agreement or any delay in the Authority's exercise of any right under this Agreement shall not be construed as a waiver. A "waiver" of a Party's breach of this Agreement shall only occur if there is a specific provision in this Agreement which expressly describes the Party's conduct or inaction as constituting a waiver or if there is a writing signed by the waiving Party expressly, specifically and unequivocally waiving such breach.
- 15.12 Provisions Required By Law Deemed Inserted. Each and every provision of law required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and, if through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, then, upon the application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction.
- 15.13 Execution in Counterparts. This Agreement, where applicable, may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument. Each individual who executes this Agreement certifies and affirms that he/she is fully authorized to do so on behalf of the Party for whom he/she has signed and that his/her signature duly binds said Party.

- 15.14 Unit of Integrity. The Unit of Fiscal Integrity, the Office of the State Inspector General, or any other State inspecting or oversight agencies may, at their discretion, investigate, examine and inspect the activities of CM and all other parties involved with the Project relating to the design, construction and financing of the Project and to the implementation of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The Unit of Fiscal Integrity, the Office of the State Inspector General, or any other State inspecting or oversight agencies may require CM or any other party involved with the Project to submit duly verified reports which shall include such information and be in such form as they may require. In addition to the foregoing, the Unit of Fiscal Integrity, the Office of the State Inspector General, or any other State inspecting or oversight agencies may investigate, examine, inspect, or audit in any manner and at such times as they may deem necessary. CM shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the Unit of Fiscal Integrity, the Office of the State Inspector General, or any other State inspecting or oversight agencies, in their discretion, to investigate, examine, inspect or audit in any manner and at such times as they may deem necessary.
- 15.15 Limitation of Liability. Whether as a result of breach of Contract, tort (including negligence), or otherwise, the Authority will not be liable to the CM for any special, consequential, incidental, or penal damages, including, but not limited to, loss of profit or revenues, loss of rental value for CM-owned equipment, damages to associated equipment, cost of capital, punitive damages or interest of any nature.
- 15.16 Security Clearance. CM and all of its personnel, as well as all Professional Services Consultants, and Subconsultants, and their personnel, shall be subject to such security clearance at the Project as the Authority may require.
- 15.17 Captions & Titles. Captions and titles of the different Sections of this Agreement are solely for the purpose of aiding and assisting in the location of different material in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.
- 15.18 Words of Obligation or Duty. Whenever in this Agreement any words of obligation or duty regarding any Party are used, they shall have the same force and effect as if stated in the form of an express covenant.
- 15.19 No Individual Liability. No personal liability arising out of this Agreement shall accrue against any individual, officer, director, employee, shareholder, representative or fiduciary of the Parties.
- 15.20 Parties are not Joint Venturers or Partners. Nothing contained in this Agreement shall be construed to mean that CM and the Authority are joint venturers or partners.