

REQUESTS FOR QUALIFICATIONS
for
CONSTRUCTION MANAGEMENT SERVICES
for
SCHOOL FACILITIES PROJECTS

Contract No.: PA-0006-M01

for the

**Marshall Street School & Pedestrian Bridge
Paterson, NJ**

Issued: December 19, 2008

Due Date: January 5, 2009

**CONSTRUCTION MANAGEMENT SERVICES
REQUEST FOR QUALIFICATIONS (“RFQ”)**

INTRODUCTION

The New Jersey Schools Development Authority (“SDA”) is seeking the services of Construction Manager (“CM”) to manage the Construction Phase of the Marshall Street School and Pedestrian Bridge in the Paterson School District.

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

1. A bidder must first respond to the items listed in Section 1 below. Shortlisted firms will be sent a Request for Proposals (RFP).
2. Request for Proposals (RFP). The SDA will issue an RFP to firms that are shortlisted through the RFQ process.

This CM services Request for Qualifications consists of the following:

1. Request for Qualifications
2. Attachment A: Team Member Resume Form
3. Attachment B: Project Description
4. Attachment C: Construction Management Services Agreement

***The form of Agreement included as Attachment C is not a final document, but is substantially similar to the final document. The final version of the Agreement will be distributed to the firms that are shortlisted through the RFQ process.**

Any firm responding to this RFQ **must be** classified by the Department of Treasury, Division of Property Management and Construction and the NJSDA in Construction Management **as of the due date for this RFQ.**

Responses to this RFQ must be received by the NJSDA by 5:00 p.m. on January 5, 2009.

1.0 INSTRUCTIONS FOR SUBMITTING QUALIFICATIONS

Firms responding to the RFQ shall thoroughly familiarize themselves with the RFQ to ensure responsiveness in their submission. The submission is to consist of the following:

1. Organization chart of all team members
2. Team members resumes (provided on Attachment A)
3. Team CM experience over the last three years
4. Team NJ school experience over the last three years
5. Team overall experience with governmental construction projects over last three years
6. Team experience in dealing with both the New Jersey Department of Environmental Protection and the New Jersey Department of Community Affairs
7. Commissioning
8. SBE compliance
9. Business Registration

All of the above items must be addressed in the Qualifications submission in the same order as stated above.

Qualifications Package Mailing Instructions

The firm must submit one unbound (1) original and 5 (five) copies of the submission no later than **5:00 p.m., January 5, 2009** as follows:

If submitting by hand or overnight delivery, at the:

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procurement & Contract Services

1 West State Street – 1st Floor

Trenton, New Jersey 08625-0991

Attention: Megan Cox, Senior Procurement Analyst

Subject: Construction Management Services Proposal PA-0006-M01

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

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procurement & Contract Services

P.O. Box 991

Trenton, New Jersey 08625-0991

Attention: Megan Cox, Senior Procurement Analyst

Subject: Construction Management Services Proposal PA-0006-M01

Faxed or e-mailed submissions shall not be accepted.

Resumes of Team Members

A resume of each Team Member (NJSDA Form 202) must be included in the submission. At a minimum the following positions must be identified: each of the people to be on site full time (construction manager, assistant construction manager and field engineer/inspector), and part time as needed (proposed scheduler, the general estimator, mechanical estimator and electrical estimator). For each Team Member, the resumes must include, but not be limited to: a description of at least 3 projects completed within the last 3 years of similar or larger size and nature to this engagement that the Team Member completed in a similar role as that proposed. Form 202 is included in Attachment A to this RFQ.

Team CM Experience

Team CM experience shall be assessed through a brief summary of the team's general relevant construction management experience within the last 3 years through **(a) a brief summary experience, and (b) two specific required case studies**. The case studies must address examples of the proposing team's past provision of services of the type and scale outlined in Attachment B. Thus, the case studies must concisely set forth the basic background information (e.g., dates and location), the scope of services provided, and results of said engagement. **Case studies may be based on contracts with public or private sector clients**. A sampling of materials specifically and directly utilized in the project must accompany each case study, **provided such material is non-confidential and may appropriately be subject to later release as a government record**. The case studies must describe the effectiveness of the project, and the methodology

used to measure such effectiveness. The team must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity who is familiar with and able to comment on the team's performance on each project. The experience summary must be 500 words or less; the narrative for each case study 1,000 words or less.

Team NJ School Construction Experience

Team NJ school construction experience shall be assessed through a brief summary of the team's general relevant experience in NJ school construction within the last 3 years through **(a) a brief summary experience, and (b) two specific required case studies**. The case studies must address examples of the proposing team's past provision of services of the type and scale outlined in Attachment B. Thus, the case studies must concisely set forth the basic background information (e.g., dates and location), the scope of services provided, and results of said engagement. **Case studies may be based on contracts with public or private sector clients**. A sampling of materials specifically and directly utilized in the project must accompany each case study, **provided such material is non-confidential and may appropriately be subject to later release as a government record**. The case studies must describe the effectiveness of the project, and the methodology used to measure such effectiveness. The team must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity who is familiar with and able to comment on the team's performance on each project. The experience summary must be 500 words or less; the narrative for each case study 1,000 words or less.

Team Governmental Construction Experience

Team governmental construction experience shall be assessed through a brief summary of the team's general relevant c experience in governmental construction within the last 3 years through **(a) a brief summary experience, and (b) two specific required case studies**. The case studies must address examples of the proposing team's past provision of services of the type and scale outlined in Attachment B. Thus, the case studies must concisely set forth the basic background information (e.g., dates and location), the scope of services provided, and results of said engagement. **Case studies may be based on contracts with public sector clients**. A sampling of materials specifically and directly utilized in the project must accompany each case study, **provided such material is non-confidential and may appropriately be subject to later release as a government record**. The case studies must describe the effectiveness of the project, and the methodology used to measure such effectiveness. The team must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity who is familiar with and able to comment on the team's performance on each project. The experience summary must be 500 words or less; the narrative for each case study 1,000 words or less.

Team Experience with NJDEP and NJDCA

Team Experience with NJDEP and NJDCA shall be assessed through a brief summary of the team's general relevant experience with NJDEP and NJDCA through **(a) a brief summary experience, and (b) two specific required case studies**. The case studies must address examples of the proposing team's past provision of services of the type and scale outlined in Attachment B. Thus, the case studies must concisely set forth the basic background information (e.g., dates and location), the scope of services provided, and results of said engagement. **Case studies may be based on contracts with public or private sector clients**. A sampling of materials specifically and directly utilized in the project must accompany each case study, **provided such material is non-confidential and may appropriately be subject to later release as a government record**. The case studies must describe the effectiveness of the project, and the methodology used to measure such effectiveness. The team must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity who is familiar with and able to

comment on the team's performance on each project. The experience summary must be 500 words or less; the narrative for each case study 1,000 words or less.

Commissioning

The selected consultant will be responsible to be the designated Commissioning Agent for the Project in accordance with the scope set forth in the CM Agreement.

SBE Targets

The selected Consultant shall be required to make good faith efforts to ensure that small business enterprises ("SBEs") have the maximum practicable opportunity to participate in the performance of this engagement. A 25% target has been established pursuant to N.J.A.C. 12A:10-1.1 et seq., and Executive Order No. 71 (2003). Firms shall be required to meet set-aside targets of 5% for Category 4, 10% for Category 5 and the remaining 10% for any combination of Categories 4 and 5. **Provide detail of how your firm will satisfy this requirement (e.g. name of SBE, % of fee, % of work).**

Business Registration

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

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

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

2.0 SELECTION PROCEDURES

Each RFQ will be reviewed to determine responsiveness. Responsive submission will be evaluated by the committee. Such evaluation will be based upon the information provided by the firms in response to this RFQ. Evaluations will be based on the following Evaluation Criteria:

	Maximum Points
Team CM experience.	20
Team NJ school experience	20
Team governmental construction experience	20
Team experience with NJDEP and NJDCA	10
Key team member experience	10
Commissioning	10
SBE Compliance	10
Total:	100

ATTACHMENT A

NJSDA FORM 202

KEY TEAM MEMBERS' RESUMES

{This form should be photocopied as necessary}

KEY TEAM MEMBER NAME: _____

PROJECT NAME; CLIENT NAME; PRIME FIRM NAME	CLIENT CONTACT; PERSON NAME & PHONE #	DESCRIPTION OF PROJECT (including its size and scope) ; DESCRIPTION OF KEY TEAM MEMBER'S ROLE	MONTHS INVOLVED IN PROJECT
1.			
2.			
3.			
4.			
5.			

ATTACHMENT B

Project Description

SCHOOL FACILITIES PROJECT LIST

Contract No.: PA-0006-C01
Contract Name: Marshall Street School & Pedestrian Bridge
Awardee: TBD
A/E Firm: Design Ideas Group
District: Paterson
NTP: Anticipated May 1, 2009
CCE Amount: \$39,300,000

Brief description of work:

Architecturally the design combines three individual elements with unique massing and finish treatment. Masonry and concrete forms that are simple and scaled to blend in with the neighborhood will be incorporated into the building design. The project is also designated as a LEED project.

New 105,490 gsf K to 8 grade elementary school to be built on an existing site in Paterson, New Jersey. The school facility will include 45 classrooms, comprised of general purpose classrooms, gymnasium, cafetorium, and special instructional classrooms for life skills, music, art, computer lab, technology room, science lab, a community room and playground. The Building has a partial basement to house mechanical equipment and support spaces. The structure is structural steel frame with masonry back-up. The mechanical system is forced air with heat pumps in the classrooms.

The project also includes the construction of a pedestrian bridge over an operational NJ Transit Railroad line to allow for safe access to the School Yard for students. The construction of this work must be closely coordinated with NJ Transit.

The general contractor will also be required to remove approximately 1200 tons of contaminated soil that is currently exists onsite. There is also an existing retaining wall onsite that was not fully constructed by a previous contractor. This may require the removal and replacement of the wall.

The Construction Manager will also be responsible for the Commissioning of the Facility and it is imperative that Construction Manager can demonstrate previous experience in Commissioning similar projects of this size and magnitude.

Status of Project:

The project has received DCA approval in 2007 and we are currently in the process of pulling the construction permit through DCA. The Architect may be required to revise the equipment specifications to ensure that the equipment specified is still being manufactured. We may also incorporate minor value engineering suggestions into the construction documents.

The project will be governed by the SDA PLA. Substantial completion is tentatively scheduled for July 1, 2011 and final completion is scheduled for September 1, 2011.

CM Contract Duration:

CM Services PA-0006-M01 RFQ
12/19/08

CM NTP to December 1, 2011

Current Subcontractors (subject to change without notice):
TBD

ATTACHMENT C

AGREEMENT

BETWEEN

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

AND

FOR

CONSTRUCTION MANAGEMENT SERVICES

PA-0006-M01

THIS AGREEMENT is made and entered into this ___ day of _____, 2008 (the “Effective Date”) between the New Jersey Schools Development Authority (the “Authority”), having an office located at 1 West State Street, Trenton, New Jersey 08625-0991, and _____ (“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: PA-0006-M01

Project Name: Marshall Street School & Pedestrian Bridge

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

Provided that CM strictly and completely performs all of the Services specified and all other obligations set forth in this Agreement, and subject only to such increases or decreases 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]

This Agreement has been reviewed and approved.

CM

**NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY**

By:
Title:

By:
Title:

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

By: _____
Name of Affiant

Notary Public of

My commission expires: _____, 20__.

Reviewed and Approved

By: _____
Name:

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 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 this agreement, including all exhibits, appendices and attachments, between the Authority and CM, as amended by the parties.
- 1.3 "Amendment" means a written modification to this Agreement executed by the Authority and CM.
- 1.4 "Authority" or "New Jersey Schools Development Authority" means the public body corporate and politic established in, but not of, the Department of Treasury pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:17G-1 et seq. The Authority is the Party that has engaged CM pursuant to this Agreement.
- 1.5 "Authority's Expedition Database" means the Primavera Expedition Database created and maintained by the Authority.
- 1.6 "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.
- 1.7 "Basic Services" means the services to be performed by CM pursuant to this Agreement as set forth in Section 4.0.
- 1.8 "Change Order" means a written modification to the Construction Contract issued by the Authority.
- 1.9 "Construction Change Directive" or "CCD" means a written order by the Authority, directing or authorizing some change to the Construction Contract for which compensation has not yet been determined.
- 1.10 "Construction Contract" means the agreement, including exhibits, appendices and attachments, between the Authority and the Contractor governing the construction of the Project.
- 1.11 "Construction Cost Estimate" or "CCE" means the estimated cost to construct the Project, 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.

- 1.12 "Construction Documents" means the plans, specifications and other documents provided by the Design Consultant to the Authority, which set forth the design and specify other necessary requirements relating to the construction of the Project.
- 1.13 "Construction Manager" or "CM" means the person, persons or firm engaged by the Authority to provide construction management services, including, but not limited to, oversight, direction, coordination and reporting in connection with the construction of the Project. Whenever the term "PMF" is used in the Construction Contract, it shall mean "CM."
- 1.14 "Construction Milestones" mean the dates identified on the Construction Schedule by which the Contractor must complete certain critical activities in the construction of the Project.
- 1.15 "Construction Phase" means that phase of the Project during which the Contractor constructs the School Facility.
- 1.16 "Construction Schedule" means a Critical Path Method schedule prepared and updated by the Contractor pursuant to the Construction Contract, wherein the Contractor identifies all critical activities, including Construction Milestones, and the projected and actual time periods for completing such activities.
- 1.17 "Contract Change Request" or "CCR" means a written request for a change to the Construction Contract. A CCR may be initiated by the Authority or the Contractor.
- 1.18 "Contractor" means that person or firm or those persons or firms engaged by the Authority to build the Project pursuant to the Construction Contract.
- 1.19 "Contractor Deliverables" means any documents required to be produced by, or work product generated by, the Contractor pursuant to the Construction Contract.
- 1.20 "CM Claim" means a demand by CM seeking, as a matter of right, adjustment or interpretation of this Agreement, payment of money, extension of time or other 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 become a claim upon resolution thereof, including resolution by withdrawal, release, or amendment to this Agreement signed by the Parties.
- 1.21 "CM Deliverables" means any services to be performed or work product to be generated by CM in accordance with this Agreement.
- 1.22 "CM Notice to Proceed" means a notice from the Authority to CM directing CM to commence performing its responsibilities pursuant to this Agreement.
- 1.23 "Day" means calendar day, unless otherwise specifically defined.
- 1.24 "DCA" means the New Jersey Department of Community Affairs.

- 1.25 "Design Consultant" means the architect or engineer or other Professional Services Consultant engaged by the Authority to provide design services and construction administration services for the Project.
- 1.26 "Design Contract" means the agreement, including all exhibits, attachments and appendices, between the Authority and the Design Consultant for the Project.
- 1.27 "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.
- 1.28 "DOE" means the New Jersey Department of Education.
- 1.29 "E-Rate Program" means the 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.
- 1.30 "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.
- 1.31 "Effective Date" means the date upon which this Agreement has been fully executed by all Parties, as indicated above.
- 1.32 "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 by CM.
- 1.33 "Final Completion" means that point in time on the Project when all requirements of the Construction Contract have been performed, when all items of the Punchlist have been completed, and when a Certificate of Occupancy, or a Certificate of Acceptance, as applicable, has been issued.
- 1.34 "Key Team Member" means a principal, partner or officer of CM firm, or a project executive, project manager, superintendent, project engineer, scheduler, or estimator 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 or more of his/her time on any phase of the Project.
- 1.35 "Parties" means the Authority and CM.
- 1.36 "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.
- 1.37 "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.

- 1.38 "Professional Services Consultants" means consultants, including CM, providing professional services 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.
- 1.39 "Professional Services Consultant Agreements" means the agreements between the Authority and Professional Services Consultants in connection with the Project and, unless otherwise noted, shall include this Agreement.
- 1.40 "Project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of the School Facility identified herein and in Appendix B or of any personal property necessary for or ancillary to the School Facility identified in Appendix B.
- 1.41 "Project Budget" means the total amount of money earmarked by the Authority for the design and construction of the Project.
- 1.42 "Project School District" means the school district in which the Project is located. The District is identified in Appendix B of this Agreement.
- 1.43 "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.
- 1.44 "Punchlist" means the list of incomplete or defective Work 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.
- 1.45 "Request for Information" or "RFI" means a written request by the Contractor to the Design Consultant for additional information about the Construction Documents.
- 1.46 "Request for Proposals" or "RFP" means a request issued by the Authority for proposals from Professional Services Consultants for services described therein.
- 1.47 "Request for Qualifications" or "RFQ" means a request issued by the Authority for qualifications from Professional Services Consultants.

- 1.48 "School Facility" means and includes any structure, building or facility used wholly or in part for academic purposes.
- 1.49 "Services" means the services to be performed by CM in accordance with this Agreement.
- 1.50 "State" means the State of New Jersey.
- 1.51 "Subconsultant" means a Professional Services Consultant with whom another Professional Services Consultant subcontracts for the performance of all or part of the services for which the latter is responsible.
- 1.52 "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.
- 1.53 "Submittal" means documents or other tangible items required by the Construction Documents to be submitted by the Contractor for approval, including, but not limited to, shop drawings, product data and samples.
- 1.54 "Substantial Completion" means that point in time on the Project when: (i) all essential requirements of the Construction Contract have been performed so that the purpose of the Construction Contract is accomplished, (ii) a Temporary Certificate of Occupancy has been issued by the Department of Community Affairs, (iii) the Punchlist has been created, (iv) there are no important or material omissions or technical defects or deficiencies, as defined by the Authority, and (v) the Project is ready for occupancy in accordance with its intended purpose.
- 1.55 "Term" means the term of this Agreement as set forth in Appendix B of this Agreement.
- 1.56 "Uniform Construction Code" means the New Jersey Uniform Construction Code, as set forth in N.J.A.C. 5:23-1 et seq.
- 1.57 "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.
- 1.58 "Work" means the labor and services to be performed by the Contractor or any Subcontractor pursuant to the Construction Contract.

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 trust, good faith and fair dealing and shall cooperate with the Design Consultant in furthering the Authority's interests.
- 2.1.2 Standard of Care. CM covenants with the Authority to furnish its Services consistent with the highest standards exercised by members of the construction management profession, and in accordance with applicable federal, state and local laws and regulations. Specifically, CM shall exercise its best skill and judgment in furnishing the Services described in this Agreement, shall perform its Services in an economical and timely manner and shall perform its Services consistent with the interests of the Authority. CM agrees that the Authority is and shall be entitled to rely upon CM so performing the Services required by this Agreement and upon CM's experience in the construction industry in general and as a construction manager in particular.
- 2.1.3 Authority's Authorized Representative. CM shall act as the Authority's authorized representative with respect to the Preconstruction Phase and/or Construction Phase of the Project.

2.2 The Authority and Design Consultant

- 2.2.1 Design Consultant Relationship. The Authority shall engage 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. The Authority shall cause the Design Consultant to provide those services reasonably requested by CM and included within the Design Consultant's scope of services under the Design Contract. CM shall provide those services reasonably requested by the Authority and the Design Consultant and included within CM's scope of Services under this Agreement. Upon request of CM, the Authority shall furnish to CM a copy of the Design Contract. 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. 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 be complementary. CM will be entitled to rely upon the Design Consultant for the proper performance of services undertaken by the Design Consultant pursuant to the Design Contract.

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 and required 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 Deliverables. CM is responsible for the quality, technical accuracy, and timely completion and delivery of all CM Deliverables. The approval of interim CM Deliverables shall not in any way relieve CM of fulfilling all of its obligations under this Agreement. Acceptance of, or payment for, any of CM Deliverables shall not be construed as a waiver 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.
- 3.2 Errors and Omissions. CM shall, without additional compensation, cure any errors, omissions, or other deficiencies in CM Deliverables and Services. Any costs incurred by the Authority to correct any errors or omissions will be deducted from the payments due then or thereafter due CM. If the payments then or thereafter due CM are not sufficient to cover such amount, CM shall pay the difference to the Authority upon demand.
- 3.3 Design Manual. CM shall review and be familiar with the requirements of the Design Manual. CM shall review all Work on the Project for compliance with 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 expeditious and economical manner consistent with the interests of the Authority.
- 3.5 Key Team Members. CM shall utilize the Key Team Members identified in its response to the Authority's RFP and/or RFQ for this Project. The Authority has the right to approve and/or reject any Key Team Member identified in CM's response to the Authority's RFP and/or RFQ for the Project. CM shall provide 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 proposed Key Team Member substitutions. No changes in Key Team Members shall be permitted without the prior, written approval of the Authority.

- 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 sole opinion, changes to Key Team Members are necessary, the Authority shall notify CM in writing. 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.
- 3.7 Contractor Deliverables. CM is responsible for the coordination and timely delivery to the Authority of all Contractor Deliverables that are required to be coordinated or reviewed by CM for approval or comment before delivery to the Authority. The approval of interim Contractor Deliverables shall not in any way relieve CM of fulfilling all of its obligations under this Agreement. Acceptance of, or payment for, any of the Contractor Deliverables shall not be construed as a waiver 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. 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 performing its obligations under this Agreement in full. CM shall continue to be solely responsible for the performance of all Services and obligations required by this Agreement. 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 by CM of the Subconsultant. CM shall be responsible for all Services performed by the Subconsultant, and CM shall cause all Subconsultant Services to conform to the provisions of this Agreement. The failure of any Subconsultant to adhere to the terms of this Agreement may, in the Authority's discretion, be cause for termination of this Agreement.
- 3.9 Professional Advice and Support. CM shall advise and make recommendations to the Authority regarding, and facilitate resolution of, any issue that will have an impact on the cost, schedule or successful delivery of the Project, including, but not limited to, safety, performance, 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 analyze any claims submitted by Contractor to the Authority and provide to the Authority in writing such analysis and recommendations as to resolution of the Contractor's claim.
- 3.10 Accounting Requirements. For all Services rendered, CM shall, in accordance with generally accepted accounting principles and practices, maintain 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 the Services and materials provided under this Agreement, whether the Services are performed by CM or any subconsultant, shall be maintained and made available for inspection by the Authority or any other state agency.

- 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 shall provide any additional office supplies and equipment it deems reasonably necessary to manage the Project at its own expense. This equipment shall include, but not be limited to, 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 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 CM deems reasonably necessary to manage the Project at its own expense. If required 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 CM Deliverables, 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 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 report its findings immediately to the Authority and assist in determining and implementing an appropriate course of action to remove or eliminate such hazardous material from the Project.
- 3.14 Other Subconsultants and Contractors. The Authority may, in its 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 the construction consultant, contractor or other Professional Services Consultant that will be furnished to CM upon request, and CM is obligated to coordinate its Services with those of the construction consultant, contractor or other Professional Services Consultants.

4.0 BASIC SERVICES

4.1 Preconstruction Phase Services.

CM shall provide these Preconstruction Services at the Authority's sole option.

- 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 Notice to Proceed by the Authority.
- 4.1.2 Review of Authority's Program. CM acknowledges that it has reviewed the Authority's Program to confirm its understanding of the requirements of the Project as such requirements impact the Services to be provided under this Agreement, and has verified such understanding with the Authority and Design Consultant.

- 4.1.3 Consultation. If CM is engaged 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.
- 4.1.4 Review of Construction Documents. Upon the Construction Documents reaching 95% completion, 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, and factors related to construction cost, including estimates of alternative designs or materials. If the CM is engaged 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 described in this Section. 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 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 to the site. CM shall provide this Plan to the Authority for review and approval in both visual and narrative form. Once approved, CM shall keep the Plan current, and the Plan shall be included in the Authority's Expedition Database.
- 4.1.6 Value Engineering. CM shall review the Project design and the Construction Documents and suggest ways to maximize the value and any savings for the Project by reviewing and revising certain parts of the Work such as, without limitation, mechanical systems, roofing systems, finishes, energy management systems, lighting and power systems, and site work, as well as maintainability and operability considerations.
- 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. CM shall help expedite the delivery of long-lead time items.
- 4.1.8 Notices and Advertisements. CM shall assist the Authority in preparing and placing notices and advertisements to solicit 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 documents from the Design Consultant and arrange for printing, binding, wrapping and delivery to the bidders. CM shall maintain a list of bidders receiving 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 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.
- 4.1.11 Information to Bidders. With the Design Consultant, CM shall develop and coordinate procedures to provide answers to bidders' questions. All 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. CM shall review addenda for constructability, for effect on the Project, Project Budget and CCE, scheduling and time of construction, for clarity and shall provide comments and recommendations to the Authority related to CM's review of the addenda. Upon approval of the addenda by the Authority, CM shall distribute a copy of all addenda to each bidder.
- 4.1.13 Bid Opening and Analyzing Bids. CM shall assist the Authority in the bid opening and upon receipt of the bids, shall evaluate the bids for responsiveness and price. CM shall make recommendations to the Authority concerning the bids and the award of the Construction Contract.
- 4.1.14 Construction Contract. CM shall assist the Authority in the assembly, delivery and execution of the Construction Contract.
- 4.1.15 Acceptability of Subcontractors. CM shall advise the Authority on the acceptability of Subcontractors and material suppliers proposed by the Contractor.
- 4.1.16 Permits. CM shall assist the Authority in obtaining building permits and any special permits, except for permits required to be obtained directly by the Contractor. CM shall verify that the Authority has paid applicable fees and assessments. CM shall 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. CM shall provide administrative, management and related Services, as required, to monitor and direct the performance of the Contractor and to verify that the Project is constructed in accordance with the Construction Contract and the Authority's objectives for cost, schedule and quality.
- 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 to the Contractor is due, except that CM shall participate in the Warranty Inspection as set forth in Section 4.10.8 and will assist the Authority in resolving any Warranty issues.
- 4.2.3 Pre-Construction Conference. In consultation with the Authority and Design Consultant, CM shall schedule and conduct a Preconstruction Conference with the successful bidder after the Construction Contract is signed during which time CM shall review contract administration procedures, Project requirements, the Construction Schedule, Project staffing and other pertinent issues consistent with Specification Section 01200 "Preconstruction Conference," as amended or superseded by the Construction Contract.
- 4.2.4 Construction Documents' Errors and Omissions. CM shall promptly report to the Authority and the Design Consultant any errors, inconsistencies, defects or omissions that it discovers in the Construction Documents.
- 4.2.5 Quality Assurance/Quality Control ("QA/QC") Program. CM shall review the Contractor's Quality Assurance/Quality Control Program, recommend approval or rejection of the Program to the Authority, and monitor Contractor's compliance with the Program, once approved, 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 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, comply with the Program and meet the requirements of the Construction Contract related to QA/QC.
- 4.2.6 Compliance with Laws. CM shall monitor the Contractor for compliance with all laws, ordinances, rules and regulations as required for the construction of the Project, specifically including 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, the Professional Services Consultants and Subconsultants. CM's actions to verify that the required bonds, permits and insurance have been obtained and paid for shall not relieve the Contractor, the Authority, Subcontractors, the Design Consultant, Professional Services Consultants or Subconsultants of their responsibility to comply with their contracts and agreements regarding permits, bonds or insurance for this Project.
- 4.2.8 On-Site Management and Construction Phase Communication Procedures. CM shall provide and maintain a management team on the Project site to provide Construction Contract administration daily. CM shall establish and implement coordination and communication procedures among CM, the Authority, Design Consultant, Contractor and/or other Professional Services Consultants.
- 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. CM shall prepare and distribute meeting minutes within three (3) Days of the meeting to the Authority and all other parties attending the meeting.
- 4.2.10 Construction Schedule. Within five (5) Days of receipt of Contractor's Construction Schedule, CM shall review, provide written comments, and recommend approval or rejection of the schedule to the Authority. The approved Construction Schedule prepared by the Contractor shall meet the Authority's requirements and be consistent with the Construction Contract. Once approved, the final Construction Schedule shall become the official Project Schedule and will be used by CM to monitor the progress of the Work. CM shall require monthly schedule updates from the Contractor. CM shall timely review those monthly schedule updates to ensure compliance with the Contractor's Construction Schedule and Construction Milestones and provide the Authority with written comments regarding the updates. In the event that CM's review of the schedule or schedule updates indicates that Contractor will not meet the Construction Milestones, CM shall immediately alert the Authority and assist the Authority in determining and implementing an appropriate course of action. If the Contractor is required to produce a recovery schedule, within five (5) Days of receipt of the recovery schedule, CM shall review, provide written comments and recommend approval or rejection of the recovery schedule to the Authority. In the event that the Schedule is significantly impaired and the CM is required to substantially increase the amount of time it spends reviewing and analyzing the Schedule and/or recovery schedule, the Authority, in its sole discretion, may compensate CM for such extra services as set forth in Section 5.0.

- 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 are met. In the event of a labor dispute affecting the Project, CM shall immediately notify the Authority's Labor Relation Unit 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 Building Commissioning. CM shall provide whole building commissioning as defined in the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. ("ASHRAE"), ASHRAE/NIVS Guidelines 0-2005, 1-2007, 3-2006 and ASHRAE Guideline 4-1993, as such Guidelines may be amended from time to time. In accordance with such ASHRAE Guidelines, CM shall, as needed, engage duly qualified professionals, such as a commissioning agent licensed as a professional engineer in the discipline of mechanical engineering, an experienced controls technician and/or test and balance technician. CM shall direct and oversee any and all Professional Services Consultants involved in the commissioning process, and shall coordinate commissioning activities with the activities of the Contractor and the Design Consultant. CM shall work in conjunction with the Design Consultant in the development of commissioning performance and reporting standards applicable to each system and assembly, in accordance with the above-referenced ASHRAE Guidelines. CM shall verify proper coordination among systems and assemblies, and between all Contractors, Subcontractors, vendors and manufacturers of furnished equipment and assemblies.
- 4.2.14 Approvals by Regulatory Agencies. CM shall coordinate transmittal of documents to regulatory agencies for review and shall advise the Authority of potential problems and suggested 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 and the actual costs of construction. As part of this cost

monitoring, CM shall 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 4.7.7(2), CM shall provide a construction cost summary and cash flow forecast.

- 4.3.2 CM shall review and analyze the CCE and provide comments as to its feasibility and any revisions that should be made.
- 4.3.3 CM's evaluations of the Project Budget and CCE represent CM's best judgment as a person or entity familiar with the construction industry. 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 of ways to control costs on the Project.
- 4.3.4 CM shall monitor the CCE, including all updates and revisions thereto, and shall advise the Authority whenever actual or projected construction costs deviate from the estimated costs set forth in the CCE.
- 4.3.5 CM shall notify the Authority whenever the CCE, actual or projected construction costs may exceed the Project Budget and shall 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 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 to meet the requirements of that Act and any actions taken to resolve the Contractor's 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 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 other related governmental safety codes, rules, regulations and requirements, such as OSHA. CM shall then recommend to the Authority approval or disapproval of the Contractor's Safety Plan. Once a Safety Plan is approved, CM shall review and monitor 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 require the Contractor to stop performance of the Work or to take immediate 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 then recommend to the Authority approval or disapproval of the Contractor's Security Plan. 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.

4.5 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 invoice submitted by the Contractor and determine whether the amount requested by the Contractor per its invoice reflects the progress of the Contractor's Work. CM shall make appropriate adjustments to each invoice and shall prepare and forward to the Authority and the Design Consultant a Progress Payment Report certifying the amounts due to the Contractor. The Report shall state the total Contract Price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this Report shall be a Certificate of Payment that shall be signed by CM.

- 4.5.2 Certification of Payment. CM's Certification 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 invoice and the quality of the Work is in accordance with the Construction Contract.

4.6 Contractor's Claims

- 4.6.1 Claims. CM shall track and coordinate all claims and the review thereof. With respect to any claim filed by the Contractor, CM shall assist the Authority in gathering and/or preparing all necessary documentation for the Authority's review of such claim. If the Authority requests, CM shall prepare a written analysis of the claim 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. If necessary, CM shall provide its own legal representation at its own expense with respect to any such claim.
- 4.6.2 Mediation and Litigation. CM agrees that it shall assist and cooperate with the Authority in and, at the request of the Authority, 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 Authority and CM are not adverse parties. CM's assistance and cooperation with the Authority in and attendance at any public or private hearing, mediation or legal proceeding will constitute an Additional Service under this Agreement unless CM is considered by the Authority to be a potentially liable party or is a liable party. CM consents to be a party to any mediation or legal proceeding if so requested by the Authority.

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 request. Such data shall include, but not be limited to, RFIs, CCRs, CCDs, Change Orders, Submittals, invoice information, construction reports, field reports, meeting minutes, daily logs, noncompliance notices, punchlists and close-out documents.
- 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, invoice information, bids, contracts, schedules, tests, inspections, payroll records and safety records. 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, all records shall be given to the Authority in hard copy and/or 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, telephone numbers (land line and cellular) necessary to allow proper communication among all persons involved in the Project.
- 4.7.4 Requests for Information. CM shall receive all RFIs from the Contractor, input them into the Authority's Expedition Database, and distribute each to the appropriate person(s) for resolution within 48 hours of receipt from the Contractor. CM shall receive comments and/or information resolving the RFI from the appropriate person(s) and deliver such information back to the Contractor within 24 hours of receipt. CM shall keep an updated RFI log to track each question as well as the timeliness of response, and shall report to the Authority periodically on the status of all RFIs. This log shall be included as part of CM's monthly report to the Authority as required by Section 4.7.7(2).
- 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 pursuant to the Construction Contract. CM shall receive, date stamp, catalogue and process all Submittals, including, but not limited to, shop drawings, samples and product data. CM shall review all Submittals and reject incomplete, erroneous or unresponsive Submittals. CM shall coordinate Submittals with information contained in related documents and the Construction Documents and shall examine the Submittals for consistency and coordination with the Construction Documents and other related documents. For those Submittals not rejected, CM shall 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 log shall be included as part of CM's monthly report to the Authority as required by Section 4.7.7(2).
- 4.7.6 CM shall manage this Submittal review process to achieve a 14-day turnaround time to return Submittals to the Contractor.
- 4.7.7 Daily Logs and 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) 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; and (vi) any other similar relevant data as the Authority may require.

- 2) Monthly Report. CM shall provide a written monthly report, submitting five (5) hard copies and one electronic copy, using the Authority's Expedition Database where appropriate, to the Authority 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, current issues, critical activities, adequacy of the Work, site manpower of the Contractor, percentage of Work completed, updated Submittal log, updated RFI log, updated Change Order log, and any Construction Milestone changes. Each 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 written report shall also include a minimum of 12 digital photographs and associated electronic files indicating Project status. In addition, the report shall include the status of the Contractor's compliance with applicable Affirmative Action, Safety and Security Plans as well as State Prevailing Wage requirements.

4.8 Inspections

- 4.8.1 Code Inspection Scheduling. CM shall assist the Contractor in the scheduling of inspections to ensure that the Work complies with all applicable codes, regulations, laws and the Construction Contract.
- 4.8.2 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 directed by the Authority, conduct the inspection, using a New Jersey licensed architect or engineer. CM shall promptly notify the Contractor 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 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.

- 4.8.3 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 of any work not in conformance with the Construction Contract and shall propose corrective action. With the Authority's review and approval, CM shall reject any nonconforming Work and transmit to the Authority and Contractor a notice of nonconforming Work.
- 4.8.4 Correction of Nonconforming Work. CM shall require timely correction by the Contractor of nonconforming Work and shall advise the Authority as to whether such corrective action has been taken and whether such action corrected the nonconforming Work. If nonconforming Work remains uncorrected for more than thirty (30) Days from 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 is 0% complete. CM shall maintain a continuing list of nonconforming Work as determined by CM, the Authority or the Design Consultant, and shall distribute this list to the Contractor periodically.
- 4.8.5 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 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 Authority or releasing the Contractor from performing 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 work unless directly employed by CM. It is understood that CM's action in providing its review of the quality of the Work as stated herein is a service to the Authority and by performing as provided herein, CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the construction for the Project. No action taken by CM shall relieve the Contractor from its obligation to perform the Work in strict conformity with the requirements of the Construction Contract, and in strict conformity with all other applicable laws, rules and regulations.
- 4.8.6 Substantial Completion, Punchlist and Correction of Defective Work. CM, in conjunction with the Design Consultant, shall determine the date of Substantial Completion for the Project. In order to achieve Substantial Completion, the Contractor must have achieved the following: (i) all essential requirements of the Construction Contract have been performed so that the purpose of the Construction

Contract is accomplished, (ii) a Temporary Certificate of Occupancy has been issued by the Department of Community Affairs, (iii) a Punchlist has been created by the CM in conjunction with the Design Consultant and the Authority, (iv) there are no important or material omissions or technical defects or deficiencies, as defined by the Authority, and (v) the Project is ready for occupancy in accordance with its intended purpose. 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 and the Authority. If the Authority, Design Consultant and CM determine that Substantial Completion has been achieved but for preparation of the Punchlist, CM, in conjunction with the Authority and the Design Consultant, shall prepare a Punchlist. Once the Punchlist is complete, CM shall consolidate and distribute to the Contractor a Certificate of Substantial Completion with the attached Punchlist. As the Contractor corrects the defective or incomplete Work on the Punchlist, CM shall monitor and maintain an updated Punchlist, and ensure and verify that the Contractor corrects the incomplete or defective Work necessary as required by the Construction Contract.

- 4.8.7 Final Inspection and Final Completion. CM shall assist the Design Consultant in determining the date of Final Completion of the Project. Final Completion means that point in time on the Project when all requirements of the Construction Contract have been performed, when all items of the Punchlist have been completed, and when a Certificate of Occupancy, or a Certificate of Acceptance, as applicable, has been issued. Following the issuance of a Certificate of Substantial Completion for the Project and CM's determination that the Punchlist Work has been completed, CM shall, in conjunction with the Design Consultant, evaluate the Work and notify the Authority when the Work is ready for final inspection. CM shall, in conjunction with the Design Consultant, the Project School District and the Authority, conduct a final inspection of the Work to ensure that all Punchlist Work has been completed and all nonconforming and/or deficient Work has been corrected or remedied. CM shall assist the Authority in issuing a Certificate of Final Completion.

4.9 Changes to the Construction Contract

- 4.9.1 Coordination of Revisions to the Construction Contract. CM shall review, 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 CCRs initiated by the Contractor. CM shall review each CCR for validity and reasonableness by performing a detailed estimate, consistent with Specification Section 01080 "Change Order Procedures," as amended or superseded by the Construction Contract, assemble and evaluate information concerning the request and provide a written analysis and recommendation to the Authority regarding 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 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 log shall be included as part of CM's monthly report to the Authority as required by Section 4.7.7(2).
- 4.9.4 Authority-Initiated Changes. CM shall prepare all CCRs initiated by the Authority and CCDs and provide the CCR or CCD to the Contractor for review. In response to the CCR or CCD, 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 estimate of the cost of the change to compare to the Contractor's 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 make written recommendations to the Authority regarding Contractor's proposal to perform the changed work identified in the CCR or CCD.
- 4.9.5 Differing Subsurface and Physical Conditions. Whenever the Contractor notifies CM that a surface or subsurface condition at or contiguous to the Project site is encountered that differs from what is indicated or referred to in the Construction Documents, or that may require a change in the Construction Contract, CM shall notify the Design Consultant. 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 or changed condition and, if necessary, shall prepare a Change Order.
- 4.9.6 Change Order Reports. CM shall periodically during the Construction Phase 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 start-up and occupancy plan for the Project 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 Authority 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 agent's work. CM shall submit a written report to the Authority upon the completion of these activities and append it to the monthly report identified in Section 4.7.7(2).

- 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 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 parties.
- 4.10.3 Project Close-out Submission Checklist. CM shall cooperate with the Design Consultant and create a Project close-out submission checklist. CM shall assist the Authority in obtaining all required documentation, certifications and other deliverables required under the Contract and identified on the 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 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 invoice from the Contractor, and either approve the invoice or return it to the Contractor for appropriate corrections. Upon receipt of an acceptable final invoice, CM shall submit the Final Payment to the Authority with a written recommendation that the Authority approve and pay the final invoice.

- 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. 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 warranty issues identified before or after Final Payment.
- 4.10.8 Warranty Inspection. Approximately eleven (11) months after Final Payment, CM shall conduct, in conjunction with the Design Consultant and the Authority, a warranty inspection at the Project site and submit a written report to the Authority setting forth the findings of the inspection. CM shall, upon completion by the Contractor of any work to correct deficiencies, latent defects or warranty work discovered in the warranty inspection, re-inspect the Work and submit a final report.
- 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 of the information to the Design Consultant.
- 4.10.10 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 CM shall oversee, coordinate the work of and cooperate with any furniture, fixtures and equipment supplier engaged by the Authority to install furniture, fixtures and equipment within the Project.

5.0 ADDITIONAL SERVICES

CM shall provide the following Additional Services upon the request and in the sole discretion of the Authority. These Additional Services shall only be provided if authorized in writing by 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 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 Services related to construction performed by the Authority;
- 5.8 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss;
- 5.9 Repairing, replacing, correcting or completing defective or incomplete Work;
- 5.10 Providing services related to future facilities;
- 5.11 Providing services to verify the accuracy of drawings or other information furnished by the Authority;
- 5.12 Providing services due to significant changes in the Project, including, but not limited to, changes in size, quality, complexity, schedule or Project Budget;
- 5.13 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work; or
- 5.14 Providing services made necessary by the termination or default of the Design Consultant or 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 request that CM provide Extended Services. CM shall be compensated only for the actual hours worked during the delay period as set forth in Appendix B of this Agreement.
- 6.2 No compensation shall be provided for Extended Services, unless the Authority authorizes CM 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 within ten (10) Days of such a delay.
- 6.3 Irrespective of whether CM makes any request for compensation under this Section, CM shall notify the Authority of any event of which it is aware that may cause any delay in the completion of the Project or may extend the Term of this Agreement.

- 6.4 Other than as 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.
- 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, CM shall promptly notify the Authority as to whether the change increases or decreases CM's compensation or the Term of this Agreement, or both. If so, CM shall provide 1) a detailed cost breakdown of, and justification for, how the change increased or decreased CM's compensation; and 2) a detailed explanation of how each change impacts the Term of this Agreement.
- 7.3 Compensation. If the scope of CM's Basic Services or the Term of this Agreement is changed, CM's compensation shall be adjusted equitably. 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 within thirty (30) Days of the occurrence of the event giving rise to such request. The amount of the change in compensation to be paid shall be determined on the basis of CM's actual costs.
- 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.

- 8.1.3 In the event that the Authority requests the performance by CM of Additional Services, CM shall include the cost of Additional Services in its monthly invoice. Each invoice shall separately identify the amount requested for Additional Services. CM will be compensated for Additional Services as provided in Appendix C. 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 CM subcontracted Additional Services.
- 8.1.4 In the event that the Authority requests that CM provide Extended Services, CM shall include the cost of the Extended Services in its final invoice. 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. Compensation for Extended Services will be capped at 1.6 times actual salary (exclusive of customary payroll burdens and benefits) for CM staff. Payment for Extended Services will be made in the final payment to CM.
- 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, including but not limited to, claims for errors, omissions, breach, or negligence.
- 8.1.6 All payments for Services under this Agreement will be made only to CM. CM is solely responsible for payments due any of its Subconsultants.
- 8.1.7 Unless otherwise set forth in writing by the Authority, any prices quoted by CM for Basic Services 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.

8.2 Invoices

- 8.2.1 Each month CM shall submit to the Authority an invoice, in a form 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 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.
- 8.2.2 Invoices submitted to the Authority must identify the Authority's contract number and the Project Name.
- 8.2.3 Invoices submitted to the Authority shall be processed and paid only after the Authority reviews and determines that the Services for which payment is sought

have been completed at the time and in the manner specified in this Agreement. Invoices will not be paid by the Authority if the Authority determines that the Services for which payment is sought are incomplete or unsatisfactory.

- 8.2.4 Within sixty (60) Days after receipt of CM's properly supported invoice, the Authority, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32 et seq., will make payment of the approved amount of such invoice. 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.
- 8.2.5 Each invoice signed by CM and submitted to the Authority for payment shall be a representation by CM that all payments due its Subconsultants have been made and that all relevant laws and regulations have been complied with.
- 8.2.6 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, 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. CM shall continue to perform all of its obligations under this Agreement notwithstanding such dispute.
- 8.2.7 In the event CM fails to pay its Subconsultants in a timely manner 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 two-party checks. Neither the Authority's discretion provided for in the preceding sentence nor the Authority's 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 Subconsultants will not constitute acceptance of the adequacy of any services performed by CM or its Subconsultants.

8.3 Withholding of Payment

- 8.3.1 If the Authority determines that any Services provided by CM for which payment is requested are incomplete or unsatisfactory, or if the Authority determines that CM Deliverables have not been delivered at the time and in the manner and form specified in this Agreement, 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 delivered.
- 8.3.2 The withholding of any sums pursuant to this Section shall not be construed as, or constitute in any manner, a waiver by the Authority of CM's obligation to furnish the Services and CM Deliverables required under this Agreement. In the event CM

fails to furnish the Services and CM Deliverables 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 this Agreement.

- 8.3.3 In addition to any other right to withhold payments under this Agreement, 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 which may result by reason of: (a) any willful misconduct or wanton or negligent act, error or omission by CM, any Subconsultant, or any of their employees, representatives or agents which gives, or may give, rise to a claim by the Authority or by some other person or entity against the Authority; (b) CM's breach of any of its material obligations under this Agreement; (c) reasonable evidence that CM will not complete the Services required by this Agreement within the Term of this Agreement, and that the unpaid balance will not cover the actual damages suffered for the anticipated delay; and (d) CM's inability or failure to complete any Services required by 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.

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 direct 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 risk of loss and indemnification obligations under Section 10.12.

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 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 direct labor on the Project must, upon enrollment in OCIP, attach to the required enrollment forms, certificates of valid insurance evidencing current coverage for the On-site and Off-site exposures enumerated below. These exposures are not covered by OCIP. Insurance binders are not acceptable as proof of insurance coverage. 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.

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 provides better coverage or higher limits of insurance to other clients, CM shall extend the same coverage and/or limits to the Authority.
- 10.1.16 Certificate of Insurance. Attached to this Agreement as Appendix D 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, 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 regardless of payment by the Authority of any compensation to CM and regardless of the delivery of any of the Work Product to the Authority. Upon request, all Work Product shall be delivered 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, CM shall not use any of the Work Product for any other project or for CM's promotional and professional (or other) materials.
- 10.2.5 CM shall not 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 and the State from any and all claims for infringement by reason of the use of any patented design, device, material, equipment or process, or any trademark, copyright, trade secret or any other material protected in any manner from use or disclosure, and shall indemnify the Authority and the State for any costs, expenses and damages,

including attorney's fees, that it may incur by reason of an infringement at any time during the performance, or after the acceptance, of the Services.

10.4 Confidentiality

- 10.4.1 All data contained in documents supplied by the Authority, 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 are legally required by order of court or administrative agency, whether state or federal, 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 its Subconsultants, if any. Any use, sale or offering of this data in any form by CM, its 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 of CM and the Authority.
- 10.5.2 CM's status shall 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 an assignment, 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 require.
- 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.
- 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 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 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 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 require.
- 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 require.

10.8 Mandatory Compliance with Law

- 10.8.1 CM must comply with any and all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to performance by CM under this Agreement. To the extent variances from such laws, statutes, ordinances, codes, executive orders, rules and regulations 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 Federal, State or local laws, acts, statutes, ordinances, codes, executive orders, rules and/or regulations with respect to its performance under this Agreement, the Authority may withhold payments for such violation or failure and take such action that it deems appropriate until CM has complied with such laws or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 10.8.5 CM's compliance with applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations and any legal requirements 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 Act, N.J.S.A. 2A:30A-1 and -2, and the provisions of N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41, and all other applicable laws concerning the prompt payment of Subcontractors or Subconsultants.

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. 19:32-5.1 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, when applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, 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 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, when 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 or sex.

- 10.9.2.3 CM and its Subconsultants, when 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, when 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 Division of Contract Compliance & EEO pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time.
- 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, 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 procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the

State of New Jersey, and applicable Federal law and applicable Federal court decisions.

- 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 public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

10.10 Anti-collusion

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

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 Indemnification

- 10.12.1 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 and employees, from and against any loss, damage, injury, cost or expense including interest, attorney's fees and other expenses; and from and against any claim, demand, liability, lawsuit, judgment, action or other proceeding arising from, in connection with, or as a result of any of the following:

- 10.12.1.1 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;
 - 10.12.1.2 the loss of life or property, or injury or damage to the person, body or property of any person or persons whatsoever, that arises or results directly or indirectly from the negligent performance of the Services 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;
 - 10.12.1.3 any gross negligence, default, or 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;
 - 10.12.1.4 violation of or non-compliance with federal, state, local and municipal laws and regulations, ordinances, building codes (including without limitation the Americans with Disabilities Act 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
 - 10.12.1.5 the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the Services.
- 10.12.2 CM's indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Agreement.
 - 10.12.3 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.
 - 10.12.4 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 Services in a satisfactory

manner.

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 the Services actually and satisfactorily performed by CM, less payments previously made.
- 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 remedy, the Authority may terminate this Agreement if CM: (i) disregards or otherwise fails to comply with laws, ordinances, rules, regulations or orders of any public body having jurisdiction; (ii) refuses or otherwise fails to properly staff the Project; (iii) fails to make 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 produce any CM Deliverables or other records required by this Agreement to be so maintained or produced; (v) fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of this Agreement; (vi) fails to obtain and properly maintain the level of insurance coverages outlined in this Agreement; (vii) assigns or transfers its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority; (viii) makes any misrepresentation or conceals any material fact; or (ix) commences or has commenced against it any action under the United States Bankruptcy Code or any state or federal insolvency law, the commencement of which, in the Authority's judgment, may effectively impair the ability of CM to perform its obligations under this Agreement; (x) fails to provide any Services required under this Agreement; or (xi) violates or breaches this Agreement or any provision or material term hereof. Such a termination shall be called a "Termination for Cause."
- 11.2.2 Any such Termination for Cause shall be effected by delivery of a "Notice of Termination for Cause" specifying the extent to which the Services under this

Agreement are terminated and the date upon which such termination becomes effective.

- 11.2.3 For all such causes of Termination for Cause except those contained in subsections 11.2.1(viii) and 11.2.1(ix), CM may avoid termination if, within seven (7) Days of receipt of the Notice of Termination for Cause, it commences correction of such default, neglect or violation, with diligence and promptness, fully curing same within the time prescribed by the Authority within the Notice of Termination. Failure of CM to commence 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 termination of this Agreement.
- 11.2.4 Upon termination 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 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 engage another construction manager to complete the Services, CM shall pay the difference to the Authority upon demand.
- 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 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 shall be determined as follows:

- 11.3.2.1 If the Authority determines that the Services have been suspended for a period cumulatively totaling 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 cumulatively totaling forty-five (45) Days or more, and if the Authority determines that the suspension has resulted from no fault of CM, the Parties shall amend this Agreement to provide a compensation adjustment in an amount deemed proper by the Authority and CM after a review of CM's submissions relating to the increased costs actually incurred by CM as a direct result of the suspension. No such Amendment will change any of the other terms of this Agreement.
- 11.3.3 When the Authority has determined that a suspension is 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 to commence and continue correction of such failure with diligence and promptness, the Authority may take steps to remedy such failure without prejudice to any other remedy the Authority may have. In such case, an appropriate written notice shall be issued deducting from the payments then or thereafter due CM the cost of correcting such failure, including compensation for any additional services of other Professional Services Consultant(s) 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 pay the difference to the Authority upon demand.
- 11.4.2 Any action by the Authority under this Section shall be without prejudice to the Authority's rights under this Agreement and shall not operate to release 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., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, 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.
- 12.3 Review of Disputes. The administrative process for review of disputes is sequential in nature and composed of the following steps:
- Step One - Review and Decision by the Authority
 - Step Two - Non-binding Mediation
- 12.4 Each dispute will begin its review at Step One. A dispute will not proceed to the next step unless CM rejects in writing and within the time specified the decision of the preceding step. If at any step in the process a dispute is resolved, CM must sign an unconditional release as to any and all matters arising from the dispute. If CM commences litigation against the Authority in any court relating to the subject matter of a dispute which is in the administrative process for the review of disputes, the administrative process shall immediately terminate.
- 12.5 CM must file the necessary forms as required by this Section to comply with the New Jersey Contractual Liability Act in order to begin the administrative process for the review of disputes. At the option of the Authority, a meeting may be scheduled with CM to discuss the dispute. The Authority shall render its decision regarding the dispute in writing within fifteen (15) Days of the receipt of the necessary forms or within fifteen (15) Days of any meeting with CM, whichever is later. This time limit may be extended by mutual agreement of the parties. CM, within ten (10) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If CM neither accepts nor rejects in writing the Authority's decision within ten (10) Days, the dispute will be considered withdrawn from the administrative process. There will be no further administrative remedy.
- 12.6 If CM rejects in writing the decision of the Authority, there is no further automatic administrative review of the dispute. Within fifteen (15) Days after issuance of a Certificate of Occupancy or Certificate of Acceptance for this Project, CM may request in writing that any or all outstanding CM Claims regarding this Project, which include any or all CM Claims that have been processed through Step One of the dispute resolution process, and that were neither withdrawn nor considered withdrawn from the process be submitted to Step Two, non-binding mediation. Such request shall be sent to the Authority. No dispute will proceed automatically to Step Two and CM must make a specific written request that the dispute be elevated to Step Two for review. Step Two 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. 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 concurrence of CM. The rules for the mediation shall be agreed to

by the Authority, CM and the mediator prior to the start of the mediation. A failure by the parties to agree on the rules for mediation shall end the resolution process.

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 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. 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 such 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 by this Agreement or by law.

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 resubmittal 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 employees from the Project at any time during the Term of this Agreement if that employee is deemed by the Authority not to be of the level of competence or ability required under this Agreement, or if said employee is for any reason found to be unsuitable to perform pursuant to this Agreement, as determined by the Authority in its sole discretion. In such case, CM shall promptly submit the name and qualifications of a replacement.
- 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.
- 14.1.5 The Authority may, during the Term, 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 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 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, 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. This representative shall have the authority to approve changes in the scope of the Project 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 Representative, the responsibility for the undertaking and completion of the Project shall be as set forth for CM in this Agreement, for the Contractor as set forth in the Construction Contract, and for any other Professional Services Consultants as set forth in the applicable Professional Services Consultant Agreement(s).
- 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 notify the Authority 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 shall be furnished by the Authority 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 cause the Construction Contract and the Design Contract to be compatible and consistent with this Agreement.
- 14.2.9 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. During the Construction Phase of the Project, the Authority shall require that the Contractor submit all notices and communications relating to the Construction Phase of the Project directly to CM.
- 14.2.10 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).
- 14.2.11 The services, information and reports required in this Section shall be furnished at the Authority's expense.

15.0 MISCELLANEOUS

- 15.1 Notices. All notices or other communications required under this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by FedEx or similar guaranteed overnight courier and shall be deemed to have been given on the day after depositing in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix B.
- 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, the RFP and/or RFQ and the responses thereto, any Amendments and any addenda.
- 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. Appendix B (Project Description and Term)
 - 4. Request For Proposals and/or Request for Qualifications
 - 5. Appendix C (Compensation)
 - 6. Appendix D (Certificate(s) of Insurance)

- 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 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 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.
- 15.12 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.
- 15.13 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.

- 15.14 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.

1.0.....	DEFINITIONS	4
2.0.....	RELATIONSHIP OF THE PARTIES AND OTHER ENTITIES	9
2.1.....	The Authority and CM	9
2.2.....	The Authority and Design Consultant	9
2.3.....	The Authority and the Contractor	10
3.0.....	THE CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES	10
4.0.....	BASIC SERVICES	12
4.1.....	Preconstruction Phase Services	12
4.2.....	Construction Phase Services	15
4.3.....	Cost Monitoring	18
4.4.....	Contractor Compliance Services	18
4.5.....	Progress Payments	20
4.6.....	Contractor's Claims	20
4.7.....	Document Control and Information Management	20
4.8.....	Inspections	22
4.9.....	Changes to the Construction Contract	25
4.10.....	Project Closeout	26
5.0.....	ADDITIONAL SERVICES	27
6.0.....	EXTENDED SERVICES	28
7.0.....	AMENDMENTS TO THIS AGREEMENT	29
8.0.....	COMPENSATION	30
8.1.....	Amount of Compensation and General Provisions	30
8.2.....	Invoices	30
8.3.....	Withholding of Payment	31
9.0.....	COMMENCEMENT DATE AND TERM	32
10.0.....	GENERAL COVENANTS	32
10.1.....	Insurance	32
10.2.....	Ownership of Documents	40
10.3.....	Copyrights and Patents	41
10.4.....	Confidentiality	41
10.5.....	Contractual Relationship	42

10.6.....	Assignment	42
10.7.....	Mergers, Acquisitions, and Dissolutions	43
10.8.....	Mandatory Compliance with Law	44
10.9.....	Affirmative Action and Non-Discrimination	44
10.10.....	Anti-collusion	46
10.11.....	Conflict of Interest	47
10.12.....	Indemnification	48
11.0.....	TERMINATION AND SUSPENSION	49
11.1.....	Termination for Convenience of the Authority	49
11.2.....	Termination for Cause	50
11.3.....	Suspension of Services	51
11.4.....	Authority's Right to Carry Out the Services	52
12.0.....	CLAIMS	52
13.0.....	REPRESENTATIONS	53
14.0.....	AUTHORITY'S RIGHTS AND RESPONSIBILITIES	54
14.1.....	Authority's Rights	54
14.2.....	Authority's Responsibilities	55
15.0.....	MISCELLANEOUS	57

APPENDICES

APPENDIX A:	Special Conditions
APPENDIX B:	Project Description and Term
APPENDIX C:	Compensation
APPENDIX D:	Disclosure Consent & Integrity Affidavits
APPENDIX E:	Certificate(s) of Insurance
APPENDIX F:	Other Documentation