

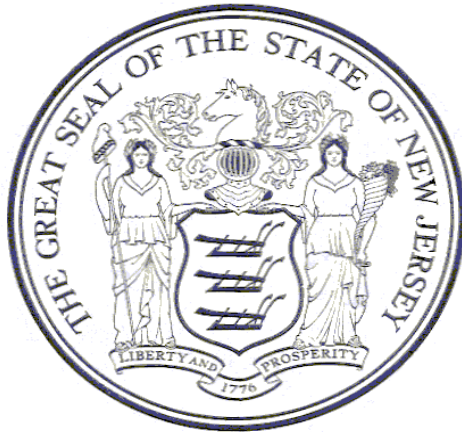
REQUEST FOR PROPOSALS
for
DESIGN CONSULTANT SERVICES
for
LIMITED-SCOPE PROJECTS

Package No.: GP-0263-R01

Issue Date: December 23, 2019

Mandatory Electronic Notice of Intent to Participate Due Date:
January 15, 2020 by 2:00 PM Eastern Time
{See the Introduction, within, for details}

Proposal Due Date:
February 3, 2020 by 2:00 PM Eastern Time
{See Section 3.0, within, for delivery addresses}



N.J. SCHOOLS DEVELOPMENT AUTHORITY

32 East Front Street, PO Box 991, Trenton, NJ 08625

**REQUEST FOR PROPOSALS
FOR
LIMITED-SCOPE PROJECTS**

INTRODUCTION

The New Jersey Schools Development Authority (“NJSDA” or “Authority”) is seeking to procure Design Consultant services for “Limited-Scope Projects” including, by way of example, design for renovation of existing school facilities; design for repair of emergent conditions; provision of commissioning services on NJSDA construction projects; and design for post-construction correction of defective conditions. However, this procurement will NOT be used to engage a design professional for the complete design of a new school facilities project. This procurement is intended to create a selected pool of Design Consultants to permit expedited assignment or competitive selection and award of Task Orders for time-sensitive, Limited-Scope Projects requiring Predesign, design and/or construction administration services.

The Limited-Scope Projects anticipated by this Procurement include Emergent Condition projects requiring the engagement of Design Consultants to design viable, cost-effective solutions for various types of emergent facilities conditions in a number of schools in several districts. While the nature of Task Orders assigned or awarded under this procurement will not be limited to Emergent Conditions projects, such projects are typical of the type of Task Orders assigned or awarded under this procurement. To assist Firms in preparing their responses to the RFP, the following non-exclusive list of building systems and conditions is provided as representative of the types of conditions that may be addressed by Task Orders under this procurement:

- Asbestos/Mold Remediation
- Building Envelope Water Infiltration
- Electrical Power and Lighting Systems
- Emergency Systems
- Exterior Masonry
- Groundwater Infiltration
- HVAC Systems
- Interior Systems
- Roofing Systems
- Sanitary/Storm Systems
- Site Lighting
- Structural Systems
- Windows and Doors

This Request for Proposals (“RFP”) defines the steps needed for participation in the procurement, and is issued pursuant to the Authority’s regulations governing the procurement of professional services consultants, N.J.A.C. 19:38C-1 et seq., in particular, the regulations governing procurement of consultants pursuant to term agreements, N.J.A.C. 19:38C-7.1 and -7.2.

The NJSDA intends to award a contract and enter into a “Design Consultant Services Agreement for Limited-Scope Projects” (the “Agreement”) with each of twenty (20) qualified Firms in accordance with this solicitation. The maximum amount of compensation payable per Firm

pursuant to the “Agreement” shall not exceed \$3,000,000. The Term of the Agreement shall extend for a period of three (3) years or until all obligations of the Design Consultant to deliver services pursuant to any existing Task Order have been performed to the satisfaction of the Authority, whichever is later.

Assignments under this engagement are anticipated to include emergent projects with construction costs that may range from \$50,000 up to \$3 million per school facility, capital improvement projects with construction costs potentially greater than \$3 million per school facility, and other types of projects with cost levels similar to emergent projects. Firms participating in this procurement must be prepared to provide services at specified hourly rates, as indicated in Attachment C to this RFP, when awarded or assigned Task Orders under this engagement.

This Design Consultant Services RFP consists of the following:

1. Request for Proposals
2. Attachment A: (Response Forms):
 - a. Firm’s Design Consultant Experience Summary Form;
 - b. Firm’s Design Consultant Experience Case Study Form;
 - c. Firm’s Key Team Member List;
 - d. Firm’s Key Team Member Resume Form;
 - e. Firm’s Approach to Predesign Investigation and Development of Cost-Effective Alternatives Form; and
 - f. Firm’s Approach to Control of Budget and Schedule Form.
3. Attachment B: Form of Agreement for Design Consultant Services Agreement for Limited-Scope Projects
4. Attachment C: Hourly Fee Schedule (Standardized Rates set by NJSDA)
5. Attachment D: Disclosure of Investment Activities in Iran Form
6. Attachment E: Source Disclosure Certification Form
7. Attachment F: Ownership Disclosure Form

These documents must be read in their entirety as they define the methodology for responding to this procurement, as well as describing the potential scope of services and responsibilities of the Design Consultant for projects awarded under this engagement. A Firm wishing to submit a response to this RFP must review and be thoroughly familiar with all terms and conditions of these documents. Note that Attachment B is the Master Form of Agreement that will govern this engagement, and is provided as an example of the responsibilities and services required for the projects to be awarded under this engagement. Contractual terms will be finalized upon award of particular task orders under this engagement, and modifications of the Agreement from the form of Attachment B will be specifically noted at the time of task order assignment or award.

Contractual terms may be adapted for particular task orders, and thus the task order documents may vary from the example documents provided herewith. Note that the specific scope of services and project scope for each Task Order will be identified in the Appendix A to the Master Agreement issued with each Task Order.

Any Firm responding to this RFP must be prequalified by the Department of the Treasury, Division of Property Management and Construction (“DPMC”) and the NJSDA in the Architecture discipline (P001) with a rating of \$10 million or greater as of the due date for responses to this RFP.

In addition, at the time of assignment or award of a particular task order, the Design Consultant will be required to name DPMC and NJSDA prequalified Subconsultants to whom the Design Consultant will directly subcontract for the furnishing of any of the work required by the Scope of Services for that particular Task Order.

Notice of Intent to Participate: The NJSDA will not hold a traditional pre-proposal conference for this procurement. Any Firm wishing to submit a proposal **must** sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Dave Kutch at dkutch@njsda.gov **no later than 2:00 PM Eastern Time on January 15, 2020.**

Questions from Interested Firms: Firms may submit written questions regarding this procurement to the NJSDA by sending them by e-mail to Dave Kutch at dkutch@njsda.gov **no later than 2:00 PM Eastern Time on January 15, 2020.** The questions and NJSDA answers will be provided via an addendum to the RFP to each Firm that submitted a timely e-mail Notice of Intent to Participate.

Notice Regarding Communications: Refer all questions to NJSDA Procurement Staff. Any bidder attempting to contact government officials (elected or appointed), including NJSDA Board members, NJSDA Staff (except for Procurement), Evaluation Committee members, NJSDA Consultants, and School District officials for information relating to this project or in an effort to influence the selection process may be immediately disqualified.

Submission of Proposals: Responses to this RFP must be received by the NJSDA **no later than 2:00 PM Eastern Time on February 3, 2020.** Faxed or e-mailed submissions will not be accepted.

1.0 PROCUREMENT OVERVIEW

1.1 General. This is a solicitation pursuant to the Authority's regulations at N.J.A.C. 19:38C-1 et seq., seeking interested Firms for the creation of a pool of twenty (20) Design Consultants to be assigned or awarded task orders for Limited-Scope Projects at specified hourly rates set by the NJSDA. Such rates vary by type of services and the title and/or experience level of the person performing the services, and are defined in Attachment C to this RFP. Additionally, certain task orders may be compensated through a negotiated lump sum, if converted to a lump-sum arrangement after assignment.

1.2 Selection Process. Responsive Firms will be evaluated and scored by a Selection Committee on the basis of their written submissions in response to the RFP. The Responsive Firms will be ranked on the basis of such scores, and the twenty (20) most highly-ranked Firms will be determined and notified. The selected Firms will be awarded a contract under this procurement, upon satisfactory completion of all specified pre-award requirements. The Authority reserves the right to conduct interviews as part of this procurement, though interviews are not contemplated at this time.

The NJSDA has no obligation to make an award and reserves the right to waive any non-material defects, reject any or all responses for any reason in accordance with law, and/or terminate the selection process at any time.

- 1.3 Task Order Assignment and Award.** Task Orders under this engagement may be awarded pursuant to the following methods: 1) rotational assignment to pool members for performance of services on a time and materials basis in accordance with the hourly rates established in this procurement; 2) advertisement to all members of the pool for award based on competitive selection of the proposal that is most advantageous to the Authority, based on considerations of cost, efficiency and appropriateness of the approach to the Limited-Scope Project that is the subject of the Task Order, with award on a lump-sum fee basis consistent with the hourly rates established in this procurement; or 3) at the discretion of NJSDA, the NJSDA may randomly select up to six pool participants to be invited to inspect the site and existing conditions and provide proposals for the Limited-Scope Project specified for a particular Task Order, and NJSDA may select, from the proposals generated by the randomly-selected Firms, the proposal for the Task Order that is most advantageous to the Authority, based on considerations of cost, efficiency and appropriateness of the approach to the Limited-Scope Project that is the subject of the Task Order, for award on a lump-sum basis consistent with the hourly rates established in this procurement.

Once a Design Consultant has been assigned or awarded a Task Order for a Limited-Scope Project, that Design Consultant may be assigned additional, related Task Orders in support or advancement of the Limited-Scope Project, either on a time-and-materials basis or on a negotiated lump-sum basis, without requiring the Authority to either assign the Task Order through the rotation process or award the Task Order after advertisement to the pool and evaluation of competing proposals.

Alternatively, at the discretion of the NJSDA, the NJSDA may “bundle” several Limited-Scope Projects that are related either by similarity of scope of work, or by location and assign these bundled project under one Task Order.

- 1.4 Components of Response.** Firms responding to the RFP shall thoroughly familiarize themselves with the RFP to ensure responsiveness in their submission. A conforming Response consists of the following components:

1. Summary and Case Studies of Firm’s Design Consultant Experience over the last seven years on projects of similar type, size and complexity (forms provided in Attachment A)
2. Firm’s Key Team Member List (form provided in Attachment A)
3. Firm’s Key Team Member Resume Form for each identified Key Team Member (form provided in Attachment A)
4. Firm’s Approach to Predesign Investigation and Development of Cost-Effective Alternatives (form provided in Attachment A)
5. Firm’s Approach to Control of Budget and Schedule (form provided in Attachment A)
6. Disclosure of Investment Activities in Iran Form (form provided in Attachment D)
7. Outsourced Services Special Provisions Form (form provided in Attachment E)
8. Ownership Disclosure Form (form provided in Attachment F)

All of the above items must be included in the submission, with responses utilizing the Authority’s Forms as indicated above.

1.5 Evaluation and Scoring Process. Each submission in response to the RFP will be reviewed to determine responsiveness. Non-responsive submissions will be rejected without evaluation. Responsive submissions will be evaluated by a Selection Committee (“Committee”) established for the purpose of evaluating responses to the RFP. The Selection Committee shall consist of no fewer than three (3) SDA Staff members. The evaluation will be based upon the information provided by a Firm in response to this RFP, and any necessary verification thereof. NJSDA reserves the right to schedule interviews of applicant Firms as a part of the evaluation process, though interviews are not contemplated at this time. Submissions shall be evaluated on the following Evaluation Criteria:

- Firm’s Design Consultant Experience
- Firm’s Approach to Predesign Investigation and Development of Cost Effective Alternatives
- Firm’s Approach to Control of Budget and Schedule

Each Selection Committee Member will evaluate each submission with respect to each criterion on a scale of 0 to 10 as follows, to arrive at a Raw Score:

- Outstanding (9–10): depth and quality of response offers significant advantages.
- Superior (7-8): exceeds RFP requirements with no deficiencies.
- Sufficient (5-6): meets RFP requirements with no significant deficiencies.
- Minimal (3-4): meets RFP requirements but contains some significant deficiencies.
- Marginal (1-2): comprehends intent of RFP but contains many significant deficiencies.
- Unsatisfactory (0): requirements not addressed and lack of detail precludes adequate evaluation.

Weighting factors will then be applied to each of the Selection Committee Member evaluations to arrive at a total weighted score as follows:

RFP Evaluation Criteria	Weighting Factor (Applied to Raw Score)	Maximum Available Points for Criteria
Firm’s Design Consultant Experience	4.0	40
Firm’s Approach to Predesign Investigation and Development of Cost Effective Alternatives	3.0	30
Firm’s Approach to Control of Budget and Schedule	3.0	30
Total Points Available		100

Following the final technical ranking, the top twenty(20) most highly-ranked Firms will be determined and notified. In the event of a tie in the final technical ranking for the twelfth ranked Firm, all Firms with the tied twelfth ranking will be notified. Each successful Firm

will be required to comply with all pre-award documentation requirements and acknowledge the fixed hourly rates, as set forth in Attachment C, and agree to those rates in writing. Upon satisfaction of all pre-award requirements, the top twenty (20) most highly-ranked Firms will be awarded the engagement.

2.0 EVALUATION CRITERIA AND SUBMISSION REQUIREMENTS

2.1 Firm's Design Consultant Experience (40 Points)

Firm's Design Consultant experience shall be evaluated based on the following submissions:

- (a) A brief summary of the Firm's general relevant Design Consultant experience within the last 7 years;
- (b) At least two (2), but not more than five (5), specific case studies;
- (c) Firm's Key Team Member List; and
- (d) Firm's Key Team Member Resumes.

A. Firm's Experience Summary. Utilizing the Firm's Experience Summary Form provided by the Authority, the Firm's experience summary should highlight the Firm's Design Consultant experience (within the past 7 years) with repair and renovation projects of the types indicated in page 2 of this RFP. The summary should describe the experience of the responding Firm and should highlight the experience of the responding Firm's working relationship with the Firm's Key Team Members. Additionally, the summary should indicate the Firm's approach to relations with relevant governing and permitting agencies (DCA, DOE, DEP). The experience summary shall be limited to no more than 1,000 words.

B. Firm's Experience Case Studies. Utilizing the Case Study Form provided by the Authority, the responding Firm shall identify particular projects as examples of the proposed Firm's past provision (within the past 7 years) of services for repair and renovation projects of the type and nature outlined in page 2 of this RFP for projects with a construction cost between one and ten million dollars. The case studies must concisely set forth the relevant information called for on the Case Study Form. Case studies may be based on contracts with public or private sector clients. The narratives should describe the effectiveness of each identified project, and the methodology used to measure such effectiveness. Additionally, the narratives should indicate the Firm's approach to relations with relevant governing and permitting agencies (DCA, DOE, DEP). The Case Study Form must identify the name and address of the contracting entity for the case study project, and the name, title and telephone number of a contact person associated with the contracting entity who is familiar with and able to comment on the Firm's performance on each project. The narrative for each case study should be no more than 1,000 words.

C. Firm's Key Team Member List. Firms responding to this RFP must identify the Key Team Members, as defined in the Agreement (Attachment B to this RFP), who will be primarily responsible for performing and/or supervising the design services for the engagement. The responding Firm must identify the following Key Team Members in its Technical Proposal:

Principal-in-Charge: Individual who has overall responsibility for the Firm's successful completion of the Project and performance under this Agreement.
A Firm may propose only **one** Principal-in-Charge.

Project Architect: Individual responsible for the technical design and coordination of the project including technical coordination of any engaged subconsultants.
A Firm may propose **one or more** Project Architect(s).

Project Manager: Individual with day-to-day responsibility for management and oversight of the design team including any engaged subconsultants.
A Firm may propose **one or more** Project Manager(s).

Each responding Firm must complete and submit the Firm's Key Team Member List (provided in Attachment A), supplying all the information requested on the form.

D. **Firm's Key Team Member's Resume and Experience.** Utilizing the NJSDA Firm's Key Member Resume Form, Firms should provide a summary of each of the Firm's Key Team Member's experience, which must include, but is not limited to: a description of at least three (3) projects for which the Firm's Team Member in question fulfilled a role similar to that proposed for this engagement. The cited projects must be completed within the last 7 years, must be renovation projects of a type and nature identified in the categories listed in page 2 of this RFP, having a construction cost between one and ten million dollars. The NJSDA Firm's Key Member Resume Form is provided in Attachment A to this RFP.

2.2 Firm's Approach to Predesign Investigation and Development of Cost-Effective Alternatives (30 Points)

Utilizing the Authority's Approach to Predesign Investigation and Development of Cost-Effective Alternatives Form (provided in Attachment A to this RFP), the responding Firm shall submit a description of the Firm's approach to certain core tasks, which include Predesign investigation and assessment of alternate solutions, with a focus on cost effectiveness. The submission should describe the Firm's methodology for investigation of conditions in need or remediation, and may describe situations in which the responding Firm or the Firm's Key Team Members performed Predesign investigations of conditions of a type and nature identified in page 2 of this RFP. The submission should describe the particular approach and methodologies for thorough investigation of such conditions, and should identify the Firm's approach to proposed solutions for the conditions and issues encountered. The submission should also describe the Firm's approach to development of cost-effective design solutions, and may describe situations where alternate solutions were offered, and where the cost of those alternates was considered as part of the Firm's presentation of alternate solutions. The narrative for the approach to Predesign investigation and development of cost-effective alternatives should be no more than 1,000 words.

2.3 Firm's Approach to Control of Budget and Schedule (30 Points)

Utilizing the Authority's Approach to Control of Budget and Schedule Form (Provided in Attachment A to this RFP), the responding Firm shall submit a description of the Firm's approach to staffing, budgeting and scheduling its Predesign, design and construction administration services that should be described in some detail. Specifically, please address the Firm's approach to budgeting, and the systems or procedures the Firm uses to ensure that budgets are met. Also, the Firm should explain the Firm's approach to scheduling work and the processes and systems in place to ensure that work is completed on schedule. The narrative for the Firm's Approach to Control of Budget and Schedule should be no more than 1,000 words.

2.4 Disclosure of Investment Activities in Iran Form (0 Points – Required Submittal)

At the same time as a Technical Proposal is submitted, the proposing Firm must submit to NJSDA a *Disclosure of Investment Activities in Iran Form* (Attachment D to this RFP) pursuant to Public Law 2012. C. 23 (codified at N.J.S.A. 52:32-55 et. seq.) (the “Act”). Pursuant to the Act, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the New Jersey Schools Development Authority must complete a Certification which states that the person or entity, or one of the persons or entity’s parents, subsidiaries, or affiliates, is not identified on a list created and maintained by the New Jersey Department of the Treasury as a person or entity engaging in investment activities in Iran. The completed Disclosure of Investment Activities in Iran Form must be submitted and included with the completed Technical Proposal.

Failure to submit such Certification will result in the disqualification of the bid and rejection of the Firm’s Technical Proposal.

2.5 Outsourced Services Special Provisions (0 Points – Required Submittal)

Pursuant to N.J.S.A. 52:34-13.2, all services under the Agreement shall be performed within the United States unless the contracting officer of the NJSDA certifies in writing a finding that the service required by the NJSDA cannot be provided within the United States and the Certification is approved by the Executive Director of the NJSDA.

Source Disclosure Requirements - In compliance with the above mandate, the NJSDA has adopted source disclosure requirements, obligating all bidders seeking a contract with the NJSDA to disclose:

- (a) The location by country where services under the contract will be performed;
- (b) The location by country where any subcontracted services will be performed; and
- (c) The reasons why any of the services cannot be provided within the United States.

Accordingly, the proposing Firm must submit a *Source Disclosure Certification Form* (Attachment E to this RFP) filled out with the sourcing information required for itself and any proposed subconsultant.

Failure to submit sourcing information shall preclude award of a contract to the proposing Firm.

Shift to Outsourced Services During Contract Term Shall Be a Breach of Contract - A consultant or subcontracted firm that had, upon contract award, declared that services would be performed in the United States, shall be deemed in breach of the Agreement if such consultant or subcontracted firm proceeds to shift the performance of services outside of the United States, at any time during the term of the contract, and the Agreement shall therefore be subject to termination for cause under the terms of the Agreement, unless the NJSDA shall have first determined in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

2.6 Ownership Disclosure Form (0 Points – Required Submittal)

At the same time as a Technical Proposal is submitted, the firm must submit an Ownership Disclosure Form, pursuant to N.J.S.A. 52:25-24.2, using the form created by the Department of

the Treasury, Division of Purchase and Property, which form is supplied by NJSDA as Attachment F to this RFP and is available as an interactive form on the Treasury website at:

<https://www.state.nj.us/treasury/purchase/forms/OwnershipDisclosure.pdf>

If the proposing firm is a corporation, the Ownership Disclosure Form requires the proposing firm to set forth the names and addresses of all stockholders in the corporation who own 10 percent or more of any class of its stock. If the proposing firm is a type of partnership, the Ownership Disclosure Form requires the names and addresses of all individual partners in the partnership who own a 10 percent or greater interest therein. If the proposing firm is a limited liability company, the Ownership Disclosure Form requires the names and addresses of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member in the firm is itself a corporation, partnership or limited liability company, then the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, and member, who exceed the 10 percent ownership criteria threshold established by N.J.S.A. 52:25-24.2, have been listed. To comply with this section, a proposing firm with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. The Ownership Disclosure Form must be submitted and included with the completed Technical Proposal.

Failure to submit such Ownership Disclosure Form will result in the disqualification of the bid and rejection of the firm's Technical Proposal.

3.0 ADDITIONAL RFP RESPONSE SUBMISSION REQUIREMENTS AND DELIVERY INFORMATION

3.1 Submission Mailing and Delivery Instructions

The firm must submit one (1) original and six (6) copies of the submission in response to the RFP no later than **2:00 PM Eastern Time on February 3, 2020** as follows:

If submitting by hand or overnight delivery, at the:

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
32 East Front Street
Trenton, New Jersey 08625-0991
Attention: Dave Kutch, Sr. Procurement Analyst
Subject: Design Consultant Services - GP-0263-R01

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

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
P.O. Box 991
Trenton, New Jersey 08625-0991
Attention: Dave Kutch, Sr. Procurement Analyst
Subject: Design Consultant Services - GP-0263-R01

Submissions received after the date and time listed above will not be forwarded to the Selection Committee for review. Faxed or e-mailed Proposals will not be accepted.

**4.0 PRE-AWARD REQUIREMENTS
(INFORMATIONAL ONLY – DO NOT INCLUDE WITH RFP SUBMISSION)**

After completion of the RFP process and determination of the successful firms, the NJSDA shall require the following additional information prior to the award of the contract:

4.1 Proof of Business Registration Certification

Pursuant to N.J.S.A. 52:32-44, the NJSDA (“Contracting Agency”) is prohibited from entering into a contract with an entity unless the bidder/proposer/contractor, and each subcontractor that is required by law to be named in a bid/proposal/contract has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury.

Prior to contract award or authorization, the contractor shall provide the Contracting Agency with its proof of business registration.

Subcontractors named in a bid or other proposal shall provide proof of business registration to the bidder, who in turn, shall provide it to the Contracting Agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

During the course of contract performance:

- (1) the contractor shall not enter into a contract with a subcontractor unless the subcontractor first provides the contractor with a valid proof of business registration.
- (2) the contractor shall maintain and submit to the Contracting Agency a list of subcontractors and their addresses that may be updated from time to time.
- (3) the contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at 609-292-6400. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

Before final payment is made under the contract, the contractor shall submit to the Contracting Agency a complete and accurate list of all subcontractors used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration as required, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of business registration not properly provided under a contract with a contracting agency.

Interested Firms may obtain New Jersey Business Registration assistance by going on-line to <http://www.state.nj.us/treasury/revenue/gettingregistered.shtml> or by calling the New Jersey Department of the Treasury at 609-292-9292.

4.2 Political Contributions

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

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

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

4.3 Political Contributions Disclosure

Firms are advised of their responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC"), pursuant to N.J.S.A. 19:44A-20.18 and 20.19 (P.L. 2005, c. 271, section 3), in the event they receive contracts in excess of \$50,000 from a public entity in a calendar year. It is a Firm's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at <https://www.elec.state.nj.us/>.

4.4 Anti-Discrimination Requirements

In addition, the Firm shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq. and all rules and regulations issued there under, including N.J.A.C. 17:27-1.1 et seq. **Accordingly, in a notice of award, a Firm shall be required to submit to the NJSDA, with its executed Agreement, one of the following three documents:**

- (1) Appropriate evidence that the Firm is operating under an existing Federally approved or sanctioned affirmative action program; or
- (2) A certificate of Employee Information Report approval issued in accordance with N.J.A.C. 17:27-4.2; or
- (3) An initial Employee Information Report (Form AA302*) provided by the Affirmative Action Office and completed by the contractor in accordance with N.J.A.C. 17:27-4.2.

***The original of the submitted document shall be provided to the New Jersey Department of the Treasury.** Please see following link for details:

http://www.state.nj.us/treasury/contract_compliance/forms.shtml

4.5 Insurance and Indemnification

A successful Firm shall be required to provide evidence of the insurance coverages required in Section 12.1 of the Agreement, Attachment B to this RFP, at the time of execution of the Agreement.

4.6 Other Information As Required

The NJSDA may request additional information from selected firms as required under the Agreement, or pursuant to applicable policies, procedures or law.

5.0 POST-AWARD REQUIREMENTS (INFORMATIONAL ONLY – DO NOT INCLUDE WITH RFP SUBMISSION)

At the time of assignment or award of a specific Task Order under this engagement, the NJSDA will require the following additional information:

5.1 Firm's Proposal for SBE and DVOB Set-Aside Targets (NJSDA SBE/DVOB Participation Form and Certification(s) of SBE/DVOB Status).

Pursuant to the Set-Aside Act, N.J.S.A. 52:32-17 and implementing regulations under N.J.A.C. 17:13-1.1 et seq., the NJSDA requires the selected Firm to provide opportunities to Small Business Enterprise (SBE) firms to participate in the performance of this engagement, consistent with the set-aside goals of N.J.A.C. 17:13-4.1, awarding 25% of the total contract value to registered SBE firms with revenues that do not exceed the annual revenue standards established by the Federal standard at 13 C.F.R. 121.201.

Pursuant to the Set-Aside Act for Disabled Veterans' Owned Businesses, N.J.S.A. 52:32-31.1 et

seq. the NJSDA requires the selected Firm to provide opportunities to Disabled Veteran Owned Businesses (DVOBs) to participate in the performance of this engagement, consistent with the set aside goals of N.J.S.A. 52:32-31.5, awarding 3% of the total design and construction contract value to DVOB firms registered with the Department of the Treasury – Division of Revenue and Enterprise Services.

The selected Firm shall be required to make good faith efforts to ensure that SBEs and DVOBs have the maximum practicable opportunity to participate in the performance of this engagement. The Firm must submit a completed “SBE/DVOB Participation Form”, provided by the Authority, identifying all SBE firms and DVOB firms proposed for use as Subconsultants on the engagement to meet (or exceed) the set-aside targets.

- For the purpose of meeting the SBE goal, any Subconsultant firm identified as an SBE must be registered as such with the Department of the Treasury, Division of Revenue, in the revenue category specified, in order for NJSDA to recognize such Subconsultant firm’s SBE status.
- For the purpose of meeting the DVOB goal, any Subconsultant firm identified as a DVOB must be registered with the Department of the Treasury – Division of Revenue and Enterprise Services, in order for NJSDA to recognize such Subconsultant firm’s DVOB status.

All Subconsultants must submit a completed Confirmation Statement of SBE/DVOB Status, provided by the Authority, to the Firm for submission to the Authority.

In the event that a Responding Firm names a Subconsultant for SBE purposes, and the Subconsultant is not registered as an SBE with the Department of the Treasury, Division of Revenue, the Firm must disclose that fact and explain how and when the lack of registration shall be cured.

In the event that a Responding Firm names a Subconsultant for DVOB purposes, and the Subconsultant is not registered as a DVOB with the Department of the Treasury, Division of Revenue, the Firm must disclose that fact and explain how and when the lack of registration shall be cured.

If a firm fails to show that it will meet its SBE or DVOB subcontracting targets, it must document its good faith efforts to meet the targets.

The Firm shall maintain records regarding each SBE and DVOB firm contacted as a potential Subconsultant and the reasons why that SBE or DVOB firm was not used by the Firm. Reasonable outreach efforts shall include but not be limited to:

1. Solicitations of SBE and DVOB firms as Subconsultants for the School Facilities Package, including advertisements in general circulation media, trade association publications, and small business focus media. Such solicitations shall be made at a sufficient length of time before the date set for receipt of bids to permit a meaningful response from SBE and DVOB firms.

2. Efforts made to use the services of available community organizations, Contractor/Consultant groups, and local, State and Federal agencies that provide assistance in the recruitment and placement of SBE or DVOB firms.

A Firm shall not be permitted to remove or substitute any firms listed on the SBE/DVOB Participation Form without prior written approval from the Authority.

For more information on statewide listing of firms certified as small, woman and minority owned business enterprises and disabled veterans owned businesses and to learn more about the Standards of Eligibility to become registered as a “Small Business” or “Disabled Veteran Owned Business” contact the Business Services Call Center at 1-866-534-7789, or visit New Jersey’s business web portal: <http://www.nj.gov/njbusiness/contracting>.

5.2 Subconsultant Business Registration Certification

Proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury (the “Division of Revenue”) for all subconsultants must be provided to the Authority.

5.3 Other Information As Required

The NJSDA may request additional information from selected firms as required under the Agreement, or pursuant to applicable policies, procedures or law.

ATTACHMENT A(a)
FIRM'S DESIGN CONSULTANT EXPERIENCE SUMMARY FORM

FIRM'S DESIGN CONSULTANT EXPERIENCE SUMMARY FORM

The Firm's experience summary should highlight the Firm's Design Consultant experience (within the past 7 years) with repair and renovation projects of the types indicated in page 2 of this RFP. The summary should describe the experience of the responding Firm and should highlight the experience of the responding Firm's working relationship with the Firm's Key Team Members. Additionally, the summary should indicate the Firm's approach to relations with relevant governing and permitting agencies (DCA, DOE, DEP). The experience summary shall be limited to no more than 1,000 words.

FIRM'S DESIGN CONSULTANT EXPERIENCE SUMMARY FORM (cont'd)

ATTACHMENT A(b)
FIRM'S DESIGN CONSULTANT EXPERIENCE CASE STUDY FORM

FIRM'S DESIGN CONSULTANT EXPERIENCE CASE STUDY FORM

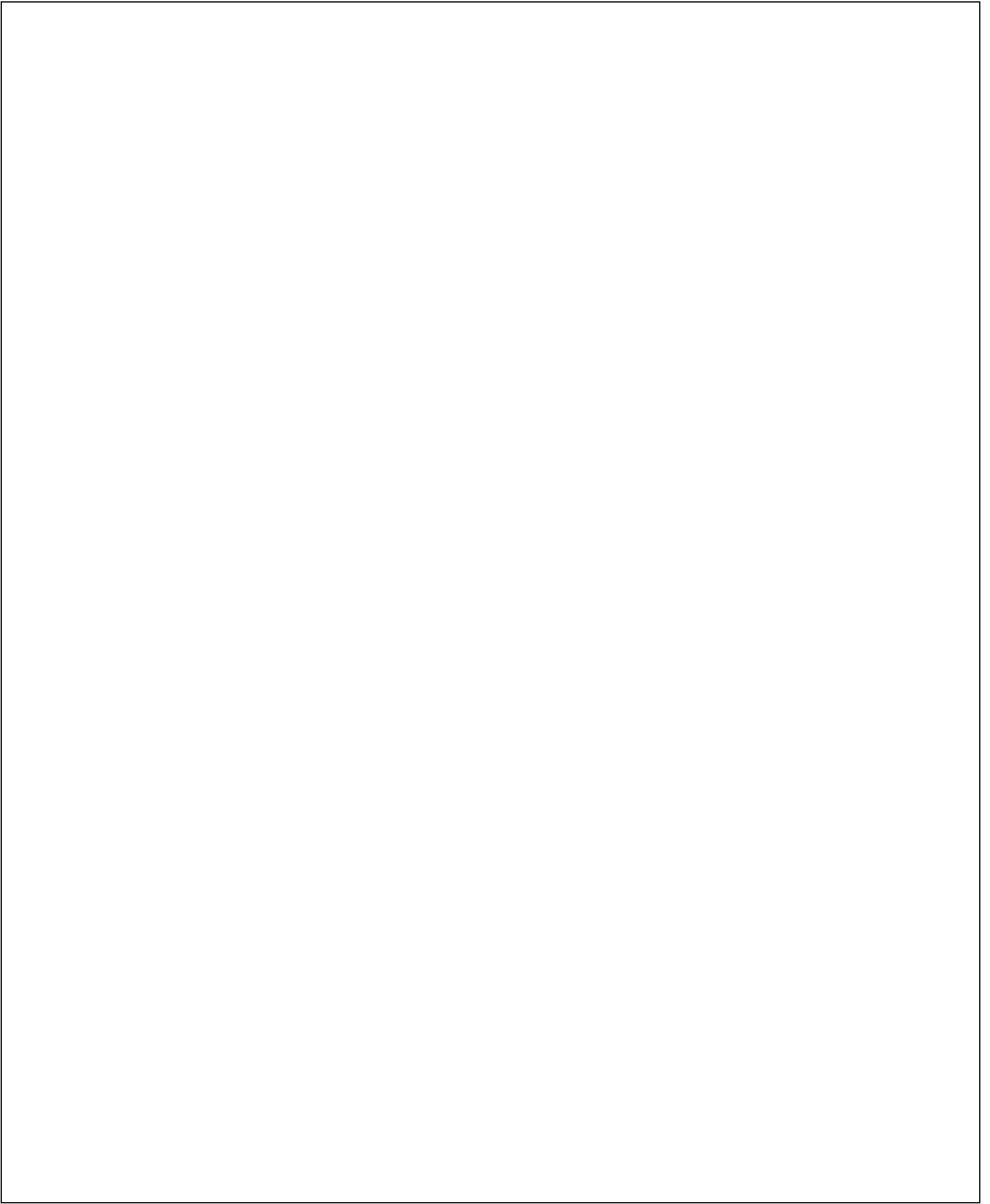
(Submit at least two (2), but not more than five (5) case studies. This form may be reproduced as necessary.)

CASE STUDY # _____

PROJECT NAME:	
PROJECT ADDRESS:	
CONTACT NAME & TITLE FOR OWNER'S REPRESENTATIVE:	CONTACT PHONE NUMBER:
TEAM MEMBER NAME & TITLE	TEAM MEMBER NAME & TITLE
TEAM MEMBER NAME & TITLE	TEAM MEMBER NAME & TITLE
PUBLIC SECTOR : <input type="checkbox"/>	PRIVATE SECTOR: <input type="checkbox"/>
PROJECT COST:	
START DATE:	END DATE:

The responding Firm shall identify particular projects as examples of the proposed Firm's past provision (within the past 7 years) of services for repair and renovation projects of the type and nature outlined in the RFP for projects with a construction cost between one and ten million dollars. Case studies may be based on contracts with public or private sector clients. The narratives should describe the effectiveness of each identified project, and the methodology used to measure such effectiveness. Additionally, the narratives should indicate the Firm's approach to relations with relevant governing and permitting agencies (DCA, DOE, DEP). The narrative for each case study should be no more than 1,000 words.

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ATTACHMENT A(c)
FIRM'S KEY TEAM MEMBER LIST

FIRM'S KEY TEAM MEMBER LIST

KEY TEAM MEMBER POSITION	KEY TEAM MEMBER NAME
<p><u>PRINCIPAL-IN-CHARGE:</u></p> <p>Individual who has overall responsibility for the Firm's successful completion of the Project and performance under this Agreement. (A Firm may propose only <u>one</u> Principal-in-Charge)</p>	
<p><u>PROJECT ARCHITECT:</u></p> <p>Individual responsible for the technical design and coordination of the project including technical coordination of any engaged Subconsultants. (A Firm may propose <u>one or more</u> Project Architect(s))</p>	
<p><u>PROJECT MANAGER:</u></p> <p>Individual with day to day responsibility for management and oversight of the design team including any engaged Subconsultants. (A Firm may propose <u>one or more</u> Project Manager(s))</p>	

ATTACHMENT A(d)
FIRM'S KEY TEAM RESUME FORM

FIRM'S KEY TEAM MEMBER RESUME FORM

FIRM'S KEY TEAM MEMBER NAME:

FIRM NAME:

PROPOSED PROJECT ROLE:

YEARS WITH FIRM:

TECHNICAL SPECIALTIES:

PROFESSIONAL HISTORY:

EDUCATION:

PROFESSIONAL REGISTRATIONS & AFFILIATIONS:

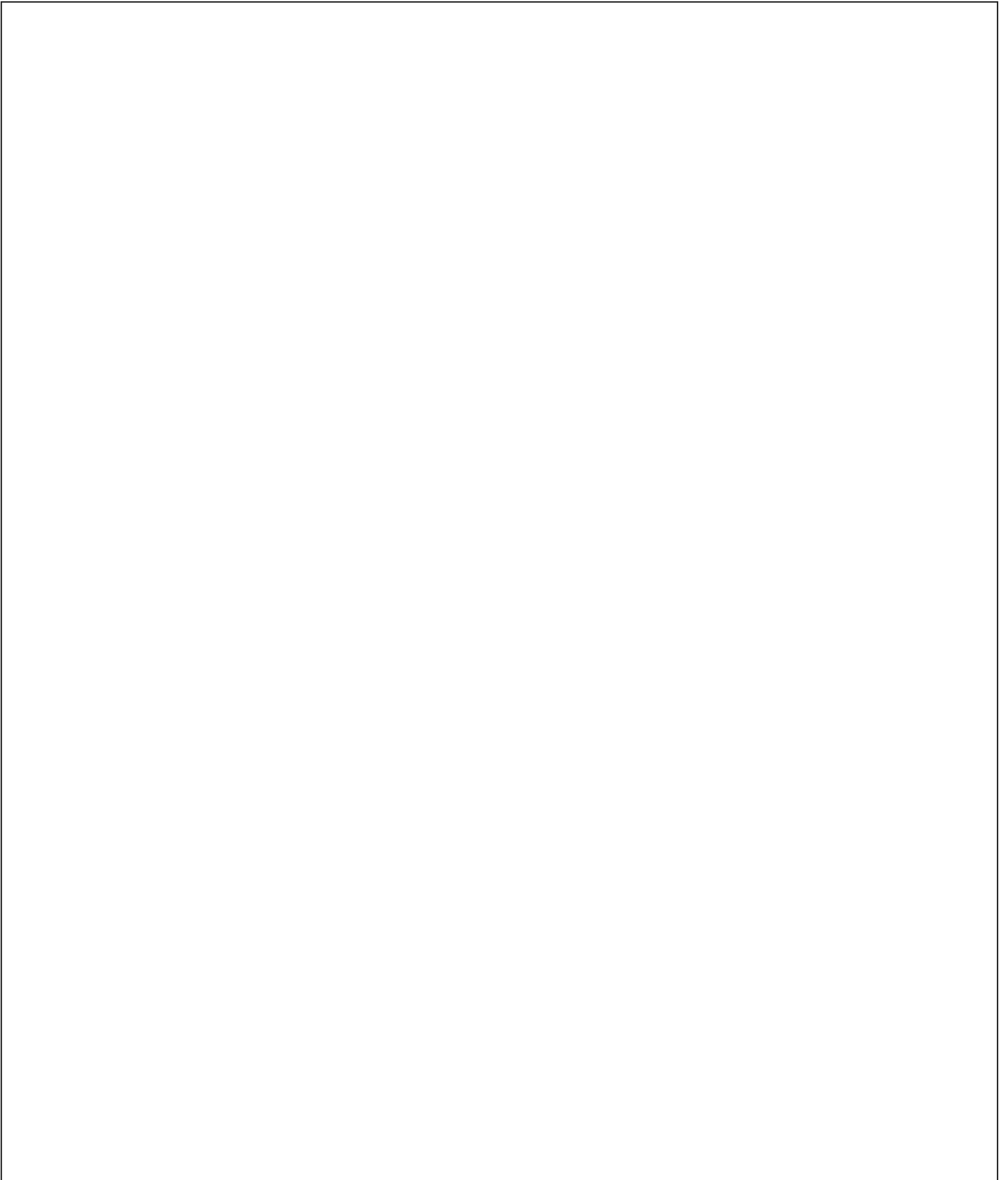
KEY TEAM MEMBER RESUME FORM (cont'd)

Key Team Member Name: _____

ATTACHMENT A(e)
**FIRM'S APPROACH TO PREDESIGN INVESTIGATION AND DEVELOPMENT OF
COST-EFFECTIVE ALTERNATIVES FORM**

FIRM'S APPROACH TO PREDESIGN INVESTIGATION AND DEVELOPMENT OF COST-EFFECTIVE ALTERNATIVES FORM

The responding firm shall submit a description of the Firm's approach to certain core tasks, which include Predesign investigation and assessment of alternate solutions, with a focus on cost effectiveness. The submission should describe the Firm's methodology for investigation of conditions in need or remediation, and may describe situations in which the responding Firm or its Key Team Members performed Predesign investigations of conditions of a type and nature identified in the RFP. The submission should describe the particular approach and methodologies for thorough investigation of such conditions, and should identify the Firm's approach to proposed solutions for the conditions and issues encountered. The submission should also describe the Firm's approach to development of cost-effective design solutions, and may describe situations where alternate solutions were offered, and where the cost of those alternates was considered as part of the Firm's presentation of alternate solutions. The narrative for the approach to Predesign investigation and development of cost-effective alternatives should be no more than 1,000 words.



ATTACHMENT A(f)
FIRM'S APPROACH TO CONTROL OF BUDGET AND SCHEDULE FORM

FIRM'S APPROACH TO CONTROL OF BUDGET AND SCHEDULE FORM

The responding Firm shall submit a description of the Firm's approach to staffing, budgeting and scheduling its Predesign, design and construction administration services that should be described in some detail. Specifically, please address the Firm's approach to budgeting, and the systems or procedures the Firm uses to ensure that budgets are met. Also, the Firm should explain the Firm's approach to scheduling work and the processes and systems in place to ensure that work is completed on schedule. The narrative for the Firm's Approach to Control of Budget and Schedule should be no more than 1,000 words.

FIRM'S APPROACH TO CONTROL OF BUDGET AND SCHEDULE FORM (cont'd)

ATTACHMENT B
**FORM OF AGREEMENT FOR DESIGN CONSULTANT SERVICES FOR LIMITED-
SCOPE PROJECTS**

AGREEMENT

between

**THE NEW JERSEY SCHOOLS DEVELOPMENT
AUTHORITY**

and

DESIGN CONSULTANT

**FOR LIMITED-SCOPE PROJECT
TASK ORDERS**

CONTRACT NO.: _____

TABLE OF CONTENTS

1.0	BACKGROUND AND DEFINITIONS.....	1
2.0	RESPONSIBILITIES OF THE DESIGN CONSULTANT	11
2.1	Project Review	11
2.2	Services Quality	11
2.3	Standard of Care	12
2.4	Intent of Agreement	12
2.5	Errors, Omissions and Deficiencies.....	12
2.6	Liability for Errors, Omissions and Deficiencies	13
2.7	Acceptance of Deliverables or Services	13
2.8	Design Consultant Project Manager	13
2.9	Construction Manager.....	14
2.10	Performance of Services	14
2.11	Subconsultants.....	15
2.12	Cooperation.....	17
2.13	Schedule.....	17
2.14	Construction Cost Estimate	17
2.15	Redesign for Excessive Bids.....	18
2.16	Records	18
2.17	Hazardous and Contaminated Materials	19
2.18	Electronic Format and Number of Copies for Deliverables	19
2.19	Revisions to the Deliverables.....	19
2.20	Compliance with Materials and Systems Manual.....	20
2.21	Government Approvals.....	20
2.22	Radon Mitigation	20
2.23	Utility Rebate “Smart Start” Program.....	20
2.24	DCA School Construction Best Practices Standards	20
2.25	Commissioning Requirements.....	20
2.26	LEED	21
2.27	Meetings.....	21
2.28	Allowances.....	21
2.29	Legal Costs.....	23
2.30	Assistance in Claims and Legal Proceedings.....	23
2.31	Political Contributions Disclosure Form	24
2.32	Political Contributions ELEC Filing.....	24
2.33	All Services to be Performed in United States.....	24
2.34	Separate Accounting for Multiple Facilities	24
2.35	Design to Facilitate “Made American” Compliance	24
3.0	SCOPE OF THE DESIGN CONSULTANT’S BASIC SERVICES.....	25
4.0	DESIGN CONSULTANT’S ADDITIONAL SERVICES.....	25
4.1	Advance Authorization Required	25
4.2	Payment for Additional Services	25
4.3	Additional Services.....	26

5.0	AMENDMENTS TO THIS AGREEMENT AND THE SCOPE OF SERVICES.....	27
5.1	Amendments	27
5.2	Services performed without an Amendment.....	27
5.3	Changes Pursuant to Design Change Directive	28
5.4	Changes Pursuant to Proposed Amendment	28
5.5	Disputes Regarding Compensation.....	28
6.0	THE AUTHORITY’S RESPONSIBILITIES.....	29
7.0	COMPENSATION	31
7.1	Basic Services	31
7.2	Additional Services Performed by Design Consultant	31
7.3	Additional Services Performed by Subconsultant	31
7.4	Hourly Rates	32
7.5	Progress Payments	32
7.6	Invoices	33
7.7	Withholding of Payment	35
8.0	GENERAL TERMS AND CONDITIONS	36
8.1	Responsibility for Contractor’s Actions	36
8.2	Professional Certification of Materials	36
8.3	Services by the Design Consultant	36
9.0	FINAL PAYMENT AND FINAL RELEASE	36
9.1	Final Payment	36
9.2	Final Release.....	37
10.0	TERM AND SCHEDULE.....	38
10.1	Term.....	38
10.2	Schedule.....	38
11.0	EXTENSIONS OF TIME AND COMPENSATION FOR DELAY	38
12.0	GENERAL COVENANTS	39
12.1	Insurance.....	39
12.2	Ownership of Documents	46
12.3	Copyrights and Patents	48
12.4	Confidentiality	48
12.5	Contractual Relationship.....	49
12.6	Assignment	50
12.7	Mergers, Acquisitions and Dissolutions	51
12.8	Mandatory Compliance with Law	52
12.9	Affirmative Action and Non-discrimination.....	53
12.10	Anti-Collusion.....	54
12.11	Anti-Trust.....	54
12.12	Conflicts of Interest.....	55
12.13	Indemnification	56
13.0	SUSPENSION OF SERVICES	58
13.1	The Authority’s Right to Suspend Services.....	58
13.2	Compensation	58
14.0	DEFAULT AND TERMINATION.....	59
14.1	Events of Default	59

14.2	Termination for Cause	61
14.3	The Authority’s Right to Complete the Services	62
14.4	Termination for Convenience of the Authority	62
15.0	CLAIMS	63
15.1	Tort Claims Act and Contractual Liability Act.....	63
15.2	Notice of Claim.....	63
15.3	Review of Design Claims	63
15.4	Compliance with Design Claim Review Process.....	63
15.5	Step One: The Authority’s Review.....	64
15.6	Step Two: Non-Binding Mediation	64
16.0	REPRESENTATIONS	65
17.0	THE AUTHORITY’S RIGHTS	67
18.0	MISCELLANEOUS	68
18.1	Notices	68
18.2	Incorporation by Reference.....	68
18.3	Order of Precedence.....	69
18.4	No Waiver of Warranties or Legal/Equitable Remedies	69
18.5	Procedural Requirements	70
18.6	Governing Law	70
18.7	Forum and Venue.....	70
18.8	Time is of the Essence	70
18.9	Entire Agreement	70
18.10	Severability	70
18.11	Waiver of Breach	70
18.12	Construction of Agreement.....	70
18.13	Peer Review	71
18.14	Execution in Counterparts.....	71
18.15	State Comptroller	71
18.16	Security Clearance	71
18.17	Notice of State Vendor Set-Off for State Tax.....	71

APPENDICES

- Appendix A – Project Description and Special Conditions
- Appendix B – Design Consultant’s Predesign Phase Services
- Appendix C – Design Consultant’s Design and Construction Phase Services
- Appendix D – Hourly Rates
- Appendix E – Certificates of Insurance and Business Registration Certificate
- Appendix F – Design Consultant’s Employees and Subconsultants
- Appendix G – Additional Forms and Addenda
- Appendix H – Materials and Systems Standards Manual/Design Requirements
- Appendix I – Mandatory Anti-Discrimination and Equal Opportunity Provisions

This AGREEMENT (the “Agreement”) is made as of _____ (the “Effective Date”), between the New Jersey Schools Development Authority (the “Authority”), having an office located at 32 E. Front Street, Trenton, New Jersey 08625-0991, and _____ (the “Design Consultant”), having an office located at _____.

The Authority and the Design Consultant agree as set forth below.

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. “Or” shall include “and/or”. Further, all reference to “Paragraph(s)” or “Section(s)” in this Agreement are references to Paragraphs and Sections of this Agreement or the Appendices to this Agreement; and all references to “Appendix(ces)” are references to the Appendices attached hereto. The table of contents and headings used in this contract are for reference and convenience only, do not in any way define, limit, describe, or amplify the provisions of this Agreement or the scope or intent of its provisions, are not a part of this Agreement, and will not enter into the interpretation of this Agreement. All references to “days” in this Agreement shall mean calendar days unless otherwise stated.

- 1.1 “Additional Services” means services to be performed by the Design Consultant at the Authority’s request which are in addition to those Basic Services that the Design Consultant is required to perform under a Task Order pursuant to this Agreement.
- 1.2 “Agreement” means this Design Consultant Agreement (and all appendices attached hereto or incorporated herein) between the Authority and the Design Consultant for the provision of design and construction administration, and other services for Task Order Projects to be assigned, as such Agreement may be amended from time to time in accordance with the provisions hereof.
- 1.3 “Allowance” or “Allowance Amount” means a sum of money that is designated to compensate for the performance of services and completion of deliverables that are anticipated for a Task Order Project, but which may or may not prove necessary, depending on actual conditions for a project.
- 1.4 “Allowance Services” means services performed or provided by the Design Consultant after prior authorization from the Authority, which are funded by Allowance amounts.

- 1.5 “Amendment” means a written modification to this Agreement executed by the Authority and the Design Consultant.
- 1.6 “Applicable Laws” with reference to the design and construction of a Project, shall specifically include, but are not limited to, the requirements of the New Jersey Uniform Construction Code, the National Electrical Code, the International Building Code, and the Occupational Safety and Health Administration, Soil, Erosion and Sediment Control Act, if applicable, and any other applicable codes.
- 1.7 “Approved CCE” means the most recent CCE that has been adjusted by the Design Consultant and either reconciled to the CCE for a prior phase, or if not reconciled to the prior CCE, otherwise approved or accepted by the Authority.
- 1.8 “Authority”, “New Jersey Schools Development Authority” or “NJSDA” means the public body corporate and politic established in, but not of, the Department of Treasury pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:17G-1 et seq. The Authority is the Party that has engaged the Design Consultant pursuant to this Agreement.
- 1.9 “Authority’s Project Requirements” means a description of the Authority’s objectives for a Project, including, but not limited to, design objectives and constraints, Project budget, time criteria, schedule, space requirements and relationships, special equipment and systems, and site requirements.
- 1.10 “Authority Project Manager” means the Authority’s representative authorized to act on behalf of the Authority with respect to a Project and the Design Contract. The Authority’s Project Manager shall have that authority specified in the Levels of Operating Authority Policy which document can be found on the Authority’s website:
- http://www.njsda.gov/BM/Operating_Authority.html
- 1.11 “Basic Services” means those Services set forth in a specific Task Order to be completed by the Design Consultant including, but not limited to, the Deliverables to be produced. The Basic Services may be amended, from time to time, in accordance with the applicable provisions of this Agreement.
- 1.12 “Change Order” means a written order, directing or authorizing a Change in the Work, executed by the Authority and the Contractor, and which shall include adjustments, if any, to the Contract Price, and extensions of time, if any, to the Contract time.

- 1.13 “Claim” means a demand by the Contractor for (1) a time extension which is disputed by the Authority or (2) the payment of money or damages, arising from work performed by or on behalf of the Contractor in connection with the Contract Documents, which is disputed by the Authority.
- 1.14 “Commencement Date” or “Initial NTP Date” means the date identified in the initial Notice to Proceed for a specific Task Order, directing the Design Consultant to commence performing its responsibilities pursuant to this Agreement.
- 1.15 “Commissioning Authority” or “CxA” means a person, persons or firm that may be engaged by the Design Consultant or the Authority to provide total building commissioning, or commissioning services for particular systems or assemblies within the scope of a Project.
- 1.16 “Compensation” means payment(s) intended to compensate the Design Consultant for Services rendered.
- 1.17 “Conformed Documents” means versions of the approved Construction Documents that incorporate all changes made by addendum during the bid period.
- 1.18 “Construction Administration Services” means the administration and oversight services that are identified in Section 3.7 of this Agreement and described more fully in the Design Manual, which services are required to be performed by the Design Consultant to monitor that the Construction Work is being performed as required by the Construction Documents.
- 1.19 “Construction Change Directive” or “CCD” means a written order by the Authority directing or authorizing some change to the Contract for Construction for which compensation or time extension has not yet been determined. Upon agreement between the Contractor and the Authority for compensation and/or time extension, if any, relating to a CCD, a Change Order shall be issued resolving the CCD.
- 1.20 “Construction Cost Estimate” or “CCE” means the estimated cost of construction at time of bid for the School Facilities Project, which amount does not include the costs of permits, acquisition of land, furnishings, contingencies, professional fees, financing costs, and any other similar types of costs. The CCE shall be prepared by the Design Consultant in accordance with this Agreement, and shall be continually updated by the Design Consultant throughout the design of the School Facilities Project as set forth in this Agreement.

- 1.21 “Contract for Construction” means the agreement between the Authority and the Contractor governing the construction of all or a portion of the School Facilities Project and all other documents setting forth the obligations of the Contractor with respect to construction of the School Facilities Project.
- 1.22 “Construction Documents” means the plans, specifications and other documents required to be prepared and submitted by the Design Consultant during the Construction Documents Phase as set forth herein.
- 1.23 “Construction Manager” or “CM” means a firm or firms that may be engaged by the Authority to act as the Owner’s representative on a Project and to provide construction management services, including, but not limited to, oversight and reporting services in connection with the construction of this Project. The Authority may elect not to engage a separate CM for Task Orders assigned under this Agreement.
- 1.24 “Construction Milestones” means the dates identified in a Project Schedule by which the Contractor must complete certain critical activities in construction of a Project.
- 1.25 “Construction Work” means the services performed by the Contractor or any Subcontractor pursuant to the Contract for Construction, and includes all other labor, materials, equipment and services provided or to be provided to fulfill such obligations.
- 1.26 “Contract Change Request” or “CCR” means a written request by the Contractor for an adjustment in the Contract Price, an extension of the Contract Time, or a modification to the Contract for Construction.
- 1.27 “Contractor” means that person or firm or those persons or firms engaged by the Authority to undertake the construction of the School Facilities Project pursuant to the Contract for Construction. There may be either a single "general" Contractor who has overall contractual responsibility for delivering all of the construction services needed to complete the School Facilities Project or there may be multiple Contractors who have responsibility for delivering particular aspects of the School Facilities Project.
- 1.28 “Day” means calendar day, unless otherwise specifically defined.
- 1.29 “DCA” means the New Jersey Department of Community Affairs.
- 1.30 “Deliverables” means, among other things, technical data, plans, Specifications, minutes, approvals, recommendations, drawings, reports,

computer discs and or digital files, spare parts lists, instruction books, operating and maintenance manuals, warranties, guarantees, documents, writings, materials, services or any other thing the delivery of which, however accomplished, is required to be delivered by the Design Consultant.

- 1.31 “Design Change Directive” means a written order by the Authority directing or authorizing some change to the Design Consultant’s Services, Deliverables, or other obligations of the Design Consultant under a Task Order assigned or awarded pursuant to this Agreement, for which Compensation and/or Time extension, if appropriate, has not yet been determined or agreed. Upon agreement on Compensation, if applicable, and/or Contract Time extension, if applicable, for a Design Change Directive, an Amendment shall be executed resolving the Design Change Directive.
- 1.32 “Design Claim” means a demand by the Design Consultant for (1) a time extension which is disputed by the Authority or (2) the payment of money or damages, arising from Services performed by or on behalf of the Design Consultant in connection with this Agreement, which is disputed by the Authority.
- 1.33 “Design Consultant” means the architect, engineer or other Professional Services Consultant and/or Design Consultant Team selected by the Authority to provide design and construction administration services in connection with the School Facilities Project.
- 1.34 “Design Consultant Documents” means all documents setting forth the obligations and responsibilities of the Design Consultant and the Authority with respect to a Project assigned as a Task Order under this Agreement, and includes, but is not limited to, the Request for Proposal, the Design Consultant’s Technical and Fee Proposal, this Agreement between the Authority and the Design Consultant and any Amendments and addenda hereto, the Task Order Assignment, the Project Description, and any and all appendices, exhibits and schedules attached to the foregoing documents.
- 1.35 “Design Consultant Project Manager” means that person designated by the Design Consultant to serve as its representative for a Project and this Agreement, and who shall have the non-exclusive authority to bind the Design Consultant in all matters relating to this Agreement.
- 1.36 “Design Directive” means a written notice issued by the Authority directing the Design Consultant to provide certain Services required by the

Contract Documents. A Directive by the Authority requires the Design Consultant to provide the directed Services in an expeditious manner, without sacrificing the progress of the rest of the Basic Services, even if there remains a dispute as to whether the Services identified in the Directive constitute grounds for an Amendment to the Design Consultant Documents or warrant additional Compensation.

- 1.37 “Design Manual” means the NJSDA’s Materials and Systems Standards Manual/Design Requirements included as Appendix H to this Agreement.
- 1.38 “Design Milestones” means the dates by which critical activities of the Design Phases must be completed by the Design Consultant. The Design Milestones for a Project shall be identified in the Design Consultant Documents.
- 1.39 “Design Request for Proposals” or “Design RFP” means the request issued by the Authority for proposals from Professional Services Consultants, which request may include a request for a Technical Proposal and/or a request for a Fee Proposal.
- 1.40 “DOE” or “NJDOE” means the New Jersey Department of Education.
- 1.41 “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
- 1.42 “Educational Specifications” or “Ed. Specs.” means a document meeting the requirements of NJAC 6A:26-5.3, describing in detail the educational program activities and requirements for each space proposed in a Project.
- 1.43 “Effective Date” means the date on which this Agreement has been fully executed by the Parties, as indicated above.
- 1.44 “E-Rate Program” means the Schools and Libraries Program administered by the Universal Service Administrative Company under the direction of the Federal Communications Commission to assist schools in obtaining affordable telecommunications and Internet access.
- 1.45 “ELEC” means the New Jersey Election Law Enforcement Commission, the State entity established pursuant to N.J.S.A. 19:44A-5.
- 1.46 “Facilities Condition Assessment Report” means the report prepared by the Design Consultant or another consultant summarizing the

investigation, findings, and recommended actions with regard to an identified facility condition.

- 1.47 “Fee Proposal” means the Fee Proposal submitted by the Design Consultant in response to a Request for Fee Proposals.
- 1.48 “Final Completion” means that point in time in the construction of a School Facilities Project when all requirements of the Contract for Construction have been performed, when all items on the Punchlist have been completed, when a Certificate of Occupancy, a Certificate of Continued Occupancy, or a Certificate of Completion, as applicable, have been issued and when final payment under the Contract for Construction has occurred.
- 1.49 “Historical and Cultural Resources” means a prehistoric or historic district, site, building, structure, or object included, or eligible for inclusion in, the New Jersey or National Registers of Historic Places. Historical and Cultural Resources may include artifacts, records and remains that are related to and located within such properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.
- 1.50 “Hourly Rates” means the Design Consultant’s compensable hourly rates as identified in Appendix D, which shall include all direct and indirect expenses including overhead and profit.
- 1.51 “Initial Construction Cost Estimate” or “Initial CCE” means the CCE for a School Facilities Project prepared by the Authority and provided to the Design Consultant in connection with a Task Order pursuant to this Agreement.
- 1.52 “Initial Notice to Proceed” or “Initial NTP” means the written notice from the Authority directing the Design Consultant to commence its responsibilities with respect to a Task Order under this Agreement.
- 1.53 “Key Team Member” means those individuals who are employed by the Design Consultant who are required to be named in the Design Consultant’s Technical Proposal and who have a responsible role in the successful completion of the Project and the performance under this Agreement.
- 1.54 “LEED™” means Leadership in Energy and Environmental Design, for Schools, or later as adopted by the US Green Building Council (USGBC).

- 1.55 “Legal Requirements” means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the performance of Services by the Design Consultant under this Agreement, including, but not limited to, the current versions of the Building Design Services Act, the New Jersey Uniform Construction Code, the DCA School Construction Best Practices Standards, the National Electrical Code, the International Building Code, the Occupational Safety and Health Administration, the Soil, Erosion and Sediment Control Act, as well as any requirements of local or national authorities having jurisdiction over a Project, if applicable.
- 1.56 “Materials and Systems Manual” means the version of NJSDA’s “*Materials and Systems Standards Manual*” including Design Requirements and Construction Details, in effect at the time of execution of this Agreement.
- 1.57 “Notice to Proceed” or “NTP” means a notice from the Authority to the Design Consultant directing the Design Consultant to commence performing certain of its responsibilities pursuant to the Agreement. The Authority may issue to the Design Consultant several Notices to Proceed during the life of a Project, including separate NTPs for each phase identified in Section 3.0 of this Agreement.
- 1.58 “Parties” means the Authority and the Design Consultant.
- 1.59 “Principal-in-Charge” means the individual who has overall responsibility for the Firm’s successful completion of the Project and performance under this Agreement.
- 1.60 “Professional Services Consultants” means consultants providing professional services associated with research, development, design, construction, construction administration, alteration, or improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These consultants may provide services including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, submittal review, testing, preparation of operating and maintenance manuals, and other related services.

- 1.61 “Project Architect” means the individual responsible for the technical design and coordination of the project including technical coordination of any engaged subconsultants.
- 1.62 “Project Manager” means the individual with day-to-day responsibility for management and oversight of the design team including any engaged subconsultants.
- 1.63 “Project” or “Task Order Project” or “School Facilities Project” means the acquisition, demolition, design, construction, improvement, repair, alteration, modernization, renovation, reconstruction, maintenance, etc., of all or any part of a School Facility or of any other personal property necessary for or ancillary to any School Facility. Throughout this Agreement, references to “the Project” shall be interpreted to refer to a specific Task Order Project, as assigned or awarded to the Design Consultant under this Agreement.
- 1.64 “Project Close-Out Phase” means that portion of a Project that follows the Construction Administration Phase. During this phase the Design Consultant provides those Services identified in Section 3.8 of this Agreement and described more fully in the Design Manual.
- 1.65 “Project Description” means the document(s) identifying and describing a School Facilities Project that is the subject of a Task Order assigned or awarded under this Agreement. The Project Description shall contain, among other things, the Initial CCE or approximate cost estimate, the Facilities Condition Assessment Report or Final Predesign Report, if available, a general description of the School Facilities Project, a room inventory, description of any parking or play areas, if applicable, and any other pertinent information. The Project Description shall be supplied at the time of assignment of a Task Order under this Agreement, and may be amended, from time to time, in accordance with the provisions of the Agreement.
- 1.66 “Project School District” means the school district in which a School Facilities Project is located. The Project School District will be identified in the Appendix A Special Conditions and Project Description, which will be supplied when a Task Order is assigned under this Agreement.
- 1.67 “Proposal Request” means a document issued by the Authority to the Contractor, defining or proposing a Change in the Work, and seeking a response from the Contractor that includes a cost estimate for the proposed Change in the Work, and a detailed explanation of the nature and scope of the Work contemplated justifying such cost estimate.

- 1.68 “Punchlist” means the list, prepared before Substantial Completion, of incomplete or defective work to be performed or remedied by the Contractor after Substantial Completion. The Punchlist shall be prepared and implemented by the Design Consultant in conjunction with the Authority.
- 1.69 “Schedule” or “Project Schedule” means the time frames established by the Authority to complete the Services within the Design Milestones and with reference to the Construction Milestones and which sets forth the dates by which each of the Phases in the Design Phase and the Construction Phase shall be completed. The Schedule shall be prepared and updated pursuant to the requirements set forth herein.
- 1.70 “Schematic Design Documents” means the documents required to be prepared and submitted by the Design Consultant during the Schematic Design Phase as set forth herein.
- 1.71 “School Facility” means and includes any site, structure, building or facility used wholly or in part for academic purposes.
- 1.72 “Services” means, collectively, those functions and actions required by a Task Order under this Agreement, and which are necessary to advance and complete the Work of a Project, including without limitation, those services, and such additional services as may be directed by the Authority, to be provided by the Design Consultant in accordance with the terms and conditions of this Agreement and set forth in the Design Consultant Documents, including any Project Schedule, Work Schedule, the production of all required Deliverables, and any work functions necessary in order to complete such Deliverables.
- 1.73 “Site” means the site(s) proposed or selected for a Project.
- 1.74 “Special Conditions” means that document attached as Appendix A to the Agreement, and made a part thereof, as such document may be amended from time to time, which may augment or modify terms of this Agreement, and which identifies, among other things, the School Facilities Project for which the Design Consultant shall be responsible.
- 1.75 “Specifications” means that portion of the Contract for Construction consisting of the written requirements of materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.76 “State” means the State of New Jersey.

- 1.77 “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.
- 1.78 “Subcontractor” means an entity to whom the Contractor or other subcontractor subcontracts part or all of the work for which such Contractor or other subcontractor is ultimately responsible.
- 1.79 “Submittal” means a document or other tangible item produced or submitted by the Contractor for review which is required to be reviewed by the Design Consultant, including, but not limited to, shop drawings, reports, calculations, product data and samples.
- 1.80 “Substantial Completion” means that point in time on a Project when all the following have occurred: (i) all essential requirements of the Contract for Construction have been performed so that the purpose of the Contract for Construction is accomplished; (ii) if applicable, a Certificate of Occupancy, Temporary Certificate of Occupancy or Certificate of Acceptance has been issued by the Department of Community Affairs; (iii) the Punchlist has been created; (iv) if applicable, the Contractor has delivered to the Authority the key(s) and/or code(s) for operation of the elevators; (v) there are no material omissions or technical defects or deficiencies in the Work, as identified by the Authority; and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.
- 1.81 “Task Order” means an order or authorization for the performance of a defined scope of Services related to a specific Project that is assigned or awarded to a Design Consultant engaged by the Authority pursuant to this Agreement.
- 1.82 “Task Order Request” means a written request issued by the Authority to a Design Consultant that is a member of the Task Order pool inviting the Design Consultant to submit a proposal and pricing for a defined scope of Services related to a specific Project, which scope of Services the Authority intends to assign or award as a Task Order.
- 1.83 “Technical Proposal” means the proposal submitted by the Design Consultant in response to the Authority’s Request for Technical Proposals or RFP.
- 1.84 “Term” means the duration of this Agreement as set forth in Section 10.0 of this Agreement.

- 1.85 “Uniform Construction Code” means the New Jersey Uniform Construction Code, as set forth in N.J.A.C. 5:23-1 et seq.
- 1.86 “Work” or “Construction Work” means the services performed by the Contractor pursuant to the Contract for Construction, whether completed or partially completed and includes all other labor, materials, equipment and services provided or to be provided to fulfill such obligations.

2.0 RESPONSIBILITIES OF THE DESIGN CONSULTANT

- 2.1 Project Review. Upon assignment of a Task Order under this Agreement, the Design Consultant shall become fully familiar with all relevant Task Order and Project documentation as well as the contractual obligations of each entity performing Work for the Project. If the Design Consultant determines that it requires any additional information to perform its Services, the Design Consultant will notify the Authority promptly in writing.
- 2.2 Services Quality. All of the Design Consultant’s Services shall be performed in accordance with the Standard of Care and quality described in Section 2.3. Should the Design Consultant or its Subconsultants fail to exercise the applicable Standard of Care, the Design Consultant shall promptly provide, at no cost to the Authority, any additional design or construction administration services necessary to correct any failure to comply with such Standard of Care, provided that the provision of such services by the Design Consultant shall in no way limit or restrict the Authority’s remedies, including the Authority’s right to withhold payment for such performance and take such action that it deems appropriate until the Design Consultant has complied with such Standard of Care or has remedied such non-compliance to the satisfaction of the Authority. Nothing in the foregoing shall be deemed to restrict or expand the Design Consultant’s Standard of Care.
- 2.3 Standard of Care. The Design Consultant's Services under this Agreement shall be performed in conformance with the degree of judgment, knowledge, skill and care ordinarily possessed and exercised by average members of the design profession, currently practicing under similar conditions at the same time and locality of the Project. The Design Consultant shall perform all Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Design Consultant is responsible for the quality, technical accuracy, and timely completion and delivery of all Services and Deliverables. The Design Consultant agrees that in its professional judgment as an architect,

the Deliverables submitted by the Design Consultant will be consistent with the Design Consultant's Standard of Care. The Design Consultant shall at all times act in the best interest of the Authority, consistent with the professional obligations assumed by it in entering into this Agreement. The Design Consultant shall perform all Services under this Agreement in accordance with the terms and conditions of this Agreement and to the reasonable satisfaction of the Authority. The Design Consultant shall design to cost when performing its Services under this Agreement.

- 2.4 Intent of Agreement. This Agreement and all Appendices and related contract documents are intended to be complementary and interpreted in harmony so as to avoid conflict. Any services that may be reasonably inferred from this Agreement as being required to produce the intended result shall be supplied whether or not specifically called for. In the event of any inconsistency, conflict, or ambiguity between or among the terms of the Design Consultant Agreement, and its Appendices and related documents, the documents shall take precedence in the order in which they are listed in Section 18.3 of this Agreement.
- 2.5 Errors, Omissions and Deficiencies. The Design Consultant agrees to provide the Authority with Services and Deliverables that will accomplish the intended purpose of each Task Order Project and satisfy the requirements of this Agreement. The Design Consultant shall, without additional cost to the Authority, timely cure any errors, omissions, or other deficiencies in the Deliverables or Services caused by or in any way due to the actions or inactions of the Design Consultant. After timely notice thereof, any damages or costs incurred by the Authority to correct any errors, omissions or deficiencies in the Design Consultant's Deliverables or Services caused by or in any way due to the actions or inactions of the Design Consultant may be deducted, at the Authority's sole discretion, from the payments due then or thereafter to the Design Consultant. If the payments then or thereafter due the Design Consultant are not sufficient to cover such amount, the Design Consultant shall pay the difference to the Authority upon demand.
- 2.6 Liability for Errors, Omissions and Deficiencies. The Design Consultant shall be liable to the Authority for all damages to the Authority caused by the Design Consultant's errors, omissions or deficiencies caused by or in any way due to the actions or inactions of the Design Consultant that breach the Design Consultant's Standard of Care. The Design Consultant shall indemnify, defend and hold harmless the Authority for any and all reasonable direct costs incurred by the Authority as a result of such errors, omissions or deficiencies, including all direct and consequential damages,

including, but not limited to, interest, reasonable attorney's fees and other expenses.

- 2.7 Acceptance of Deliverables or Services. All Deliverables submitted by the Design Consultant pursuant to this Agreement shall be subject to the written acceptance of the Authority. The acceptance of Deliverables by the Authority shall not be deemed to constitute authority to violate, cancel or set aside any provisions of this Agreement or of applicable Legal Requirements, or to relieve the Design Consultant from the responsibility of complying therewith. Acceptance or payment for any of the Deliverables or Services shall not be construed as a waiver by the Authority of any of its rights or of any cause of action arising out of the Design Consultant's performance or non-performance under this Agreement.
- 2.8 Design Consultant Project Manager. Upon execution of this Agreement and assignment of each Task Order hereunder, the Design Consultant shall designate a key individual of its firm satisfactory to the Authority as the Design Consultant Project Manager for each such Task Order Project and such individual shall be identified in Appendix F. The Design Consultant Project Manager shall, so long as his/her performance is acceptable to the Authority, remain in charge of the Design Consultant's Services through Final Completion of a Project, and shall represent the Design Consultant and be available for general consultation throughout that Project. The Design Consultant Project Manager shall have authority to receive and transmit instructions, receive information and render decisions related to the Project on behalf of the Design Consultant and shall have the non-exclusive authority to bind the Design Consultant in all decisions, changes or other matters relating to this Agreement and the Design Consultant Documents. All directions given to the Design Consultant Project Manager shall be binding as if given to the Design Consultant.
- 2.8.1 The Design Consultant shall provide advance notice to, and seek approval of, the Authority in the event that the Design Consultant proposes to replace the Design Consultant Project Manager as initially identified in the Technical Proposal or other document. No changes in the Design Consultant Project Manager shall be permitted without the prior, written approval of the Authority. Any proposed replacement must have equal or superior qualifications to the individual the Design Consultant proposes to replace. The Design Consultant shall submit to the Authority, for approval, the name and qualifications of any individual proposed to replace the Design Consultant Project Manager.

- 2.9 Construction Manager. The Authority may engage a Construction Manager (CM) to directly manage the Construction Contract for any Task Order assigned under this Agreement, and, if a CM is engaged, the Design Consultant shall cooperate with this CM. The Authority may choose not to engage a Construction Manager for a Project under this Agreement, and if so, the Authority may elect to directly perform the responsibilities of the CM or to expand the responsibilities of the Design Consultant during the Construction Phase of any such Project.
- 2.10 Performance of Services. The Services to be provided by the Design Consultant pursuant to this Agreement shall be performed by the Design Consultant and its employees and Subconsultants, if any, in accordance with the Design Consultant Documents. The Design Consultant shall provide properly licensed personnel to perform all required Services in a professional, timely and expeditious manner. The Design Consultant shall identify, in Appendix F to this Agreement, or in other documentation upon the assignment of a Task Order, the names and titles of all employees and Subconsultants retained by the Design Consultant to perform Services related to the Task Order Project. Throughout the Term of a Task Order Project, the Design Consultant shall update the list of employees and Subconsultants every six (6) months or within five (5) Days after the Design Consultant replaces any employees or Subconsultants on a given Project.
- 2.11 Subconsultants. In the event the Design Consultant hires, employs or otherwise engages Subconsultants, the Design Consultant shall be considered the sole point of contact with regard to matters relating to this Agreement. The Design Consultant assumes sole and full responsibility for the complete performance contemplated by this Agreement, including the performance of all of its Subconsultants. The Design Consultant shall coordinate the activities of all its Subconsultants and all other members of its architect/engineering team. The Design Consultant shall be responsible for all actions of its subconsultants and other team members in accordance with this Agreement.
- 2.11.1 Approval by the Authority. The Design Consultant must: (i) select only Subconsultants that have been pre-qualified by the Authority, for those disciplines that the Authority regularly requires prequalification, and (ii) obtain the approval of the Authority prior to the engagement of any such Subconsultants.
- 2.11.2 The Design Consultant will not be permitted to subcontract to firms or individuals suspended or debarred by the State of New Jersey, or to firms or individuals that are otherwise ineligible to

perform as Subconsultants on a Project pursuant to regulation, the Authority procedures or the requirements of this Agreement.

- 2.11.3 The Design Consultant shall list in its proposal all Subconsultants required by this Agreement to be included therein.
- 2.11.4 As soon as a potential additional Subconsultant has been identified by the Design Consultant, but in no event less than seven (7) Days prior to the scheduled commencement of Services by such Subconsultant, the Design Consultant shall notify the Authority in writing of the name and address of the Subconsultant and shall request that the Authority approve the Subconsultant. Within five (5) Days after receipt of such request, the Authority will notify the Design Consultant that the Subconsultant has been approved, or advise the Design Consultant of the reasons for the Authority's disapproval of the Subconsultant. If a proposed Subconsultant is not approved, the Design Consultant shall submit other candidates for approval.
- 2.11.5 The Authority shall not be liable for any costs, damages or delays incurred to the Design Consultant resulting from the Authority's disapproval of a Subconsultant, nor shall the Design Consultant be entitled to any reimbursement or time extensions in connection with such disapproval.
- 2.11.6 All subcontracts between the Design Consultant and its Subconsultants must be in writing, and shall include at least a detailed description of the Services to be performed, and the agreed-upon compensation schedule. All subcontracts must contain all contract provisions and certificates as are required by the Authority. In the event of non-performance by a Subconsultant under this Agreement, the Design Consultant shall be responsible to perform those Services, on-time and on-budget. All terms and conditions under this Agreement applying to the Design Consultant shall apply equally to the Subconsultants. The Design Consultant agrees that all subcontracts made pursuant to the Agreement shall be made expressly subject to all of the terms and conditions of this Agreement.
- 2.11.7 The Design Consultant shall be fully responsible and liable for the performance of all Services, on-time and on-budget, required under this Agreement in accordance with the Design Consultant Documents, whether performed by the Design Consultant's own

personnel, by Subconsultants of the Design Consultant, or by the consultants of the Subconsultants.

2.11.8 Replacement of Subconsultants. The Design Consultant shall provide notice to the Authority in the event that the Design Consultant proposes to replace, add or remove any Subconsultant. No changes in Subconsultants shall be permitted without the prior, written approval of the Authority. Any proposed replacement or new Subconsultant must have equal or superior qualifications to the Subconsultant the Design Consultant proposes to replace. The Design Consultant shall submit to the Authority, for approval, the name and qualifications of proposed Subconsultant substitutions.

2.11.9 Responsibility for Subconsultants. It is expressly understood by the Design Consultant that the consent of the Authority to the subcontracting of any Services under this Agreement shall not relieve the Design Consultant from performing its obligations under this Agreement. The Design Consultant shall at all times give due attention to the fulfillment of its obligations under the Agreement and shall keep the Services under its control. Consent by the Authority to any subcontracting of any part of the Services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as consent to the engagement by the Design Consultant of the Subconsultants. The Design Consultant shall be responsible for all Services performed by its Subconsultants, the provision of which Services shall conform to the provisions of this Agreement and the requirements of all applicable Legal Requirements. Nothing in this Agreement is intended or deemed to create any legal or contractual relationship between the Authority and any Subconsultant, including but not limited to any third-party beneficiary rights.

2.12 Cooperation. The Design Consultant shall cooperate with the other Professional Services Consultants engaged by the Authority for this Project. The Authority will identify in Appendix A such Professional Services Consultants and their roles by the Effective Date or by other means if such Professional Services Consultants are engaged during the Term. At the direction of the Authority, the Design Consultant shall also cooperate with the Project School District and its personnel and any other applicable State agencies.

2.13 Schedule. As part of the Design Consultant Documents, the Authority will provide to the Design Consultant a Milestone Schedule for design and construction. Within ten (10) Days of the commencement of the Design

Consultant's Services, the Design Consultant shall prepare and submit for review and acceptance by the Authority, a Schedule showing the order and time frames in which it proposes to carry out its Services, including Design Milestones and Construction Milestones, calculated to meet the milestone dates set forth in the Authority's Milestone Schedule, and reflect schedule concerns arising from the Project School District's use and occupancy of the school facility during the school term. Within ten (10) Days of the Design Consultant's submission of the Schedule, the Authority shall review the Schedule and either accept or reject the Schedule. The Authority shall provide the Design Consultant with a detailed explanation if the Schedule is rejected in whole or in part. In the event that the Schedule is rejected by the Authority, the Design Consultant shall resubmit the Schedule until it is accepted by the Authority. The Design Consultant acknowledges that the Project is time-sensitive, and as such, time is of the essence, and the Design Consultant's services are to be provided in an efficient and expeditious manner so as to meet the requirements of the Schedule.

- 2.14 Construction Cost Estimate. The Authority shall provide the Design Consultant with a Construction Cost Estimate (the "Construction Budget" or "Initial Construction Cost Estimate") as part of the Project Description (Appendix A). At the end of the each Design Phase, the Design Consultant shall prepare a Construction Cost Estimate (CCE) for the approved Project Scope, on the basis of the Design Consultant's experience and qualifications and this CCE shall represent the Design Consultant's best judgment as an experienced and qualified professional generally familiar with the industry and general market conditions. This CCE shall be prepared in a format provided or approved by the Authority. The Design Consultant shall submit the CCE to the Authority for review and approval. If the Design Consultant's CCE exceeds the Authority's Initial Construction Cost Estimate, then the Authority may either approve the Design Consultant's CCE despite exceeding the Initial CCE, or require the Design Consultant to suggest changes in the design to reduce the proposed CCE to an amount within the Authority's Construction Budget (hereinafter, "cost control design changes"). The Design Consultant shall revise the proposed cost control design changes until: 1) the Authority accepts the cost control design changes; 2) the Authority accepts an increase in the Construction Cost Estimate in excess of the Initial Construction Cost Estimate; 3) or a combination of the foregoing. Upon acceptance by the Authority, the Design Consultant shall revise its Work Product to incorporate the accepted cost control design changes into the Project without additional cost to the Authority. The Design Consultant shall update the CCE at the completion of each Phase, and shall reconcile the updated CCE with the Approved CCE for the previous Phase. The

Design Consultant may not proceed to the next Phase until the updated CCE is reconciled with the Approved CCE developed at the previous Phase, or the updated CCE is otherwise approved by the Authority. It is understood that the Construction Cost Estimate is for the purpose of aiding the Authority in making decisions and is not be interpreted as a guarantee of costs by the Design Consultant.

- 2.15 Redesign For Excessive Bids. In the event that all proposals received from prospective contractors for construction of a Project are in excess of ten percent (10%) of the Final CCE, the Design Consultant shall, at the sole option of the Authority, redesign the Construction Documents in a manner intended to lower the price of the proposals and satisfy the Authority's Project Requirements. Such redesign effort shall not compromise the Authority's Project Requirements without the Authority's express written consent. Such redesign Services, including reproduction costs, shall be undertaken by the Design Consultant at no additional cost to the Authority.
- 2.16 Records. For all Services rendered, the Design Consultant shall, in maintain all documents related to all aspects of the Services and Deliverables provided under this Agreement and any Task Order issued hereunder, whether the Services are performed by the Design Consultant, its Subconsultants or any other firm. Such records shall include, without limitation, weekly certified payroll, overhead, cost and accounting records, as well as all other records the Design Consultant may customarily maintain in its business. Such records shall be maintained for a period of at least five years from Final Payment for any Task Order issued hereunder, and such records shall be made available for inspection by the Authority and any other State oversight or inspecting agency, including the NJ Office of the State Comptroller, upon request, Before Final Payment will be made to the Design Consultant, or sooner, upon written request by the Authority, the Design Consultant must provide all such records to the Authority.
- 2.17 Hazardous and Contaminated Materials. Except as otherwise provided in this Agreement, should the Design Consultant discover previously undetected asbestos, contaminated soils, radon, lead, PCBs or other hazardous and/or contaminated material, the Design Consultant shall report its findings immediately to the Authority. During any remedial action undertaken by the Authority or any other entity, the Design Consultant may be required to cease performing Services related to the Project, if so directed by the Authority. Such work stoppage shall be deemed a suspension governed by Section 13.0 of this Agreement. The Design Consultant will resume working at the direction of the Authority

and the terms and conditions of this Agreement shall remain in full force and effect. The Design Consultant and its sub-consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project Site.

- 2.18 Electronic Format and Number of Copies for Deliverables. Unless otherwise specified, all Deliverables of each Phase shall be submitted to the Authority in two electronic formats: one electronic copy in native format acceptable to the Authority; and one electronic copy in pdf format. Unless otherwise specified, the Design Consultant shall provide at least two hard copies of all Deliverables to the Authority.
- 2.19 Revisions to the Deliverables. Notwithstanding anything else contained in this Agreement, the Design Consultant recognizes that a reasonable number and variety of revisions to the Deliverables will occur prior to the issuance of the Contract for Construction, and the Design Consultant acknowledges that its bid provides and allows for a reasonable number of revisions to the Deliverables as part of the Services required by and within the terms and conditions of this Agreement.
- 2.20 Compliance with Materials and Systems Manual. The Design Consultant shall be guided by the provisions of the Materials and Systems Manual, unless otherwise specified in a Task Order assigned or awarded pursuant to this Agreement, or pursuant to written direction from the Authority.
- 2.21 Government Approvals. The Design Consultant must provide documentation required to obtain approvals from all governmental Authorities having Jurisdiction to approve a Project and must obtain such reviews, approvals and consents from governmental authorities, such as DOE and others, as necessary for completion of each phase of a Project.
- 2.22 Radon Mitigation. When applicable to the nature of the Project or the scope of services, the Design Consultant shall incorporate into the design radon mitigation techniques consistent with the Radon Hazard Subcode of the New Jersey Uniform Construction Code, N.J.A.C. 5:23-10 et seq. This requirement shall apply to all Projects, regardless of whether the project is located in a Tier 1 municipality, as defined in N.J.A.C. 5:23-10 (Appendix 10-A). The Design Consultant shall ensure that the Construction Documents comply with, and require the Contractor to comply with the Radon Hazard Subcode of the New Jersey Uniform Construction Code.

- 2.23 Utility Rebate “Smart Start” Program. The Design Consultant shall be familiar with any and all applicable utility rebate programs, including but not limited to, the Smart Start Program. The Design Consultant shall apply, on behalf of the Authority, for all applicable incentives, rebates, reimbursements and grants associated with such programs. The scope of the Design Consultant’s associated responsibilities will be determined at the conclusion of the Predesign Phase.
- 2.24 DCA School Construction Best Practices Standards. The Design Consultant shall incorporate applicable DCA Best Practices Standards for Schools Under Construction or Being Planned for Construction (" School Construction Best Practices Standards") into the Deliverables.
- 2.25 Commissioning Requirements. Building Systems Commissioning, in accordance with ASHRAE Guideline 0-2005, is required to the extent that the Project Scope for any Task Order under this Agreement includes equipment, systems or assemblies which are identified in Task Order documentation as subject to Systems Commissioning. If commissioning is required, the Design Consultant shall demonstrate that they have the appropriate in-house resources to undertake such Commissioning services, or, at the Authority’s option, the Design Consultant shall engage a firm or entity to serve as Commissioning Authority to perform these services.
- 2.26 LEED™. The Design Consultant is not required to incorporate LEED criteria into any Project assigned under this Agreement. The Design Consultant is not required to prepare LEED checklists for any Project assigned under this Agreement.
- 2.27 Meetings. During the Term of this Agreement and as determined by the Authority, the Design Consultant shall be obligated to participate in Progress meetings with the Authority and/or the CM on a regular basis as part of its Basic Services. At a minimum, the Design Consultant shall participate in one (1) Progress Meeting with the Authority every two weeks during the Schematic Design Phase and the Construction Documents Phase. During all other phases of a Project, the Design Consultant shall participate in meetings with the Authority and/or the Contractor weekly. The meetings will be held so that the Authority may ascertain progress and/or introduce input regarding costs, constructability, Value Management and Value Engineering, and other such matters. The Progress Meetings described in this Section may be at the Site and are in addition to any meetings that the Design Consultant is required to attend pursuant to other sections of this Agreement. The Design Consultant shall take minutes of such Progress Meetings and shall circulate those minutes to all participants within five (5) days of each such meeting. The Design

Consultant's transmittal shall notify all participants that attendees of a meeting must advise Design Consultant, in writing and within three (3) Days of receipt, of any perceived error or omission in the minutes being transmitted by Design Consultant.

2.27.1 In addition to the above Progress meetings, the Design Consultant's Basic Services shall also include one additional meeting or site visit and report, each month for the duration of the Project.

2.28 Allowances. If required by the Task Order, the Contract amount shall include a designated amount or amounts set aside for certain specified Allowance Services.

2.28.1 Such Allowance Services do not represent a change in the Design Consultant's Scope of Work, or constitute Additional Services. Allowance Services shall be invoiced against the designated Allowance Amounts described in the Task Order.

2.28.2 Funds allocated as Allowance Amounts are to be utilized by the Design Consultant only as directed and approved by the Authority. The Design Consultant shall obtain the NJSDA's written approval on the appropriately executed Allowance Authorization form before performing any Services, or providing any Deliverables, to be invoiced against an Allowance amount. Any services performed or undertaken by the Design Consultant to be compensated as an Allowance item shall be performed at the Design Consultant's own financial risk, unless the Design Consultant has received specific written authorization from the Authority to perform the Allowance services, and to invoice against dedicated Allowance funds.

2.28.3 For each request to utilize an Allowance, the Design Consultant shall submit to the Authority detailed backup documentation describing the proposed Allowance Services and an itemization and/or justification of the proposed costs to perform the Allowance Services. The Design Consultant may include in such costs a reasonable amount of time for the Design Consultant's oversight and management of Allowance Services provided by its subconsultants, but such oversight and management costs shall not exceed 10% of the value of the Allowance Services provided by subconsultants.

2.28.4 The Authority may request as part of the justification for the proposed costs of Allowance Services that the Design Consultant

prepare bid documents and solicit at least three (3) competitive proposals for the Allowance Services based on the defined scope of the services sought. If competitive proposals are requested by the Authority, the Design Consultant may include the time related to such solicitation as part of the Allowance Services.

2.28.5 In its written authorization to perform the Allowance services, the Authority may, in its sole discretion, elect to have the Allowance services performed and invoiced on a lump sum, monitored time and materials, or other basis for compensation.

2.28.6 Upon the Design Consultant's receipt of written authorization to perform the Allowance Services, approved and executed by the Authority, the Design Consultant shall proceed to perform or provide the described Allowance Services. The Design Consultant shall be responsible for the oversight of the Allowance Services in the same manner as specified by the Agreement for Basic Services.

2.28.7 If, upon completion of the Project, or upon completion of the Design Consultant's Basic Services, or at such other time as may be appropriate, an unused Allowance fund balance remains in an Allowance category, the Design Consultant shall credit the Authority in the amount of any remaining balance in such Allowance category.

2.28.8 If the amount or cost of Allowance Services exceeds the Allowance amount for such category of Allowance Services, then the Authority may adjust the Allowance Amount and/or the Compensation in accordance with the Operating Authority, to increase the funds available to perform the Allowance Services.

2.29 Legal Costs. The Design Consultant shall be responsible for all legal costs that must be incurred for it to properly perform the requirements of this Agreement, on-time and on-budget, including, but not limited to, legal costs necessitated to obtain all its own governmental approvals (City, State and Federal) and all its own zoning approvals, and legal costs that must be incurred to defend, indemnify and hold the Authority harmless from and against any claims, causes of actions, lawsuits, or actions which are brought against the Authority or the Design Consultant by any third party as a result of any act, failure to act, error or omission by the Design Consultant or its Subconsultants in connection with this Agreement according to the indemnity provisions herein.

- 2.30 Assistance in Claims and Legal Proceedings. During the duration of the Project, the Design Consultant shall provide any services which may be required to review and evaluate claims relating to the execution or progress of construction, or the interpretation of the Construction Documents submitted in connection with the work on the Project, so long as the Design Consultant is qualified to provide such interpretation and its relates to aspects of the Project for which the Design Consultant is responsible. Such services shall be rendered by the Design Consultant, on a timely basis, without additional fee or compensation, unless they require participation or involvement in litigation or an alternative dispute resolution process to which the Design Consultant is not a party. The Design Consultant shall provide any services that may be required to review and evaluate claims (whether submitted pre-litigation or during litigation) relating to the provision of Services, without additional fee or compensation, unless they require participation or involvement in litigation or an alternative dispute resolution process to which the Design Consultant is not a party. If the services required result from participation or involvement in litigation or an alternative dispute resolution process to which the Design Consultant is not a party, such services shall be deemed “Additional Services” and shall be compensated for as set forth in Sections 4.0, 7.2 and 7.3, so long as such litigation or alternative dispute resolution process is not the result of an error, omission, willful misconduct, negligence or other wrongful act of the Design Consultant.
- 2.31 Political Contributions Disclosure Form. Pursuant to law, the Design Consultant shall, on a continuing basis, disclose and report to the Authority any “contributions,” as that term is defined in P.L. 2005, c. 51, made during the Term of this Agreement by the Design Consultant or any “Business Entity,” as that term is defined in P.L. 2005, c. 51, associated with the Design Consultant, on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made.
- 2.32 Political Contributions ELEC Filing. The Design Consultant shall comply with its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (“ELEC”), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3), in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Design Consultant’s responsibility to determine if the Award of this Agreement triggers a responsibility to make such a filing.
- 2.33 All Services to be Performed in United States. The Design Consultant shall have a continuing duty to comply with Executive Order No. 129 (2004) (“EO 129”), and with P.L. 2005, c. 92, the Design Consultant shall

have a continuing duty to comply with the provisions of EO 129 and P.L. 2005, c. 92, as applicable. By executing this Agreement, the Design Consultant agrees that all Services performed by the Design Consultant and/or its Subconsultants pursuant to this Agreement shall be performed within the United States. If, during the Term, the Design Consultant or a subcontracted firm proceeds to shift the performance of the Services outside of the United States, the Design Consultant shall be deemed in breach of the Agreement and shall be subject to termination for cause, unless the Authority shall determine in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the Authority or the State.

- 2.34 Separate Accounting for Multiple Facilities. The Task Order Project(s) assigned under this Agreement may specify a scope of services that addresses conditions at more than one school facility. In the event that multiple locations or facilities are contemplated in the Project(s) assigned under this Agreement, the Design Consultant shall prepare and maintain separate document submissions for each school facility included in the Project Scope, and shall maintain a separate accounting for all costs associated with the Work at each school facility
- 2.35 Design to Facilitate “Buy American” Compliance. The Design Consultant shall design the Project to allow compliance with N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1 et seq., which prohibit the use by the Contractor or any Subcontractor of materials or farm products produced and manufactured outside of the United States on any public work. The Authority interprets this requirement consistent with analogous federal guidance, which provides that goods may be considered “produced or manufactured in the United States,” without regard to the origin of components or subcomponents used in such manufactured goods, as long as the manufacturing (which includes assembly) occurs in the United States. The Design Consultant’s design shall not specify, recommend or require the use of any materials or equipment produced or manufactured outside of the United States, unless domestic materials or equipment of comparable kind or class are not commercially available, reasonably priced, or of sufficient quality. Any request for deviation from the requirement to specify domestic products must be submitted to the Authority for review, and the Authority may reject any deviation from the requirement to specify domestic products.

3.0 SCOPE OF THE DESIGN CONSULTANT’S BASIC SERVICES

The Design Consultant’s Basic Services for a particular Task Order shall be as identified in Appendix A for that Task Order. Such Basic Services may include the

Services identified in Appendices B and C or other similar services as may be further delineated or modified by Appendix A for that Task Order. Delivery of the Services shall be in accordance with the requirements of the Design Manual and will be performed in distinct phases as identified in Appendices B and C and as further delineated or modified by Appendix A for that Task Order.

4.0 DESIGN CONSULTANT'S ADDITIONAL SERVICES

The Design Consultant shall provide the following Additional Services identified in this Section 4.0 upon the request and in the sole discretion of the Authority. The following list of Additional Services is not exclusive and the Authority is not obligated to require these Additional Services. The Additional Services described in this Section are not included in the Basic Services. All of the terms of this Agreement shall apply to any Additional Services provided by the Design Consultant.

- 4.1 Advance Authorization Required. The Additional Services described in this Section 4.0 shall only be provided if authorized in advance and in writing by the Authority's Project Manager.
- 4.2 Payment for Additional Services. The Additional Services described in this Section will be paid by the Authority as indicated in Sections 7.2 and 7.3 of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Authority shall not be responsible to pay for and the Design Consultant shall not be entitled to receive, Compensation for any Additional Services to the extent that such Services are required due to the Design Consultant's failure to perform in accordance with the terms of this Agreement.
- 4.3 Additional Services. If authorized in writing by the Authority, the Design Consultant shall furnish, or obtain from others, Additional Services that may include activities or services of the kinds listed below. Note, however, that if services of the type or kind listed below are identified by the Authority as "Other Basic Services" included in the Design Consultant's Basic Services, such services shall not constitute Additional Services, and shall not warrant additional compensation.
 - 4.3.1 Making changes in the Deliverables when such revisions are:
 - 4.3.1.1 inconsistent with acceptances, approvals or instructions previously provided to the Design Consultant by the Authority, including revisions made necessary by adjustments in the Project Budget;

- 4.3.1.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such Deliverables unless such enactment or revision was pending and the Design Consultant failed to bring it to the Authority's attention; or
- 4.3.1.3 due to the failure of the Authority to render decisions or due to the failure of Authority-retained Professional Services Consultants to supply information in a timely manner;
- 4.3.2 Providing services in connection with an arbitration proceeding or lawsuit except where the Design Consultant is a party or a fact witness thereto or to the extent that the adequacy of the Design Consultant Services is at issue;
- 4.3.3 Providing financial feasibility or other financial studies over and above any feasibility studies or analysis already required or specified in the Basic Services;
- 4.3.4 Providing detailed quantity surveys or inventories of material, equipment and labor;
- 4.3.5 Providing services after Final Completion of a Project, except for the Services required in the Project Close-Out and Post Occupancy Phases of the Project and to the extent that such services are required as a result of a defect or deficiency in any of the Design Consultant's Services previously rendered;
- 4.3.6 Undertaking investigations and studies in addition to those specified in the Basic Services;
- 4.3.7 Performing services during out-of-town travel required of the Design Consultant other than for visits to the Site or the Authority's office;
- 4.3.8 Assisting the Authority in connection with proposal protests, re-bidding work or renegotiating contracts for design, construction, equipment or services, except for rebidding work required pursuant to Section 2.15 of this Agreement; or
- 4.3.9 Performing services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment, or energy shortages.

5.0 AMENDMENTS TO THIS AGREEMENT AND THE SCOPE OF SERVICES

- 5.1 Amendments. The Authority reserves the right to make such alterations, deviations, additions to, or omissions from the Basic Services defined in a Task Order as it deems necessary for the satisfactory completion of a Project. Such increases, decreases, alterations or omissions shall not invalidate the Agreement or release the Design Consultant from its obligations thereunder. The duties, responsibilities, authority and limitations of authority of the Design Consultant as set forth in this Agreement will not be changed, modified, or extended without a separate Task Order or a written Amendment executed by the Design Consultant and the Authority, or a Design Change Directive issued by the Authority, as described in this Section 5.
- 5.2 Services performed without an Amendment. Any Services performed by the Design Consultant that differ from, or are in addition to, the Basic Services set forth in this Agreement or a Task Order assigned or awarded under this Agreement shall be performed at the Design Consultant's own financial risk, unless such Services have been specified in a separate Task Order or Amendment executed by the Design Consultant and the Authority, or in a Design Change Directive issued by the Authority.
- 5.3 Changes Pursuant to Design Change Directive. The Authority, without invalidating this Agreement, may direct changes in the Design Consultant's Basic Services required under a specific Task Order, by issuing a Design Change Directive. In the event that the Authority directs such a change, the Design Consultant shall immediately commence performance of the Services dictated by the Design Change Directive, and shall notify the Authority, within ten (10) days, as to whether the change in Services increases or decreases the Design Consultant's Compensation or the Term of its engagement under the Task Order and this Agreement, or both. If so, the Design Consultant's notification shall provide (1) a detailed cost breakdown of, and justification for, the increase or decrease to the Design Consultant's Compensation resulting from the change; and (2) a detailed explanation of how the change impacts the Term of this Agreement.
- 5.4 Changes Pursuant to Proposed Amendment. If the scope of the Design Consultant's Basic Services or the Term of this Agreement is changed through an Amendment, the Design Consultant's Compensation shall be adjusted equitably. An Amendment may be proposed by the Authority or the Design Consultant. On its own initiative, or in response to a request

from the Authority to modify the scope of the Services, the Design Consultant shall prepare 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. This written proposal shall be provided by the Design Consultant to the Authority within thirty (30) Days of the Authority's request for the change in the Basic Services, or within thirty (30) days of the occurrence of the event that initiated the Design Consultant's request for a change in the Services. Any changes in the scope of the Services as described in the proposal shall not be effected without a written Amendment, executed by both the Authority and the Design Consultant, which Amendment shall also detail any change in the Design Consultant's compensation or the Term of this Agreement. Any change in the Compensation to be paid the Design Consultant, shall be determined on the basis of the Design Consultant's actual costs.

- 5.5 Disputes Regarding Compensation. In the event the Authority and the Design Consultant cannot agree on the adjustment to the Design Consultant's Compensation or Schedule as a result of a change in the Services, or disagree as to whether certain Services constitute Additional Services, the Design Consultant shall nevertheless proceed to perform the services required by the Amendment upon the Authority's issuance of a Design Change Directive or other written notice from the Authority to proceed with such disputed services. The Design Consultant shall maintain separate records of all costs and time required to perform the services required by the Amendment and upon agreement between the Parties, and completion of the services at issue, the Authority shall pay the Design Consultant for such services as Additional Services. The Design Consultant must provide the Authority with weekly cost data, and the Authority will advise the Design Consultant whether to continue to perform the services required by the Amendment. Should the services at issue cause delay to the Design Consultant over which the Design Consultant has no control, the Schedule shall be equitably adjusted upon agreement between the Design Consultant and the Authority. The Design Consultant will only be compensated based on the actual hours worked during the delay period.

6.0 THE AUTHORITY'S RESPONSIBILITIES

In addition to other responsibilities of the Authority as set forth in this Agreement, the Authority shall:

- 6.1 Provide the Design Consultant with the Authority's Project Requirements when assigning or awarding a Task Order under this Agreement, including

design objectives and constraints, space requirements, performance requirements, capabilities, security needs and budgetary limitations. The Authority shall have the right to make necessary changes to the Authority's Project Requirements after completion of each phase of a Task Order Project under this Agreement.

- 6.2 Furnish copies of design and construction standards which the Authority will require to be included in the RFP (except public laws, codes and/or ordinances applicable to a Project).
- 6.3 Furnish copies of the Authority's standard forms, conditions and related Documents for use by the Design Consultant or inclusion in the RFP, when applicable.
- 6.4 Furnish any other available information pertinent to the Project including any reports and data relative to previous design efforts, or investigations at or adjacent to the Site.
- 6.5 Establish the Initial Construction Cost Estimate. The Authority shall review the preliminary CCE, as initially prepared by the Design Consultant and each updated CCE prepared by the Design Consultant after each phase of a Task Order Project under this Agreement (or as otherwise specified herein), and shall direct the Design Consultant to make any necessary adjustments to the CCE, or shall otherwise approve the updated CCE.
- 6.6 Designate in writing a Project Manager authorized to act on the Authority's behalf with respect to the Project. This Project Manager shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner. The Authority Project Manager shall have that authority specified in the Levels of Operating Authority Policy which document can be found on the Authority's website:

<https://www.njsda.gov/njsda/RP/PoliciesAndRegulations/OperatingAuthority/OperativeAuthNarrative.pdf>

- 6.7 Unless the following information is the responsibility of the Design Consultant to provide or secure pursuant to other sections of this Agreement, the Authority shall, upon the Design Consultant's request, furnish or otherwise make available such additional Project-related information and data as is reasonably required to enable the Design Consultant to complete its Basic and Additional Services for a Task Order

under this Agreement. Such additional information or data generally includes the following:

- 6.7.1 property, boundary, easement, right-of-way, and engineering surveys or data;
 - 6.7.2 deeds and other land use restrictions;
 - 6.7.3 data relating to subsurface conditions at the Site and drawings relating to existing surface or subsurface structures at the Site;
 - 6.7.4 environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project and the Site; and
 - 6.7.5 data related to a Project but not otherwise identified in this Agreement.
- 6.8 Provide prompt written notice to the Design Consultant whenever the Authority observes or otherwise becomes aware of any development that affects the scope of Services or time of performance, or any defect in the Design Consultant's Services or in the Contractor's Construction Work.
 - 6.9 Examine all Deliverables, studies, reports, drawings, Specifications, proposals and other documents presented by the Design Consultant and render timely decisions, as requested by the Design Consultant.
 - 6.10 Attend Project-related meetings and participate in inspections, as necessary.
 - 6.11 In the event that the Authority retains Professional Services Consultants, including, but not limited to a CM, the Authority shall provide those Professional Services Consultant agreement(s) to the Design Consultant upon request.

7.0 COMPENSATION

- 7.1 Basic Services. The Design Consultant's Compensation for Basic Services shall be based on hourly rates as set forth in Appendix D to the Agreement, and duly acknowledged by the Design Consultant. Such rates shall be valid for the duration of the engagement. The Design Consultant's Compensation for Basic Services may be based on 1) hourly rates for services performed pursuant to a specific Task Order; 2) a lump sum based on the hourly rates specified in Appendix D; or 3) a combination of a

proportion of an agreed lump-sum fee for certain specific activities, with other specific activities compensated based on an hourly basis.

- 7.2 Additional Services Performed by Design Consultant. The Authority shall pay the Design Consultant for Additional Services performed by the Design Consultant's staff in an amount equal to the cumulative hours of Additional Services performed by each class of the Design Consultant's employees multiplied by that class of employees' Hourly Rate for each applicable billing period. The Design Consultant's Hourly Rate for each class of employees is set forth in Appendix D. At the Authority's own option, it may also pay the Design Consultant a negotiated lump sum price for Additional Service.
- 7.3 Additional Services Performed by Subconsultant. In the event that the Design Consultant must engage Subconsultants in order to provide Additional Services, such Additional Services performed by Subconsultants shall be invoiced to the Authority and compensated at actual cost to the Design Consultant, with no markup. Any oversight or coordination efforts by the Design Consultant with respect to such Subconsultant Additional Services shall be invoiced and compensated at the Hourly Rates set forth in Appendix D, but such management, oversight or coordination efforts shall not exceed ten percent (10%) of the value of the Subconsultant Additional Services.
- 7.4 Hourly Rates. Hourly Rates set forth in Appendix D to this Agreement include salaries and wages paid to personnel in each billing class, plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit. Such rates shall be valid for the duration of the engagement.
- 7.5 Progress Payments. The Design Consultant shall invoice the Authority as follows:
- 7.5.1 For all Basic Services to be compensated on a lump-sum basis, the Design Consultant shall submit monthly invoices to the Authority requesting payment in an amount equal to either: the proportion or percentage of the Basic Services completed during the billing period multiplied by the lump sum value for the Basic Services; or a proportion or percentage of the work completed during the billing period for a specific Phase, task or activity that the Parties have agreed shall be compensated on a lump sum basis, multiplied by the agreed-upon lump sum value for such defined Phase, task or activity.

- 7.5.2 For all Basic Services to be compensated on the basis of hourly rates, the Design Consultant shall submit monthly invoices to the Authority requesting payment in an amount equal to the cumulative hours of Basic Services performed by each class of the Design Consultant's employees multiplied by the Hourly Rate for each such employee class, as identified in Appendix D.
- 7.5.3 For Allowance Services and/or Additional Services that have been appropriately authorized by the Authority in advance of performance, the Design Consultant shall submit invoices to the Authority requesting payment in an amount equal to the cumulative hours of Additional Services performed by each class of the Design Consultant's employees multiplied by the Hourly Rate for each such employee class, as specified in Appendix D. If the Authority opts to compensate the Design Consultant for all or select Allowance Services and/or Additional Services on a lump-sum basis, the Design Consultant shall submit monthly invoices in the form and manner requested by the Authority.
- 7.5.4 The Design Consultant shall invoice for any Subconsultant charges, if any, incurred during the billing month as allowed under Sections 7.3 and 7.4 of this Agreement.

7.6 Invoices

- 7.6.1 On or about the twenty-fifth day of each month, the Design Consultant shall submit to the Construction Manager and the Authority a pencil copy of its proposed monthly Invoice, in a form acceptable to the Authority, requesting payment for those Design Consultant Services performed during the prior month, so that the Construction Manager and/or the Authority may request any revisions to the pencil copy before the Design Consultant submits its Invoice on the first day of the following month, as required pursuant to this Section 7.6.
- 7.6.2 On or about the first day of each month, the Design Consultant shall submit to the Authority an Invoice, in a form acceptable to the Authority, requesting payment for those Design Consultant's Services performed during the previous month. Such Invoice shall properly differentiate all Basic Services and Additional Services, if any, for which the Design Consultant seeks payment. Each Invoice shall include all data supporting the amounts requested for Basic Services, Additional Services, Allowance Services, and any other documentation reasonably requested by the Authority.

- 7.6.3 Invoices submitted to the Authority must identify the Authority's contract number and name of the Project.
- 7.6.4 Invoices submitted to the Authority shall be processed and paid only after the Authority reviews and determines that the Services for which payment is sought have been completed at the times and in the manner specified in this Agreement. Invoices will not be paid by the Authority if the Authority reasonably determines that the Services for which payment is sought are incomplete or unsatisfactory.
- 7.6.5 Within thirty (30) Days after receipt of the Design Consultant's properly supported Invoice, the Authority, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32 and 2A:30A-2, will make payment of the approved amount of such Invoice, unless within twenty (20) Days of receipt the Authority issues a notice in accordance with the Prompt Payment Act indicating that funds will be withheld, the amount of the funds to be withheld and the reason for such withholding. The twenty (20) Day period for providing notice to the Design Consultant that the Authority will withhold funds shall be extended if authority for payment by the Authority's Board of Directors is required. The thirty (30) Day payment requirement shall be extended if the Design Consultant fails to provide complete and sufficient documentation in support of the amounts claimed.
- 7.6.6 Each Invoice signed by the Design Consultant and submitted to the Authority shall include a representation by the Design Consultant that all payments due its Subconsultants have been made from prior paid Invoices and that all relevant laws and regulations have been complied with.
- 7.6.7 If the Design Consultant submits any false or fraudulent Invoice to the Authority for payment, the Contractor shall be held liable and subject to all penalties and damages under New Jersey's False Claims Act, N.J.S.A. 2A:32C-1, et seq.
- 7.6.8 In the event of a dispute between the Authority and the Design Consultant as to whether an amount is owed for certain 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.

The Design Consultant shall continue to perform all of its obligations under this Agreement notwithstanding such dispute.

7.6.9 In the event the Design Consultant 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 the Design Consultant, the Authority may, but is not obligated to, make payments directly to each Subconsultant or by two-party checks. Neither the Authority's discretion in the preceding sentence nor the Authority's making of such payments to the Design Consultant'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 to Subconsultants will not constitute acceptance of the adequacy of any services performed by the Design Consultant or its Subconsultants.

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

7.7 Withholding of Payment

7.7.1 Prior to the withholding of payment under this Agreement, the Authority shall notify the Design Consultant of the failure for which payment is being withheld and grant the Design Consultant the opportunity to remedy same within ten (10) working days of said notice. The Authority may extend such remedial period, at its sole discretion, if there is evidence of the Design Consultant's good faith effort to remedy the failure.

7.7.2 If the Authority reasonably determines that any Services provided by the Design Consultant are incomplete or unsatisfactory, or if the Authority reasonably determines that Deliverables have not been delivered at the time and in the manner and form specified in this Agreement, the Authority will return the relevant invoice to the

Design Consultant, who shall resubmit the invoice once all of the Services have been completed or corrected or the Deliverables have been delivered.

7.7.3 The withholding of any sums pursuant to this Section shall not be construed as, or constitute in any manner, a waiver by the Authority of the Design Consultant's obligation to furnish the Services and Deliverables required under this Agreement. In the event that the Design Consultant fails to furnish Services and 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.

7.7.4 In addition to any other right to withhold payments under this Agreement, after timely notice thereof, the Authority shall have the right to withhold from payments due the Design Consultant such sums as necessary to protect the Authority against any loss or damage which may result by reason of: (a) any willful misconduct or wanton or negligent act, error or omission by the Design Consultant, 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) the Design Consultant's breach of any of its material obligations under this Agreement; (c) reasonable evidence that the Design Consultant 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 delay; and (d) the Design Consultant's inability or failure to complete any of the Services required by this Agreement.

8.0 GENERAL TERMS AND CONDITIONS

8.1 Responsibility for Contractor's Actions. The Design Consultant shall not be responsible for, nor have control of, Contractor's construction means, methods or procedures, and shall not be responsible for Contractor's failure to carry out its responsibilities under its Contract for Construction. The Design Consultant shall not be responsible for, nor have control over, the acts or omissions of the Contractor or its subcontractors, agents or employees.

8.2 Professional Certification of Materials. When professional certification of performance characteristics of materials, systems or equipment is required

by the Contract for Construction, the Design Consultant shall be entitled to rely upon such certifications of the Contractor to establish that the materials, systems, or equipment will meet performance criteria required by the Contract for Construction.

- 8.3 Services by the Design Consultant. Any Services by the Design Consultant pursuant to this Agreement shall be performed with such reasonable promptness as to cause no delay to the Construction Work, while allowing for sufficient time in the Design Consultant's professional judgment for adequate review.

9.0 FINAL PAYMENT AND FINAL RELEASE

9.1 Final Payment

9.1.1 Final Payment shall be made by the Authority to the Design Consultant only when:

- a) This Agreement has been fully performed by the Design Consultant;
- b) The Design Consultant has delivered all Deliverables required under this Agreement;
- c) The final Invoice and final accounting has been submitted by the Design Consultant and has been reviewed and approved by the Authority;
- d) The Design Consultant has produced to the Authority all records as described in Section 2.16;
- e) Final releases have been obtained from the Design Consultant, and its Subconsultants; and
- f) The Authority has accepted the Design Consultant's Services under this Agreement.

9.1.2 If all requirements for Final Payment have been fulfilled by the Design Consultant, the Authority shall make Final Payment in accordance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-2.

9.2 Final Release

- 9.2.1 The acceptance of Final Payment by the Design Consultant shall constitute a waiver of all claims by the Design Consultant except for those claims expressly reserved by the Design Consultant at the time of Final Payment and those claims arising after Final Payment due to an alleged breach by the Authority of any provision of the Agreement which survives after the Term.
- 9.2.2 The Compensation described in Section 7.1 and set forth in Appendix D shall compensate the Design Consultant in full for all Services rendered pursuant to the Agreement, except as otherwise provided by this Agreement.
- 9.2.3 Acceptance of, or payment for, any of the Services performed by the Design Consultant shall not constitute a release or waiver of any claim the Authority has or may have against the Design Consultant for errors, omissions deficiencies, breach of contract, or negligence.
- 9.2.4 All payments for Services under this Agreement will be made only to the Design Consultant, except as explicitly allowed in this Agreement. The Design Consultant shall assume sole and full responsibility for payments due to any of its Subconsultants.
- 9.2.5 Unless otherwise set forth in writing by the Authority, prices quoted shall be firm and not subject to increase during the Term.
- 9.2.6 The Authority assumes no responsibility and no liability for costs incurred by the Design Consultant prior to the execution of this Agreement.

10.0 **TERM AND SCHEDULE**

- 10.1 Term. The Term of this Agreement shall be from the Effective Date and shall extend until all obligations of the Design Consultant to deliver Services pursuant to this Agreement have been fully performed to the satisfaction of the Authority, unless sooner terminated as set forth in this Agreement.
- 10.2 Schedule. The Design Consultant's Services shall be performed in accordance with the Schedule and as specified elsewhere in this Agreement. Time is of the essence with respect to the performance of the Design Consultant's Services. The Design Consultant's failure to comply with the Schedule shall be a material breach of this Agreement to the

extent that the failure to comply reasonably is within the Design Consultant's control. The Design Consultant's obligation to provide Services pursuant to a Task Order Project assigned under this Agreement shall not terminate until the Project is complete, regardless of any changes to the Schedule.

11.0 EXTENSIONS OF TIME AND COMPENSATION FOR DELAY

- 11.1 The Authority will consider and, in its discretion, grant requests for extensions of the Schedule due to a delay the cause of which is beyond the control of the Design Consultant. No request for extension will be considered by the Authority unless the Design Consultant delivers to the Authority a written notice of delay within ten (10) Days of the event or occurrence causing a delay or expected to cause a delay. The notice shall indicate the duration of any requested time extension, the nature of the delay, the alleged cause of the delay for which an extension is sought, and the nature of any Additional Services to be performed as a result of the delay, and the identification of the staff or subconsultants who shall perform such Additional Services.
- 11.2 The Design Consultant may be compensated for delay which is beyond the control of the Design Consultant, but only for salary escalation costs actually incurred by the Design Consultant as a direct result of such delay, or for Additional Services made necessary by the delay. Any such Compensation will be paid in accordance with the Design Consultant's Hourly Rates as set forth in Appendix D. No Compensation will be provided under this Section, if the Design Consultant fails to submit to the Authority a written notice of delay in accordance with the Paragraph above, and a request for additional compensation as a result of the delay, which shall include the amount of costs actually incurred by the Design Consultant during such delay, the amount of Compensation being requested, and the alleged cause of such delay.
- 11.3 The Design Consultant's failure to comply with the written notice requirements set forth in Sections 11.1 and 11.2 waives any right to an extension of time or Compensation for delay from the Authority.
- 11.4 To the extent that such delay requires the provision of Additional Services, any compensation for such Additional Services shall be in accordance with Sections 7.2 and 7.3 above.
- 11.5 Regardless of whether the Design Consultant makes a request for an extension of time or Compensation for delay pursuant to this Section 11.0,

the Design Consultant shall notify the Authority of any event of which it is aware that may cause any delay in the completion of a Project.

- 11.6 Other than as provided in this Section 11.0, the Authority shall not be liable to the Design Consultant for any damages or additional Compensation on account of any delay whatsoever, whether caused by the Authority or any other party except where the Authority has requested for the Design Consultant to provide Additional Services.

12.0 GENERAL COVENANTS

12.1 Insurance

- 12.1.1 Prior to undertaking any Services under this Agreement, the Design Consultant, shall purchase, maintain and provide to the Authority evidence of a policy or policies of insurance covering the performance of the Services required under this Agreement as enumerated below, and shall cause its subconsultants to do the same. The cost of all such insurance shall be included in the Design Consultant's compensation under this Agreement.
- 12.1.2 The Design Consultant shall maintain all insurance from insurers that are authorized to transact the business of insurance in the State of New Jersey and that are "A- VIII" (or better) rated, as recently determined by A.M. Best Company.
- 12.1.3 It is recognized that in some instances that insurance may be acceptable which is underwritten by an insurer that is not reported in the Best Guide, or the coverage is extended under a self-insurance program. This insurance, or self-insurance, must be in conformity with the rules and regulations of the Commissioner of Insurance of the State of New Jersey. Any insurance or self-insurance is subject to the review and acceptance by the Authority's Office of Chief Counsel or the Director of Risk Management. Furthermore, written proof of acceptability by the Office of the Commissioner of Insurance may be necessary.
- 12.1.4 In each policy, the Design Consultant shall have incorporated a provision, in accordance with the laws of New Jersey, requiring written notice to the Authority at least thirty (30) days prior to cancellation or non-renewal of any insurance required under this

Section. The Design Consultant warrants that if the insurer, or coverage, is not subject to the provisions requiring thirty (30) days prior notification of cancellation or non-renewal, it will, in any event, provide notice to the Authority immediately upon receipt of any notice of cancellation or non-renewal of any insurance coverage required under this Section.

12.1.5 Design Consultant warrants that its insurers are accurately informed regarding the business activities of the Design Consultant and that those insurers intend to cover the exposures arising from those business activities.

12.1.6 Design Consultant shall require subconsultants to maintain the same types of insurance as required of the Design Consultant

12.1.7 The types and minimum amounts of insurance required are as follows:

12.1.7.1 Professional Liability Insurance (Errors & Omissions), with all coverage retroactive to the date of commencement of Services on the Project sufficient to protect the Design Consultant from any liability arising from the Services and professional obligations performed pursuant to this Agreement, in an amount not less than \$1,000,000 per claim and \$1,000,000 in the annual aggregate.

Design Consultant warrants, and contractually obligate its subconsultants to warrant, that they will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) days of the policy holder's receipt of such reduction.

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

12.1.7.2 Commercial General Liability Insurance, and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$5,000,000 combined single limit each occurrence, \$5,000,000 aggregate limit for

products/completed operations and \$5,000,000 general aggregate limit. The policy shall include liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with the Services performed under this Agreement.

The EDA, the Authority, the State of New Jersey, the Project School District, the DOE and their respective directors, officers, members, employees and agents shall be included as insureds under the CGL, using ISO additional insured endorsement CG2010 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Design Consultant may also be required to name other parties as additional insureds at the request of our Authority.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

12.1.7.3 Workers' Compensation Insurance and Employers' Liability prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Design Consultant while engaged in the performance of the Services under this Agreement. The Workers' Compensation coverage shall be statutory and the Employer's Liability (including Umbrella coverage) shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease and \$500,000 policy limit for bodily injury by disease.

12.1.7.4 Business Automobile Liability Insurance, when any motor vehicle is used in connection with the Services required under this Agreement, insurance covering liability arising out of the operation or use of any auto (including owned, hired and non-owned autos) with a limit of not less than \$1,000,000 each accident. In the event the Design Consultant does not own vehicles, but utilizes non-owned and hired vehicles, evidence of such

insurance is acceptable with a signed statement from the Design Consultant stating that only non-owned and hired vehicles are used in connection with this Agreement.

- 12.1.7.5 Pollution Liability. In the event the Design Consultant's efforts involve a Pollution Liability exposure, the Design Consultant shall carry Pollution Liability insurance with minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for all operations conducted. Where the Design Consultant is solely a consultant, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy. If the Design Consultant performs and also utilizes the efforts of subcontractors, insurance coverage must provide a Pollution Liability policy with a Contractor's endorsement, which extends coverage to its subcontractors.
- 12.1.8 Certificates of Insurance. Attached to this Agreement as an Appendix shall be valid insurance certificates, executed by a duly authorized representative of each insurer, in form and substance satisfactory to the Authority. The certificates shall evidence that the Design Consultant has obtained the acceptable insurance policies with the minimum limits required herein and shall be accompanied by copies of any and all amendatory riders or endorsements. An insurance certificate must be submitted to evidence each insurance renewal required by this Section.
- 12.1.9 Failure of the Authority to demand such certificates or other evidence of full compliance with the insurance requirements set forth herein or failure of the Authority to identify a deficiency in the insurance provided shall not be construed as a waiver of the Design Consultant's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this Agreement at the Authority's sole option.
- 12.1.10 The Design Consultant shall provide certified copies of all insurance policies within ten (10) Days of the Authority's written request for such policies.
- 12.1.11 Liability in Excess of Coverage. By executing this Agreement, the Design Consultant expressly agrees that any

insurance protection required herein or by the Design Consultant Documents shall in no way limit the Design Consultant's obligations under this Agreement or the Design Consultant Documents and shall not be construed to relieve the Design Consultant from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of this Agreement or the Design Consultant Documents or otherwise in law or equity. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect the Design Consultant, and such coverage and limits shall not be deemed as a limitation on the Design Consultant's liability under this Agreement.

12.1.12 Right to Remedy. If the Design Consultant fails to obtain and/or maintain the insurance as required in this Section, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at the Design Consultant's sole expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between the Design Consultant and the Authority; (iv) suspend performance by the Design Consultant under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section may be used, at the Authority's discretion, to renew or purchase the Design Consultant's insurance for the periods and amounts as set forth in this Agreement. In the event the Authority purchases said insurance the Authority may, at its discretion, reduce the Design Consultant's Compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees.

12.1.13 No Representation. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect Design Consultant and such coverage and limits shall not be deemed as a limitation on Design Consultant's liability under the indemnities granted to the Authority in this Agreement.

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

- 12.1.15 Disclaimer. The Design Consultant and each of its Sub-consultants 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.
- 12.1.16 Certificates of Insurance. Attached to this Agreement, as an Appendix, shall be valid insurance certificates, executed by a duly authorized representative of each insurer, in form and substance satisfactory to the Authority. The certificates shall evidence that the Design Consultant has obtained the acceptable insurance policies with the minimum limits required herein and shall be accompanied by copies of any and all amendatory riders. An insurance certificate must be submitted to evidence each insurance renewal required by this Section. Failure of the Authority to demand such certificates or other evidence of full compliance with the insurance requirements set forth herein or failure of the Authority to identify a deficiency in the insurance provided shall not be construed as a waiver of the Design Consultant's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this Agreement at the Authority's sole option.
- 12.1.17 Waiver of Subrogation. The Design Consultant waives all rights of subrogation and recovery against the Authority, the Contractor, the CM, any Professional Services Consultants, agents or employees of the Authority and Subconsultants of all tiers to the extent these damages are covered by the CGL, Business Automobile Liability or Commercial Umbrella Liability Insurance obtained by the Design Consultant. If the policies of insurance purchased by the Design Consultant as required above do not expressly allow the insured to waive rights of subrogation prior to loss, the Design Consultant shall cause them to be endorsed with a waiver of subrogation as required herein.
- 12.1.18 Deductible or Self-Insured Retention. Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be the sole responsibility of the Design Consultant. Those in excess of \$10,000 shall be disclosed to and approved by the Authority. The Design Consultant 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 THIS SECTION IS A MATERIAL BREACH OF CONTRACT.

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

12.1.20 Notice of Claim or Lawsuit. The Design Consultant shall advise the Authority in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon the Design Consultant’s Services, omission or breach, that it will abide fully by the indemnifications and insurance requirements of this Agreement, and that the applicable insurers have been advised to defend, indemnify, and hold harmless the Authority in accordance with the provisions of this Agreement. The Design Consultant shall not decline to provide the Authority with full protection and coverage under the indemnification and insurance provisions of this Agreement because some other contractor or consultant may, in whole or in part, be responsible for the occurrence, death, injury, damage, or loss to persons or property, or economic loss, damage, or expense, or because the Authority may be co-insured as an additional insured on some other contractor’s or consultant’s policy of insurance. The Design Consultant agrees that any violation of the indemnification or insurance provisions shall be deemed a material breach of the Agreement.

12.2 Ownership of Documents

12.2.1 The Authority and the Design Consultant acknowledge that during the course of, and as a result of, the performance of the Design Consultant’s Services, the Design Consultant or its Subconsultants will create written materials, plans, drawings, specifications, computer files, or other tangible manifestations of the Design Consultant’s efforts under this Agreement, including architectural work, as that term is defined in the Architectural Works Copyright Protection Act of 1990 (hereinafter individually or collectively referred to as “Work Product”). All Work Product furnished or prepared by the Design Consultant or its Subconsultants pursuant to a Task Order under this Agreement shall at all times be property

of the Authority, and may be used by the Authority to complete the Task Order Project, in the event that the Authority elects to terminate or cancel this Agreement pursuant to any provision hereof, or for any other purpose as set forth in Section 12.2.4 below. The Authority's ownership of the Work Product shall commence immediately upon the Effective Date of this Agreement, and shall commence regardless of payment by the Authority of any compensation to the Design Consultant and regardless of delivery of any such Work Product to the Authority.

- 12.2.2 The Design Consultant hereby assigns to the Authority sole ownership of any copyrights or other intellectual property rights created or existing under state or federal law in any and all Work Product prepared by the Design Consultant or its Subconsultants pursuant to this Agreement.
- 12.2.3 All Work Product (including the original, one (1) set of electronic copies in AutoCAD, native format, or other format acceptable to the Authority, one (1) set of electronic copies in .pdf format, and two (2) sets of hard copies thereof) shall be delivered to the Authority in accordance with the Deliverables requirements of this Agreement, or upon the termination or expiration of this Agreement, except that the Design Consultant may, subject to any confidentiality obligations under this Agreement, retain one or more record sets of the Work Product.
- 12.2.4 All Work Product may be referred to freely by the Authority for the purpose of for information and reference in connection with the School District's use and occupancy of the Project, for appending any addition to and integrating the same with the Project, performing any alterations or repairs of any portion of the Project, or designing or constructing other similar school facilities, buildings or projects whenever or wherever the Authority shall desire; provided, however, that the Design Consultant shall not be responsible for any use, misuse, alteration or adaptation of the Work Product beyond the scope of the Design Consultant's engagement under this Agreement.
- 12.2.5 In the event that the Authority terminates for cause a Task Order assigned under this Agreement, or terminates this Agreement in its entirety for cause, or in the event the Design Consultant fails to perform in accordance with this Agreement, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Design Consultant's performance of this Project by

whatever methods the Authority deems appropriate. Upon termination of the Design Consultant or the Design Consultant's failure to perform, the Authority may retain a substitute design professional to complete the Design Consultant's performance using the Work Product and any other Project-related documents or data to make changes, corrections or additions for the purpose of completing, using and maintaining the Project(s).

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

12.2.7 The Design Consultant shall be liable to, and hereby agrees to indemnify and hold harmless the EDA, the Authority, the State of New Jersey, the Project School District, the DOE and their respective directors, officers, members, employees and agents, from and against all claims made against any of them for infringement of any copyright or patent arising out of the Work Product prepared or furnished by the Design-Consultant in the performance of this Agreement.

12.3 Copyrights and Patents

12.3.1 If the Design Consultant employs any design, device, material, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patent holder. The Design Consultant 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.

12.3.2 The Design Consultant shall defend, indemnify and hold harmless the EDA, the Authority, the State of New Jersey, the Project School District, the DOE and their respective directors, officers, members, employees and agents 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.

12.4 Confidentiality

12.4.1 All data contained in documents supplied by the Authority, Project School District or any other party involved in a Project, and after the execution of this Agreement, any data gathered by the Design Consultant 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.

12.4.2 The Design Consultant 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 the Design Consultant shall provide immediate notice to the Authority of such order.

12.4.3 The Design Consultant 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 the Design Consultant, its employees, Subconsultants or assignees will be considered a material breach of this Agreement. The Design Consultant shall be liable for any and all damages arising from its breach of this confidentiality provision, including damages, costs and/or attorney's 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.

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

12.5 Contractual Relationship

12.5.1 Nothing in this Agreement shall be construed as creating a contractual relationship between any Subconsultants of the Design Consultant and the Authority.

- 12.5.2 The Design Consultant's status shall be that of an independent contractor, not an employee of the Authority. The Design Consultant agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof. The Design Consultant 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.
- 12.5.3 The Design Consultant shall include in all of its Subconsultants' contracts a requirement that the Subconsultant is bound by the terms and conditions of this Agreement.
- 12.5.4 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 the Design Consultant or the Authority. It is further intended that no individual, firm, Authority, or any combination thereof, which supplies materials, labor, services or equipment to the Design Consultant for the performance of the Services becomes thereby a third party beneficiary of this Agreement.
- 12.5.5 The Authority and the Design Consultant hereby bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement.

12.6 Assignment

- 12.6.1 The Design Consultant shall not assign or transfer its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority. Any assignment or transfer of the Design Consultant's rights under this Agreement without the prior, written consent of the Authority shall not relieve the Design Consultant of any duty, obligation or liability assumed by it under this Agreement.
- 12.6.2 In the event the Authority approves an assignment, the Design Consultant shall submit to the Authority: (i) corporate resolutions prepared by the Design Consultant 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.

12.6.3 Notwithstanding anything to the contrary, under no circumstance shall the Design Consultant 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.

12.6.4 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, the Design Consultant agrees to continue to perform all of its obligations as set forth in this Agreement. The Design Consultant shall make no claim against the Authority in the event of such assignment and shall execute such certificates, documents and instruments as may be reasonably requested by the Authority to effect such assignment.

12.7 Mergers, Acquisitions, and Dissolutions

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

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

12.7.3 In the event the Design Consultant seeks the Authority's approval of a proposed merger or acquisition, the Design Consultant shall submit to the Authority: (i) corporate resolutions prepared by the Design Consultant and the new entity ratifying this

Agreement; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) the names and addresses of all owners and potential owners that hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s) for the new entity; (v) acknowledgment and acceptance of all rights, duties and obligations of this Agreement without limitation by the new entity; and (vi) any other information which the Authority may require.

12.7.4 In the event the Design Consultant seeks the Authority's approval of a dissolution, the Design Consultant shall submit to the Authority: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the principal parties of a joint venture to dissolve the Authority, partnership or joint venture, respectively; (ii) any new or changed Federal Employer Identification Number(s); (ii) acknowledgment of the assumption of all rights, obligations and duties of this Agreement without limitation by the new parties; and (iv) any other information which the Authority may require.

12.8 Mandatory Compliance With Law

12.8.1 The Design Consultant must comply with all applicable Legal Requirements that apply to Design Consultant's performance of Services under this Agreement. To the extent variances from such Legal Requirements are required, the Design Consultant and the Authority shall cooperate to pursue such variances in the interests of a Project.

12.8.2 The Design Consultant shall be knowledgeable of the design standards, codes, rules, regulations, and zoning proffers applicable in the jurisdiction in which a Project is located and the Design Consultant agrees to comply with such Legal Requirements, including without limitation, (i) the Americans with Disabilities Act, (ii) the Building Design Services Act, N.J.S.A. 45:4B-1 et seq. (iii) insurance industry standards, surveys and other information provided by the Authority, and (iv) development covenants and conditions and easements applicable to the Site on which a Project is located, regardless of whether the Authority has furnished the Design Consultant with the foregoing information.

- 12.8.3 Each and every provision required by law to be inserted into this Agreement or into the Design Consultant Documents shall be deemed to have been inserted therein. If any such provision has been omitted or has not been correctly inserted, the Design Consultant Documents shall be amended, upon application of either Party, to provide for such insertion or correction.
- 12.8.4 If the Authority determines that the Design Consultant has violated or failed to comply with any Legal Requirements under this Agreement, after timely notice thereof, the Authority may withhold payments for such performance and take such action that it deems appropriate until the Design Consultant has complied with such Legal Requirements or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 12.8.5 The Design Consultant's compliance with applicable Legal Requirements is mandatory and cannot be waived by the Authority.
- 12.8.6 The Design Consultant shall ensure 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 Subconsultants.

12.9 Affirmative Action and Non-discrimination

- 12.9.1 General. The Design Consultant and its Subconsultants shall abide by the affirmative action program established by the Authority pursuant to Sections 6 and 36 of the legislation creating the NJSDA, P.L. 2007, c. 137 (N.J.S.A. 52:18A-240 and 18A:7G-26) , and any rules associated therewith, as may be amended from time to time, including, but not limited to, N.J.A.C. 17:27-1.1 to -12.5 and N.J.A.C. 19:39-1.1 to 4.1.
- 12.9.2 Documentation. The Design Consultant shall submit to the Authority, after notification of the award of this Agreement, but prior to execution, one of the following three (3) documents: (i) documentation (e.g., a Letter of Approval) sufficient to show that the Design Consultant is operating under an existing Federally-approved or sanctioned affirmative action program; (ii) a Certificate of Employee Information Report approval issued in accordance with N.J.A.C. 17:27-4; or (iii) an Employee

Information Report (Form AA-302) in accordance with N.J.A.C. 17:27-4.

- 12.9.3 The Design Consultant and its Subconsultants shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by that office from time to time in order to carry out the purposes of these regulations, and shall furnish to the Authority such reports and other documents, in the manner and form requested, as may be required to carry out the purposes of the Authority's regulations.
- 12.9.4 Required Language and Application to Design Consultant and Subconsultants. The Design Consultant shall abide by, and shall include language in all subcontracts with Subconsultants requiring that all Subconsultants abide by, the requirements of this Section 12.9, as well as the Mandatory Anti-Discrimination and Equal Opportunity Provisions contained in Appendix I to this Agreement.
- 12.9.5 Anti-Discrimination Obligations. Design Consultant shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1et seq., and all rules and regulations issued thereunder, including N.J.A.C. 17:27-1.1 et seq., as well as the Antidiscrimination provisions of N.J.S.A. 10:2-1, which are attached to this Agreement as part of Appendix I.

12.10 Anti-Collusion

- 12.10.1 The Design Consultant, by executing this Agreement, does hereby warrant and represent that this Agreement has not been solicited, secured or prepared, directly or indirectly, in a manner contrary to the laws of the State, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Services by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity, or consideration of any kind, direct or indirect, to any employee, officer, or board member of the Authority.
- 12.10.2 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.

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

12.12 Conflicts of Interest

12.12.1 The Design Consultant shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to: (i) an Authority officer or employee with which the Design Consultant transacts, or offers or proposes to transact, business; or (ii) any member of the immediate family (defined by N.J.S.A. 52:13D-13i) of any such Authority officer or employee; or (iii) any partnership, firm or Authority with which such Authority officer or employee is employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

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

12.12.3 The Design Consultant shall not directly or indirectly undertake any private business, commercial or entrepreneurial

relationship (whether or not pursuant to employment, contract or other agreement, express or implied) with, or sell any interest in the Design Consultant to, any Authority officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the Authority; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such Authority officer or employee is employed or associated, or in which such Authority officer or employee has an interest within the meaning of N.J.S.A. 52:13D-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.

12.12.4 The Design Consultant shall not influence, attempt to influence, or cause to be influenced any Authority officer or employee in such officer's or employee's official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.

12.12.5 The Design Consultant shall not cause or influence, or attempt to cause or influence, any Authority officer or employees to use or attempt to use such officer's or employee's official position to secure unwarranted privileges or advantages for the Design Consultant or any other person.

12.12.6 Under N.J.S.A. 52:34-19, it is a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the Authority. It is the policy of the Authority to treat the offer of any gift or gratuity by the Design Consultant, 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.

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

12.12.8 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.

12.13 Indemnification

12.13.1 To the fullest extent permitted by law, the Design Consultant shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority, CM 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:

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

12.13.3 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 the Design Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Design Consultant's request, subject to its direction, or on its behalf;

12.13.4 any default or breach of the Design Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Design Consultant's request, subject to its direction, or on its behalf;

12.13.4.1 violation of or non-compliance with Legal Requirements arising from the performance or non-performance of, or arising out of conditions created or caused to be created by the Design Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Design Consultant's request, subject to its direction, or on its behalf; and

12.13.4.2 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.

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

12.13.6 The Design Consultant agrees that any acceptances by the Authority of the Services performed, and/or reports, plans or specifications provided by the Design Consultant shall not operate to limit the obligations of the Design Consultant under this Agreement and that the Authority assumes no obligations to indemnify or hold harmless the Design Consultant, its agents, servants, employees, or Subconsultants against any claims that may arise out of its performance or nonperformance under this Agreement. The Design Consultant also agrees that the provisions of this indemnification clause shall in no way limit the Design Consultant's obligations under this Agreement, nor shall they be construed to relieve the Design Consultant 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.

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

13.0 SUSPENSION OF SERVICES

13.1 The Authority's Right to Suspend Services. 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 or any Task Order assigned or awarded hereunder, whenever, in the sole discretion of the Authority, it is necessary or expedient for the Authority to do so. The Authority shall by notice to the Design Consultant suspend performance of the Services, and upon receipt of such notice, unless otherwise directed in writing by the Authority, the Design Consultant shall immediately discontinue all Services, except as necessary to properly secure a Project.

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

- 13.2.1 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 the Design Consultant.
- 13.2.2 If the Authority determines that the Services on a Task Order assigned or awarded under this Agreement have been suspended for a period cumulatively totaling forty-five (45) Days or more, and if the Authority determines that the suspension has resulted from no fault of the Design Consultant, and if the Design Consultant makes a claim for compensation related to such suspension, the Parties shall amend this Agreement to provide a Compensation adjustment in an amount equal to the reasonable, direct, foreseeable and out-of-pocket cost actually incurred by the Design Consultant due solely to the suspension period exceeding forty-four (44) days, taking into account the Design Consultant's duty to mitigate such costs. No such Amendment will change any of the other terms of this Agreement.
- 13.2.3 When the Authority has determined that a suspension is the fault of the Design Consultant, the Authority may, at its sole option, suspend all payments to the Design Consultant. Payment may be reinstated by the Authority upon completion of the Services in accordance with the other provisions of this Agreement, provided that there shall be no upward adjustment in direct or indirect costs or in any other costs. Alternatively, the Authority may terminate this Agreement pursuant to Section 14.2 or carry out the Services as provide for in Section 14.3 below.

14.0 DEFAULT AND TERMINATION

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

- 14.1 Events of Default. The Design Consultant shall be in default under this Agreement and the Design Consultant Documents upon the occurrence of any one or more of the following events or conditions ("Events of Default"), following notice and opportunity to cure (if applicable), as specified in 14.1.2.

- a) The Design Consultant disregards or otherwise fails to comply with laws, ordinances, rules, regulations or orders of any public body having jurisdiction over the Project;
- b) The Design Consultant refuses or otherwise fails to properly staff the Project;
- c) The Design Consultant fails to make payments to Subconsultants for services in accordance with the respective agreements between the Design Consultant and the Subconsultants;
- d) The Design Consultant fails to maintain or produce any Design Consultant Deliverables or other records required by this Agreement to be so maintained or produced;
- e) The Design Consultant fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of this Agreement;
- f) The Design Consultant fails to obtain and properly maintain the level of insurance coverages outlined in this Agreement;
- g) The Design Consultant assigns or transfers its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority;
- h) The Design Consultant makes any misrepresentation or conceals any material fact;
- i) The Design Consultant commences or has commenced against it any action under the United States Bankruptcy Code or any State or Federal insolvency law, the commencement of which, in the Authority's judgment, may effectively impair the ability of the Design Consultant to perform its obligations under this Agreement;
- j) The Design Consultant materially fails to provide any Services required under this Agreement;
- k) The Design Consultant fails to obey a Design Directive or Design Change Directive;

- l) The Design Consultant violates or breaches this Agreement or any provision or material term hereof.

14.1.1 The Authority shall provide the Design Consultant with written notice of the Design Consultant's default ("Notice of Default"). For all such Events of Default except those contained in subsections 14.1.1 (h) (misrepresentation) and 14.1.1 (i) (bankruptcy, insolvency) (and any such default that by its nature cannot be cured), the Design Consultant may, within seven (7) Days of receipt of the Notice of Default, commence correction of such default, neglect or violation, with diligence and promptness, fully curing the same within the time prescribed by the Authority, if any, within the Notice of Default. If the Design Consultant's default is capable of cure, but by its nature, cannot be cured within seven (7) Days, such additional period of time shall be allowed as may reasonably be necessary to cure the default, provided that the Design Consultant commences such cure within such seven (7) Day period and thereafter diligently prosecutes such through completion. Failure of the Design Consultant to commence correction of its default, neglect or violation within seven (7) Days of receipt of the Notice of Default, or to cure the same within the time prescribed by the Authority, shall result in termination of this Agreement for cause.

14.2 Termination for Cause

14.2.1 If any default described in Section 14.1 above is not subject to cure or is not cured within the period specified in 14.1.2, the Authority may terminate this Agreement or a Task Order assigned or awarded hereunder, for cause. 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.

14.2.2 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 the Design Consultant by whatever methods the Authority may deem appropriate.

14.2.3 In the event this Agreement or a Task Order assigned or awarded hereunder is terminated for cause pursuant to this Section 14.2, the Authority reserves the right not to make any further payments to

the Design Consultant and may require the Design Consultant to repay all or a portion of the monies already paid. The Design Consultant, 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 design professional 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 a Project. If the payments then or thereafter due the Design Consultant are not sufficient to cover the Authority's cost to complete the Services itself or engage another design professional to complete the Services, the Design Consultant shall pay the difference to the Authority upon demand.

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

14.3 The Authority's Right to Complete the Services

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

14.3.2 Any action by the Authority under this Section shall be without prejudice to the Authority's rights under this Agreement and shall not operate to release the Design Consultant from any of its obligations under this Agreement.

14.4 Termination for Convenience of the Authority

14.4.1 Performance by the Design Consultant of its obligations under this Agreement or a Task Order assigned or awarded hereunder 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."

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

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

14.4.4 Upon a Termination for Convenience, the Design Consultant shall furnish to the Authority, free of charge, such completed drawings, plans, specifications, closeout reports, documents, and materials as may be reasonably required by the Authority.

15.0 CLAIMS

All Design Claims against the Authority shall be governed by the provisions of this Section 15.

15.1 Tort Claims Act and Contractual Liability Act. All Claims asserted by the Design Consultant against the Authority shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

15.2 Notice of Claim. The Design Consultant shall file notice of its Design Claim on a form provided by the Authority (Form 505 Notice of Claim), which form shall be completed in its entirety and signed by the Design Consultant. Incomplete forms will be rejected and have no effect. Submission of completed notice forms shall constitute compliance with the notice provisions of the New Jersey Contractual Liability Act if such notices are provided within the time limits established by N.J.S.A. 59:13-5. Design Consultant must file the necessary forms as required by this Section to comply with the New Jersey Contractual Liability Act and in order to begin the administrative process for the review of Design Claims.

- 15.3 False Claims Liability. Design Consultant shall be held liable and subject to all penalties and damages under the False Claims Act, N.J.S.A. 2A:32C-1 et seq., for any false or fraudulent Claim submitted to the Authority
- 15.4 Review of Design Claims. The administrative process for review of Design Claims is sequential in nature and composed of the following steps:

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

Completion of Step One of the Claims Review Procedure is a mandatory prerequisite to the initiation of Step Two of the procedure.

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

15.6 Step One: The Authority's Review.

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

15.6.2 At the option of the Authority, a meeting may be scheduled with the Design Consultant to discuss the Design Claim. The Authority shall render its decision regarding the Design Claim in writing within ninety (90) Days of the receipt of the necessary documentation or within ninety (90) Days of any meeting with the Design Consultant to review or discuss the Design Claim, whichever is later. This time limit may be extended by mutual agreement of the parties. The Design Consultant, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If the Design Consultant neither accepts nor rejects in writing the Authority's decision within this fifteen (15) Day period, the Authority will consider the Step One process administratively closed, and the claim will be eligible for Step Two Non-binding Mediation, if a

request for mediation is made by the Design Consultant in the time and manner indicated in the following section (“Step Two Non-Binding Mediation”).

15.7 Step Two: Non-Binding Mediation.

15.7.1 If the Design Consultant rejects in writing the decision of the Authority, there is no further automatic administrative review of the Design Claim. No later than fifteen (15) Days after issuance of a Certificate of Occupancy or Certificate of Acceptance for this Project, the Design Consultant may request in writing that any or all outstanding Design Claims regarding this Project, which include any or all Design Claims that have been processed through Step One of the Design Claim resolution process, proceed to Step Two, Non-binding Mediation. Such request for mediation must be in writing and must identify with specificity the Design Claims to be mediated. Any Design Claim not specifically identified shall be deemed withdrawn. No Design Claim will proceed automatically to Step Two and the Design Consultant must make a specific written request that the Design Claim be elevated to Step Two.

15.7.2 Step Two will not be available until after the issuance of a Certificate of Occupancy or Certificate of Acceptance, unless an earlier time for submission of the Design Claim to Step Two is agreed to by the Design Consultant and the Authority. The cost of non-binding mediation shall be shared equally by the Design Consultant and the Authority. The mediator shall be selected by the Authority, with the concurrence of the Design Consultant. The rules for the mediation shall be agreed to by the Authority, the Design Consultant and the mediator prior to the start of the mediation. The mediation will not proceed, however, if the Parties fail to agree on the rules for the mediation, in which case Step Two will be deemed complete.

16.0 REPRESENTATIONS

The Design Consultant hereby represents as follows:

- 16.1 The Design Consultant is financially solvent, can pay its debts when due, and possesses sufficient working capital to complete the Services required and perform its obligations under this Agreement.
- 16.2 The Design Consultant is professionally qualified to act as the Design Consultant for the Task Order Project, and has the capability and

experience, including sufficient qualified and competent personnel, to efficiently and timely perform the Services. The Design Consultant will continuously furnish sufficient personnel to perform the Services in a timely and proper manner.

- 16.3 The Design Consultant is experienced, authorized to do business in the State of New Jersey and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Design Consultant and the Services it will be performing. The Design Consultant shall ensure that all of its Subconsultants and the employees of the Design Consultant performing services for this Project have such licenses and certificates. The Design Consultant will provide properly licensed and experienced personnel to perform all required architectural and engineering services in a professional and timely manner.
- 16.4 The Design Consultant's execution of this Agreement and its performance hereunder is within its duly authorized powers.
- 16.5 The Design Consultant certifies that it has investigated, or will investigate the conditions of the Task Order Project and that it fully understands the conditions of the Project and its obligations pursuant thereto. The Design Consultant agrees that it will not make any 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.
- 16.6 The Design Consultant certifies that all representations made or to be made by it in this Agreement or any of the Design Consultant Documents are true, subject to penalty of law. The Design Consultant understands and agrees that its knowing or intentional violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact may be cause for termination of this Agreement and a legal bar to the Design Consultant's enforcement of its rights under this Agreement, including any and all Claims at law or equity.
- 16.7 The Design Consultant and any Subconsultants have provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to N.J.S.A. 52:32-44b. The Design Consultant shall not enter into any subcontract with a Subconsultant that has not provided it and the Authority with proof of such valid business registration. Design Consultant shall maintain and submit to the Authority a list of Subconsultants and their addresses, which list must be updated as necessary during the Term. A complete and final version of such list must

be submitted to the Authority before final payment for Services shall be made.

- 16.8 The Design Consultant assumes full responsibility to the Authority for the acts and omissions of its officers, employees, Subconsultants, and others employed or retained by it in connection with the performance of the Services for this Project.
- 16.9 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.

17.0 THE AUTHORITY'S RIGHTS

- 17.1 The Authority shall have the right to perform work related to a Project and to award contracts in connection with a Project that are not part of the Design Consultant's responsibilities under this Agreement.
- 17.2 The Authority shall have the right, in its sole discretion, to accept or reject employees and personnel proposed by the Design Consultant to work on a Project. The Design Consultant shall make a timely and prompt resubmittal to provide other employees or personnel to replace any that are rejected by the Authority, both in the initial proposal or any subsequent rejection or substitution of personnel.
- 17.3 The Authority shall have the right to remove any of the Design Consultant's employees from a Project at any time during the Term of this Agreement if that employee is deemed by the Authority not to be of the level of competence or ability required under this Agreement, or if said employee is for any reason found to be unsuitable to perform pursuant to this Agreement, as determined by the Authority in its sole discretion. In such case, the Design Consultant shall promptly submit the name and qualifications of a replacement.
- 17.4 The Authority shall have the right to evaluate the Design Consultant's performance pursuant to the Authority's Performance Evaluation Policy and Procedures. The Authority shall also have the right to consider the Design Consultant's evaluation as a factor used in the technical ranking of the Design Consultant with respect to any submission by the Design Consultant in response to future Requests for Proposals issued by the Authority.

- 17.5 In addition to any of the other rights and remedies of the Authority specified in this Agreement, the Authority reserves the right to bring an action against the Design Consultant for any damages sustained by the Authority from the use of the Deliverables prepared by the Design Consultant when such damage is occasioned by the negligent act, error, omission or willful misconduct of the Design Consultant.
- 17.6 The Authority's acceptance, use of or payment for all or any part of the Design Consultant's Services hereunder or in connection with a Project shall in no way alter the Design Consultant's obligations under this Agreement.
- 17.7 The Authority and any other State inspecting or oversight agencies have the right to audit (or have their agents audit) the records of the Design Consultant in connection with all matters related to this Agreement. If, as a result of such audit, the Design Consultant is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Design Consultant's invoice amount to an amount considered commensurate with the actual services provided.
- 17.8 The Authority and any other State inspecting or oversight agencies have the right to request, and the Design Consultant agrees to furnish free of charge, all information and copies of all records, documents or books the Authority or any other State inspecting or oversight agencies may request of the Design Consultant and its Subconsultants. The Design Consultant and its Subconsultants shall allow representatives of the Authority or any other State inspecting or oversight agencies to visit the office(s) of each periodically, upon reasonable notice, in order to review any information, records, documents or books related to this Agreement or to otherwise monitor any Services being performed by the Design Consultant and its Subconsultants pursuant to this Agreement.

18.0 MISCELLANEOUS

- 18.1 Notices. All notices or other communications required by this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by FedEx or similar guaranteed overnight courier and shall be deemed delivered on the day after the notice or other communications was deposited in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A.
- 18.2 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, any Amendments and any addenda.

18.3 Order of Precedence. This Agreement, and its Appendices and related documents are intended to be interpreted in harmony so as to avoid conflict. In the event of a conflict, discrepancy or inconsistency between or among the documents constituting this Agreement and its Appendices and related documents, interpretation will be based on the following descending order of priority:

1. Appendix A (Task Order Project Description and Special Conditions);
2. Appendix C (Design Consultant's Design and Construction Phase Services);
3. Appendix B (Design Consultant's Predesign Phase Services);
4. This Agreement, and any Amendments hereto;
5. Materials and Systems Standards and Construction Details Manual;
6. Appendix H (Materials and Systems Standards/Design Requirements);
7. Appendix I (Mandatory Antidiscrimination Language and Equal Opportunity Provisions).

Notwithstanding the above order of precedence in documents, in the event there is any conflict or discrepancy between the terms contained in this Agreement or any Appendix or other document incorporated by referenced into this Agreement on the one hand, and any other terms of this Agreement or any other Appendix or document incorporated into this Agreement on the other hand, the Design Consultant will be required to provide the higher quality level of service or meet the higher standard as articulated in the more stringent provision of the Agreement or other document, as determined by the Authority.

18.4 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 by the Design Consultant, expressed or implied, or any remedies at law or equity available to the Authority, and any such waiver must be specifically and expressly stated in a writing executed by the Authority.

- 18.5 Procedural Requirements. The Design Consultant shall comply with all written procedural instructions that may be issued from time to time by the Authority.
- 18.6 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.
- 18.7 Forum and Venue. Any legal action to resolve a dispute or Claim filed under the terms of this Agreement shall only be brought in a state court in the State of New Jersey.
- 18.8 Time is of the Essence. Time is of the essence for Task Orders assigned under this Agreement. The Design Consultant shall commence its Services immediately upon Notice to Proceed and shall diligently prosecute its Services through completion. The Design Consultant shall use its best efforts to complete the Services on or ahead of the Project Schedule for such Task Order.
- 18.9 Entire Agreement. This Agreement and the appendices represent the entire and integrated agreement between the Design Consultant and the Authority and supersede all prior negotiations, representations or agreements, either written or oral.
- 18.10 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.
- 18.11 Waiver of Breach. In the event that any provision of this Agreement should be breached by either party and such breach is thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach. Any consent by the Authority to a delay in the Design Consultant's performance of any obligation shall apply only to the particular obligation or transaction to which it relates, and it shall not apply to any other obligation or transaction. Any delay in the Authority's enforcement of any remedy in the event of a breach by the Design Consultant 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.
- 18.12 Construction of Agreement. This Agreement shall be construed in accordance with its plain meaning, without giving any effect to any

implication or inference arising from the fact that it may have been drafted by or on behalf of any party to this Agreement.

- 18.13 Peer Review. The Authority may, at its sole discretion, provide all or a portion of the documents or other items prepared by the Design Consultant to other professionals for review and comment (“Peer Review”).
- 18.14 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.
- 18.15 State Comptroller. The NJ Office of the State Comptroller or any other State inspecting or oversight agency may, at its discretion, investigate, examine and inspect the activities of the Design Consultant and all other parties involved with the Project relating to the design, construction and financing of the Project and to the implementation of the Educational Facilities Construction and Financing Act, P.L 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The Office of the State Comptroller or any other State inspecting or oversight agencies may require the Design Consultant or any other party involved with the Project to submit duly verified reports which shall include such information and be in such form as they may require. In addition to the foregoing, the Office of the State Comptroller or any other State inspecting or oversight agencies may investigate, examine, inspect, or audit in any manner and at such times as they may deem necessary. The Design Consultant shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the Office of the State Comptroller, 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. The Design Consultant shall maintain all documentation related to products, transactions or services under contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
- 18.16 Security Clearance. The Design Consultant and its personnel, as well as all other Professional Services Design Consultants and Subconsultants, and their personnel, shall be subject to such security clearance at the Project as the Authority may require.
- 18.17 Notice of State Vendor Set-Off For State Tax.
- 18.17.1 Pursuant to L. 1995, c. 159, effective January 1, 1996 and notwithstanding any provision of the law to the contrary, whenever

any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods and services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

18.17.2 The Director of the Division of Taxation shall give notice of the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State to the taxpayer, pursuant to L. 1987, c. 184 (c. 52:32-35.), shall be stayed.

18.18 Equal Pay Act Compliance. The Design Consultant shall be required to submit compensation information, in the form of a Qualifying Services Report, to the Division of Labor and Workforce Development, with copies to the NJSDA, in accordance with the Diane B. Allen Equal Pay Act (P.L. 2018, c. 9). Guidance and forms for compliance with this requirement are available at: www.nj.gov/labor/equalpay/equalpay.html

IN WITNESS WHEREOF, the parties have caused this instrument to be signed, attested to and sealed.

AUTHORITY

New Jersey Schools Development Authority

(Signature) Date

(Printed Name)

(Title)

DESIGN CONSULTANT

Witness or attest:

(Signature)

(Signature) Date

(Printed Name)

(Printed Name)

(Title)

(Title)

AFFIX SEAL IF A CORPORATION

Reviewed and Approved as to form:

Cecelia E. Haney, Senior Counsel

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

APPENDIX A
(Project Description and Special Conditions)
(To Be Inserted at time of Task Order Assignment or Award)

APPENDIX B

DESIGN CONSULTANT'S PREDESIGN PHASE SERVICES

1. **General:** The Design Consultant's Predesign Services shall be performed in accordance with the Design Consultant Agreement and Appendix A for the specific Task Order Project. Predesign Services shall consist of the following tasks as described herein and as may be further delineated or modified by the Appendix A for the specific Task Order Project. (Additions in **bold and underlined** text; deletions in *strikethrough and italics*)

Following completion of Predesign Phase Services, the Authority may request that the Design Consultant submit a detailed fee proposal for performance of additional Design Consultant Services related to the approved Project Scope which shall be authorized through the issuance of additional Task Order(s).

2. **Predesign Phase Schedule** – At least three days prior to the Initial Project Meeting the Design Consultant shall prepare and submit to the Authority a detailed schedule for completion of all Predesign Phase activities in accordance with the following:

- 2.1. The Predesign Phase Schedule shall include proposed start and finish dates and durations for all Predesign Phase activities including all on-site verification activities, meetings, and all deliverables.
- 2.2. Include milestone dates for determination of the need for any Allowance Services and other similar activities requiring action by the Authority.
- 2.3. Unless indicated otherwise, for all reports and deliverables requiring review and acceptance or approval by the Authority, provide for one initial 10 business day review period, an appropriate revision period, and a final 5 business day period for Authority review and acceptance.
- 2.4. Following review of the Predesign Phase Schedule at the Initial Project Meeting and within 5 business days, revise and resubmit the Predesign Phase Schedule for acceptance by the Authority.
- 2.5. The Design Consultant shall update the Predesign Phase Schedule for review at each bi-weekly progress meeting.

3. **Initial Project Meeting and Report:** Within 5 business days of receipt of the NTP, and prior to commencing any on-site verification activities, the Design Consultant shall attend a meeting with the Authority's Project Representative and representatives of the Client School District.

- 3.1. The Initial Project Meeting shall include review and discussion of the following:
 - 3.1.1. Project Requirements Review as described in 4.1 below.

- 3.1.2. Review the Predesign Phase Schedule and confirm a schedule for conducting on-site verification activities, including access to restricted areas, and inclusive of restrictions imposed by the District.
 - 3.1.3. Review and confirm any logistical constraints, including the District's schedule for use and occupancy of the facility, which may impact when and how the Design Consultant's on-site verification activities may be performed.
 - 3.1.4. Review and confirm available existing conditions information such as warranty information, construction documents, maintenance records, the District's Asbestos Management Plan and AHERA report, and relevant reports and documents previously prepared by the Authority or others.
 - 3.2. Initial Project Report: Within 5 business days of the Initial Project Meeting, the Design Consultant shall provide an Initial Project Report to the Authority for review and acceptance. The Initial Project Report shall include minutes of the meeting which shall summarize discussion points, document decisions, and identify any action items with responsible parties and due dates. The Initial Project Report shall include the revised Predesign Phase Schedule and the Project Requirements Report as attachments. Revise and resubmit for Authority acceptance within 5 business days of any comments.
4. **Project Requirements Review and Report:** The Design Consultant shall conduct a Project Requirements Review with representatives of the Authority and School District in order to confirm and document the requirements which will serve as the basis for evaluating proposed solutions to conditions deficiencies.
 - 4.1. The Project Requirements Review shall include the following:
 - 4.1.1. Review and confirm the specific site(s), conditions, systems, and components which are the subject of preliminary verification activities.
 - 4.1.2. Review and confirm general project expectations and goals including performance, cost, and schedule considerations.
 - 4.1.3. Identify any related materials and systems preferences that have been adopted or otherwise expressed by the School District, noting any that are in conflict with the Authority's Materials and Systems Standards; and identify any items for which the School District plans to request proprietary specifications.
 - 4.1.4. Identify any School District requirements or restrictions with respect to operations and maintenance.

- 4.1.5. Identify any other functional or performance considerations or requirements which the School District may wish to propose for the project.
 - 4.1.6. Identify any potential special requirements such as commissioning or operations and maintenance training.
 - 4.2. Project Requirements Report - Within 5 business days of the Project Requirements Review meeting, the Design Consultant shall prepare and submit a Project Requirements Report for review by the Authority and the School District. The Project Requirements Report shall discuss each of the items described in 4.1 above and shall include a summary of agreed-upon project requirements. Within 5 business days of Authority review and comment, the Design Consultant shall complete and submit a revised Project Requirements Report for acceptance by the Authority.
- 5. **Existing Conditions Survey and Verification:** In accordance with the accepted Predesign Phase Schedule, the Design Consultant shall proceed with the following activities in order to establish an understanding of existing conditions sufficient to support completion of all Predesign Phase services.
 - 5.1. **Facilities Survey:** The Design Consultant shall conduct a survey of each identified building system or component and shall document them to a level of information and detail sufficient to support the completion of all Predesign Phase services. The Facilities Survey shall include the following:
 - 5.1.1. Review of existing drawings and other documents that describe the existing facilities.
 - 5.1.2. On-site inspection of existing facilities and identification of any areas or conditions that vary from those reflected in existing documentation.
 - 5.1.3. For any areas of such variance or for areas where no existing documentation exists, measurement and recording of existing conditions in detail sufficient to support the development, evaluation, scoping, and pricing of condition deficiency correction work.
 - 5.1.4. The creation of plans, details, and/or sketches, at appropriate scales acceptable to the Authority, with information sufficient to support the development, evaluation, scoping, and pricing of condition deficiency correction work.
 - 5.2. **Facilities Condition Assessment and Report:** The Design Consultant shall conduct a survey and assessment of existing building systems and components as identified in Appendix A (hereafter, “existing facilities”) in order to establish a sufficient understanding of their disposition and condition sufficient to support the completion of all Predesign Phase

services. The Facilities Condition Assessment and Report shall include the following:

- 5.2.1. Review of existing drawings and other documents that describe the existing facilities.
- 5.2.2. A non-invasive survey of the existing facilities to become familiar with their type, disposition, quality, functionality, and condition.
- 5.2.3. Verification of existing condition deficiencies in project scope areas specifically identified in Appendix A.
- 5.2.4. Identification, during the course of the steps above, of any other significant condition deficiencies that might be considered by the Authority for inclusion in the project scope.
- 5.2.5. Prepare a Facilities Condition Assessment Report for review and acceptance by the Authority. The report shall be organized by building area, element, or system type as appropriate and shall include the following:
 - 5.2.5.1. The report shall describe the investigative activities which were undertaken, participants, and dates when on-site investigations were undertaken.
 - 5.2.5.2. The report shall describe the type, disposition, capacity, quality, functionality, and condition of the existing facilities and shall describe the nature and extent of identified existing conditions deficiencies.
 - 5.2.5.3. For each identified condition deficiency, the report shall identify and discuss options, if any, for addressing the deficiency including initial considerations of cost, schedule, regulatory requirements, potential impact on ongoing use and occupancy of the facilities, and other identified project requirements.
 - 5.2.5.4. For each identified condition deficiency, the report shall either identify a recommended solution for addressing the condition with the rationale for recommendation or shall:
 - a. Identify additional investigative activities, such as testing, which may be recommended to further assess the condition of the existing facilities pursuant to a recommended solution, or shall
 - b. Recommend the development and evaluation of specific options in accordance with Section 7. Conceptual Options Development, Evaluation and Selection which follows.

- 5.2.6. Following review and comment by the Authority and completion of any authorized additional activities, the Design Consultant shall complete, submit, and revise the Facilities Condition Assessment Report as necessary for acceptance by the Authority.
6. **Regulatory Review Report:** The Design Consultant shall determine all applicable codes and regulatory reviews applicable to the range of deficiency correction work identified in the Facilities Condition Assessment and shall prepare a Regulatory Review Report that includes the following:
 - 6.1. A list of all approvals that will be required for completion of the work, including prior design or other approvals required under the Uniform Construction Code.
 - 6.2. Identification of the authority having jurisdiction for each approval, submission requirements, typical timeframes for securing such approvals, and identification of the project milestone(s) for which each approval is a prerequisite.
 - 6.3. Based on review with the Authority, identification of the party or parties responsible for securing each approval.
7. **Conceptual Options Development, Evaluation and Selection:** If authorized by the Authority, the Design Consultant shall develop, and evaluate options for addressing existing conditions deficiencies as identified and recommended during the Facilities Condition Assessment and in accordance with the following:
 - 7.1. **Confirmation of Options:** Prior to proceeding with the Conceptual Options Development and Report, the Design Consultant shall review and confirm the specific options to be developed and evaluated. The Design Consultant shall document in writing the discussion and decision-making process by which the options were identified, presented, discussed, and selected for subsequent incorporation in the Conceptual Options Report.
 - 7.2. **Confirmation of Evaluative Criteria:** Based on the Project Requirements Review and discussions with the Authority and the School District, the Design Consultant shall confirm the criteria that will be used in the evaluation of conceptual options and shall prepare a narrative describing such criteria for review and acceptance by the Authority and subsequent incorporation in the Conceptual Options Report. Such criteria shall include, but shall not be limited to:
 - 7.2.1. Construction Time and Phasing Requirements.
 - 7.2.2. Impact of construction activities on ongoing use and operation of the facilities.
 - 7.2.3. Potential for earlier advancement of some elements of the project scope.

7.2.4. Construction Cost.

7.2.5. Other criteria as identified and agreed by the Authority and School District.

7.3. **Conceptual Options Development and Report:** The Design Consultant shall develop and undertake a comparative evaluation of the selected options, and shall prepare a Conceptual Options Report for review and acceptance by the Authority. The Conceptual Options Report shall include the following:

7.3.1. An executive summary which shall include:

7.3.1.1. A brief overview of the options development and evaluation process.

7.3.1.2. Options selection narrative (see 7.1)

7.3.1.3. A description of each facilities condition deficiency and a brief description of each developed option for addressing that condition.

7.3.1.4. Evaluative criteria description (See 7.2)

7.3.1.5. A summary comparison of developed conceptual options in tabular form based on the established evaluative criteria.

7.3.1.6. A preliminary recommendation for advancement of selected option(s) including the reasons and rationale for the recommendation.

7.3.2. For each developed option, the Conceptual Options Report shall include:

7.3.2.1. A narrative description of the option describing the type and extent of site and building construction proposed.

7.3.2.2. A narrative evaluation of the option in regard to how and to what extent it satisfies project requirements and established evaluative criteria.

7.3.2.3. Plans, details, or sketches as may be necessary to illustrate the proposed deficiency correction.

7.3.2.4. A schedule for advancement of the option including time frames for completion of design, approvals, bidding, and construction.

7.3.2.5. A conceptual construction cost estimate based upon types and extent of proposed construction and agreed-upon unit costs.

- 7.3.3. The Design Consultant shall submit the Conceptual Options Report to the Authority for review and comment. Following any revisions directed by the Authority, the Design Consultant shall present the conceptual options and comparative analysis to the Authority and the School District for selection of a preferred option.
- 7.4. **Conceptual Options Selection and Report:** Following selection of the preferred conceptual option by the Authority and the School District, the Design Consultant shall revise the Conceptual Options Report to reflect the development, evaluation and selection process and the basis for selection of the preferred option and shall submit a final Conceptual Options Report to the Authority for review and acceptance.
8. **Final Predesign Report:** Following review and acceptance of each of the above components, the Design Consultant shall prepare and submit the Final Predesign Report, consisting of printed and electronic versions of all final Predesign Phase deliverables and reports in a format acceptable to the Authority. Following review and comment by the Authority, the Design Consultant shall revise and submit the Final Predesign Report for acceptance by the Authority.
9. **Progress Meetings**
- 9.1. In addition to meetings and site visits required as part of the scope of services described above, the Design Consultant shall attend and participate in progress meetings every two weeks at the Authority's offices in Trenton or as otherwise agreed by the Authority and Design Consultant. Progress meetings shall include review of the current Predesign Phase Schedule, review of the status of all current Predesign Phase activities, and identification and discussion of any critical issues.
- 9.2. The Design Consultant shall prepare and submit a meeting agenda identifying discussion items to the Authority at least 3 business days prior to each scheduled progress meeting.
- 9.3. The Design Consultant's Subconsultants shall be available to participate in meetings where their services and deliverables are to be discussed or reviewed.
- 9.4. The Design Consultant shall prepare and submit draft minutes of all meetings within 5 business days for the Authority's review and comment or acceptance, and revised minutes within 5 business days of receipt of any Authority comments.
10. **Other Services:** If requested and authorized by the Authority, the Design Consultant's scope of services may also include the following as required by the Appendix A for a specific Task Order:
- 10.1. **Boundary Survey Plan:** The boundary survey shall depict the Site in its entirety, inclusive of all individual tax blocks and lots that comprise the site

and of all adjoining rights-of-way and vacated streets to fully delineate and describe the property boundaries, including, but not limited to, the delineation and description of any individual internal tax lots. The boundary survey plan for the Site shall show metes and bounds for the entire Site and for all individual internal tax lots, and shall comply with the following:

- 10.1.1. Surveying services shall include all necessary fieldwork, file research, office work in order to compile boundary, topographic, and utility survey data fully describing the Site. These services shall comply with all American Land Title Association/ American Congress of Survey and Mapping (“ALTA/ACSM”) survey requirements.
- 10.1.2. If the Site is owned or to be acquired by the Authority, the Authority will order a title search and provide a copy to the Design Consultant.
- 10.1.3. If the Site is owned by the Project School District, the Design Consultant shall order a title search of the County records for all properties within the Site, which shall identify and describe any and all encumbrances of any kind as necessary to complete the final boundary survey plan.
 - 10.1.3.1. The title search shall review all county land records pertaining to the Site for a period of sixty years prior to the date of the search, and shall include a complete examination of title (the “Title Report”).
 - 10.1.3.2. The final boundary survey plan shall delineate and describe any and all encumbrances of any kind, and any additional pertinent information revealed by the title search.
 - 10.1.3.3. In the event the Title Report is not available at the time these survey services are required, the Design Consultant shall proceed with the survey based on its research of information available from appropriate municipal and/or County records, and shall confirm such information in a supplement to the final boundary survey plan, at such time as the formal Title Report becomes available.
- 10.1.4. The Design Consultant shall research all available records of deeds, easements, plans of survey, right-of-way (“ROW”) maps, utility company maps, and Federal, State, County and City/Municipal records as necessary to fulfill the requirements of the boundary survey, and shall prepare and submit the boundary survey plan to the Authority.

- 10.1.5. The survey shall be conducted under the supervision of and certified by a surveyor licensed in the state of New Jersey. The Design Consultant's survey crew shall provide survey controls suitable for use by the Design-Build contractor. The Design Consultant shall install redundant control points and provide coordinates for each point. The control points and coordinates shall enable a contractor to establish critical construction features, such as the property lines, elevations and fence line location.
- 10.1.6. The boundary survey plan shall delineate and describe all utility easements and rights-of-way within the Site and within 100 feet of the Site boundary, or within such additional distance as may be required by local subdivision or land development ordinance.
- 10.1.7. The boundary survey plan shall show all structures, buildings, pavement areas, existing easements and street rights-of-way, on the Site. The boundary survey plan shall show distances between structures and/or buildings and the property and lot lines, at their closest points. The distances shown on the boundary survey plan shall have been field measured.
- 10.1.8. The boundary survey plan, and all horizontal control, shall be presented in the New Jersey State Plane Coordinate System ("NJSPCS"). State Plane Coordinates shall be provided for all external property corners.
- 10.1.9. The boundary survey plan shall identify all owners of record and the acreage of each individually owned property within the Site, and shall also identify all adjoining property owners of record. All acreage shall be calculated to one one-hundredth (0.01) of an acre. Lot areas shall be calculated in acres and square feet. All current tax block and lot numbers shall be shown for all lots within the Site and for all adjoining properties.
- 10.1.10. The boundary survey plan shall show all street names, ROW lines, and ROW widths.
- 10.1.11. The boundary survey plan shall indicate the locations and descriptions of all of the Site's property corners. The exact location of each property corner shall be marked in the field by temporary iron pins, drill holes, or other suitable recoverable marker. For this purpose, the Design Consultant shall use any existing monuments and, if necessary, shall establish a new permanent monument.
- 10.1.12. A location or key map, north arrow and the appropriate graphic scale must be included on the final boundary survey plan.

- 10.1.13. The boundary survey plan must be certified to the New Jersey Schools Development Authority, the Project School District, the State of New Jersey Department of Education, the Title Company of the Authority and/or the Project School District, and if requested, the designated attorney that will represent the Authority during transactions related to the Site.
- 10.2. **Topographic/Utility Survey Plan:** The Design Consultant shall prepare topographic/utility survey plans for the Site showing all site topographic features, including, but not limited to, utilities, structures/buildings, pavements, slabs, vegetation, and surface materials, and shall comply with the following:
- 10.2.1. The Design Consultant shall perform all field survey measurements necessary to develop a topographic/utility survey plan. All horizontal control shall be presented in the NJSPCS; vertical datum shall be National Geodetic Vertical Datum of 1929 (“NGVD”).
- 10.2.2. Contours shall be shown on a one-foot contour interval. Spot elevations shall be provided as necessary within the Site at locations of structures, pavements, high and low points of elevation, and other appropriate points, in order to accurately document elevations of the Site’s surface and subsurface features.
- 10.2.3. Where practical, the topographic mapping shall extend to 100 feet beyond the Site or to such additional distance as may be required by local subdivision or land development ordinances.
- 10.2.4. The topographic mapping may be prepared via aerial photography at a scale sufficient to accurately produce the required topographic/utility survey plan. If the Design Consultant proposes to prepare the topographic mapping from existing aerial photography, the date of the aerial photography shall not be more than two years prior to the Effective Date of this Agreement. The Design Consultant shall verify the existence of all structures indicated by the aerial photography, above or below ground, prior to commencement of the survey. The locations of all building corners, permanent structures and the like shall be field verified and relayed on to the topographic and utility survey plan.
- 10.2.5. Utility information shall include accurate locations of any and all utilities, such as water lines, storm sewer, sanitary sewer, gas mains, telephone and underground electric lines; utility poles with identity numbers and street lights; the size of all such lines and their type of construction material (e.g., RCP, DIP, PVC, etc.). The utility information shall also include the accurate location of all manholes, catch basins, chambers, culverts, utility vaults, valve boxes,

hydrants, headwalls, and any other features and structures related to utilities. The Design Consultant shall provide surveyed elevations of all inverts, top of grate/castings, outfall inverts and top of headwalls associated with the above-mentioned features and structures, where accessible. Any sewers containing combined sanitary and storm sewer flows shall be noted as such.

10.2.6. The final topographic/utility survey plan shall include pertinent data from the boundary survey plan, such as each individual tax lot line and description, area calculations, easements, street right-of-way lines and descriptions, street names and tax lot numbers.

10.3. **Survey Deliverables**

10.3.1. The Design Consultant shall provide certified, reproducible vellums and digital versions in .dwfx and .pdf formats of each boundary survey plan and topographic/utility survey plan, in appropriate scales approved by the Authority.

10.3.2. Digital survey information shall be layered to facilitate its use as a base map for geotechnical and environmental investigations of the Site, and for subsequent site/civil, planning and design phases of the project.

10.3.3. The Design Consultant shall provide six (6) sets of signed and sealed prints of each final boundary survey plan and final topographic/utility survey plan. These survey plans shall be signed and sealed by a New Jersey Licensed Professional Surveyor.

10.3.4. The Design Consultant shall provide six (6) signed and sealed, certified, written boundary descriptions of each overall Site and of each individual property that may comprise the Site.

10.3.5. The Design Consultant shall provide one (1) set of 8" x 10" color prints of any aerial photography used to prepare the topographic base maps. The Design Consultant shall also provide digital versions of any such aerial photography, in native, .pdf and .jpeg formats.

10.4. **Utility Verification and Report:** Based on a review of existing documentation and site observations, the Design Consultant shall verify and document the location, age, size, and capacity of utilities available to the Site, including sanitary sewer and storm sewer systems, potable water, electric power, natural gas, telephone service, cable television, and communication lines. The Design Consultant shall confirm conditions of utilities with respect to project requirements and perform the following for the Site:

- 10.4.1. Analyze and estimate order-of-magnitude utility loads for the proposed project.
 - 10.4.2. Perform a water flow/hydrant test to confirm available water supply pressure and flow.
 - 10.4.3. Develop a contact list for all utility companies, and secure a dated “will-serve” letter from each stating the projected utility load for each facility and confirming the utility company’s capacity for providing the required service in the necessary quantity.
 - 10.4.4. In the event that existing utility services are not sufficient for project requirements, assist the Authority in identifying alternative solutions and requesting utility infrastructure improvements.
 - 10.4.5. Provide a Utility Investigation Report to the Authority for review and acceptance. The report shall include an inventory of all active and non-active utilities within and in each of the streets surrounding the Site. The report shall include copies of all site utility survey data, a utility contact list, and copies of all correspondence with all utilities including all “will-serve” letters. The report shall summarize the utility survey and investigation activities undertaken by the Design Consultant and shall include a comparison of projected utility service requirements and the compatibility of existing utilities to meet those requirements, and final recommendations for any necessary improvements to existing utilities.
- 10.5. **Preliminary Geotechnical and Stormwater Review and Report:** The Design Consultant shall review existing documentation and perform visual onsite observations of the Site in order to:
- 10.5.1. Describe the subsurface soil and groundwater conditions at likely areas of new construction and/or site development.
 - 10.5.2. Describe existing stormwater drainage and related systems and structures at likely areas of new construction and/or site development.
 - 10.5.3. Identify any apparent conditions that may impose limitations on project design, placement or construction, or warrant other consideration in the development of the project.
 - 10.5.4. Provide a Preliminary Geotechnical and Stormwater Report summarizing the above for the Authority’s review and acceptance.
 - 10.5.5. If necessary, recommend additional investigative activities, such as test pits or borings, which may be required in order to confirm existing conditions to the extent necessary to inform the

development and evaluation of conceptual options. Upon authorization by the Authority, complete such additional investigative activities as Allowance Services, and incorporate the findings in the Preliminary Geotechnical and Stormwater Report.

- 10.6. **Preliminary Geophysical Survey and Report:** The Design Consultant shall conduct a multi-component geophysical survey of areas of potential new construction and/or site development work in order to identify the presence of buried utilities, subsurface structures, artifacts, anomalies or obstructions in the potential project areas.
 - 10.6.1. This survey shall include electromagnetic terrain conductivity (EM), ground-penetrating radar (GPR) using both high frequency and low frequency antennas, and radiodetection line tracer, as well as the use of a metal detector and fluxgate magnetometer based on professional judgment.
 - 10.6.2. If necessary, recommend additional investigative activities, such as test pits, which may be required in order to confirm existing conditions to the extent necessary to inform the development and evaluation of conceptual options. Upon authorization by the Authority, complete such additional investigative activities as Allowance Services, and incorporate the findings in the Preliminary Geophysical Survey Report.
 - 10.6.3. Provide a Preliminary Geophysical Survey Report summarizing the above for the Authority's review and acceptance.
- 10.7. **Preliminary Environmental Review and Report:** The Design Consultant shall undertake a preliminary environmental review for the Site and each indicated existing building consisting of the following:
 - 10.7.1. Review of existing records including AHERA reports and environmental documentation.
 - 10.7.2. Visual inspection for preliminary confirmation of existing records and preliminary identification of any variances or other conditions that must be taken into account in the course of development and evaluation of conceptual options.
 - 10.7.3. If necessary, recommend additional investigative activities which may be required in order to confirm existing conditions to the extent necessary to inform the development and evaluation of conceptual options. Upon authorization by the Authority, complete such additional investigative activities as Allowance Services, and incorporate the findings in the Preliminary Environmental Review Survey Report.

10.7.4. Provide a Preliminary Environmental Review Report summarizing findings for the Authority's review and acceptance.

11. **Submissions:** Unless otherwise directed by the Authority, the Design Consultant shall provide all deliverables in three printed and bound copies, plus digital versions in native (.doc or .dwg) and .pdf (or .dwx) formats.

APPENDIX C

DESIGN CONSULTANT'S DESIGN AND CONSTRUCTION PHASE SERVICES

1. General

- 1.1. The Design Consultant's Design Services shall be performed in accordance with the Design Consultant Agreement, the Design Manual, and as may be further delineated or modified by the Appendix A for the specific Task Order Project. Design Services shall be delivered in the following phases, each of which is further defined below:
 - 1.1.1. Schematic Design Phase.
 - 1.1.2. Design Development Phase.
 - 1.1.3. Construction Documents Phase.
 - 1.1.4. Bidding and Contract Award Phase.
 - 1.1.5. Constructability Review Phase.
 - 1.1.6. Construction Phase.
 - 1.1.7. Project Close-Out Phase.
 - 1.1.8. Post-Occupancy Review Phase.
- 1.2. A written Notice to Proceed for each project phase shall be provided to the Design Consultant by the Authority prior to commencement of such services.
- 1.3. The Design Consultant's Design Services may include other services as authorized in writing by the Authority, in accordance with the Design Consultant Agreement and Appendix A. Such other services may include the following:
 - 1.3.1. Other Basic Services
 - 1.3.1.1. Facilities Condition Assessment.
 - 1.3.1.2. Building Survey, Inventory and Documentation.
 - 1.3.1.3. Environmental Screening Report.
 - 1.3.1.4. Wetlands Investigation and Flood Hazard Assessment
 - 1.3.1.5. Hazardous Materials and Universal Waste Survey and Report.
 - 1.3.1.6. Preliminary Geotechnical Investigation and Report.

- 1.3.1.7. Historical and Cultural Resources Evaluation and Report.
- 1.3.1.8. Preliminary Assessment and Report.
- 1.3.1.9. Site Investigation Activities and Report.
- 1.3.1.10. Executive Order 215 Report.
- 1.3.1.11. Property Acquisition Environmental Cost Estimate Report.
- 1.3.1.12. Traffic Impact Evaluation and Report.
- 1.3.1.13. Preliminary Storm Water Management Investigation and Report.
- 1.3.1.14. Testing and Inspection Services
- 1.3.1.15. Commissioning Services
- 1.3.2. The Design Consultant’s Services may also include other similar or related services as enumerated and authorized by the Authority.
- 1.4. In the event that invasive or destructive investigations in existing facilities are deemed to be necessary for completion of the Design Consultant’s Services, the Design Consultant shall obtain the approval of the Authority and the Project School District for such invasive or destructive testing activities, and shall coordinate the scheduling of these activities with all other Design activities and the Project School District’s schedule in order to minimize impact on the Project School District’s operations.

2. **Schematic Design Phase:** Upon authorization by the Authority, and based upon the approved Project scope, budget, and schedule, the Design Consultant shall proceed Schematic Design Phase Services which may include the following:

2.1. Educational Planning Services and Educational Specifications

- 2.1.1. If required by Appendix A, the Design Consultant shall undertake detailed interviews with representatives of the Project School District and review the Project School District’s current curricular and other materials in order to develop a full and complete understanding of its educational requirements as applicable to the proposed Project. Educational planning services shall be sufficient to prepare detailed Educational Specifications and Schematic Plans as described below, and shall without limitation consider the following:
 - 2.1.1.1. Demographic, social and cultural features of the Project School District.

- 2.1.1.2. Organization of educational programs across the Project School District, and the proposed School Facility Project's place within the District.
- 2.1.1.3. All educational programs to be delivered in the proposed School Facility Project.
- 2.1.1.4. Organization of the educational programs and the necessary organization of programmatic elements.
- 2.1.1.5. Essential and preferred adjacencies and separations among all programmatic elements.
- 2.1.1.6. Detailed facility features, furnishings and equipment needed to support teaching and learning for each space within the School Facility Project.
- 2.1.1.7. The Project School District's practices and systems for information technology and communications, for teaching and learning, administrative, and security purposes.
- 2.1.1.8. Student movement patterns throughout the school day and for pre-and after-school activities.
- 2.1.1.9. Site activities and features including outdoor physical education facilities, play areas, parking, service and loading, and pedestrian and vehicular site circulation.
- 2.1.1.10. School security policies, procedures and features.
- 2.1.1.11. Use of the proposed School by organizations other than the Project School District.
- 2.1.2. The Design Consultant shall prepare Educational Specifications in a format provided by or acceptable to the Authority and in accordance with the requirements of the New Jersey Department of Education (DOE) and N.J.A.C. 6A:26-5.2.
- 2.1.3. The Design Consultant shall submit draft Educational Specifications to the Authority and Project School District for review and comment and shall meet with the Authority and the Project School District to review such comments. The Design Consultant shall revise the Educational Specifications as may be requested by the Authority and shall provide copies of revised Educational Specifications to the Authority for review and acceptance and subsequent submission to DOE.

2.2. Schematic Design Documents

- 2.2.1. Based on the Final Pre-design Report and accepted Educational Specifications (if any), and comments and other input from Authority and the Project School District, the Design Consultant shall prepare Schematic Design Documents in a format acceptable to the Authority and in accordance with the requirements of DOE and N.J.A.C. 6A:26-5.3.
- 2.2.2. The Schematic Design Documents shall consist of drawings, written materials and other documents as may be required to illustrate the proposed scale and relationships of the Project's components, and may include site and floor plans, building sections and elevations, diagrams, sketches, models and perspectives.
- 2.2.3. The Schematic Design Documents shall include, as applicable, phasing and logistical requirements and an assessment of the impact of construction activities on ongoing use and operation of the facilities by the Project School District.
- 2.2.4. The Design Consultant shall submit draft Schematic Design Documents to the Authority and Project School District for review and comment and shall meet with the Authority and the Project School District to review such comments. The Design Consultant shall revise the Schematic plans as may be requested by the Authority and shall provide copies of revised Schematic plans to the Authority for review and acceptance and subsequent submission to DOE.
- 2.3. Construction Cost Estimate (CCE):** Based on the Schematic Design Documents and other documents as accepted by the Authority and the Project School District, the Design Consultant shall prepare its Schematic Design Construction Cost Estimate in a format provided by or acceptable to the Authority.
 - 2.3.1. If requested by the Authority, the Design Consultant shall meet with the Authority to review its CCE and, if necessary, to reconcile its CCE with the Authority's own CCE or secure approval of the updated CCE.
- 2.4. Schedule:** The Design Consultant shall review its Schedule and make any revisions necessitated by the Schematic Design Documents and other documents, and submit its updated Schedule to the Authority for review and acceptance.
 - 2.4.1. If requested by the Authority, the Design Consultant shall meet with the Authority to review its updated Schedule and, if necessary, to reconcile its updated Schedule with the Authority's own Schedule or secure approval of the updated Schedule.

- 2.5. Educational Adequacy Submission:** The Design Consultant shall prepare and submit copies of the accepted Schematic Design, Educational Specifications, and/or other required documents for the Authority's and District's approval and subsequent submission to the New Jersey Department of Education pursuant to N.J.A.C. 6A:26-5.3, and shall make such revisions as are required to secure DOE approval of the educational adequacy of the Schematic Design Documents or a determination by DOE that the Project has no impact on educational adequacy.
- 2.6. Planning Board Review:** If requested by the Authority, the Design Consultant shall participate in one meeting with the local Planning Board to review and discuss any technical comments that it may have in response to the Authority's schematic design submission.
- 3. Design Development Phase Services:** Upon authorization by the Authority, the Design Consultant shall proceed with Design Development Services which may include the following:

 - 3.1. Detailed Materials and Systems Review:** The Design Consultant shall meet with the Authority and the Project School District in order to review the Project School District's standards for materials and systems in detail, and shall deliver a report including the following:

 - 3.1.1. Detailed comparison of the Authority's Materials and Systems Standards with Project School District standards, documenting resolution of any areas of conflict as accepted by the Authority.
 - 3.1.2. Detailed review of the Project School District's information technology and communication standards, practices and equipment.
 - 3.1.3. Detailed review of the Project School District's security policies, practices and procedures, and equipment and design features associated therewith.
 - 3.1.4. Detailed review of the Project School District's policies, practices, procedures, and equipment and design features for food service, health services, and any other educational or support activities requiring specialized design features and/or equipment.
 - 3.1.5. Review, confirmation and update, where necessary, of Project School District's requests for proprietary specifications, and preparation of proprietary specification requests for review and action by the Authority.
 - 3.1.6. Prepare any necessary requests for variance from the Authority's Materials and Systems Standards for review and action by the Authority.

3.2. Design Development Documents

- 3.2.1. Based upon the accepted Schematic Design and the detailed materials and systems review, the Design Consultant shall develop drawings, outline specifications, and other information to produce the Design Development Documents.
- 3.2.2. The Design Development Documents shall consist of drawings and other documents to fix and describe the Project's size and character as to sitework, architectural, structural, mechanical, electrical and other systems, equipment and materials, and such other information as may be necessary to define fully all features and characteristics of the Project.
- 3.2.3. For addition and renovation work, the Design Development Documents shall include the following, as applicable:
 - 3.2.3.1. A Summary of the Work which shall include a description of project sequencing, phasing, and scheduling as well as other procedural requirements necessary for execution of the Work.
 - 3.2.3.2. An updated assessment of the impact of construction activities on ongoing use and operation of the facilities by the Project School District.
 - 3.2.3.3. Detailed descriptions of proposed disposition of all existing building systems in each affected area of the existing facilities, including continued use, extension or modification to serve additions and/or renovated spaces, discontinuation and removal, or abandonment in place. Systems may include but are not limited to mechanical, electrical, plumbing, fire protection, life safety and communication systems
- 3.2.4. The Design Development Documents shall include an updated Program Comparison highlighting any changes that have taken place during the Design Development Phase.
- 3.2.5. The Design Consultant shall submit the Design Development Documents to the Authority and Project School District for review and comment at 50% completion and at 100% completion, and shall meet with the Authority to review such comments, and shall make such revisions as are necessary to secure the Authority's acceptance of the Design Development Documents.

3.3. Uniform Construction Code and Best Practices Documents and Review: The Design Consultant shall perform an analysis of the design

and prepare code compliance drawings to establish its compliance with the New Jersey Uniform Construction Code and Best Practices Standards for Schools Under Construction or Being Planned for Construction.

3.3.1. The Design Consultant shall participate in one meeting with the Authority and the New Jersey Department of Community Affairs to review the requirements of the Uniform Construction Code and Best Practices Standards and their application to the project, and shall make any necessary modifications to deliverables in order to ensure that the Design Development documents are consistent with all code requirements.

3.4. Other Regulatory Requirements: The Design Consultant shall initiate all other regulatory reviews and approvals indicated by the Authority as the Design Consultant's responsibility, and shall assist the Authority in its fulfillment of other regulatory requirements associated with the Project.

3.5. Construction Cost Estimate: Based on the Design Development drawings and other documents as accepted by the Authority and the Project School District, the Design Consultant shall prepare its Design Development CCE in a format provided by or acceptable to the Authority.

3.5.1. If requested by the Authority, the Design Consultant shall meet with the Authority to review the updated CCE and, if necessary, to reconcile the updated CCE with the previously approved CCE or secure approval of the updated CCE.

3.6. Schedule: The Design Consultant shall review its Schedule and make any revisions necessitated by the Design Development drawings and other documents, and submit its updated Schedule to the Authority for review and acceptance.

3.6.1. If requested by the Authority, the Design Consultant shall meet with the Authority to review its updated Schedule and, if necessary, to reconcile its updated Schedule with the Authority's own Schedule or secure approval of the updated Schedule.

4. Construction Documents Phase Services: Upon authorization by the Authority, the Design Consultant shall proceed with Construction Documents Services which may include the following:

4.1. Construction Documents

4.1.1. Based upon the accepted Design Development documents, the Design Consultant shall develop drawings, outline specifications, and other information to produce the Construction Documents setting forth in detail the requirements for the construction of the entire Project.

- 4.1.2. The Construction Documents, as may be supplemented from time to time, shall include all drawings and specifications required to bid and construct the Project in its entirety in accordance with applicable codes and regulations, and to obtain all State and local permits and approvals necessary to complete the construction of the Project.
 - 4.1.3. The Construction Documents shall include, as applicable, updated phasing and logistical requirements and an updated assessment of the impact of construction activities on ongoing use and operation of the facilities by the Project School District.
 - 4.1.4. The Design Consultant shall submit the Construction Documents to the Authority and Project School District for review and comment at 60% completion and at 100% completion, and shall meet with the Authority to review such comments, and shall make such revisions as are necessary to secure the Authority's acceptance of the Construction Documents.
- 4.2. Construction Cost Estimate:** Based on the Construction Documents as accepted by the Authority and the Project School District, the Design Consultant shall prepare its Construction Documents CCE in a format provided by or acceptable to the Authority.
- 4.2.1. If requested by the Authority, the Design Consultant shall meet with the Authority to review the updated CCE and, if necessary, to reconcile the updated CCE with the previously approved CCE or secure approval of the updated CCE.
- 4.3. Schedule:** The Design Consultant shall review its Schedule and make any revisions necessitated by the Construction Documents, and submit its updated Schedule to the Authority for review and acceptance.
- 4.3.1. If requested by the Authority, the Design Consultant shall meet with the Authority to review its updated Schedule and, if necessary, to reconcile its updated Schedule with the Authority's own Schedule or secure approval of the updated Schedule.
- 4.4. OSC Submission:** If required by the Authority, the Design Consultant shall provide procedural and design specifications for inclusion in the Authority's submission to the Office of the State Comptroller (OSC) and shall revise specifications as may be necessary to secure OSC approval to advertise the project.
- 4.5. Final Educational Adequacy Submission:** If required by the Authority, the Design Consultant shall prepare and submit copies of the detailed plans and specifications for the Authority's review and subsequent submission to the New Jersey Department of Education pursuant to

N.J.A.C. 6A:26-5.4, and shall make such revisions as are required to secure final DOE approval of the educational adequacy of the plans and related Project documents.

4.6. Regulatory Reviews and Approvals

4.6.1. Following the Authority's acceptance of the Construction Documents, the Design Consultant shall submit the Project to the New Jersey Department of Community Affairs for plan review, and shall make such revisions, with the Authority's knowledge and acceptance, as are necessary to secure plan release under the requirements of the Uniform Construction Code (N.J.A.C. 5:23).

4.6.2. The Design Consultant shall secure all other regulatory reviews and approvals indicated by the Authority as the Design Consultant's responsibility, and shall assist the Authority in its fulfillment of other regulatory requirements necessary for construction and occupancy of the Project.

5. Bidding and Contract Award Phase Services: Upon authorization by the Authority, the Design Consultant shall proceed with Bidding and Contract Award Phase Services which may include the following:

5.1. Assistance During Bidding

5.1.1. The Design Consultant shall assist the Authority with preparation of the Information Package.

5.1.2. The Design Consultant shall attend the pre-bid meeting and site tour conducted for bidders.

5.1.3. The Design Consultant shall provide responses to all bidder questions regarding the Construction Documents, and shall prepare revised drawings, sketches, and other modifications to the Construction Documents as necessitated in response to bidder questions. Responses shall be provided to the Authority in writing, with modifications to the Construction Documents as necessary, within three business days of submission of questions.

5.1.4. The Design Consultant shall review and provide written comments on the Authority's draft addenda.

5.1.5. The Design Consultant shall assist the Authority in review of the successful bidder's price proposal, including participation in a meeting with the Authority and the successful bidder. The Design Consultant shall provide a written explanation of any significant variances between the bidder's price proposal and the Design Consultant's cost estimate.

5.2. GC Task Order Option - If the Authority, in its sole discretion, elects to pursue award of a Contract for Construction through use of an existing Task Order Contract for Construction, the Design consultant shall, upon request of the Authority:

- 5.2.1. Meet with the Authority and the proposed Task Order Contractor to review the Construction Documents and discuss Project requirements for construction;
- 5.2.2. Review the Task Order Contractor's proposal for Construction Work, and shall request, as appropriate, any additional information or documentation needed to evaluate the Task Order Contractor's proposal;
- 5.2.3. Make a recommendation to the Authority with regard to the award of a Task Order Contract for Construction;

5.3. Conformed Documents

- 5.3.1. Within 14 calendar days of the issuance of the Notice of Award, the Design Consultant shall incorporate all addendum modifications to the Construction Documents and complete a conformed set of Construction Documents, for review and acceptance by the Authority.
- 5.3.2. Following the Authority's acceptance of the conformed Construction Documents, the Design Consultant shall evaluate the need for amended plan release. If addendum modifications to the Construction Documents necessitate amended plan release, the Design Consultant shall submit the Project to the New Jersey Department of Community Affairs for amended plan review, and shall make such revisions, with the Authority's knowledge and acceptance, as are necessary to secure amended plan release.

6. Constructability Review Phase Services: Upon authorization by the Authority, the Design Consultant shall provide the following Constructability Review Phase services:

6.1. Constructability Meetings

- 6.1.1. The Design Consultant shall participate in one initial meeting and two progress meetings of no less than two hours each, at two-week intervals, with the SDA and the Contractor's participants in its Constructability Review, to review the Contractor's progress and preliminary findings.
- 6.1.2. The Design Consultant and its Subconsultants shall participate in one full-day final meeting with the SDA to review the findings of the Constructability Review.

- 6.2. Requests for Information and Constructability Log:** The Design Consultant shall review and respond in writing to all requests for information and provide its written comments on the Contractor's Constructability Log within seven days of the issuance of each update to the Constructability Log.
- 6.3. Comments on Constructability Review Report:** The Design Consultant shall provide its written comments on the Contractor's Constructability Review Report. The Design Consultant shall comment on each Design Deficiency listed in the Report, indicating whether it concurs or disagrees with the Contractor's identification of each Deficiency, together with one of the following:
- 6.3.1. In the case of concurrence, the Design Consultant shall explain briefly the steps necessary to correct the Design Deficiency in the Documents.
 - 6.3.2. In the case of disagreement, the Design Consultant shall explain in writing why the identified condition does not constitute a Design Deficiency or does not require correction. Such explanation shall in no way relieve the Design Consultant of its responsibilities or the Authority of its rights under the terms of the Agreement.
- 6.4. Resolution of disagreements concerning Design Deficiencies:** The Design Consultant shall participate in discussion with the Authority as necessary to support its position with respect to contested Design Deficiencies. Following such discussion and its review of the Contractor's Constructability Review Report and the Design Consultant's comments thereon, the Authority shall issue direction to the Design Consultant with respect to correction of all Design Deficiencies.
- 6.5. Correction of Design Deficiencies:** Upon direction by the Authority, the Design Consultant shall immediately undertake correction of all Design Deficiencies for review and acceptance by the Authority.
- 6.6. Updated Conformed Documents:** If the Constructability Review results in changes to the design, the Design Consultant shall provide an updated set of conformed Construction Documents incorporating all revisions, for review and acceptance by the Authority.
- 6.7. Amended Plan Release:** Following its correction of all Design Deficiencies and updating of the conformed Construction Documents, the Design Consultant shall evaluate the need for amended plan release. If amended plan release is required, the Design Consultant shall make such revisions and, following review and acceptance by the Authority, shall make submission(s) to the Department of Community Affairs until amended plan release is secured.

7. **Construction Phase Services:** Upon Authorization by the Authority, the Design Consultant shall provide Construction Phase Services which may include the following:
- 7.1. **Submittal Review:** The Design Consultant shall review and approve or reject Submittals prepared by or for the Contractor, including shop drawings, product data, samples and other Submittals, to confirm that the Submittals are consistent with and in compliance with requirements of the Construction Documents.
- 7.1.1. The Design Consultant shall review each Submittal within seven calendar days of receipt to determine whether additional information is required to adequately review a given Submittal, and notify the Contractor at once if additional information is needed.
- 7.1.2. The Design Consultant shall approve or reject each Submittal within fourteen days of receipt of a complete Submittal.
- 7.1.3. The Design Consultant shall maintain a record of Submittals and copies of Submittals submitted by the Contractor, with receipt and return dates and Submittal status for each.
- 7.1.4. The Design Consultant shall review and approve or reject revised Submittals prepared by the Contractor in response to the Design Consultant's review comments.
- 7.1.5. The Design Consultant shall provide the Authority with a copy of each Submittal, with action taken, promptly following review and acceptance or rejection.
- 7.1.6. The Design Consultant's review pursuant to this Section shall be for the purpose of determining whether the items or equipment specified in Submittals are consistent with the requirements of the Contract Documents, and such review shall not be deemed to be undertaken for the purpose of determining the accuracy and completeness of each Submittal, determining that any other details such as dimensions and quantities have been complied with, or of substantiating instructions for installation and performance of equipment or systems, all of which shall remain the Contractor's responsibility, unless otherwise specified in the Contract for Construction. The Design Consultant's review pursuant to this Section also shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Consultant, of construction means, manners, methods, techniques, sequences or procedures. The Design Consultant's approval of specific items shall not indicate approval of an assembly of which the item is a component.

- 7.2. Site Observations:** The Design Consultant shall make visits to the Site during construction for general observation of quality and progress and to determine if the Construction Work is proceeding in accordance with the Contract for Construction and Applicable Laws, statutes, ordinances, codes, rules and regulations, other than those pertaining to Contractor's construction means and methods.
- 7.2.1. The Design Consultant shall visit the Site weekly during periods of active construction and at other times reasonably requested by the Authority, and shall promptly notify the Authority in writing of Contractor's failure to comply with the above requirements.
- 7.2.2. The Design Consultant shall report promptly to the Authority in writing about the progress and quality of the Construction Work following each weekly Site visit, and endeavor to guard the Authority against defects and deficiencies in the Construction Work.
- 7.2.3. The Design Consultant shall inform the Authority about the progress and quality of the Construction Work, and endeavor to guard the Authority against defects and deficiencies in the Construction Work.
- 7.2.3.1. Should the Design Consultant observe or become aware of conditions that require action to guard the Project and the Authority against defects and deficiencies in the Construction Work, the Design Consultant shall so notify the Authority in writing within three days of observing or becoming aware of such conditions.
- 7.2.4. The Design Consultant shall report to the Authority any failure of the Contractor to carry out the Construction Work in accordance with the Contract for Construction and any work, factors, data or information that fails to conform to, or that may otherwise indicate any nonconformity with, the Contract for Construction of which it knows or reasonably should have known.
- 7.2.4.1. The Design Consultant shall recommend that the Authority reject Construction Work on the Project that does not conform to the Contract for Construction by immediately notifying the Authority in writing.
- 7.2.5. The Design Consultant shall notify the Construction Manager and the Authority's on-Site representatives immediately if the Design Consultant has actual knowledge of hazardous site conditions or

site conditions which may result in an imminent danger on the Site to occupants or persons on or in the vicinity of the Site.

- 7.3. Requests for Information:** The Design Consultant shall review and provide written responses, including supplemental information or sketches as necessary and appropriate, to Requests for Information (RFIs) submitted by the Contractor. The Design Consultant shall provide such response to the Authority within seven days of receipt of the RFI.
- 7.4. Change Orders:** The Design Consultant shall assist the Authority and CM to evaluate, recommend and prepare Change Orders, Proposal Requests, and Construction Change Directives with supporting documentation and data if deemed necessary by the Authority.
- 7.4.1. The Design Consultant shall evaluate and prepare specific written recommendations, including evaluation of costs, to the Construction Manager and the Authority, within seven days of receipt of a Contractor's Proposal or other response to a Proposal Request, Contract Change Request or Construction Change Directive.
- 7.4.1.1. If the nature of the work described in the Proposal Request or Contract Change Request is complex, the Authority may grant the Design Consultant additional time for its evaluation, if requested in writing.
- 7.4.2. The Design Consultant, upon request of the Authority, shall attend meetings in connection with Change Orders, Proposal Requests or Construction Change Directives.
- 7.5. Amended Plan Release:** When Change Orders, RFIs or other information result in modifications to the Construction Documents, the Design Consultant shall evaluate the need for amended plan release. If amended plan release is required, the Design Consultant shall make such modifications and, following review and acceptance by the Authority, shall make submission(s) to the Department of Community Affairs until amended plan release is secured.
- 7.6. Contractor's Invoices:** The Design Consultant shall be responsible for certifying to the Authority the amounts due to the Contractor under the Contract for Construction.
- 7.6.1. The Design Consultant shall review and certify the amounts due the Contractor within five business days after receipt of the Contractor's invoice.
- 7.6.2. The Design Consultant's certification of payment shall constitute a representation to the Authority, based on the Design Consultant's on-site observations, the data contained in the

Contractor's invoice and any other facts, data or information known to it, to the best of its knowledge, information and belief, that:

- 7.6.2.1. The Construction Work on the Project has progressed to the point indicated;
- 7.6.2.2. The quality of the Construction Work is generally in accordance with the Contract for Construction; and
- 7.6.2.3. The Contractor is entitled to payment in the amount certified.

7.7. Other Construction Phase Services

- 7.7.1. The Design Consultant shall advise the Authority regarding existing or anticipated disputes and/or Claims that may arise between the Authority and the Contractor.
- 7.7.2. The Design Consultant shall advise the Authority as to the necessity of special inspections.
- 7.7.3. The Design Consultant shall receive, review and comment on results and certifications of testing and inspections, and make recommendations for correction of non-conforming Work.

7.8. Construction Management Services – In the event that the Authority elects not to engage a Construction Manager for the Project, the Design Consultant's Construction Phase Services may also include the following:

- 7.8.1. Serve as the Authority's Project Representative and administrate the Contract for Construction;
- 7.8.2. Serve as the conduit for communications between the Contractor and the Authority;
- 7.8.3. Produce and issue "Project Directories," which shall consist of all information, including but not limited to, names, company affiliations, business address, e-mail addresses, telephone and fax numbers (land line and cellular) necessary to allow proper communication among all persons involved in the Project;
- 7.8.4. Schedule and conduct a Pre-Construction Conference with the Authority and the Contractor within three days of the Effective Date of the Contract for Construction, which conference shall include review of the Construction Documents, Subcontractors, key personnel, scheduling, staffing, contract administration procedures, site utilization, logistics, scheduling, Project School District logistical and scheduling limitations, procedures for processing field decisions, submittals, substitutions, invoices, Change Orders and other pertinent issues consistent with the

Authority's Specification Section 01200 "Preconstruction Conference";

- 7.8.5. Schedule and conduct weekly Project Progress meetings, take attendance and meeting minutes for same, and issue meeting minutes within two (2) days of each meeting. The Design Consultant's transmittal shall notify all participants that attendees of a meeting must advise Design Consultant, in writing and within three (3) Days of receipt, of any perceived error or omission in the minutes being transmitted by Design Consultant;
- 7.8.6. Receive, respond to or otherwise resolve Contractor Requests for Information ("RFIs") ;
- 7.8.7. Prepare Proposal Requests on behalf of the Authority;
- 7.8.8. Receive and review Contractor Construction Change Requests ("CCRs"), and make recommendations to the Authority with regard to such CCRs;
- 7.8.9. Prepare Change Orders for execution and issuance;
- 7.8.10. Upon request by the Authority, prepare Construction Change Directives and issue same;
- 7.8.11. Maintain Contract Modification Logs, tracking and including all RFIs, Architect's Supplemental Instructions ("ASIs"), Requests for Proposals, CCRs, Change Orders, and CCDs. If requested by the Authority, the Design Consultant shall create and maintain such logs using the Authority's Primavera Expedition project information tracking system;
- 7.8.12. Establish and maintain all Construction Phase records and technical documentation, consistent with the Authority's file documentation system. Such records or technical documentation may include, but are not limited to, project correspondence, the Contractor's daily reports, the Design Consultant's Field Reports, design plans, drawings, specifications, Submittals, all permits and approvals, samples, Contractor's Invoice information, bids, contracts, schedules, tests, inspections, payroll records, safety records and claims-related documentation. The Design Consultant shall maintain such records for the Term of the Project and make them available and easily accessible to the Authority. Upon final completion of the Project, and before Final Payment will be made to the Design Consultant, all documents, files and records shall be turned over to the Authority in hard copy and electronic formats;

- 7.8.13. Communicate with the Contractor directly. Communications by and with the Design Consultant's Subconsultants shall be through the Design Consultant;
- 7.8.14. The Design Consultant, upon request of the Authority, shall attend meetings in connection with Change Orders, Proposal Requests or CCD's;
- 7.8.15. Observe the performance of all testing and control samples performed by the Contractor, including deferred tests; Schedule and attend all Code Inspections, and track and enter into the Authority's Expedition Database all inspection dates and any Inspection Reports documenting the results of such inspections, whether generated by DCA officials, or generated by alternate inspecting entities;
- 7.8.16. Track any conditions or items identified in any Inspection Reports as incomplete, noncompliant with code, or otherwise in need of further attention from the Contractor, by documenting such items in hard copy and electronic form, and, if requested by the Authority, by entering such items into the Authority's Expedition Database;
- 7.8.17. Assist the Contractor in following up on such incomplete, noncompliant or open items or conditions to ensure the completion of any action steps necessitated by such items or conditions and the resolution of any outstanding issues identified by the Inspection Reports;
- 7.8.18. Advise the Authority as to the necessity of special inspections, and schedule and attend such inspections and perform tracking and follow-up on items or conditions identified in such special inspections until resolution;
- 7.8.19. Receive and review certifications of inspections, tests, etc.;
- 7.8.20. Advise the Authority regarding existing or anticipated disputes and/or Claims that may arise between the Authority and the Contractor;
- 7.8.21. Monitor the Contractor's compliance with the Construction Schedule and advise the Authority of the progress of the Construction Work and any deviations from the most current Construction Schedule;

8. **Project Close-Out Phase Services:** The Design Consultant shall cooperate with the Authority and its agents in the planning, scheduling and execution of project close-out activities including the following:

- 8.1. Inspections:** Upon notice from the Contractor that the Work is complete, the Design Consultant shall participate in any and all pre-final and final inspections, along with representatives of the Contractor, the Authority, the Construction Manager, and the Project School District.
- 8.2. Punchlist:** Upon notice from the Contractor that the Work is complete, the Design Consultant, in conjunction with the Authority, the Construction Manager and the Project School District, shall inspect the Work and assist the Construction Manager in preparation of the Punchlist of incomplete, defective or unsatisfactory Work items, and shall develop a schedule for completion or correction by the Contractor.

 - 8.2.1. When the Design Consultant and Construction Manager are satisfied that the Punchlist is complete, the Design Consultant shall forward the Punchlist and all supporting documentation to the Authority for review and acceptance and issuance to the Contractor.
- 8.3. Substantial Completion:** Once the Punchlist has been prepared, if the Design Consultant determines in conjunction with the Authority that the contractual completion status of the Construction Contract supports a finding that Substantial Completion has been met, the Design Consultant shall issue a certificate of Substantial Completion, with the executed Temporary Certificate of Occupancy attached, in a format acceptable to the Authority, to the Contractor.
- 8.4. Phased Construction:** In the case of phased construction and/or partial occupancy, the Design Consultant shall provide multiple inspections, Punchlists, and certificates of Substantial Completion corresponding to the phases of construction and/or partial occupancy.
- 8.5. Project Close out Submission Checklist:** The Design Consultant shall create a Project close-out submission checklist, and shall assist the Authority in obtaining all required documentation, certifications and other deliverables required of the Contractor under the Construction Contract and identified on such checklist.
- 8.6. Final Completion:** Upon receipt of all required documentation and notice from the Contractor that all outstanding items on the Punchlist have been completed, the Design Consultant shall perform its final inspection, in conjunction with the Construction Manager and the Project School District, to confirm that all Punchlist items have been completed. Upon finding all Punchlist items complete, the Design Consultant shall issue its certificate of Final Completion, with the executed Certificate of Occupancy attached, in a format acceptable to the Authority, to the Contractor.

- 8.6.1. The Design Consultant shall assist the Authority in the creation and issuance of a Final Completion Checklist Form (NJSDA Form 710), including documentation and certification of all Punchlist items.
- 8.7. Record Drawings:** The Design Consultant shall prepare Record Drawings incorporating all changes, notations, and other data provided by the Contractor in the As-Built Documents.
- 8.7.1. The Design Consultant shall monitor the Contractor's timely preparation and updating of As-Built Documents and notify the Contractor and the Authority of any failure in the completion of as-built drawings.
- 8.7.2. If applicable, the Design Consultant shall verify that the Contractor has adequately prepared a Site survey consistent with the Authority's Land Title Conveyance Survey Requirements as part of the required As-Built Documents.
- 8.7.3. The Design Consultant shall place the following statement on the Record Drawings: "The As-Built information added to this drawing has been supplied by the Contractor. The (Architect) (Engineer) assumes no responsibility or liability for its accuracy other than conformity with the design concept and general adequacy of the As-Built information to the best of the (Architect's) (Engineer's) knowledge."
- 8.7.4. The Design Consultant shall complete the Record Set within 30 days of receipt of the As-Built Documents.
- 8.8. Construction Management Services** – In the event that the Authority elects not to engage a Construction Manager for the Project, the Design Consultant's Project Close-Out Phase Services may be expanded or otherwise modified accordingly.
- 9. Post-Occupancy Review Phase Services:** The Design Consultant shall assist in the resolution of the Contractor's obligations in accordance with its warranty and guarantee for this Project as such arise.
- 9.1. Warranty Inspection:** Approximately eleven months after Final Payment to the Contractor, the Design Consultant shall conduct, in conjunction with the Construction Manager, the Authority and the Project School District, a walk-through and warranty inspection at the Project Site.
- 9.1.1. The Design Consultant shall prepare, and within ten days of the walk-through shall submit, a written report to the Authority setting forth the findings of the inspection.

- 9.1.2. The Design Consultant shall, upon completion by the Contractor of any work to correct deficiencies, latent defects or warranty work discovered in the walk-through and warranty inspection (but not later than thirty days after the end of the one-year warranty period), re-inspect the Construction Work and within ten Days of reinspection, shall submit a final report to the Authority documenting the findings of the reinspection.

10. Other Basic Services: Following completion of Predesign Services (if any) and in a manner coordinated with all Design Services, the Design Consultant shall provide the following services when authorized by the Authority:

10.1. Facilities Condition Assessment: The Design Consultant shall undertake a condition assessment of existing facilities as identified for inclusion or possible inclusion in the Project Scope.

10.1.1. Objectives of Facilities Condition Assessment: The Facilities Condition Assessment may be undertaken to address one or more of the following objectives, as determined by the Authority:

10.1.1.1. To inform the Authority in its decision-making about the scope of the proposed Project.

10.1.1.2. To collect information about the existing facilities with sufficient detail and accuracy to inform the subsequent planning of additions and/or renovations.

10.1.1.3. To assess the condition of existing facilities in regard to performance, functionality, life-cycle and compliance with applicable codes and standards.

10.1.2. Content of Facilities Condition Assessment: The Facilities Condition Assessment may include one or more of the following, for building(s) and site and organized by building element, as directed by the Authority:

10.1.2.1. Description.

10.1.2.2. Photographs, captioned and keyed to building plans.

10.1.2.3. Current functional condition.

10.1.2.4. Life expectancy.

10.1.2.5. Code analysis, standards and compliance.

10.1.2.6. Educational adequacy.

10.1.2.7. Measurement and documentation of physical dimensions.

10.1.2.8. Determination of capacities of existing systems.

- 10.1.2.9. Feasibility of extension or expansion of existing systems.
 - 10.1.2.10. Cost estimating and analysis, which may include comparison of replacement and upgrade costs, life cycle cost comparisons and similar analyses.
 - 10.1.2.11. All survey data, interviews, field notes, cost calculations, review comments, etc. shall be included in the Facility Assessment as appendices.
 - 10.1.3. The Facilities Condition Assessment shall include all building elements affected by or identified for inclusion or possible inclusion in the Project Scope.
 - 10.1.4. Building elements in the Facilities Condition Assessment shall be organized in the same manner as directed by the Authority for project specifications.
- 10.2. Building Survey, Inventory and Documentation:** The Design Consultant shall inspect all existing building and site conditions affected by the proposed Project Scope, to provide base information sufficient for development of the Schematic Design and subsequent project phases. Deliverables shall include but are not limited to the following:
- 10.2.1. Measurement and documentation of all building spaces, whether affected by the proposed Project Scope or not, including:
 - 10.2.1.1. Floor plans showing room names, areas, ceiling heights, and built-in furnishings and equipment.
 - 10.2.1.2. An updated room inventory listing room types, areas, ceiling heights, and built-in furnishings and equipment.
 - 10.2.2. Review with the Project School District and the Authority portions of the latest version of the District's approved Long-Range Facilities Plan that are applicable to the Project, identifying the status of items that may affect or be affected by the Project.
 - 10.2.3. Detailed survey and documentation of all building elements affected by the proposed Project Scope, including dimensions, finishes, major structural elements, food service equipment, and mechanical, electrical, plumbing, fire protection, life safety and communication systems.
 - 10.2.4. A detailed evaluation and written report of the current performance, functional condition, capacity and code status of existing mechanical, electrical, plumbing, fire protection, life

safety and communication systems. Systems shall be evaluated with respect to their suitability for continued use, extension or modification to serve additions and/or renovated spaces, and discontinuation and removal or abandonment in place.

- 10.2.5. Identification, during the course of the above activities, of any other significant condition deficiencies or previously unknown conditions of which it becomes aware.

10.3. Environmental Screening Report (ESR)

- 10.3.1. The Consultant shall develop the Environmental Screening Report (“ESR”) to assess the likelihood of obtaining the various environmental, historical and cultural, and land use approvals necessary to develop the site as an educational facility.

- 10.3.1.1. The ESR shall identify, on a preliminary basis, potential insurmountable technical and administrative obstacles that may exist on a proposed schools facility project, or in close proximity to the proposed site. Specifically, the ESR shall provide an identification of potential fatal flaws that cannot be overcome, in order to inform the Authority in its possible elimination of a particular site from further consideration if land use approvals are incompatible with preliminary project requirements.

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

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

- 10.3.3. Within the ESR, the Consultant shall assess the following elements. If any of these elements were completed by another party in support of other predesign or site feasibility work, the Consultant shall reference those findings in the ESR, and include

copies of the associated reports and accompanying documentation as an Appendix to the ESR.

10.3.3.1. Availability of Sewer Service: The Consultant shall affirm that (1) the site is located in an approved sewer service area and there is sufficient capacity to connect to an existing sewage collection line, and the treatment facility has adequate capacity to treat the wastewater for the proposed maximum enrollment; or (2) in the case that the proposed site is not serviced by an approved sewer service area, the Consultant shall indicate the likelihood of the site being suitable for a discharge to groundwater from either a package treatment plant or a septic system.

10.3.3.1.1. The Consultant shall obtain a “Will Serve Letter” from the local sewerage authority that confirms the availability and willingness to accept sewerage in the specific quantity necessary for the proposed Project.

10.3.3.1.2. If applicable, the affirmation shall also include the status with respect to the locally approved Water Quality Management Plan (WQMP).

10.3.3.1.3. If the location of the proposed school site is inconsistent with the WQMP the Consultant shall include an estimated timetable for approval of a WQMP Amendment by the local, County and State agencies in the ESR.

10.3.3.2. Availability of Potable Water Supply: The Consultant shall affirm that a local water purveyor serves the proposed School Facilities Project, and is capacity exists within the system to service the proposed maximum enrollment.

10.3.3.2.1. The Consultant shall obtain a “Will Serve Letter” from the local water purveyor that confirms the availability and willingness to supply potable water in the specific quantity necessary for the proposed Project.

- 10.3.3.2.2. Alternatively, if potable water is not available at the proposed site, provide a statement from a professional engineer or licensed geologist indicating the likelihood that there is sufficient groundwater available to provide for the drilling of potable water wells, and that necessary approvals for withdrawal may be obtained.
- 10.3.3.3. Identification of Potential Coastal and/or Freshwater Wetlands: The Consultant shall affirm the absence or presence of wetlands at the Site, and if required prepare a Letter of Interpretation (LOI) for submission to NJDEP.
 - 10.3.3.3.1. The Consultant shall review published wetlands information and produce photo-documentation of the wetlands area, including a sketch map outlining the extent of wetlands and a list of permits that may be necessary to construct the proposed school site.
 - 10.3.3.3.2. In the event that the subject Site is not encumbered by wetlands, including streams and ditches, the Consultant shall, at a minimum, provide a statement that in his/her professional opinion the subject Site does not contain regulated wetlands.
- 10.3.3.4. Identification of Streams, Flood Hazard Areas or Other Water Bodies: The Consultant shall determine the presence or absence of streams or other open water bodies on the proposed site.
 - 10.3.3.4.1. The Consultant shall provide a report that is based on a review of published data, photo documentation of the stream or water body, and include a sketch map showing the 100- and 500-year flood hazard area delineations, if applicable.
 - 10.3.3.4.2. If the Consultant's review of associated flood hazard maps indicates that the proposed activities are regulated by the

Flood Hazard Areas Control Act rules, the Consultant shall determine if a flood hazard area permit is required prior to undertaking any proposed construction activity within the flood hazard area.

10.3.3.4.3. The ESR shall also indicate whether construction activity would require a stream encroachment permit.

10.3.3.5. Identification of Dedicated Open Space: The Consultant shall determine if any land-related encumbrances exist on the proposed site, including but not limited to deed restrictions, institutional controls, classification exception areas, easements, and protective covenants or rights of way.

10.3.3.5.1. The Consultant shall determine if any Green Acres covenants exist based on a review of the municipal and/or county Recreation and Open Space Inventories (ROSI) or documents on file with the NJDEP's Green Acres Program.

10.3.3.6. Identification of Historic and/or Archeological Resources: The Consultant shall document the potential presence or absence of historic or archeological resources on or adjacent to the site eligible for inclusion on the New Jersey Register of Historic Places.

10.3.3.6.1. The Consultant shall prepare a report that documents the methods used in the investigation and provides photo documentation on any structures over 50 years old.

10.3.3.6.2. If historic sites, historic districts, or archeological resources are identified on or adjacent to the site of the proposed school, the Consultant shall provide additional documentation including historic background information and maps, and determine whether the need exists for additional evaluation.

10.3.3.7. Identification of Threatened or Endangered Plant or Animal Species: The Consultant shall consult readily

available databases to determine the presence or absence of State or Federal threatened or endangered plant or animal species on or immediately adjacent to the proposed site.

- 10.3.3.8. Assessment of the Potential of Soil and/or Groundwater Quality Concerns: The Consultant shall incorporate the substantive findings of the Preliminary Assessment Report (PA) into the ESR.
 - 10.3.3.8.1. If site investigation and/or remedial investigations were completed for the property, the Consultant shall incorporate the substantive findings of these investigations into the ESR.
- 10.3.3.9. Investigation of Prior or Current Environmental Enforcement Actions, Site Remediation Activities and Regional Context: The Consultant shall complete a search of municipal, county, state, and federal records to determine whether the proposed site, or immediately adjacent sites, are (or were previously) the subject of environmental enforcement actions or remedial actions.
 - 10.3.3.9.1. It is expected that most of this information may be readily available from a commercial environmental database product and may be extracted from the PA Report if previously completed.
- 10.3.3.10. Review of the following:
 - 10.3.3.10.1. NJDEP Known Contaminated Sites List.
 - 10.3.3.10.2. Facilities that report under the Toxic Release Inventory.
 - 10.3.3.10.3. Major facilities permitted for Hazardous Air Pollutants; facilities regulated under the Discharge Prevention Control and Countermeasure Program.
 - 10.3.3.10.4. Hazardous waste treatment, storage and/or disposal facilities.
 - 10.3.3.10.5. Pipelines transmitting petroleum products and hazardous substances.

- 10.3.3.10.6. In addition to any map supplied in a commercial environmental database product, the Consultant shall consult NJDEP's GeoWeb geographical information system to affirm the accuracy of the database product.
- 10.3.3.10.7. If "orphan properties" are listed in the database product, but were not identified on a map due to incomplete or inaccurate address information, the Consultant shall document that visual inspection of the vicinity was conducted in an attempt to reconcile the incomplete information.

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

10.3.3.12. Applicability of Madden Legislation: In consultation with the Authority, the Consultant shall request from the local construction official a letter confirming that their records do not identify a prior use of the property that involved any of the following uses as defined in the Madden Legislation: Factory/industrial Facility (Group F); High Hazard Use (Group H); Storage (Group S); Nail Salon or Dry Cleaner (Group B); Gasoline station (Group M); or Agriculture.

10.4. Wetlands Investigation and Flood Hazard Assessment: The Consultant shall build upon the Environmental Screening Report above and as appropriate perform a wetlands investigation on the Site in accordance with all applicable regulatory and code requirements, including but not limited to NJDEP freshwater wetlands regulations.

10.4.1. The wetlands investigation shall include but shall not necessarily be limited to an on-site inspection by a qualified trained professional wetlands specialist who shall perform soil probes

and plant and habitat observations as may be necessary to determine whether or not wetlands are present.

- 10.4.2. The Consultant shall prepare a Wetlands Evaluation Report detailing the results of the wetlands investigation and shall make a recommendation for any further action warranted by such results.
 - 10.4.2.1. If the wetlands evaluation report indicates the presence of wetlands on the Site, the Consultant shall include with the report a cost estimate to: (i) physically delineate the limits of all such wetland areas on the Site, by staking and/or flagging their limits; and (ii) precisely locate soil probes and wetland delineation points on the topographic base map.
- 10.4.3. If required, the Consultant shall prepare the following:
 - 10.4.3.1. A list of potential NJDEP Individual and/or Statewide General Permits (“SGP”) necessary to conduct construction activities within the delineated wetland.
 - 10.4.3.2. An application to the NJDEP for a Letter of Interpretation (“LOI”) and approval of the wetland delineation.
 - 10.4.3.3. A freshwater wetlands application for submission to the NJDEP.
- 10.4.4. In the event that the subject Site is not encumbered by wetlands including streams and ditches, the Consultant shall, at a minimum, provide a statement that in his/her professional opinion the subject Site does not contain regulated wetlands.
- 10.4.5. In the event that a State Open Water (e.g., creek, stream, river, etc.) exists on or adjacent to the site, the Consultant shall: (1) prepare and submit all necessary applications; (2) obtain a Flood Hazard Area verification from NJDEP or other governing bodies on behalf of the Authority; and (3) prepare the necessary signed survey documents to enable the legal recording of any restriction with the County.

10.5. Hazardous Materials and Universal Waste Survey and Report: In conformance with all applicable regulations, the Consultant shall provide for the sampling and analysis to identify Asbestos Containing Materials (ACM), Lead-Based Paint (LBP), Mold and Mildew, Polychlorinated Biphenyls (PCBs) and Universal Wastes, Lead in Drinking Water (site-

specific) and Radon in areas that will be disturbed, or have the potential to be disturbed, either during invasive and destructive investigations or performance of work anticipated to be part of a related project scope of work.

10.5.1. The Survey and Report shall address the following:

10.5.1.1. Suspect ACM (friable and non-friable and non-friable organically-bound) within each individual building and affected site area, such as interior and exterior pipe/duct insulations, equipment and boiler insulations, fire brick, HVAC units, plaster materials, floor and ceiling tiles, mastics/glues, roofing materials, glazing caulks, wire wrap, fireproofing.

10.5.1.2. Suspect LBP, such as floor, wall or ceiling finishes and/or equipment housing paint materials.

10.5.1.3. Suspect areas of moisture intrusion (within portions of buildings to remain) potentially supporting excessive growth of mold and mildew, inclusive of an opinion on the primary and secondary root causes for the moisture.

10.5.1.4. Suspect Universal Waste, such as PCB equipment and transformers, caulking, light ballasts, fluorescent light tubes, hazardous materials that may need to be lab packed, radioactive sources (such as emergency signs and fire detectors), emergency lights and batteries, and electrical switches containing mercury.

10.5.2. The Consultant shall request and review documented historical information such as warranties, as-built drawings, contract documents, maintenance records; the Project School District's Asbestos Management Plan and AHERA report, 3-year re-inspection reports; and all relevant reports previously conducted by the Authority and others.

10.5.2.1. The Consultant's review of the AHERA Management Plan shall determine the following:

10.5.2.1.1. Which building materials were actually sampled and found to contain asbestos.

10.5.2.1.2. Which materials were assumed to contain asbestos.

10.5.2.1.3. The analytical methods used.

- 10.5.2.1.4. The appropriateness of those methods compared to current standards (see detail on TEM requirement below).
- 10.5.3. If directed by the Authority, the Consultant shall prepare a sampling plan based on suspect materials present and undertake sampling as authorized.
 - 10.5.3.1. The Consultant shall ensure that all invasive or destructive testing investigations are coordinated with the Project School District in advance of scheduling the work. The Consultant shall confirm with the Authority or Authority's representative the exact areas under investigation, the exact nature of demolition and/or renovation work, and the extent of materials that will be disturbed or accessed.
 - 10.5.3.2. The Consultant shall identify all structural, mechanical, flooring, and roofing systems that are suspect or to be disturbed by other investigations, and investigate those that are suspect.
 - 10.5.3.3. The Consultant shall complete invasive or destructive investigations to enable the inspection of hidden and concealed spaces. The Consultant shall include invasive and destructive sampling methodologies including coring, drilling, and other sampling methodologies. All Sampling shall be performed by qualified asbestos sampling technicians. If the sampling is being done in occupied spaces, all sample locations shall be repaired.
 - 10.5.3.4. The Consultant shall use equipment that will allow visual examination and photo documentation of all accessible spaces. If hidden or inaccessible areas are to be disturbed, or are likely to be disturbed, the Consultant shall provide a detailed description of the procedures to be employed to find hidden or concealed ACM. (For example, if asbestos pipe insulation is suspected in a wall cavity, the Consultant shall describe, by location, where the wall was opened for examination.) The report shall identify where attempts were made to access concealed areas but could not be accessed, and include a qualifying statement that due to the age of the structure and knowledge of site development

these concealed areas may contain undiscovered ACM.

- 10.5.3.5. The Consultant shall ensure that polarized light microscopy (PLM) and “stop-positive” methods are employed to assess all potential ACM. For all investigation and abatement activities, transmission electron microscopy (TEM) analytical techniques shall be employed for all materials found to contain less than 1% asbestos fiber using PLM, not just for non-friable organically bound (NOB) materials (as is more typical for this method).
 - 10.5.3.5.1. The Authority emphasizes that NJ Department of Labor field inspectors regularly verify ACM and non-ACM claims using TEM, regardless of material type. Therefore the Authority requires this level of analysis to allow direct comparison of results.
- 10.5.3.6. The Consultant shall document in tabular format where the ACM exists, provide a description of the material, the condition of the ACM (e.g., the type, level and amount of damage), the method of analysis, and the estimated quantities.
- 10.5.3.7. The Consultant shall prepare a narrative report that summarizes the ACM survey in a manner to promote ease of comprehension. At a minimum, the ACM section of the hazardous materials report shall include the following sections:
 - 10.5.3.7.1. Background Information and Scope of Work.
 - 10.5.3.7.2. Building Description.
 - 10.5.3.7.3. Identification of Qualified Inspector/Firm Affiliation/Laboratory Information.
 - 10.5.3.7.4. Survey Methodology and Material Location Plans.
 - 10.5.3.7.5. Asbestos Identification Process and Conclusions.

- 10.5.3.8. The Consultant shall conduct a visual inspection of all existing buildings and structures that are to be included in any renovation or addition work, to determine if they are being impacted by water infiltration. The visual inspection shall focus on signs of water staining and/or microbial growth, and will include checking humidity levels with a moisture meter in all floors, wings, basements, and crawlspaces that may be included in the scope of renovation or addition.
- 10.5.3.8.1. All mold inspections, testing and remediation activities shall be in conformance with DCA, DHSS and DOL requirements.
- 10.5.3.9. If signs of water infiltration, water damage, or active microbial growth are observed and/or relative humidity levels are not within established American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) guidelines of 30-60% (ASHRAE 55), these areas shall be identified for abatement and the sources of the moisture shall be identified. In addition, all HVAC units that service areas of water infiltration or mold growth should be visually inspected and identified for subsequent cleaning.
- 10.5.3.10. The Consultant shall investigate existing buildings and structures that are to be included in the renovation or addition or demolition work, to determine the presence of equipment and fixtures containing PCB and/or Universal Wastes, to include but not limited to batteries, fluorescent lights, and radioactive smoke detectors and emergency exit signs.
- 10.5.3.11. The Consultant shall prepare a PCB and Universal Waste Inventory identifying all of the aforementioned items suspected of containing PCB and/or Universal Wastes. The Inventory report shall clearly define the federal and state regulatory requirements applicable to PCB and/or Universal Waste items for handling, storage, and marking.
- 10.5.3.12. The Consultant shall submit a Hazardous Material and Universal Waste Survey Report that presents a

detailed inventory of the materials and conditions encountered, with appropriate exhibits. The report shall be organized by building (if multiple buildings), building area, or as otherwise requested by the Authority.

10.5.3.12.1. The Report shall summarize all work accomplished, and shall include all laboratory data, sketch plans identifying the location of all samples obtained, summary tables identifying all analytical results, including but not limited to detection and friability levels of all ACM/non-ACM, concentrations of Total Lead, and TCLP analyses for disposal, and a comparison of all such levels and concentrations to residential action levels as determined by NJDEP and the United States Environmental Protection Agency (the “USEPA”).

10.5.3.12.2. The Report shall include an itemized inventory of all suspected ACM and LBP materials found to exist in each individual building in an itemized format with a corresponding cost estimate to successfully abate such conditions in accordance with all applicable regulatory agency and code requirements. Documentation such as field data sheets and photographs shall appear in appendices to the Report.

10.5.4. The Consultant shall perform a sampling and analysis of potable water systems within the building(s) to determine the presence and concentration of lead. The associated report shall include the identification of all potable water sources (and locations) that contain lead above State/Federal action levels. Upon request, the Consultant shall provide cost estimates for successfully abating such conditions in accordance with all applicable regulatory and code requirements.

10.5.5. The Consultant shall conduct testing for the presence and concentration of radon. Where levels are identified equal to or greater than 4.0 pCi/L, the Consultant shall provide

recommendations for remediation measures, with preliminary budget costs for such measures.

10.6. Preliminary Geotechnical Investigation and Report

- 10.6.1. The Consultant shall complete a subsurface investigation program consisting of multiple supervised test borings and test pits at select locations within the proposed site in order to:
 - 10.6.1.1. Explore, in a comprehensive manner, the subsurface soil and groundwater conditions at selected locations within the site.
 - 10.6.1.2. Estimate the geotechnical engineering properties of the encountered materials.
 - 10.6.1.3. Evaluate the general site foundation requirements and recommend appropriate types of foundations for support of the proposed structure.
 - 10.6.1.4. Present recommendations relative to the support and sub-drainage requirements of the lowest level floor slabs.
 - 10.6.1.5. Identify a seismic site class in accordance with the latest version of the International Building Code, New Jersey Edition.
 - 10.6.1.6. Discuss general earthwork operations or considerations consistent with the recommended site and foundation solutions.
- 10.6.2. The borings shall be performed with either truck-mounted or all-terrain-vehicle drilling equipment and shall extend to depths that will provide sufficient preliminary geotechnical and geologic information to set forth a recommendation for the type of foundation necessary for the proposed structure.
 - 10.6.2.1. All field work shall be performed under the oversight of a licensed professional engineer experienced in conducting geotechnical investigations.
 - 10.6.2.2. The Consultant shall locate the explorations in the field, maintain continuous logs of the explorations as the work proceeds, and observe the soil sampling operations in order to develop the required subsurface information.
 - 10.6.2.3. Soil samples suitable for identification purposes shall be extracted from the borings at closely spaced

- intervals in accordance with the procedures of the Standard Penetration Test.
- 10.6.2.4. Drilling and representative sampling shall be accomplished in accordance with ASTM D 1586, and laboratory testing shall be accomplished in accordance with the Unified Soil Classification System.
 - 10.6.2.5. The Consultant shall perform all sampling and testing necessary in order to complete the geotechnical investigation, and shall, at a minimum, identify soil and rock types, densities, bearing capacities and groundwater elevation.
 - 10.6.2.6. All borings shall be backfilled and/or grouted to existing grade.
- 10.6.3. The Consultant may be directed to collect environmental soil and groundwater samples at select geotechnical boring locations. Groundwater sampling may be accomplished through the installation of temporary well points within the borings. The purpose of the groundwater investigation is to determine groundwater flow direction and a general sense of groundwater quality.
- 10.6.4. The Consultant shall prepare a geotechnical base map. All boring and test pit locations shall be accurately surveyed and located on the geotechnical base map.
- 10.6.5. The Preliminary Geotechnical Report shall describe the Consultant's findings, address the suitability of subsurface conditions to support the project, and indicate any limitations on building placement or construction based on preliminary geotechnical findings.
- 10.6.5.1. This Report is not intended to meet code compliance; rather, it is intended to provide sufficient information to support development, evaluation and selection of conceptual options for the placement and design of the proposed Project.
 - 10.6.5.2. The Report shall include the geotechnical base map and logs for all test pits and borings, drawings, profiles and testing results.
 - 10.6.5.3. The Report shall summarize the geotechnical work accomplished, describe in a general sense the earthwork needs of the Site to support the project,

and provide recommendations and suggestions for the most cost effective type(s) of foundation system(s) for construction of the school.

- 10.6.5.4. The Report shall include a preliminary estimate of the volume and cost to remove unsuitable soils, fill, miscellaneous debris, and former building foundations.

10.7. Historical and Cultural Resources Evaluation and Report: If the Site contains structures over fifty years old or is in or near a Historic District registered by the State, the Consultant shall undertake an evaluation to determine the historic significance of buildings and resources and any archaeological resources on the Site.

- 10.7.1. The Consultant's services shall be provided by a historic preservation specialist with experience in New Jersey, pre-qualified by the Authority, and having met the minimum professional qualification standards promulgated by the National Park Service, 36 C.F.R. § 61.
- 10.7.2. The Consultant shall conduct a file search and on-Site investigation to identify the likelihood of archaeological or historic resources on and near the Site, and a review of any previously completed and/or ongoing historic investigations or reports conducted by the State of New Jersey or other agencies.
- 10.7.3. If the Consultant's file search and on-Site investigations indicate that significant historic and/or archaeological resources exist on or adjacent to the Site, the Consultant shall, in consultation with the Authority, perform further investigation to determine the impacts of the proposed school facilities and to explore ways to avoid, minimize or mitigate adverse impacts.
- 10.7.4. The Historic and Cultural Resources Report shall set forth the locations and boundaries and origins of all historic structures, districts or archeological resources on the Site and relevant surrounding area.
- 10.7.5. The Report shall set forth the results of the file search and on-site investigation, and shall contain photo documentation of all buildings affected by the proposed school project and in the vicinity of the proposed school site.
 - 10.7.5.1. Photographs shall include a minimum of two facades and two exterior building corners.
- 10.7.6. The Report shall include the Consultant's recommendations, if any, for preservation through avoidance, adaptive reuse, or

minimization of impacts. If these steps are not seen as practical, the Consultant shall make recommendations on mitigation, including but not limited to archival recording, alternate design considerations to minimize impacts, preservation of component artifacts, or archeological recovery.

10.7.7. The Report shall address the requirements of both Executive Order 215 and the regulations of the New Jersey Register of Historic Places.

10.7.7.1. In the event that properties listed on the Register will be affected by the proposed school project, the Consultant shall, in consultation with the Authority, prepare an application for submission to the NJDEP pursuant to the regulations of the State Register Act.

10.7.7.2. The Report shall be summarized in the E.O. 215 report and included as an appendix.

10.8. Preliminary Assessment and Report: If a Preliminary Assessment was previously completed, the Consultant, in consultation with the Authority, shall determine whether the report can be relied upon, or whether a new report or update is necessary. If a new report is necessary, the Consultant shall conduct all appropriate inquiry and prepare an environmental report in compliance with both N.J.A.C. 7:26E-3.1 and ASTM E-1527-13 (Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process).

10.8.1. Objectives of the Preliminary Assessment are as follows:

10.8.1.1. To identify potential areas of concern (“AOCs”) and any previously recognized environmental conditions at the site.

10.8.1.2. To establish an appropriate Site Investigation (“SI”) scope of work to document soil and groundwater quality.

10.8.2. Preparation of the Report by a Licensed Site Remediation Professional (“LSRP”) is not required.

10.8.3. The Preliminary Assessment Report shall, at a minimum, include the following:

10.8.3.1. An evaluation of the potential presence of urban historic fill, to support development of an appropriate soil management plan in conjunction with the proposed Project.

- 10.8.3.2. A certification that the inquiry into the property and the resulting report was prepared by a “Qualified Environmental Professional” as defined by the USEPA, and meeting the qualifications set forth in the ASTM Standard for conducting Phase I Environmental Site Assessments.
 - 10.8.3.3. A visual inspection of the property and adjacent properties, completed by a Qualified Environmental Professional.
 - 10.8.3.4. Identification of the presence of existing groundwater monitoring wells within 200 feet of the property using visual means and/or electronic records available from the NJDEP Bureau of Water Allocation.
 - 10.8.3.5. A summary of interviews with personnel having knowledge of the site development history.
 - 10.8.3.6. An evaluation and interpretation of historical Sanborn Fire Insurance Maps, historical aerial photographs, USGS topographic maps and geologic maps, and any other maps, surveys, or written materials provided by the Project School District.
 - 10.8.3.7. A review of publicly-available environmental databases for indications of potential environmental concerns on, or within a mile of the property.
 - 10.8.3.8. A review of available government records and the records of public utilities, local building/engineering departments, and fire department, to assist in defining the site development history.
 - 10.8.3.9. An evaluation of commonly known or reasonably attainable information, including the degree of obviousness of the presence of contamination and the ability to detect the presence of such contamination.
- 10.8.4. If no areas of concern are identified by the Consultant, provide a review and certification by an LSRP that additional investigation or remediation activities are not warranted and that a remedial action outcome (RAO) is appropriate.

10.9. Site Investigation Activities and Report: The Consultant shall develop a Site Investigation Work Plan to comply with the requirements of N.J.A.C. 7:26E-3.1 and to enable the development of preliminary remedial action cost estimates. The following elements may be required:

10.9.1. Soil and Groundwater Sampling and Analyses and Report: The Consultant shall complete an assessment of soil and groundwater quality to inform future construction activities.

10.9.1.1. Groundwater samples may be collected via direct push technologies or by installing temporary well points to determine impacts to groundwater.

10.9.1.2. Sufficient groundwater samples shall be collected to preliminarily evaluate and affirm groundwater quality and basic hydrogeologic conditions at the site, such as regional groundwater elevations and gradients.

10.9.1.3. The Consultant shall be responsible for mobilizing all equipment necessary to conduct the investigation and collect the necessary samples, as well as providing qualified personnel necessary to operate the equipment and record the investigation.

10.9.1.4. The Consultant shall be responsible for the quality and accuracy of the information collected, and shall provide for the safe and accessible storage of this information.

10.9.1.5. All site investigation costs shall be maintained by tax block and lot numbers.

10.9.2. Surface Geophysical Survey and Report

10.9.2.1. The Consultant shall conduct a Surface Geophysical Survey in order to inform any or all of the following:

10.9.2.1.1. Early site development, remediation, and demolition design activities.

10.9.2.1.2. Location of unknown underground tanks or underground utilities.

10.9.2.1.3. Identification of pre-existing foundations and obstructions.

10.9.2.1.4. Location of subsurface structures remaining after site demolition and site remediation actions are complete.

- 10.9.2.2. In consultation with the Authority and before any Survey activities are authorized, the Consultant shall develop a Geophysical Survey proposal and Work Plan based on specific Project objectives and goals and a strong understanding of the site history and existing site conditions. The proposal and Work Plan shall include the following:
 - 10.9.2.2.1. Affirmation that the Consultant has communicated to its sub-consultant (if the surface geophysical work is subcontracted) available information with respect to the site development.
 - 10.9.2.2.2. A detailed Work Plan including a brief site description; the goals and objectives of the survey; the proposed equipment and methodologies to meet the objectives; and a summary of the site-specific limitations, factors, and external interferences that may affect the ability of the survey to measure certain physical parameters.
 - 10.9.2.2.3. A quality control plan.
 - 10.9.2.2.4. A proposed test pit and trench excavation program (including proposed excavation equipment and depth of excavation) as a contingency to confirm or refute the results of the surveys, and to identify buried materials.
- 10.9.2.3. Depending on Site-specific conditions the surface geophysical survey shall incorporate two or more techniques, electromagnetic terrain conductivity (EM), ground-penetrating radar (GPR) using both high frequency and low frequency antennas, and/or radiodetection line tracing, with options to include a metal detector and fluxgate magnetometer.
- 10.9.2.4. The Consultant's Geophysical Survey Report shall include the supporting geophysical survey plans and data profiles, conclusions, and an assessment of the data measurement error, noise, interference, interpreter prejudices, and other factors that may

affect the ambiguity, uncertainty, or reliability of the survey.

10.9.2.4.1. The results of the surface geophysical surveys shall be shown on scaled site plans and figures to inform future site investigation and construction decisions.

10.9.2.5. If necessary, recommend additional investigative activities, such as test pits, which may be required in order to confirm existing conditions to the extent necessary to inform the development and evaluation of conceptual options. Upon authorization by the Authority, complete such additional investigative activities as Allowance Services, and incorporate the findings in an updated Geophysical Survey Report.

10.10. Executive Order 215 Report: The Design Consultant shall prepare a report in accordance with Executive Order No. 215 (1989) ("E.O. 215") for submission of the project to the NJDEP Office of Program Coordination. The tasks to be incorporated may include but are not limited to development of the following:

10.10.1. Environmental Screening Report.

10.10.2. Preliminary Assessment.

10.10.3. Site Investigations.

10.10.4. Wetland Investigation and Determination.

10.10.5. Hazardous Materials and Universal Waste Report including Asbestos Containing Materials (ACM), Lead-Based Paint, Lead in Drinking Water, Radon, Mold and PCB Investigation.

10.10.6. Traffic Feasibility Analysis and Report.

10.10.7. Historic and Cultural Resources Report.

10.11. Property Acquisition Environmental Cost Estimate Report

10.11.1. The Consultant shall develop a Property Acquisition Environmental Cost Estimate Report (PAECER) for each property under consideration for acquisition or for groups of properties under single ownership, in order to:

10.11.1.1. Summarize environmental conditions based on preliminary assessments, site investigations and other studies.

10.11.1.2. Estimate the cost of remedial activities in the event that the Authority decides to move forward with

acquisition and remediation of the proposed properties in order to build the proposed Project.

- 10.11.2. The Consultant shall develop the report from an analysis of studies conducted at the properties to be acquired, based on the use of the site for educational purposes. Cost estimates shall be based on the Consultant's professional experience with projects of similar scope and complexity.
- 10.11.3. For each property under consideration, the PAECER shall include, at a minimum, the following:
 - 10.11.3.1. A brief summary of the environmental investigations conducted at the property.
 - 10.11.3.2. A site plan showing the location of each AOC, soil sampling locations, monitoring wells, and all other significant items on the Site.
 - 10.11.3.3. A tabular summary, in accordance with NJDEP requirements, showing the results of the soil and/or ground water sampling on the property.
 - 10.11.3.4. The Consultant's recommendations for remedial actions, if any.
 - 10.11.3.5. Itemized cost estimates for specific soft costs (such as environmental investigation and reporting, design, permits, fees, oversight, post excavation sampling, long term stewardship obligations) and hard costs (such as soil or groundwater remedial actions, engineering control installation, asbestos abatement, and UST removal) which may be required to complete the remedial actions recommended for the property.
 - 10.11.3.6. A projected schedule for completing remediation.
- 10.11.4. The Consultant shall prepare an Environmental Summary Memorandum (ESM) for each PAECER. This one-page summary is required by law to alert the property owner that there may be environmental concerns associated with this property. The ESM must be consistent with the format required by the Authority, who will assist with the selection of the most appropriate ESM for the subject property.
- 10.11.5. The report shall also include as a separate attachment cost estimates for building demolition and site clearing on the Site. These cost estimates shall include the following:

- 10.11.5.1. Hard and soft costs associated with demolition, including demolition engineering plans, specifications, permits, utility disconnects, and contractor costs.
- 10.11.5.2. The cost of any necessary off-site remediation.
- 10.11.5.3. A projected schedule for clearing and building demolition activities.
- 10.11.6. Suggested outline of the PAECER:
 - 10.11.6.1. Executive Summary
 - 10.11.6.2. Introduction
 - 10.11.6.2.1. Purpose, Scope, and Project Description
 - 10.11.6.2.2. Brief Physical Site Description
 - 10.11.6.2.3. Brief Description of AOCs
 - 10.11.6.3. Summary of Soil and Groundwater Sampling Data
 - 10.11.6.4. Identification of Appropriate and Relevant Remedial Action Objectives
 - 10.11.6.5. Identification of Remedial Alternatives
 - 10.11.6.6. Focused Evaluation and Preliminary Cost Estimate of Remedial Alternatives to Satisfy Remedial Action Objectives for Use of the Site as a School
 - 10.11.6.7. Recommendation for Remedial Action
- 10.11.7. Cost estimates should reflect cost to satisfy NJDEP technical requirements and LSRP requirements. All assumptions must be outlined.

10.12. Traffic Impact Evaluation and Report

- 10.12.1. The Design Consultant shall conduct a Traffic Impact Evaluation to assess traffic, parking, and existing traffic patterns in proximity to the Site. The tasks to be incorporated may include but are not limited to:
 - 10.12.1.1. A traffic engineering analysis, determining the capacity and existing levels of service (“LOS”) of roadways and highways serving the Site.
 - 10.12.1.2. Additional studies to address anticipated traffic requirements of local, county and State transportation agencies, and potential traffic mitigation improvements (both on-Site and off-Site).

- 10.12.1.3. Traffic counts at all affected intersections shall be completed, as directed by the Authority.
- 10.12.1.4. Review of the impact of phasing of the School Facilities Project (if any) and any related improvements.
- 10.12.1.5. Detailed site distance analysis along all frontages in order to determine the best and most efficient location for all points of ingress and egress and maximize site distances for vehicles entering and exiting the site.
- 10.12.1.6. Assessment of the current levels of service of the existing roadway network adjacent to the Site.
- 10.12.1.7. Description of the project's impact on the surrounding area and changes to the existing level of services necessitated by the Site's intended use.
- 10.12.1.8. Field inspection to obtain an inventory of existing roadway geometry, traffic control, and the location and geometry of such adjacent driveways and intersections as may be gathered without an instrument survey.
- 10.12.1.9. Traffic volume recordings conducted during weekday AM and PM peak hours at adjacent intersections.
- 10.12.1.10. Estimates of traffic to be generated by the proposed Project based on standard trip generation rates published by the Institute of Transportation Engineers, and/or trip generation research, including school buses, conducted by the Consultant. Site traffic shall be assigned to the adjacent roadway systems based upon the anticipated directional distribution.
- 10.12.1.11. Capacity analyses of the affected roadways and intersections surrounding the Site to obtain existing and projected peak hour capacities and to define existing and projected levels of service.
- 10.12.1.12. Recommendations for offsetting any negative impacts of the proposed School Facilities Project, including, but not limited to, signalized intersections, modification to existing signal timing, roadway widening and/or roadway re-striping.

- 10.12.1.13. Proposed points of ingress and egress, which shall have been inspected for adequacy of geometric design, spacing from adjacent driveways, and conformance with generally accepted design standards.
 - 10.12.1.14. Recommendations for the Site's internal geometry to accommodate large wheel vehicles such as school buses, delivery trucks, refuse trucks and emergency vehicles, and any actions required to ensure that the geometry necessary for vehicle accommodation is maintained.
 - 10.12.1.15. A comparison of the proposed parking layout with respect to generally accepted design standards, local ordinances and demands experienced at similar developments, and recommendations for any actions required to ensure that an appropriate parking layout is maintained.
- 10.12.2. The Consultant shall include a traffic evaluation to comply with the Terrell James Law.
- 10.12.2.1. The evaluation shall take into consideration the utility of any previous traffic studies completed for the project.
 - 10.12.2.2. The Consultant shall identify all existing entry or exit ramps (if any) associated with a highway within 1,000-feet of the proposed school. If a determination is made that there is no feasible or prudent alternative, the Consultant shall assist the Authority in preparing required notifications to the Department of Transportation
 - 10.12.2.3. If requested by the Authority, the Consultant shall provide under separate cover an estimate of any necessary improvements that may be required to comply with the Terrell James Law.
- 10.12.3. Upon completion of the Study, the Consultant shall submit the Traffic Study Report and any presentation graphics required for the Authority's review, for local planning board courtesy review, and for any other presentations required by the Authority.

10.13. Preliminary Storm Water Management Investigation and Report

- 10.13.1. The Consultant shall undertake additional investigations to ascertain soil characteristics and depth to groundwater to support

a schematic design of any subsurface detention/infiltration system. It is anticipated that these investigations may include:

- 10.13.1.1. Installation of temporary well point(s) to provide a representative groundwater sample to determine if special handling requirements, or to determine if dewatering is necessary during construction.
- 10.13.1.2. Analysis of groundwater for parameters required by the local sewer utility.
- 10.13.1.3. Exploration and documentation of the subsurface physical and chemical soil characteristics and groundwater conditions at possible storm water management locations.
- 10.13.1.4. Determination of the seasonal high groundwater elevations, and if elevations indicate the viability of subsurface infiltration, in-situ percolation testing for use in storm water management design.
- 10.13.1.5. Identification of limitations presented by existing on-site and off-site infrastructure and development of solutions to mitigate those limitations, with estimates of associated costs.

10.13.2. The Preliminary Storm Water Management Report shall include the outcomes of all investigations, with supporting data, and indicate any limitations on storm water system design, placement or construction based on these findings.

10.14. Testing and Inspection Services: The Design Consultant shall be responsible for providing technical inspection and testing for the Project. All Testing and Inspection Services necessary or appropriate to perform the investigation obligations of the Predesign Phase (with the exception of infrared testing and/or moisture or other probes, which the Authority may require to be performed as Allowance Services in accordance with Section 2.25 of this Agreement) shall be performed or procured by the Design Consultant as part of the Basic Services, and the costs of such shall be included in the Design Consultant's lump sum price for the Basic Services. Other technical inspection and testing services may be necessary during the construction phase for code-related or special inspection requirements, and such services may be considered Allowance Services.

10.14.1. The Design Consultant shall, as needed, and upon prior written authorization from the Authority, engage duly qualified Professional Services Consultants necessary to provide the code-

related or construction-phase technical inspection and testing required by this Agreement, a specific Task Order under this Agreement, and/or the Contract for Construction.

- 10.14.2. When procuring testing and technical inspection services for the Project that constitute Allowance Services or Additional Services, the Authority may require that the Design Consultant solicit fee proposals from three qualified testing and inspection firms and shall negotiate the fee, to secure appropriate services at a reasonable cost.
- 10.14.3. If Testing and Inspection Services are considered Allowance Services, and compensated through Allowance categories, the Design Consultant must comply with the provisions of Section 2.25 above, before procuring or performing Testing and Inspection services or invoicing for such services.
- 10.14.4. The Design Consultant shall direct, oversee and coordinate with these Professional Services Consultants. The Design Consultant 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 and the Contractor. The Design Consultant 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.
- 10.14.5. The Design Consultant shall require that, and monitor to ensure that, all testing and technical inspection by the Professional Services Consultants engaged by the Design Consultant conforms to the following requirements.
 - 10.14.5.1. All testing laboratories engaged or utilized for testing and inspection services shall:
 - a) meet the “Recommended Requirements for Independent Laboratory Qualification” published by the American Council of Laboratories;
 - b) meet basic requirements of ASTM E 329, “Standards of Recommended Practices for Inspection and Testing Agencies for Concrete and Steel as Used in Construction;
 - c) be authorized to operate in the State of New Jersey;

- d) calibrate all testing equipment at reasonable intervals by devices of accuracy traceable to the National Institute of Standards and Technology (NIST) or the accepted value of natural physical conditions.

10.14.5.2. Testing laboratories are not authorized to:

- a) Release, revoke, alter or enlarge on requirements of the Agreement or the Contract for Construction;
- b) Approve or accept any portion of the Contractor's Work; or
- c) Perform any duties of the Contractor.

10.14.6. The Design Consultant shall require that Testing laboratories and Technical Inspection Firms engaged to provide testing and inspection services for the Project shall:

10.14.6.1. Cooperate with the Design Consultant and Contractor and provide qualified personnel after due notice;

10.14.6.2. Perform specified inspections, sampling and testing of materials and methods of construction;

10.14.6.3. Comply with the specifications of the Contract for Construction;

10.14.6.4. Ascertain compliance of materials with requirements of contract documents;

10.14.6.5. Furnish the Design Consultant with written evaluation of proposed concrete design mixes, and other materials, submitted by contractor for evaluation;

10.14.6.6. Notify the Design Consultant and Contractor immediately of observed work or materials which fail to meet the requirements of contract documents

10.14.6.7. Perform additional tests as required by the Design Consultant or NJSDA;

10.14.6.8. Promptly submit a written report of each test and inspection to the Design Consultant and the Contractor and to other entities as designated by the design consultant. Each report shall include:

- a) Date issued;

- b) Project title and number;
- c) Testing Laboratory name;
- d) Name and signature of laboratory inspector;
- e) Date and time of sampling or inspection;
- f) Record of temperature and weather conditions;
- g) Date of tests;
- h) Identification of items or products tested and relevant specification sections governing such items or products;
- i) Location within the Project where sample was collected;
- j) Type of inspection;
- k) Results of tests and evaluation of test results with respect to compliance with contract documents; and
- l) Interpretation of test reports, when requested by the Authority or the Design Consultant.

10.15. Commissioning Services: If requested by the Authority, the Design Consultant shall provide Commissioning Services. The scope of such Commissioning Services, including provision of Commissioning Authority Services, if any, shall be determined by the Authority at the conclusion of the Predesign Phase.

APPENDIX D

(Hourly Rates)

APPENDIX E

(Certificates of Insurance and Business Registration Certificate)

APPENDIX F

(Design Consultant's Employees and Subconsultants)

APPENDIX G

(Additional Forms and Addenda)

APPENDIX H

Materials and Systems Standards Manual/Design Requirements

The Design Consultant shall be guided by the applicable requirements of the Authority's Materials and Systems Standards Manual/Design Requirements, as such manual exists as of the date of advertisement of the procurement. The Authority's Materials and Systems Standards Manual/Design Requirements shall be considered incorporated into this agreement as if reproduced here, and is available on the Authority's website at:

https://www.njsda.gov/NJSDA/Content/design/design_requirements.pdf

APPENDIX I

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE AND ANTIDISCRIMINATION PROVISIONS

FOR NJSDA GOODS and SERVICES AGREEMENTS

For all regulatory and statutory language cited below, all references to “contractor” shall be deemed to refer to the holder of the relevant Goods and Services, General Services or Professional Services contract.

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.A.C. 17:27-1.1 et seq.
(Implementing N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127))

EXHIBIT A

(For Goods, Professional Service and General Service Contracts)

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer,

advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with 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.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at:
http://www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program 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 Purchase &

Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

Antidiscrimination Provisions of N.J.S.A. 10:2-1

§ 10:2-1. Antidiscrimination provisions

Antidiscrimination provisions. Every contract for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract. No provision in this section shall be construed to prevent a board of education from designating that a contract, subcontract or other means of procurement of goods, services, equipment or construction shall be awarded to a small business enterprise, minority business enterprise or a women's business enterprise pursuant to P.L.1985, c.490 (*C.18A:18A-51 et seq.*)

ATTACHMENT C
HOURLY FEE SCHEDULE

ATTACHMENT C
HOURLY FEE SCHEDULE

Staff Category	Rate
Principal Architect-In-Charge	200.00
Project Manager	175.00
Project Architect	150.00
Staff Architect	125.00
Commissioning Specialist	150.00
LEED Specialist	150.00
E-Rate Specialist	150.00
Acoustical Specialist	150.00
Specifications Writer	150.00
QA/QC Specialist	150.00
CAD/Draftsperson	95.00
Senior Cost Estimator	125.00
Cost Estimator	100.00
Educational Planner	150.00
Scheduling Specialist	100.00
Constuction Administrator	150.00
Historical & Cultural Resources Specialist	150.00
Administrative/Clerical	65.00
PE, Principal-In-Charge	200.00
Engineering Manager	175.00
Civil Engineer	150.00
Landscape Architect	125.00
Geotechnical Engineer	150.00
Structural Engineer	150.00
Plumbing / Fire Protection Engineer	150.00
HVAC Engineer	150.00
Electrical Engineer	150.00
Technology/Security Specialist	125.00
CAD/Draftsperson	95.00
Administrative/Clerical	65.00
Principal Environmental Specialist	200.00
Senior Environmental Specialist	175.00
Project Environmental Specialist	150.00
Environmental Specialist	125.00
Environmental Staff	105.00
Field Sampling Personnel	95.00
Administrative/Clerical	65.00

ATTACHMENT D
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

NJSDA Contract No: _____ Project Description: _____

Bidder Name and Address: _____

PART 1

BIDDER MUST COMPLETE PART 1 BY CHECKING ONE OF THE BOXES

FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE

Pursuant to Public Law 2012, c. 25 (codified at N.J.S.A. 52:32-55, et seq.) (the "Act"), any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the New Jersey Schools Development Authority ("NJSDA") must complete the certification below to attest, under penalty of perjury, that neither the person nor entity, nor any of its parents, subsidiaries, or affiliates, is identified on the list created and maintained by the New Jersey Department of the Treasury ("Treasury") (referred to hereinafter as the "Chapter 25 List") as a person or entity engaging in investment activities in Iran. The Chapter 25 List is located at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders **must** review the Chapter 25 List prior to completing the below certification. **Failure to complete the certification and/or to submit a completed Disclosure form will render the Bidder's proposal non-responsive.** If the NJSDA finds a person or entity to be in violation of the law, it shall take action as may be appropriate and permitted by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and/or seeking debarment or suspension of the party.

CHECK THE APPROPRIATE BOX

A. <input type="checkbox"/>	I certify, pursuant to the Act, that neither the Bidder listed above nor any of its parents, subsidiaries, or affiliates is listed on the Chapter 25 List. Disregard Part 2 and complete and sign the Certification below.
B. <input type="checkbox"/>	I am unable to certify as above because the Bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Chapter 25 List. I will provide a detailed, accurate and precise description of the activities in Part 2 and sign and complete the Certification below. Failure to provide such information will result in the proposal being rendered as nonresponsive and appropriate penalties, fines, and/or sanctions will be assessed as provided by law.

PART 2

PLEASE PROVIDE ADDITIONAL INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

If you checked Box "B" above, provide a detailed, accurate and precise description of the activities of the Bidder, or any of its parents, subsidiaries or affiliates, engaged in the investment activities in Iran below:

ENTITY NAME: _____

RELATIONSHIP TO BIDDER: _____

DESCRIPTION OF ACTIVITIES: _____

DURATION OF ENGAGEMENT: _____

ANTICIPATED CESSATION DATE: _____

BIDDER CONTACT NAME: _____

BIDDER CONTACT PHONE NO.: _____

Attach Additional Sheets If Necessary.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Bidder, that the foregoing information and any attachments hereto, are true and complete. I acknowledge that the NJSDA is relying on the information contained herein, and that the Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the NJSDA to notify the NJSDA in writing of any changes to the information contained herein. I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the NJSDA, permitting the NJSDA to declare any contract(s) resulting from this certification void and unenforceable.

Signature: _____ Date: _____

Print Name and Title: _____

ATTACHMENT E
SOURCE DISCLOSURE CERTIFICATION FORM

SOURCE DISCLOSURE CERTIFICATION FORM

Bidder: _____

Contract No.: _____

I hereby certify and say:

1. I have personal knowledge of the facts set forth herein and am authorized to make this Certification on behalf of the Bidder.
2. The Bidder submits this Certification as part of a bid proposal in response to the referenced solicitation issued by the New Jersey Schools Development Authority (the "Authority"), in accordance with the requirements of N.J.S.A. 52:34-13.2.
3. The following is a list of every location where services will be performed by Bidder and all subcontractors. If any of the services cannot be performed within the United States, the Bidder shall state, with specificity, the reasons why the services cannot be performed in the United States.

Bidder or Subcontractor	Description of Services	Performance Location(s) by Country	Reason Services Cannot be Performed in U.S.

4. Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced solicitation or extension thereof will be immediately reported by the Bidder to the NJSDA.
5. I understand that, after award of a contract to the Bidder, it is determined that the Bidder has shifted services declared above to be provided within the United States to sources outside the United States, prior to a written determination by the NJSDA that extraordinary circumstances require the shift of services or that the failure to shift the services would result in economic hardship to the State of New Jersey, the Bidder shall be deemed in breach of contract, which contract will be subject to termination for cause.
6. I further understand that this Certification is submitted on behalf of the Bidder in order to induce the Authority to accept a bid proposal, with knowledge that the Authority is relying upon the truth of the statements contained herein and that I am under a continuing obligation from the date of this certification through the

completion of any contracts with the NJSDA to notify the NJSDA in writing of any changes to the information contained herein.

7. I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the NJSDA, permitting the NJSDA to declare any contract(s) resulting from this certification void and unenforceable.

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Bidder: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT F
OWNERSHIP DISCLOSURE FORM



**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY**

**33 WEST STATE STREET, P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230**

OWNERSHIP DISCLOSURE FORM

BID SOLICITATION #: _____ **VENDOR {BIDDER}:** _____

**ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE THE
INFORMATION REQUESTED PURSUANT TO N.J.S.A. 52:25-24.2.**

PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.

PART 1

YES NO

Are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor {Bidder}?

If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein.

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

Attach Additional Sheets If Necessary.

PART 2

YES NO

Of those entities disclosed above owning a 10% or greater interest in the Vendor {Bidder}, are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest of those listed entities?

If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein. Please note that this disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been identified.

Name of the entity listed above to which the disclosure below applies: _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

Attach Additional Sheets If Necessary.

PART 3

As an alternative to completing this form, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.

