

REQUEST FOR QUALIFICATIONS AND PROPOSALS

for

CONSTRUCTION MANAGEMENT SERVICES

for

Contract No.: HU-0029-M01

for

**New Grade 7-9 School
Union City, NJ**

RFQ/RFP Issue Date: June 15, 2022

Proposal Due Date: July 18, 2022



STATE OF NEW JERSEY

SCHOOLS DEVELOPMENT AUTHORITY

32 East Front Street, P.O. Box 991, Trenton, NJ 08625

**CONSTRUCTION MANAGEMENT SERVICES
REQUEST FOR QUALIFICATIONS AND PROPOSALS (“RFQ/RFP”)**

INTRODUCTION

The New Jersey Schools Development Authority (“SDA”) is seeking the services of a Construction Manager (hereafter “NJSDA”, “SDA”, or “Authority”) to manage the Design-Build Construction of the New Grade 7-9 School in the Union City Public Schools District.

This RFQ/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.

This CONSTRUCTION MANAGEMENT SERVICES REQUEST FOR QUALIFICATIONS AND TECHNICAL PROPOSALS consists of the following:

1. Request for Qualifications and Proposals
2. Attachment A: (Response Forms):
 - a. Firm’s Construction Management Experience Form;
 - b. Identification of Construction Manager’s Required Key Team Members Form;
 - c. Firm’s Staffing Proposal for the Project Form;
 - d. Key Team Member Resume Form;
 - e. Ownership Disclosure Form;
 - f. NJSDA Price Proposal Form;
 - g. Disclosure of Investment Activities in Iran Form;
 - h. Certification of Non-Debarment Form;
 - i. Source Disclosure Certification Form; and
 - j. Certification of Non-Involvement in Prohibited Activities in Russia or Belarus.
3. Attachment B: Construction Management Services Agreement.
4. Attachment C: Design-Build Information Package (DBIP) (DBIP to be made available via NJSDA’s secure FTP site to Firms submitting a valid Notice of Intent to Participate in accordance with the terms of this RFQ/RFP).

The Construction Management Services Agreement (Attachment B to this RFQ/RFP) includes a Project Description as Appendix B.

These documents must be read in their entirety as they define the scope of services and responsibilities of the CM and the NJSDA. A Firm wishing to submit a Proposal for Construction Management Services must review and be thoroughly familiar with all terms and conditions of these documents.

Notice of Intent to Participate: The NJSDA will not hold a traditional pre-proposal conference for this procurement. All Firms interested in submitting 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 on June 30, 2022

Questions from Interested Firms: Interested Firms may submit written questions regarding this procurement to the NJSDA by sending them by email to Dave Kutch at DKutch@njsda.gov no later than 2:00 PM on June 30, 2022. The questions and NJSDA answers will be provided via an addendum to the RFQ/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), Selection 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 RFQ/RFP must be received by the NJSDA no later than 2:00 PM on July 18, 2022. Faxed or e-mailed submissions shall not be accepted.

Any Firm responding to this RFQ/RFP (hereafter “Firm”, “Interested Firm” or “Responding Firm”) **must be** prequalified by both the Department of Treasury-Division of Property Management and Construction and the NJSDA in the Construction Management (P029) discipline as of the due date for Responses to this RFQ/RFP.

Upon award, the NJSDA shall forward the Form of Construction Management Services Agreement to the successful Firm for immediate execution, **without modification**.

SECTION 1 - PROCUREMENT OVERVIEW

1.1 General

This is a “Price and Other Factors” solicitation for Construction Management Services for the New Grade 7-9 School in the Union City Public Schools District. This solicitation seeks responses from Interested Firms in the form of a simultaneous submission of:

1. A Qualifications and Technical Proposal, which provides information regarding the Responding Firm’s past experience and qualifications, for evaluation by a Selection Committee charged with evaluation and scoring of the submittals with reference to the non-price “Other Factors” criteria identified in this solicitation; and

2. A sealed Price Proposal, which will remain sealed until completion of the “Other Factors” evaluation and scoring, and which states the Responding Firm’s Total Compensation Amount for the services required for the project. The Price Proposal will be subject to scoring in accordance with the terms of this RFQ/RFP.

Responsive Firms will be evaluated and scored by a Selection Committee on the basis of their written Qualifications and Technical Proposal submissions. The Responsive Firms will be ranked on the basis of such scores, and a shortlist of the six (6) most highly-ranked Responsive Firms will be determined. The shortlisted Responsive Firms will participate in interviews with the Selection Committee and will be separately scored on the basis of the interview.

PLEASE NOTE: Bidders are not permitted to bring handouts or other written materials to the interviews to provide to the selection committee members. To the extent that bidders bring such materials to the interviews, the NJSDA will not accept or retain those materials, and those materials will not be provided to the selection committee members.

The scores for the written submission and the interview will be combined into a total “Non-Price Score.”

Once the Non-Price Scores for all Responsive Firms has been determined, the sealed Price Proposals will be opened and scored, with the lowest Price Proposal awarded the maximum Price Score, and all other Price Proposals scored accordingly.

The Non-Price Scores will be adjusted by a weighting factor of 60% and the Price Scores will be adjusted by a weighting factor of 40%, before being combined in a “Final Combined Score.” The Authority will recommend award of the contract to the Responsive Firm with the highest Final Combined Score.

1.2 Basis of Award

The Authority will award a contract to the Firm whose proposal conforms with the terms and conditions of this solicitation and whose qualifications, technical proposal and price are determined to be the most advantageous to the Authority, price and other factors considered, in accordance with the terms of this RFQ/RFP, and the provisions of the NJSDA’s authorizing statute at N.J.S.A. 18A:7G-243 and regulations adopted by the Authority at N.J.A.C. 19:38C-1 et seq. Responses from Firms shall be evaluated and scored, and Price shall be considered as 40% of the weighted scoring and all other factors representing 60% of weighted scoring.

The Authority is under no obligation to accept the lowest Price Proposal, as evaluation and scoring of responses shall be in accordance with the terms of the RFQ/RFP and regulations at N.J.A.C. 19:38C-1 et seq.

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 Components of Response

A conforming Response consists of the following components:

- Qualifications and Technical Proposal Forms (**one (1) unbound original and one (1) cover-to-cover copy in PDF format on USB Flash Drive**):
 - Firm’s Construction Management Experience Forms
 - Identification of Construction Manager’s Required Key Team Members Form
 - Firm’s Staffing Proposal for the Project Form
 - Key Team Member Resume Forms
 - Ownership Disclosure Form

- Price Proposal (**one (1) unbound original**):
 - NJSDA Price Proposal Form

Additionally, Firms are requested to submit the following documents with their response:

- Disclosure of Investment Activities in Iran Form;
- Certification of Non-Debarment Form;
- Source Disclosure Certification Form; and
- Certification of Non-Involvement of Prohibited Activities in Russia or Belarus.

A Firm’s failure to submit the *Disclosure of Investment Activities in Iran Form*, *Certification of Non-Debarment Form*, *Source Disclosure Certification Form* or the *Certification of Non-Involvement of Prohibited Activities in Russia or Belarus* form with its Qualifications and Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, these forms **shall** be submitted before the time of contract award.

A. Qualifications and Technical Proposal

Responding Firms must submit a Qualifications and Technical Proposal utilizing the Forms provided by the Authority, which provides responses to the non-price “other factors” evaluative criteria requirements of this RFQ/RFP. The Qualifications and Technical Proposals (**one (1) unbound original and one (1) cover-to-cover copy in PDF format on USB Flash Drive**) must be received by the NJSDA no later than **2:00 PM on July 18, 2022**. Faxed or e-mailed Submittals will not be accepted.

B. Price Proposal

Responding Firms must submit with the Qualifications and Technical Proposal a sealed “Price

Proposal,” which contains the Total Compensation Amount the Responding Firm intends to offer for the Construction Management Services as well as other required information. The Total Compensation Amount is based upon Monthly Rates for Key Team Members performing the Services of the engagement, plus several Specified Sum Amounts for certain Basic Services not compensated through the Monthly Fee, as well as Insurance costs and certain Allowance Amounts. The Price Proposal must be submitted on the form provided by the NJSDA, and no modifications or alterations to the wording or the calculation methodology of the Price Proposal Form are permitted.

Note that the NJSDA requires the Construction Manager to provide opportunities to Small Business Enterprise (SBE) firms and Disabled Veteran Owned Business (DVOB) firms to participate in the performance of the Work, consistent with the NJSDA’s 25% SBE and 3% DVOB Set-Aside Goals.

The Price Proposals must be separately sealed and submitted with the Qualifications and Technical Proposal and received by the NJSDA no later than **2:00 PM on July 18, 2022**. Faxed or e-mailed Price Proposals will not be accepted.

1.4 Evaluation and Scoring Process

For this procurement, price shall be weighted as 40% of the overall weight, and all non-price factors shall have a combined weight of 60%.

Each Responding Firm’s Qualifications and Technical Proposal will be reviewed to determine responsiveness.

The Qualifications and Technical Proposals will be evaluated by a Selection Committee (“Committee”) established for the purpose of evaluating such responses. 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 Responding Firm in response to this RFQ/RFP, and any necessary verification thereof.

The members of the Selection Committee will evaluate each Responsive Firm’s Qualifications and Technical Proposal, and may confer with each other regarding the content of the submissions before scoring, but each Selection Committee member will independently score each Qualifications and Technical Proposal in all of the non-price evaluation categories described in this RFQ/RFP, in accordance with the evaluation criteria described herein. Qualifications and Technical Proposals will be evaluated in the following categories:

- Responsive Firm’s CM Experience on Similarly Sophisticated Projects
- Staffing Proposal
- Key Team Members’ Experience on Similarly Sophisticated Projects

Each Selection Committee Member will evaluate each Qualifications and Technical Proposal, assigning a raw score for each category on a scale of 0 to 10 as follows:

- Outstanding (9–10): depth and quality of response offers significant advantages.
- Superior (7-8): exceeds RFQ/RFP requirements with no deficiencies.
- Sufficient (5-6): meets RFQ/RFP requirements with no significant deficiencies.
- Minimal (3-4): meets RFQ/RFP requirements but contains some significant deficiencies.
- Marginal (1-2): comprehends intent of RFQ/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’s raw scores for each category to arrive at a total weighted category score as follows:

| Qualifications and Technical Proposal Evaluation Category | Weighting Factor (Applied to Raw Score) | Maximum Available Points for Category |
|---|---|---------------------------------------|
| Responsive Firm’s CM Experience on Similarly Sophisticated Projects | 2.0 | 20 |
| Staffing Proposal | 3.0 | 30 |
| Key Team Members’ Experience on Similarly Sophisticated Projects | 5.0 | 50 |
| Total Possible Qualifications and Technical Proposal Points: | | 100 |

For each Firm’s Qualifications and Technical Proposal, the individual category scores awarded by a particular Selection Committee member will be added together to calculate a score for that Qualifications and Technical Proposal. The maximum score for a Qualifications and Technical Proposal Score is 100.

All of the scores awarded by the Selection Committee members to a particular Firm’s Qualifications and Technical Proposal will be added together and averaged to arrive at a Final Qualifications and Technical Proposal Score for each Firm. The Firms will be ranked based on their Final Qualifications and Technical Proposal Scores, and a shortlist of the six (6) highest-ranked Responsive Firms will be determined. The shortlisted Responsive Firms will be notified to participate in interviews with the Selection Committee. If fewer than six Responding Firms submit valid, responsive Qualifications and Technical Proposals, then all such Firms will be invited to participate in interviews with the Selection Committee.

The Selection Committee will interview each of the shortlisted Firms and evaluate each Firm on Interview Criteria that are the same as those used in the evaluation of the Qualifications and Technical Proposals, as follows:

- Responsive Firm’s CM Experience on Similarly Sophisticated Projects

- Staffing Proposal
- Key Team Members’ Experience on Similarly Sophisticated Projects

Each Selection Committee Member will evaluate each Firm’s participation in the interview and assign a raw score for each Interview Category on a scale of 0 to 10 as follows:

- Outstanding (9–10): depth and quality of response offers significant advantages.
- Superior (7-8): exceeds RFQ/RFP requirements with no deficiencies.
- Sufficient (5-6): meets RFQ/RFP requirements with no significant deficiencies.
- Minimal (3-4): meets RFQ/RFP requirements but contains some significant deficiencies.
- Marginal (1-2): comprehends intent of RFQ/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’s raw scores for each Interview Category as indicated below:

| Interview Evaluation Category | Weighting Factor (Applied to Raw Score) | Maximum Available Points for Category |
|---|---|---------------------------------------|
| Responsive Firm’s CM Experience on Similarly Sophisticated Projects | 2.0 | 20 |
| Staffing Proposal | 3.0 | 30 |
| Key Team Members’ Experience on Similarly Sophisticated Projects | 5.0 | 50 |
| Total Possible Interview Points: | | 100 |

The weighted Interview Category scores awarded by a particular Selection Committee member will be added together to calculate an Interview Score for that Firm. The maximum Interview Score is 100.

All of the Interview Scores awarded to a particular Firm by the Selection Committee members will be added together and averaged to arrive at a Final Interview Score for each Firm. The Final Interview Score for each Firm will be added to the Final Qualifications and Technical Proposal Score for such Firm, and the two scores will be averaged to arrive at a Non-Price Score for each Firm. The maximum Non-Price Score is 100.

Once all the Non-Price Scores for all shortlisted Firms have been calculated, the Authority will open the sealed Price Proposals and will review them for responsiveness, and determine a Price Score for each responsive Price Proposal.

The lowest responsive Price Proposal shall be scored by awarding the maximum number of points for the price component, which shall be 100. All other Price Proposals shall be scored by awarding

points based on the percentage that each proposal exceeds the lowest Price Proposal. For example, the following table demonstrates the method for calculation of price points:

CALCULATING PRICE POINTS

| SAMPLE Price Proposal | SAMPLE Points Calculation |
|--|---|
| Firm #1: Price = \$ 900,000 | Lowest Price = 100 points awarded |
| Firm #2: Price = \$1,100,000 Lowest Price - <u>\$ 900,000</u> Price Difference \$ 200,000 | $\$200,000 \div \$900,000 = .22222 \times 100 = 22.222$ points 100 points – 22.222 points = 77.778 points awarded |
| Firm #3: Price = \$1,200,000 Lowest Price - <u>\$ 900,000</u> Price Difference \$ 300,000 | $\$300,000 \div \$900,000 = .33333 \times 100 = 33.333$ points 100 points – 33.333 points = 66.667 points awarded |
| Firm #4: Price = \$1,400,000 Lowest Price - <u>\$ 900,000</u> Price Difference \$ 500,000 | $\$500,000 \div \$900,000 = .55555 \times 100 = 55.556$ points 100 points – 55.556 points = 44.444 points awarded |
| Firm #5: Price = \$1,000,000 Lowest Price - <u>\$ 900,000</u> Price Difference \$ 100,000 | $\$100,000 \div \$900,000 = .11111 \times 100 = 11.111$ points 100 points – 11.111 points = 88.889 points awarded |

After the Price Scores are determined for all Responsive Firms, the Price Scores will be adjusted by a weighting factor of 40%. The Non-Price Scores for “other factors” criteria will be adjusted by a 60% weighting factor. The Price Score and Non-Price Score for each Responsive Firm will then be added together for a Final Combined Score.

Once all the Responsive Firms’ Non-Price Scores and Price Scores are weighted and compiled, the Authority shall prepare a final ranking and determine the Firm with the highest Final Combined Score for price and the non-price “other factors” evaluative criteria, and will recommend that award be made to that Firm.

SECTION 2 – QUALIFICATIONS AND TECHNICAL PROPOSAL EVALUATION CRITERIA

Where applicable, submissions shall be prepared and submitted using the Forms provided by the Authority as specified below. The Qualifications and Technical Proposal shall provide information as indicated below, and each evaluation criteria shall have the maximum score indicated below.

2.1 Responding Firm’s Experience on Similarly Sophisticated Projects (20 Points)

Utilizing the *Firm’s Construction Management Experience Form* provided by the Authority, the

Responding Firm shall submit at least three, but no more than five, case studies as examples of the Responding Firm's past experience in managing construction projects comparable in size, cost and/or complexity to the Project.

Such projects may include, but are not limited to, any of the following:

- Projects of similar size, cost and/or complexity
- Public sector projects
- Design-Build projects
- Any combination of the above

The case studies shall describe projects completed within the past seven (7) years, for which the Firm served as the Construction Manager. Case studies representing public-sector projects and/or design-build projects are preferable.

The case studies must concisely set forth the basic background information for the projects offered as comparables (dates and location and the cost and scope of the work). The case studies must describe the effectiveness of the cited projects, and the methodology used to measure such effectiveness (on-time delivery, successful completion of project, effective management of costs).

The case studies shall demonstrate why the cited projects are comparable to the Project that is the subject of this procurement.

Where applicable, the case studies shall demonstrate the Firm's experience working with any Subconsultants named in its submission.

Case studies demonstrating the Firm's experience working on projects subject to NJDEP and NJDCA jurisdiction (or equivalent entities in other states or the Federal Government) are preferred, and case studies should describe the nature of the interaction with NJDEP/NJDCA (or equivalent entities), in terms of the particular issues encountered and the approach or methodologies employed for interacting with NJDEP/NJDCA (or other equivalent entities), and should describe the effectiveness of the Firm's approach, and the methodology used to measure such effectiveness.

Each case study must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity that is familiar with and able to comment on the Firm's performance on each project.

2.2 Staffing Proposal (30 Points)

A. Overview

In this procurement, the Authority has determined to require a minimum threshold for CM staffing for the Project, defining a roster of required CM Staff members identified by title and responsibilities, and defining a required time commitment for such staff member that varies over the

duration of the Project. This is a minimum requirement, and Responding Firms may propose staffing that exceeds this minimum standard.

The staffing required to be identified in the Qualifications and Technical Proposal is as follows:

Project Executive: Supporting commitment (not required as a full-time requirement, but shall be on an as-needed basis and as per the CM proposal) from Construction NTP to Substantial Completion.

The Project Executive (PE) is the point of contact for the NJSDA and the CM on all contractual matters and is the primary overall manager of the CM staff. The PE shall assure that the CM field staff provides all deliverables and meets all project requirements. The PE shall manage the CM field and CM office staff to provide deliverables required by the contract. The PE shall be responsible for the overall performance of the CM staff, and shall be the “CM Contact” as defined in section 1.20 of the Agreement.

Project Manager: Full-time commitment from the first Construction NTP to Substantial Completion; then four (4) months of full-time commitment from Substantial Completion to Project Closeout.

The Project Manager (PM) shall be the CM’s “in the field” staff manager, and lead for the Project. The PM is responsible for the review of all general construction activities as well as site work and furniture/technology placement. PM is responsible for coordinating all communications between CM, NJSDA and the Contractor/Design Builder. PM is the CM’s liaison with NJDCA. PM shall manage the documentation control and uploading to the NJSDA database/systems (currently PMWeb). PM is responsible for the coordinating of all inspections by Code officials or Special Inspectors. The PM is responsible for review of all change orders, change proposals, and allowance allocations. The PM is responsible for review of all submittals and for recommending action on such submittals to NJSDA. The PM is responsible for review, oversight, and recommendation of the project schedule and updates. PM provides oversight and management of the Design-Builder’s safety and QA/QC programs. PM shall manage and coordinate the activities of other CM Staff and resources to achieve the successful performance of all of the PM’s job functions and responsibilities listed above.

Office Engineer: Full-time commitment from the first Construction NTP to Substantial Completion; then three (3) months of full-time commitment from Substantial Completion to Final Completion.

The Office Engineer (OE) shall have the primary role of the review, processing and filing of all documentation on the project. The OE shall

receive, log, and upload into the NJSDA Database/system (currently PMWeb) system all submissions, submittals, correspondence or other documentation received on the project. The OE shall be responsible to track and ensure that all submissions/submittals are reviewed and processed by CM and NJSDA and returned to the Design-Builder. The OE shall maintain the various documentation logs (Submittals, Change Orders, etc.) and report on this function at job meetings and in monthly reports.

MEP Manager: Full-time commitment from NJSDA Acceptance of Design-Builder's Final Design Documents for the first Partial Plan Release Package to Substantial Completion; then three (3) months of full-time commitment from Substantial Completion to Final Completion.

The MEP Manager shall be responsible to manage the performance of mechanical, electrical, plumbing and HVAC systems work ("MEP Work") in coordination with the overall construction of the Project. The MEP Manager shall have experience managing systems coordination and installation on projects of similar size and/or scope, in the areas of HVAC, Electrical (including but not limited to Fire Alarm, Public Address and Information Technology), and Plumbing (including but not limited to sprinkler, fire suppression and domestic water) systems. The MEP Manager will provide on-site pre-installation coordination and installation coordination of MEP Work for the Project. The MEP Manager shall be responsible to ensure that the specified and approved systems are fully provided and installed to function in accordance with the intent of the Design-Build Information Package. The MEP Manager shall supervise inspections of MEP systems and equipment. The MEP Manager shall manage and coordinate the commissioning and startup of building systems by the Commissioning Agent engaged by the Design-Builder for the Project.

Furthermore, the Agreement requires that CM employ or engage a CPM Schedule Reviewer with the experience and qualifications noted in Section 4.3.10.5 of the Agreement. The CPM Schedule Reviewer does not need to be identified or named in the Qualifications and Technical Proposal.

B. Components of a Staffing Proposal

Utilizing the *Identification of Construction Manager's Required Key Team Members Form* and the *Firm's Staffing Proposal for the Project Form* provided by the Authority, Responding Firms shall provide a Project-specific Staffing Proposal that identifies the CM's Team, including a roster of Key Team Members to fulfill the primary obligations of the engagement and the CM Agreement, and any subcontractors or subconsultants necessary to fulfill the remaining obligations of the CM Agreement.

In addition to the information provided on the Staffing Proposal Form, the Responding Firm shall

provide an Organizational Chart showing the Key Team Members identified for the Project, any other employees or resources that may participate in performance of CM Services under the engagement, and any named Subconsultants included in the Price Proposal. The Organizational Chart shall show the responsibilities, structure, and lines of authority for the persons or entities identified.

The Staffing Proposal shall identify the Key Team Members (including CM Contact and CM Field Staff), other employees, and subconsultant resources responsible for the following:

- Overall management of CM services
- Management of subconsultants (if any)
- Management of invoicing and verification of project completion status
- Analysis of the Project Schedule and schedule updates
- Management of quality control and assurance program
- Management of submittal review process
- Submittal reviews (including Civil, Architectural, Structural, Mechanical, Plumbing, Electrical, and Technology submittals)
- Tracking and monitoring of multiple permits, inspections, CAs, and COs
- Monitoring, tracking, and follow-up on safety concerns
- Management of Project Close-Out
- Coordination of SDA FFT&E installations

In addition to the core services performed by Key Team Members, certain services or deliverables for the engagement may be required on an as-needed basis (such as scheduling, estimating, review of submittals or inspection) and such as-needed services may be performed by other resources, such as subconsultants or other employees of the CM Firm, as needed to fulfill the requirements of the Agreement and this engagement. The Staffing Proposal shall identify these other employees or resources that are proposed to participate in the performance of CM Services under this engagement on an as-needed basis, though without the regularity or frequency of a Key Team Member.

C. Prohibitions and Limitations on Staffing Proposal

No firm may propose as a Key Team Member any person who has assisted the Authority by materially participating in the preparation of an RFQ/RFP for this Construction Management Services procurement or for the Design-Build Services procurement for the Project. “Materially participating in the preparation of an RFQ/RFP” shall mean the preparation of the RFP or RFQ/RFP themselves, as well as the preparation of plans, specifications, reports or other documents that are produced with the intent to be incorporated into a Project Manual or Design-Build Information Package that is part of that RFP or RFQ/RFP. Failure to observe this prohibition shall result in disqualification of the conflicted person from the Proposed Team, and rejection of the entire proposal that includes the ineligible person.

Identified Key Team Members are expected to fulfill their assigned duties, as referenced by the Responding Firm in this Qualifications and Technical Proposal, throughout Final Completion of the

Design-Builder's Agreement. Changes to Key Team Members will not be approved if the Key Team Member to be replaced is still employed by the Responding Firm.

Responding Firms are encouraged to identify individuals to perform CM Field Staff duties for this Procurement who are not currently assigned, and will not in future be assigned to perform CM Field Staff duties on other Projects that will be in active construction during the active construction phase for this Project. The scoring evaluation will favor Staffing Proposals that do not present staffing conflicts for CM Field Staff with respect to other active construction projects.

To facilitate evaluation of the Staffing Proposal in light of this concern, the Responding Firm shall provide a description, using the space allotted in the *Key Team Member Resume Form*, of all current and planned future assignments for any individual identified in the Qualifications and Technical Proposal as performing a CM Field Staff role.

2.3 Key Team Members' Experience on Similarly Sophisticated Projects (50 Points)

Utilizing the *Key Team Member Resume Form* provided by the Authority, the Responding Firm shall submit resumes of those employees designated as Key Team Members for the Project, and such resumes shall demonstrate the Key Team Members' experience providing similar services on similarly sophisticated projects, and shall demonstrate the Key Team Members' experience working with the subconsultants proposed for the Project, if any. "Similarly Sophisticated Projects" may include, **but are not limited to**, any of the following:

- Projects of similar size, cost and/or complexity
- Public sector projects
- Design-Build projects
- Any combination of the above

For each Key Team Member, the resumes must include, but not be limited to: a description of at least two, but no more than five, projects completed within the last 7 years of similar or larger size and sophistication to this engagement. The resumes should also include governmental experience and experience with NJDEP and NJDCA (or equivalent entities in other states or the Federal Government) that the Team Member completed in a similar role as that proposed. Specifically the resumes shall describe the nature of the interaction with NJDEP/NJDCA (or equivalent entities in other states or the Federal Government), in terms of the particular issues encountered and the approach or methodologies employed for interacting with NJDEP/NJDCA (or equivalent entities in other states or the Federal Government), and should describe the effectiveness of the approach, and the methodology used to measure such effectiveness.

For each project cited in the Key Team Member Resume Form, the Responding Firm must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity that is familiar with and able to comment on the Key Member's performance on each project.

The submitted information will be evaluated to determine how well the Firm identifies and demonstrates that its key personnel meet or exceed minimum qualifications necessary to illustrate that the Firm has sufficient previous satisfactory experience with work of equal or greater sophistication. The Selection Committee will evaluate how well the Responding Firm demonstrates that it has the necessary structure and sufficient experienced, qualified personnel within its organization to effectively manage, inspect and administer the Project, and monitor construction operations, quality control and safety programs.

As previously noted, using the *Key Team Member Resume Form*, the Responding Firm shall provide a description of all current and planned future assignments for any individual identified in the Qualifications and Technical Proposal as performing CM Field Staff duties. Specifically, the required information shall include, for each individual named to perform CM Field Staff duties: 1) the name of each other project for any such assignment; 2) a description of the responsibilities or duties required for such assignment; and 3) the anticipated duration of the other assignment. The SDA will utilize this information to evaluate whether the Staffing Proposal presents the possibility of a staffing conflict by identifying CM Field Staff who will be or who are already assigned to active construction projects running simultaneously with this Project. The Evaluation Committee may consider evidence of such a staffing conflict when evaluating and scoring the Qualifications and Technical Proposal.

2.4 Ownership Disclosure Form (0 Points – Required Submittal)

The Responding Firm **must** submit a completed *Ownership Disclosure Form*, pursuant to N.J.S.A. 52:25-24.2, using the form created by the Department of Treasury - Division of Purchase and Property, which form is supplied by NJSDA and is available as an interactive form on the Treasury site at:

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

If the Responding Firm is a corporation, the Ownership Disclosure Form requires the Responding Firm to set forth the names and addresses of all stockholders in the corporation, partnership, or limited liability company who own 10 percent or more of any class of its stock. If the Responding 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, or 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 Responding 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, exceeding 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 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 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 completed Ownership Disclosure Form must be submitted and included with the completed Qualifications and Technical Proposal.

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

2.5 Price Proposal

A. NJSDA Price Proposal Form

Utilizing the *NJSDA Price Proposal Form* provided by the Authority, the Responding Firm must submit its Price Proposal specifying a Total Compensation Amount based upon Monthly Rates for Key Team Members performing the Services of the engagement, plus several Specified Sum Amounts for certain Basic Services not compensated through the Monthly Fee, as well as Insurance costs and certain Allowance Amounts, which shall compensate CM for all labor and other direct costs associated with the required services. The Total Compensation Amount must include all required onsite and offsite labor, including home office support, and all other direct costs, for the entire Team.

The *NJSDA Price Proposal Form* is included in Attachment A to this RFQ/RFP.

Any alteration, modification or exception to the wording or the calculation formula of the *NJSDA Price Proposal Form* shall cause the Price Proposal to be rejected as non-responsive.

The Responding Firm shall fill in all relevant blank spaces in the Price Proposal in ink or by typewriting. In the event of a discrepancy between unit prices (or Monthly Rates) and computed totals, the individual unit price (or Monthly Rate) shall govern.

The NJSDA reserves the right to reject any Price Proposal that it deems to be unbalanced in a manner detrimental to the competitive process, the Project or the school construction program.

The Responding Firm must sign the Price Proposal in ink and all signatures **must be original**. If the Responding Firm is a corporation, partnership or sole proprietorship, the legal name of the Responding Firm shall be printed or typed on the line provided. The Price Proposal **must be** signed by an officer, partner or principal of the Bidder, as applicable, witnessed and the Corporate Seal must be affixed to the signature.

B. Sealing and Delivery Of Price Proposal

The Price Proposal (one original only) shall be enclosed in a sealed envelope that is clearly marked with the Responding Firm's Name, Contract Number, Contract Name, School District Name and the date of Price Proposal submission.

The Responding Firm must submit its sealed Price Proposal to the Authority in conjunction with its Qualifications and Technical Proposal.

If the sealed Price Proposal is enclosed in another envelope for the purpose of delivery, the exterior envelope shall be clearly marked as containing a Price Proposal with the Responding Firm's name, Contract Number, Contract Name, School District Name and the date of the Price Proposal submission shown on the envelope.

Any Price Proposal that arrives after the time set for submission will be returned to the Responding Firm unopened.

2.6 Disclosure of Investment Activities in Iran Form (0 Points - Requested Submittal)

As part of the response to the RFQ/RFP, the Responding Firm is requested to submit a *Disclosure of Investment Activities in Iran Form* pursuant to N.J.S.A. 52:32-55 et seq., on the form provided by the NJSDA. This form is requested as a convenience at the time of submission of RFQ/RFP responses, in order to increase the likelihood that the Responding Firm selected as awardee as a result of the RFQ/RFP evaluation and scoring process will be able to comply with the statutory requirements. A Responding Firm's failure to submit the Disclosure form with its Qualifications and Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, this form **shall** be submitted before the time of contract award.

Pursuant to N.J.S.A. 52:32-55, et seq., any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the NJSDA must certify prior to the time a contract is awarded or at the time a contract is renewed that neither the person nor entity, nor any of its 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.

2.7 Certification of Non-Debarment Form (0 Points - Requested Submittal)

As part of the response submission to the RFQ/RFP, the Responding Firm is requested to submit a *Certification of Non-Debarment Form*, pursuant to N.J.S.A. 52:32-44.1, using the form provided by NJSDA. This form is requested as a convenience at the time of submission of RFQ/RFP responses, in order to increase the likelihood that the Responding Firm selected as awardee as a result of the RFQ/RFP evaluation and scoring process will be able to comply with the statutory requirements. A Responding Firm's failure to submit the *Certification of Non-Debarment Form* with its Qualifications and Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, this form **shall** be submitted before the time of contract award.

Pursuant to N.J.S.A. 52:32-44.1, prior to awarding any contract for public work, a person shall provide written certification to the contracting agency that neither the person nor the person's affiliates are debarred at the federal level from contracting with a federal government agency. The contracting agency will not make, negotiate, or award a contract for public work to any person that does not provide such written certification as required by this subsection.

2.8 Outsourced Services Special Provisions (0 Points - Requested 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.

As part of the response submission to the RFQ/RFP, the Responding Firm is requested to submit a *Source Disclosure Certification Form* provided by the NJSDA, filled out with the sourcing information required for itself and any proposed subconsultant. This form is requested as a convenience at the time of submission of RFQ/RFP responses, in order to increase the likelihood that the Responding Firm selected as awardee as a result of the RFQ/RFP evaluation and scoring process will be able to comply with the statutory requirements. A Responding Firm's failure to submit the *Source Disclosure Certification Form* with its Qualifications and Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, this form **shall** be submitted before the time of contract award.

Shift to Outsourced Services During Contract Term Shall Be a Breach of Contract - If, during the Term, the successful Firm or a subcontracted firm proceeds to shift the performance of any part of the Work or Services outside of the United States, the Firm shall be deemed in breach of the Agreement and shall be subject to termination for cause, unless the NJSDA 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 NJSDA or the State.

2.9 Certification of Non-Involvement in Prohibited Activities in Russia or Belarus (0 Points - Requested Submittal)

As part of the response submission to the RFQ/RFP, the Responding Firm is requested to submit a

Certification of Non-Involvement in Prohibited Activities in Russia or Belarus form, pursuant to P.L. 2022, c.3, using the form provided by the NJSDA. This form is requested as a convenience at the time of submission of RFQ/RFP responses, in order to increase the likelihood that the Responding Firm selected as awardee as a result of the RFQ/RFP evaluation and scoring process will be able to comply with the statutory requirements. A Responding Firm's failure to submit the *Certification of Non-Involvement in Prohibited Activities in Russia or Belarus* form with its Qualifications and Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, this form **shall** be submitted before the time of contract award.

Any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the NJSDA must complete a Certification which states that the person or entity is not engaged in prohibited activities in Russia or Belarus as such term is defined in P.L. 2022, c.3, section 1.e, except as permitted by federal law.

2.10 Opening of Price Proposals

Following interviews, Price Proposals from all interviewed Responsive Firms, having been submitted on or before the date and time scheduled for submission, will be publicly opened and the Total Compensation Amount prices submitted by the those firms will be read at the time and place indicated in the Bid Advertisement, or such other time and place as may be established by Addendum.

Responding Firms, their authorized agents, and other interested parties are invited to be present.

The public opening and reading of Price Proposals is for informational purposes only and is not to be construed as an acceptance or rejection of any bid submitted.

SECTION 3 – DELIVERY/ MAILING REQUIREMENTS

A Responding Firm must submit one (1) unbound original one (1) cover-to-cover copy in PDF format on USB Flash Drive of its Qualifications and Technical Proposal, accompanied by one (1) original, separate, signed, sealed Price Proposal no later than **2:00 PM on July 18, 2022.** Submissions will only be accepted by overnight or hand delivery at the following address:

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
32 East Front Street
Trenton, New Jersey 08625-0991
Attention: Dave Kutch, Senior Procurement Analyst
Subject: Construction Management Services Proposal – HU-0029-M01

Submissions received after the date and time listed above will not be forwarded to the Selection Committee for review.

Faxed or e-mailed submissions will not be accepted.

SECTION 4 - PRE-AWARD REQUIREMENTS (INFORMATIONAL ONLY – DO NOT INCLUDE WITH RFQ/RFP SUBMISSION)

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

a. 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 and that of any named subcontractor(s).

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 Treasury at (609) 292-9292.

b. Political Contributions. P.L. 2005, c. 51 amended and supplemented N.J.S.A. 19:44A-20.1 *et seq.*, and superseded Executive Order 134 (2004), addresses the effect of political contributions on State contracting. Accordingly, a selected Firm will be required to respond in a timely fashion to certification and disclosure requirements that will be stated in the Notice of Award issued by the NJSDA. Additionally, 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.

c. 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 www.elec.state.nj.us.

d. 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 Treasury.** Please see following link for details: https://www.nj.gov/treasury/contract_compliance/

e. 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 Treasury-Division of Revenue and Enterprise Services, 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 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 Treasury-Division of Revenue and Enterprise Services, 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 Treasury-Division of Revenue and Enterprise Services, 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 NJ Business Action Center at 1-800-JERSEY-7 (1-800-537-7397), or visit New Jersey’s business web portal: <https://business.nj.gov/pages/certifications>.

f. Insurance and Indemnification. A successful Firm shall be required to provide evidence of the insurance coverages required in Section 10.1 of the Agreement (Attachment B to this RFQ/RFP) at the time of execution of the Agreement.

g. Additional Information. NJSDA may request additional information as required under the Agreement, or pursuant to applicable policies, procedures or law.

ATTACHMENT A

RESPONSE FORMS

{Please see attached files}

- a. FIRM'S CONSTRUCTION MANAGEMENT EXPERIENCE FORM
- b. IDENTIFICATION OF CONSTRUCTION MANAGER'S REQUIRED KEY TEAM MEMBERS FORM
- c. FIRM'S STAFFING PROPOSAL FOR THE PROJECT FORM
- d. KEY TEAM MEMBER RESUME FORM
- e. OWNERSHIP DISCLOSURE FORM
- f. NJSDA PRICE PROPOSAL FORM
- g. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM
- h. CERTIFICATION OF NON-DEBARMENT FORM
- i. SOURCE DISCLOSURE CERTIFICATION FORM
- j. CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN RUSSIA OR BELARUS

FIRM'S CONSTRUCTION MANAGEMENT EXPERIENCE

Submit at least three (3), but no more than five (5) comparable case studies. Responding Firms are urged to select their case study projects with particular emphasis on the **size and complexity** of projects offered as comparable to the School Facility Project which is the subject of this Procurement.

This form should be photocopied as necessary. Narrative portions of this form should be no more than 1000 words, combined maximum for each case study.

FIRM NAME: _____

CASE STUDY # _____

| | | | |
|--|--|---|--|
| OWNER: | | PROJECT NAME: | |
| PROJECT ADDRESS: | | | |
| CONTACT NAME & TITLE FOR OWNER'S REPRESENTATIVE: | | CONTACT PHONE NUMBER: | |
| PUBLIC SECTOR : <input type="checkbox"/> | | PRIVATE SECTOR: <input type="checkbox"/> | |
| START DATE: | | END DATE: | |
| PROJECT COST: | | | |
| KEY TEAM MEMBERS PARTICIPATING IN CASE STUDY PROJECT (If Applicable): | | | |
| NAME/TITLE: | | NAME/TITLE: | |
| NAME/TITLE: | | NAME/TITLE: | |

| | |
|--|--|
| SUBCONSULTANT INFORMATION (Please provide names): | |
| NAME/FUNCTION: | |
| NAME/FUNCTION: | |
| NAME/FUNCTION: | |
| | |

FIRM'S CONSTRUCTION MANAGEMENT EXPERIENCE (cont'd)

FIRM NAME: _____

CASE STUDY # _____

The narrative responses to the following sections of this form shall be limited to a combined total of 1000 words or less.

Describe the effectiveness of project, and the methodology used to measure such effectiveness (e.g., on-time delivery, successful completion of project, effective management of costs):

FIRM'S CONSTRUCTION MANAGEMENT EXPERIENCE (cont'd)

FIRM NAME: _____

CASE STUDY # _____

The narrative responses to the following sections of this form shall be limited to a combined total of 1000 words or less.

SCOPE OF WORK (Describe the case study project and indicate why the case study is comparable to the proposed engagement, in terms of project cost, size & complexity).

IDENTIFICATION OF CONSTRUCTION MANAGER’S REQUIRED KEY TEAM MEMBERS

IDENTIFY ALL REQUIRED KEY TEAM MEMBERS by NAME as indicated in section 2.2 of the RFP (“Staffing Proposal For the Project”). Refer to Section 2.2 for details.

Project Executive:

NAME:

Project Manager:

NAME:

Office Engineer:

NAME:

MEP Manager:

NAME:

FIRM'S STAFFING PROPOSAL FOR THE PROJECT

FIRM NAME: _____

Describe your Staffing Proposal for the Project by identifying the Key Team Members who will have primary responsibility for the Project, describing the roles of such Key Team Members.

Identify other employees or resources that are proposed to participate in the performance of CM Services on an as-needed basis, though without the regularity or frequency of a Key Team Member.

Provide an Organizational Chart showing the Key Team Members identified for the Project, any other employees or resources that may participate in the performance of CM Services, and any named Subconsultants included in the Proposal. The Organizational Chart shall show the responsibilities, structure, and lines of authority for the persons or entities identified.

Refer to Section 2.2 of the RFP for details.

**KEY TEAM MEMBER RESUME
QUALIFICATIONS**

KEY TEAM MEMBER NAME AND FIRM:

JOB FUNCTION: **CM CONTACT** **CM FIELD STAFF*** **OTHER:** _____

YEARS OF EXPERIENCE:

YEARS WITH FIRM:

TECHNICAL SPECIALTIES:

PROFESSIONAL HISTORY:

EDUCATION:

PROFESSIONAL REGISTRATIONS & AFFILIATIONS:

CM FIELD STAFF CURRENT AND FUTURE ASSIGNMENTS*:

***Must provide additional details on current and future assignments per RFP Section 2.2.C. where requested on resume form.**

KEY TEAM MEMBER RESUME (cont'd)

REPRESENTATIVE PROJECT EXPERIENCE

Key Team Member Name and Firm: _____

Describe Key Team Member's experience providing similar services on similarly sophisticated projects and, if applicable, demonstrate the Key Team Member's experience working with any subconsultants proposed for the Project. Submit at least two (2), but no more than five (5), project descriptions for each Key Team Member named. Representative projects must have been completed within the last seven (7) years and must be of similar or greater size and sophistication to this engagement. Refer to Section 2.3 of the RFP for details



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

BID SOLICITATION # AND TITLE: _____

VENDOR NAME: _____

PURSUANT TO N.J.S.A. 52:25-24.2, ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE A STATEMENT OF OWNERSHIP.

- The vendor is a **Non-Profit Entity**; and therefore, no disclosure is necessary.
- The vendor is a **Sole Proprietor**; and therefore, no other disclosure is necessary.
A Sole Proprietor is a person who owns an unincorporated business by himself or her-self.
A limited liability company with a single member is not a Sole Proprietor.
- The vendor is a **corporation, partnership, or limited liability company**; and therefore, disclosure is necessary.

If you answered **YES** to Question 3, you must disclose the following information below: **(a)** the names and addresses of all stockholders in the corporation who own 10% or more of its stock, of any class; **(b)** all individual partners in the partnership who own a 10% or greater interest therein; or, **(c)** all members in the limited liability company who own a 10% or greater interest therein.*

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- For each of the corporations, partnerships, or limited liability companies identified in response to Question #3 above, are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest of those listed business entities?

If you answered **YES** to Question 4, you must disclose the following information below: **(a)** the names and addresses of all stockholders in the corporation who own 10% or more of its stock, of any class; **(b)** all individual partners in the partnership who own a 10% or greater interest therein; or, **(c)** all members in the limited liability company who own a 10% or greater interest therein. The disclosure(s) shall be continued until the names and addresses of every non-corporate stockholder, individual partner, and/or member a 10% or greater interest has been identified.*

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| ADDRESS | _____ |
| CITY | STATE ZIP |

- As an alternative to completing this form, a Vendor 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% 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% 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% or greater beneficial interest.*

* Attach additional sheets if necessary

NJSDA PRICE PROPOSAL FORM

DESIGN-BUILD CONSTRUCTION MANAGEMENT SERVICES

Contract No.: HU-0029-M01

The Price Proposal submitted by (Name of Vendor) _____

This Price Proposal provides for a Total Compensation Amount as follows:

A) Staffing Costs, Construction Phase
(estimated 34 Months Duration):

Note: The durations specified below are for bidding purposes only, and the actual project durations may vary. For non-Specified Sum Services, CM will be compensated based on the Monthly Rates for designated staff actually performing during the project duration.

1. Project Executive (As supporting commitment (not required as a full-time requirement, but shall be on an as-needed basis and as per the CM proposal) from Construction NTP to Substantial Completion.)

Rate per Month \$ _____ x 34 Months = \$ _____

2. Project Manager (full-time commitment from the first Construction NTP to Substantial Completion)

Rate per Month \$ _____ x 34 Months = \$ _____

3. Office Engineer (full-time commitment from the first Construction NTP to Substantial Completion)

Rate per Month \$ _____ x 34 Months = \$ _____

4. Monthly Schedule Review (Monthly Cost to review Design-Builder's Schedule Updates, and provide recommendations on schedule, as well as cost and resource loading. Includes delay analysis, recovery schedule analysis and recommendations, and schedule improvement recommendations under Section 4.3.10.4 of the Agreement, and the CPM Schedule Reviewer obligations under Section 4.3.10.5 of Agreement.)

Rate per Month \$ _____ x 34 Months = \$ _____

5. MEP Manager (full time commitment from NJSDA Acceptance of Design-Builder's Final Design Documents for the first Partial Plan Release Package to Substantial Completion)

Rate per Month \$ _____ x 30 Months = \$ _____

TOTAL SUBSECTION A (Sum of A.1 through A.5): \$ _____

NJSDA PRICE PROPOSAL FORM

DESIGN-BUILD CONSTRUCTION MANAGEMENT SERVICES

Contract No.: HU-0029-M01

B) Staffing Costs, Close-Out Phase

(estimated 4 months duration to Project Closeout, or duration as otherwise noted below):

1. Project Manager (full-time commitment from Substantial Completion to Project Closeout)

Rate per Month \$ _____ x 4 Months = \$ _____

2. Office Engineer (3 months full-time commitment from Substantial Completion)

Rate per Month \$ _____ x 3 Months = \$ _____

3. MEP Manager (3 months full-time commitment from Substantial Completion)

Rate per Month \$ _____ x 3 Months = \$ _____

Note: The durations specified above are for bidding purposes only, and the actual project durations may vary. For non-Specified Sum Services, CM will be compensated based on the Monthly Rates for designated staff actually performing during the project duration.

TOTAL SUBSECTION B (Sum of B.1+B.2+B.3) = \$ _____

C) Initial Schedule Review Amount \$ _____

Initial Schedule Review Services are described in Section 4.3.10.1, 4.3.10.2 and 4.3.10.3 of the Agreement. This review shall include review of the Design-Builder's Initial Construction Schedule for compliance with contract requirements, review of schedule logic, including links between predecessor and successor activities, and preparation of recommendations for approval, rejection and/or modifications required for approval.

D) Schedule Cost/Resource Review Amount: \$ _____

Schedule Cost/Resource Review Services are described in Section 4.3.10.3 of the Agreement. This review shall include review of the Design-Builder's proposed Cost- and Resource-loaded Schedule for compliance with contract requirements, and for cost and resource loading information, as well as preparation of recommendations for approval, rejection and/or modifications required for approval of the proposed Cost and Resource-loaded Schedule.

NJSDA PRICE PROPOSAL FORM

DESIGN-BUILD CONSTRUCTION MANAGEMENT SERVICES

Contract No.: HU-0029-M01

E) **Procurement of Special Inspectors Amount:** \$ _____

CM will be required to procure and engage special inspectors, and this may be called for prior to the issuance of a Notice to Proceed to the Design-Builder, and prior to the performance of any of CM's Construction Phase Services. This Amount is intended to compensate CM for the costs of procurement of special inspection services pursuant to Section 4.11.3 of the Agreement, whether such procurement occurs prior to issuance of a CM NTP for Construction Phase Services, or concurrent with any of CM's Construction Phase Services under the Agreement. This amount is NOT intended to compensate for the costs of Special Inspections themselves, which shall be compensated as Allowance Services under a separate Allowance Amount.

F) **Insurance Amount:** \$ _____

The Authority requires CM and its Subconsultants to secure and maintain the insurance coverage detailed in Section 10.1 of the Agreement. The Authority shall compensate CM and its Subconsultants for the cost of such required Insurance. CM's Price Proposal shall reflect CM's costs for Insurance for the Basic Services and any Contingent Additional Services identified at contract execution.

G) **Allowance for Testing and Inspection Services:** \$ 350,000

H) **Allowance for Cleaning Services:** \$ 20,000

I) **Allowance for Additional FFTE Services:** \$ 15,000

This Allowance is intended to compensate CM for FFTE-related services in excess of those FFTE coordination services specified in Section 4.10 of the Agreement, if such additional services are deemed necessary and are approved by the Authority.

**Total Compensation Amount
(Sum of Subsections A through I):** \$ _____

NJSDA PRICE PROPOSAL FORM

DESIGN-BUILD CONSTRUCTION MANAGEMENT SERVICES

Contract No.: HU-0029-M01

Addenda:

The Bidder acknowledges receipt and incorporation into this bid of the following Addenda:

Number: _____

Dated: _____

By submitting this Price Proposal, the Bidder agrees to hold this Price Proposal open and valid for a period of one hundred twenty (120) calendar days from the date of the public opening and reading of the Price Proposals, unless this time period is extended by mutual agreement of the Bidder and the NJSDA.

I am duly authorized to sign this Price Proposal on behalf of the named firm.

Signature: _____

Print Name: _____

Title: _____

Date: _____



NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

NJSDA CONTRACT # AND DESCRIPTION: _____

VENDOR/BIDDER NAME AND ADDRESS: _____

Pursuant to N.J.S.A. 52:32-55, et seq. (P.L. 2012, c.25 and P.L. 2021, c.4) 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 certify prior to the time a contract is awarded or at the time a contract is renewed that neither the person nor entity, nor any of its parents, subsidiaries, or affiliates, is identified on the New Jersey Department of the Treasury's Chapter 25 List as a person or entity engaged in investment activities in Iran. The Chapter 25 list is found on the Division's website at <https://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Vendors/Bidders must review this list prior to completing the below certification. If the NJSDA finds a person or entity to be in violation of the law, it shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

CHECK THE APPROPRIATE BOX

I certify, pursuant to N.J.S.A. 52:32-55, et seq. (P.L. 2012, c.25 and P.L. 2021, c.4), that neither the Vendor/Bidder listed above nor any of its parents, subsidiaries, or affiliates is listed on the New Jersey Department of the Treasury's Chapter 25 List of entities determined to be engaged in prohibited activities in Iran.

OR

I am unable to certify as above because the Vendor/Bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the New Jersey Department of the Treasury's Chapter 25 List. I will provide a detailed, accurate and precise description of the activities of the Vendor/Bidder, or one of its parents, subsidiaries or affiliates, has engaged in regarding investment activities in Iran by completing the information requested below.

Entity Engaged in Investment Activities _____
Relationship to Vendor/ Bidder _____
Description of Activities _____

Duration of Engagement _____
Anticipated Cessation Date _____

Attach Additional Sheets If Necessary.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the NJSDA is relying on the information contained herein, and that the Vendor/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; that 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

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

CERTIFICATION OF NON-DEBARMENT FORM

NJSDA Contract No: _____

Contract Name: _____

Bidder Name: _____

Bidder Address: _____

STATEMENT OF NON-DEBARMENT OF BIDDER OR ASSOCIATED ENTITIES

Pursuant to Public Law 2019, c.406 (codified at N.J.S.A. 52:32-44.1), I, the undersigned, being duly authorized to complete this certification on behalf of the above-named Bidder, hereby certify and attest, under penalty of perjury, that:

- The Bidder is not debarred at the federal level from contracting with the federal government; and
- None of the parent entities, subsidiaries, or affiliates identified on the *Ownership Disclosure Form* submitted by the Bidder in connection with the procurement for the above-referenced NJSDA Contract Number as owning 50% or more of the Bidder are debarred at the federal level from contracting with the federal government.

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.

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: _____

Print Name: _____

Title: _____

Date: _____



NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SOURCE DISCLOSURE CERTIFICATION FORM

CONTRACT NO. AND TITLE: _____

VENDOR NAME: _____

The Vendor/Bidder submits this Form in response to a Bid Solicitation issued by the New Jersey Schools Development Authority ("SDA"), in accordance with the requirements of N.J.S.A. 52:34-13.2.

PART 1

All services will be performed by the Contractor and Subcontractors in the United States. **Skip Part 2.**

Services will be performed by the Contractor and/or Subcontractors outside of the United States. **Complete Part 2.**

PART 2

Where services will be performed outside of the United States, please list every country where services will be performed by the Contractor and all Subcontractors. If any of the services cannot be performed within the United States, the Contractor shall state, with specificity, the reasons why the services cannot be performed in the United States.

| Name of Contractor/ Sub-contractor | Performance Location by Country | Description of Service(s) to be Performed Outside of the United States * | Reason Why the Service(s) Cannot be Performed in the United States * |
|---------------------------------------|------------------------------------|---|---|
| | | | |
| | | | |
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****Attach additional sheets if necessary to describe which service(s), if any, will be performed outside of the U.S. and the reason(s) why the service(s) cannot be performed in the U.S.***

Any changes to the information set forth in this Form during the term of any Contract awarded under the referenced Bid Solicitation or extension thereof shall be immediately reported by the Contractor to the SDA. If during the term of the Contract, the Contractor shifts or is determined to have shifted the location of services outside the United States, without a prior written determination by the SDA, the Contractor shall be deemed in breach of Contract, and the Contract will be subject to termination for cause.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor and that the foregoing information and any attachments hereto, to the best of my knowledge, are true and complete. I acknowledge that this Form is submitted on behalf of the Vendor to induce the SDA to accept a Bid Proposal and that the SDA is relying on the information contained herein. I further acknowledge that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the SDA to notify the SDA 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 am subject to criminal prosecution under the law, and it will constitute a material breach of my contract(s) with the SDA, permitting the SDA to declare any contract(s) resulting from this certification void and unenforceable.

Signature

Date

Print Name and Title



**CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES
IN RUSSIA OR BELARUS PURSUANT TO P.L.2022, c.3**

NJSDA CONTRACT # AND DESCRIPTION: _____

VENDOR/BIDDER NAME AND ADDRESS: _____

CHECK THE APPROPRIATE BOX

I, the undersigned, am authorized by the person or entity seeking to enter into or renew the contract identified above, to certify that the Vendor/Bidder is not engaged in prohibited activities in Russia or Belarus as such term is defined in [P.L.2022, c.3](#),¹ section 1.e, except as permitted by federal law.

I understand that if this statement is willfully false, I may be subject to penalty, as set forth in P.L.2022, c.3, section 1.d.

OR

I, the undersigned am unable to certify above because the person or entity seeking to enter into or renew the contract identified above, or one of its parents, subsidiaries, or affiliates may have engaged in prohibited activities in Russia or Belarus. A detailed, accurate and precise description of the activities is provided below.

Failure to provide such description will result in the Bid being rendered as non-responsive, and the New Jersey Schools Development Authority ("NJSDA") will not be permitted to contract with such person or entity, and if a Bid is accepted or contract is entered into without delivery of the certification, appropriate penalties, fines and/or sanctions will be assessed as provided by law.

Description of Prohibited Activity

Attach Additional Sheets If Necessary.

If you certify that the bidder is engaged in activities prohibited by P.L. 2022, c. 3, the bidder shall have 90 days to cease engaging in any prohibited activities and on or before the 90th day after this certification, shall provide an updated certification. If the bidder does not provide the updated certification or at that time cannot certify on behalf of the entity that it is not engaged in prohibited activities, the NJSDA shall not award the business entity any contracts, renew any contracts, and shall be required to terminate any contract(s) the business entity holds with the NJSDA that were issued on or after the effective date of P.L. 2022, c. 3.

Signature of Authorized Representative

Date

Print Name and Title of Authorized Representative

Vendor Name

¹ Engaged in prohibited activities in Russia or Belarus” means (1) companies in which the Government of Russia or Belarus has any direct equity share; (2) having any business operations commencing after the effective date of this act that involve contracts with or the provision of goods or services to the Government of Russia or Belarus; (3) being headquartered in Russia or having its principal place of business in Russia or Belarus, or (4) supporting, assisting or facilitating the Government of Russia or Belarus in their campaigns to invade the sovereign country of Ukraine, either through in-kind support or for profit.

ATTACHMENT B

CONSTRUCTION MANAGEMENT SERVICES AGREEMENT

{Please see attached file}

**FORM OF
AGREEMENT
BETWEEN
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
AND
CM FIRM
FOR
DESIGN-BUILD
CONSTRUCTION MANAGEMENT SERVICES**

Design-Build Construction Management Agreement

THIS AGREEMENT is made and entered into this ____ day of _____, 2020 (the “Effective Date”) between the New Jersey Schools Development Authority (the “Authority”), having an office located at 32 East Front Street, Trenton, New Jersey 08625-0991, and _____ (“Construction Manager” or “CM”), a _____ corporation with its principal place of business at _____.

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

Contract Number:

Project Name:

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

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

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

[SIGNATURES ON THE FOLLOWING PAGE]

Design-Build Construction Management Agreement

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

CM FIRM

**NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY**

By:
Title:

By:
Title:

Sworn and subscribed to before me

Reviewed and Approved

This ____ day of _____, 20__:

By: _____
Name:

Notary Public of _____

My commission expires: _____, 20__.

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1.0 DEFINITIONS

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

- 1.1 “Agreement” or “CM Agreement” means the written agreement between the Authority and CM consisting of this document and all exhibits, appendices, attachments and amendments thereto and whatever has been expressly incorporated herein by reference.
- 1.2 “Allowance” or “Allowance Amount” means a sum of money that is set aside within the CM’s Total Compensation Amount that is designated to compensate CM for the performance of services and completion of deliverables that are anticipated for the Project, but which the Authority may or may not require, depending on actual conditions for the project.
- 1.3 “Allowance Services” means services performed or provided by CM in accordance with the Allowance provisions of this Agreement, after prior authorization from the Authority, which are funded by Allowance amounts.
- 1.4 “Amendment” means a written modification to the Agreement, executed by the Authority and CM.
- 1.5 “Applicable Laws” means all laws, statutes, ordinances, codes, regulations, rules, orders, decisions, decrees, executive orders and resolutions of all national, administrative, state, county, municipal, and other governing bodies relating to the Project or the performance of this Agreement.
- 1.6 “Authority” or “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 CM pursuant to this Agreement. The definition of “Authority” includes the employees and designated agents of the NJSDA.
- 1.7 “Authority’s Affirmative Action Program” means the requirements and procedures established by the Authority pursuant to Section 6 and 36 of the legislation creating the New Jersey Schools Development Authority, P.L. 2007, c. 137, and any rules associated therewith, as may be amended from time to time, including, but not limited to, N.J.A.C. 19:39-1.1 to -4.1.
- 1.8 “Authority’s Documentation Database” means the contract documentation and scheduling database created and maintained by the Authority, and to be used by the CM.

- 1.9 “Authority’s Project Manager” means the Authority’s employee representative for the Project who administers the Construction Contract and the CM Contract and manages the Project on behalf of the Authority. The Authority’s Project Manager shall have that level of authority consistent with that employee’s title and authority level as specified in the NJSDA’s Levels of Operating Authority Policy which document can be found on the NJSDA website:
- <https://www.njsda.gov/NJSDA/Governance/OperatingAuthority>
- 1.10 “Basic Services” means the services to be performed by CM pursuant to this Agreement as set forth in Section 4.0.
- 1.11 “Certificate of Payment” means a certification to be prepared by CM verifying the actual amount owed to the Design-Builder in connection with the Design-Builder’s monthly requests for payments. The document shall be submitted to the Authority simultaneously with CM’s Progress Payment Report.
- 1.12 “Change in the Work or Services” means a change in the Design-Builder’s Work or Services, or a change in the Design Build Contract Documents, including, but not limited to, an increase or decrease in the scope of the Work and Services.
- 1.13 “Change Order” means a written order directing or authorizing a Change in the Work or Services of the Design-Builder, executed by the Authority and the Design-Builder, which shall include adjustments, if any, to the Construction Contract Price and/or extensions of time, if any, to the Design-Builder’s Contract Time.
- 1.14 “Change Order Log” means a written, updated summary prepared by the CM tracking the status of all of the Design-Builder’s Contract Change Requests (CCRs), Construction Change Directives (CCDs) and Change Orders. The Change Order Log shall also include similar information for potential Change Orders of which CM may then be aware. This Change Order Log shall be included as part of CM’s Monthly Report to the Authority.
- 1.15 “Change Order Report” means the monthly written reports by CM to the Authority listing all approved Change Orders by number, a brief description of the Change Order Work, the cost established in the Change Order and the percent of completion of the Change Order Work.
- 1.16 “Claim” means a written demand, submitted to the Authority utilizing forms specified by the Authority, for a time extension, monetary compensation and/or another form of relief.
- 1.17 “Close-Out Services” means those Basic Services which are necessary for the close out and completion of the Project, as described in Section 4.11 of the Agreement (“Close-Out Services”).

- 1.18 “CM Claim” means a written demand by CM seeking, as a matter of right, adjustment or interpretation of this Agreement, payment of money, extension of time or other form of relief with respect to the terms of this Agreement, and shall also mean other disputes and matters in question between the Parties arising out of or relating to this Agreement.
- 1.19 “CM’s Commencement Date” or “CM’s NTP Date” means the date identified in the initial written Notice to Proceed issued by the Authority to CM directing CM to commence performance of its duties, obligations and responsibilities pursuant to this Agreement, or some specified portion of such duties, obligations and responsibilities.
- 1.20 “CM Contact” means that person designated by CM in writing to serve as CM’s representative for the project and this Agreement, who shall: 1) be a Key Team Member; 2) have supervisory responsibility over all CM Field Staff; and 3) have non-exclusive authority to bind CM in all matters relating to this Agreement.
- 1.21 “CM’s Daily Log” or “Daily Log” means a daily report to be incorporated by the CM into the Authority’s Primavera Expedition Database.
- 1.22 “CM Deliverables” means any written, electronic or tangible data materials or things to be gathered, assembled, generated and/or supplied by CM under the terms of this Agreement, including, but not limited to, Work Product.
- 1.23 “CM Field Staff” means those persons, who may be Key Team Members, who are responsible for monitoring, inspection, management and administration of the Construction Work and on-site activities for the Project.
- 1.24 “CM Monthly Report” means a written report created monthly by CM and submitted to the Authority in hard copy and electronic form, and entered by the CM into the Authority’s Documentation Database.
- 1.25 “CM Notice to Proceed” or “CM NTP” means a written notice from the Authority to CM directing CM to commence performing its responsibilities, or a portion thereof, pursuant to this Agreement.
- 1.26 “CM Schedule of Values” shall mean an itemized listing, supported by such substantiating data as the Authority may require, prepared by the CM and approved by the Authority, that allocates the CM’s Services over the several phases of the engagement, and apportions CM’s lump-sum Compensation accordingly.
- 1.27 “CM’s Construction Submittal Log” or “Construction Submittal Log” means the written summary prepared and updated by CM in the Authority’s Documentation Database tracking the status of each Construction Submittal issued by the Design-Builder required by the Design Build Contract Documents and the

Submittal review process. The Construction Submittal Log shall not include any Design Phase Submissions, or submittals generated during the Design Phase of the Project. CM's Submittal Log shall be included as part of CM's required Monthly Report to the Authority.

- 1.28 "Commissioning Authority" or "CxA" means the person, persons or firm that may be engaged by the Authority to provide oversight and monitoring of commissioning activities for the Project. The CM may be required to provide or procure commissioning services for the Project, if so requested by the Authority as part of the Basic Services or as a Contingent Additional Service.
- 1.29 "Compensation" means payment(s) intended to compensate CM for Services performed pursuant to this Agreement.
- 1.30 "Construction Change Directive" or "CCD" means a written order by the Authority to the Design-Builder directing or authorizing some change to the Design-Build Contract Documents for which there has been no determination by the Authority as to the Design-Builder's entitlement to Compensation and/or a Design-Build Contract Time extension. If, ultimately, there is an agreement on Compensation and/or a Design-Build Contract Time extension, for a CCD, a Change Order shall be issued by the Authority to the Design-Builder resolving the CCD.
- 1.31 "Contract Price" means the amount stated in the Design-Build Contract Documents, as it may be adjusted in accordance with the Design-Build Contract Documents, representing the total amount payable by the Authority to the Design-Builder for performance of the Services and Work under the Design-Build Contract Documents.
- 1.32 "Construction Documents" means the plans, Specifications and other documents prepared by the Design-Builder as Final Design Documents and accepted by the Authority, which documents set forth in detail the design for, and other necessary requirements relating to, the construction of the Project, based on the requirements set forth in the Design-Build Contract Documents. The Construction Documents shall be consistent with the Design-Build Contract Documents.
- 1.33 "Construction Manager" or "CM" means the person, persons or firm engaged by the Authority, pursuant to this Agreement, to provide construction management services, as defined herein, including oversight and reporting services, in connection with the construction of this Project.
- 1.34 "Contract Milestones" mean the dates identified in the Design-Build Contract Documents by which the Design-Builder must complete certain critical activities in advancement of the Project.

- 1.35 “Construction Phase” means that phase of the Project during which the Design-Builder provides labor, materials and equipment to construct the Project.
- 1.36 “Contingent Additional Services” means services to be performed by CM at the Authority’s written request and subject to a properly executed Amendment, which services are in addition to the Basic Services that CM is required to perform. A non-exclusive list of types of Contingent Additional Services is set forth in Section 5.0.
- 1.37 “Contract Change Request” or “CCR” means a written request by the Design-Builder for a Change to the Design-Build Contract. A Contract Change Request does not authorize the Design-Builder to perform the requested change, but may trigger the issuance of either a Change Order or a Construction Change Directive by the Authority.
- 1.38 “Day” means calendar day, unless otherwise specifically defined in this Agreement.
- 1.39 “DCA” means the New Jersey Department of Community Affairs.
- 1.40 “Design Phase” means that phase of the Project before the Design-Builder commences construction of the School Facility and during which time the Project Design, Construction Documents and other necessary documents for the construction of the Project are prepared.
- 1.41 “Design-Build Commencement Date” means the date set forth in the initial Notice to Proceed issued by the Authority to the Design-Builder, on which date the Design-Builder shall begin performing its Design Phase Services pursuant to the Design-Build Contract Documents.
- 1.42 “Design-Build Contract” or “Design-Build Agreement” means the agreement between the Authority and the Design-Builder governing the design and construction of the Project, as represented by, and embodied in, the Design-Build Contract Documents, as defined below.
- 1.43 “Design-Build Contract Documents” means the written agreement executed between the Authority and the Design-Builder governing the design and construction of the Project, together with the Design-Build Information Package, Supplementary Conditions (if any), Request for Qualifications and/or the Request for Proposals, instructions to Bidders and Addenda, the Authority’s Design Manual and Safety Manual, any Change Orders or other Amendments to the Design-Build Agreement, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials, setting forth the obligations of the Design-Builder with respect to the design and construction of the Project.

- 1.44 “Design-Build Contract Time” means the number of calendar days, specified within the Design-Build Contract Documents, within which the Design-Builder is required to complete the Services and Work under the Design-Build Contract Documents, as amended. The Design-Build Contract Time is calculated from the Design-Build Commencement Date.
- 1.45 “Design-Builder” means the firm or firms engaged by the Authority to design and construct the Project in accordance with the requirements of the Design-Build Contract Documents. Any and all references to the term “Contractor” in this Agreement or the Design-Build Contract Documents shall mean the Design-Builder as such term is defined in the Design-Build Agreement.
- 1.46 “Design-Builder Deliverables” means any documents required to be produced by, or Work product generated by, the Design-Builder pursuant to the Design-Build Contract Documents.
- 1.47 “Design-Builder’s Design Consultant” or “Design Consultant” means the architect, engineer or other licensed Professional Services Consultant engaged by or affiliated with the Design-Builder to provide design in connection with the design and construction of the Project, as more specifically described in the Design-Build Contract Documents, as amended
- 1.48 “Design-Builder’s Invoice” means a request for payment submitted by the Design-Builder to the Authority requesting payment for a portion of the Design-Builder’s Work completed during the stated billing period.
- 1.49 “Design-Builder’s Submittal Schedule” or “Submittal Schedule” means the Design-Builder’s detailed schedule of its required Project Submittals, as required under the terms of the Design-Build Contract Documents. Once accepted by the Authority, it will be incorporated into the approved Project Schedule and used to monitor the progress of Design-Builder’s submittals.
- 1.50 “Design-Builder’s Design Consultant” or “Design Consultant” means the architect, engineer or other licensed Professional Services Consultant engaged by or affiliated with the Design-Builder to provide design in connection with the design and construction of the Project, as more specifically described in the Design-Build Contract Documents, as amended.
- 1.51 “Directive” means a written order by the Authority directing the CM to perform Services under the CM Agreement. A Directive by the Authority requires the CM to perform the directed Services, even if there remains a dispute as to whether the Directive constitutes a change in the CM’s Services or warrants additional Compensation or a time extension.
- 1.52 “Document” means any written or graphic matter, however produced or reproduced, of any kind or description, including originals, marked copies and drafts, and including, but not limited to, correspondence, letters, memoranda,

notes, notations, transcripts, notes, books, pamphlets, or articles, requisitions, resolutions, certificates, opinions, reports, studies, analyses, evaluations, contracts, licenses, agreements, financial statements, ledgers, checks, books or records of accounts, statistical records, lists, tabulations, summaries, charts, graphs, maps, surveys, plans, drawings, specifications, schedules, sound recordings, photographs, computer disks, faxes and electronic mail, and papers and things similar to any of the foregoing.

- 1.53 “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.
- 1.54 “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.
- 1.55 “ELEC” means the New Jersey Election Law Enforcement Commission established pursuant to N.J.S.A. 19:44A-5, et seq.
- 1.56 “Effective Date” means the date upon which this Agreement has been fully executed by all Parties, as indicated above.
- 1.57 “Final Completion” means that point in time on the Project when the Project is 100% complete and: (i) all requirements of the Construction Documents and Design-Build Contract Documents have been correctly completed, (ii) all items on the Punchlist have been correctly performed, and (iii) all required inspections and items of work required by Authorities Having Jurisdiction have been completed, including, without limitation, inspections by soil erosion agencies, DEP, etc.; and (iv) a Certificate of Occupancy has been issued by DCA.
- 1.58 “Key Team Member” means a principal, partner or officer of CM, or a project executive, project manager, assistant project manager, superintendent, project engineer, scheduler, estimator, or other individuals identified in the staffing proposal included in CM’s response to the Authority’s RFP/RFQ. One of the Key Team Members shall be designated as the CM Contact.
- 1.59 “Legal Requirements” means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, court orders, court judgments, decrees, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the Design-Builder’s performance of the Services and Work under the Design-Build Contract Documents, including, but not limited to, current versions of the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools Under Construction or Being Planned for Construction (“Best Practice Standards”), the Occupational Safety and Health Act of 1970, the Soil, Erosion and Sediment Control Act, as well as any

requirements of any local or national Authorities having Jurisdiction over the Project, as applicable.

- 1.60 “Licensed Site Remediation Professional” or “LSRP” means the site remediation professional licensed by the New Jersey Department of Environmental Protection (DEP) and retained by the Authority in conjunction with this Project. The Authority will identify the LSRP in Appendix B (Project Description) to this Agreement.
- 1.61 “Materials and Systems Standards” means the NJSDA’s “*Materials and Systems Standards Manual*” including Design Requirements and Construction Details, as available on the Authority’s website at time of execution of the Design-Build Agreement for this Project.
- 1.62 “Monthly Rates” means the fully loaded “Rate per Month” for each employee, either during the Construction Phase or Closeout Phase, as indicated on CM’s Price Proposal, which shall include the per-month salaries and wages paid to each such employee, plus the cost of customary and statutory benefits, as well as an allocated amount for operating margin or profit and general and administrative overhead, including non-project operating costs, home office labor costs, fringe benefits and labor burden; facilities costs; depreciation; general and administrative costs; and all initiation and mobilization costs, including consumables and costs of equipment and materials (including monthly fees for leased equipment or amortized costs of one-time purchases of equipment); as well as all direct and indirect costs relating to administrative activities, including all accounting, scheduling or coordination activities performed by non-Key Team Member or unidentified CM staff. Such rates shall be valid for the duration of the engagement.
- 1.63 “Multiplier Factor” means the modifying factor for labor costs, that, when applied to actual salary figures (exclusive of customary payroll burdens and benefits) is intended to compensate the CM for all indirect costs relating to services performed by CM staff as Contingent Additional Services, which indirect costs include, but are not limited to, the following: profit; bonds and insurance costs; home office labor costs; fringe benefits and labor burden; facilities costs; depreciation; general and administrative costs; as well as all direct and indirect costs relating to administrative activities, including all accounting, scheduling or coordination activities performed by non-Key Team Member CM staff, as a result of such Contingent Additional Services.
- 1.64 “Notice to Proceed” or “NTP” means a written notice authorizing a party to commence performance of duties, obligations or responsibilities under a contract. A contract may require the issuance of multiple NTP’s, each authorizing commencement of a specific, defined subset of duties and obligations.

- 1.65 “Parties” means the signatories to this Agreement, i.e., the Authority and CM.
- 1.66 “Performance Evaluation Policy and Procedure” means the policies and procedures developed or to be developed by the Authority for evaluating the performance of professional services consultants, contractors, etc.
- 1.67 “Performance Specification” means a written document issued by the Authority providing parameters for the Design Builder’s selection, installation and/or incorporation in the Project of a particular type or kind of product, material, system or equipment, based on the desired qualities, technical or functional characteristics or performance capabilities required to be possessed by the particular product, material, system or equipment selected by the Design Builder. Such document may include a statement of any of the Authority’s requirements and may require inspection, testing or the preparation of a sample of a construction item before inclusion of the item in the design documents or procurement of the item by the Design Builder.
- 1.68 “Prescriptive Specification” means a written document issued by the Authority to the Design Builder, providing detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or Work to be incorporated by the Design Builder into the Project, or a requirement of the Work to be performed under this Agreement. Such document may include a statement of any of the Authority’s requirements and may require inspection, testing or the preparation of a sample of a construction item before inclusion of the item in the design documents or procurement of the item by the Design Builder.
- 1.69 “Procedural Specification” means a written document issued by the Authority to the Design Builder, providing a detailed description of procedures or processes required to be implemented by the Design Builder in the performance of Services or Work under this Agreement. Specification Section 01200 (Preconstruction Conference) is an example of a Procedural Specification.
- 1.70 “Product data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate a material, product or system proposed for use in some portion of the Work.
- 1.71 “Professional Services Consultants” means consultants, including CM, providing professional services related to the Project and associated with research, development, design, construction administration, alteration, or improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These consultants may provide services, including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, submittal

review, testing, preparation of operating and maintenance manuals, and other related services.

- 1.72 “Professional Services Consultant Agreements” means the Agreements between the Authority and Professional Services Consultants in connection with the Project and, unless expressly stated, otherwise elsewhere in this Agreement, shall include this Agreement.
- 1.73 “Progress Payment Report” means a written report by the CM to the Authority and the Design Consultant prepared by CM after meeting with the Design-Builder to review each Design-Builder Invoice.
- 1.74 “Project” means the design, acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of the School Facilities identified herein (including Appendix B hereto) and in the Design-Build Contract Documents, as well as any personal property necessary for or ancillary to the School Facility identified herein, and in the Design-Build Contract Documents.
- 1.75 “Project Budget” or “Budget” means the amount of money earmarked by the Authority for the design and construction of the Project.
- 1.76 “Project Description” means the description of the Authority’s objectives for the Project, including, but not limited to, Project Budget, schedule and project delivery dates, special equipment and systems, and site requirements described in Appendix B of this Agreement.
- 1.77 “Project Directories” means all information, including, but not limited to, names, company affiliations, business address, telephone numbers (land line and cellular) necessary to allow proper communication among all persons involved in the Project.
- 1.78 “Project Labor Agreement” or “PLA” means the Agreement negotiated and executed by the Authority, the New Jersey Building Trades Council, the Local Unions and the Design-Builder pertaining to the subject Project.
- 1.79 “Project Schedule” means the Design-Builder’s schedule, as submitted to the Authority and CM and accepted by the Authority. The Project Schedule shall be used to monitor the progress of the Work, subject to periodic updates contemplated under the Design-Build Contract Documents.
- 1.80 “Project School District” means the school district in which the Project is located. The District is identified in Appendix B of this Agreement.
- 1.81 “Proposal” means a written description of certain proposed Services or Work, setting forth the price and time adjustments, if any, necessary to perform the proposed Work, prepared by the Design-Builder in response to a “Proposal

Request” issued by the Authority with respect to a contemplated Change in the Services or Work.

- 1.82 “Proposal Request” means a written request issued by the Authority and prepared by the Authority with the assistance of CM, recognizing a contemplated Change in the Work or Change to the Design-Build Contract Documents and seeking the Design-Builder’s Proposal for the performance of Work to accomplish the contemplated Change in the Work or Services, or Change to the Design-Build Contract Documents.
- 1.83 “Punchlist” or “Punchlist Work” means the list of incomplete or defective Work, including Work that does not comply with the applicable Code or Legal Requirements, to be performed or remedied by the Design-Builder after Substantial Completion and before Final Completion. The Punchlist shall be prepared by the CM in conjunction with the Authority, with input from the Project School District, prior to the issuance of the Certificate of Substantial Completion. The Punchlist shall not include items that are necessary to be completed in order to secure a temporary Certificate of Occupancy.
- 1.84 “Remedial Action” means those actions taken at a site as may be required by the New Jersey Department of Environmental Protection, including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use, or otherwise, designed to ensure that any discharged contaminant is remediated in compliance with the applicable remediation standards pursuant to N.J.A.C. 7:26E-6.
- 1.85 “Remedial Action Work Plan” or “RAWP” means the written documentation prepared and certified by licensed qualified environmental and/or engineering firms to satisfy New Jersey Technical Requirements for Site Remediation (N.J.A.C. 7:26E-6.2). The RAWP will include, among other things, a summary of findings and recommendations generated by any Remedial Investigation Report, an identification of areas of concern, and a detailed description of the remedial action to be conducted and the remedial technology to be employed on the Site.
- 1.86 “Request for Information” or “RFI” means a written request by the Design-Builder to the Authority for additional information about, or clarification of, the Design-Build Contract Documents; or a written request from the Design-Builder or its subcontractors to the Design Builder’s Design Consultant for additional information about, or clarification of, the Construction Documents.
- 1.87 “Request for Information Log” or “RFI Log” means a written report or summary prepared by CM and updated monthly tracking the status of all RFIs.

- 1.88 “Request for Proposals” or “RFP” as used in this Agreement means the written request issued by the Authority seeking proposals from Professional Services Consultants for Construction Management services for the engagement resulting in this Agreement.
- 1.89 “Request for Qualifications” or “RFQ” as used in this Agreement means the written request issued by the Authority seeking submission of qualifications from Professional Services Consultants for Construction Management services, for the engagement resulting in this Agreement.
- 1.90 “Safety Manual” means the latest edition of NJSDA’s Safety Manual available at the time the Design-Build Agreement is executed.
- 1.91 “Sample” means physical examples that illustrate materials, equipment or workmanship, and establish standards by which the Design-Builder’s Work will be judged.
- 1.92 “Schedule” means a Critical Path Method (“CPM”) schedule prepared and submitted by the Design-Builder to the CM and Authority for acceptance, which identifies all critical and certain non-critical activities, including Contract Milestones, and the projected and actual time periods for completing such activities and Contract Milestones. The accepted Schedule shall constitute the official Project Schedule.
- 1.93 “Schedule of Values” shall mean an itemized table prepared by the Design-Builder that allocates the entire Guaranteed Maximum Price among the various portions of the Services and Work, except that the GMP Reserve shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such substantiating data as the Authority may require.
- 1.94 “School Facility” means and includes any site, structure, building or facility used wholly or in part for academic purposes, and any property, structure or area ancillary or appurtenant thereto.
- 1.95 “Services” or “CM Services” means the services to be performed by CM in accordance with this Agreement. Such services shall include, but not be limited to, the development and production of CM Deliverables and Work Product.
- 1.96 “Shop drawings” means drawings, diagrams, schedules and other data prepared specifically for the Work by the Design-Builder or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Design-Builder’s Work.
- 1.97 “Site” or “Project Site” means the geographical location of the site(s) proposed or selected for the physical location of the Project.

- 1.98 “Special Inspection” means an independent verification by a qualified person (a “Special Inspector”) rendered to a code official for various construction systems and materials, as required by Chapter 17 of the Building Subcode of the New Jersey Uniform Construction Code as modified or augmented by Bulletin 03-5 issued by the Department of Community Affairs, Division of Codes and Standards, revised December 2015.
- 1.99 “Specification” means a written description prepared by the Design-Builder as part of the Final Design Documents (or “Construction Documents”) setting forth the detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or Work to be incorporated into the Project, or a requirement of the Work to be performed under this Agreement. Specifications shall augment and complement the drawings and plans prepared by the Design-Builder. The term “Specification” shall not include, and shall be distinguished from the Authority’s “prescriptive specifications,” “performance specifications” and “procedural specifications” as described herein and included as part of the Design-Build information package.
- 1.100 “Specified Sum Services” means those portions of the CM’s Basic Services that are to be compensated on the basis of a specified sum identified in the Total Compensation Amount and the Price Proposal attached as Appendix C; Initial Schedule Review Services and Procurement of Special Inspectors are examples of Specified Sum Services.
- 1.101 “State” means the State of New Jersey.
- 1.102 “Subconsultant” means a Professional Services Consultant with whom another Professional Services Consultant subcontracts for the performance of all or part of the services for which the latter is responsible. This term also includes any consultant retained by a Subconsultant, regardless of tier.
- 1.103 “Subcontractor” means the party to whom a Design-Builder or another Subcontractor subcontracts part or all of the work for which such Design-Builder or other Subcontractor is responsible. “Subcontractor” shall also include subcontractors of any tier.
- 1.104 “Submittal” means Deliverables including documents or other tangible items, prepared by the Design-Builder or its subcontractors for review and approval by the Design-Builder’s Design Consultant including, but not limited to, shop drawings, product data and samples. The term “Submittals” shall not refer to Design Builder’s Preliminary Design or Final Design submissions to the Authority. Submittals may be subject to review by the CM for constructability and consistency with the Construction Documents, and by the Authority for consistency with the Design-Build Contract documents, as well as for functional and aesthetic sensibility.

- 1.105 “Submittal Log” or “CM’s Submittal Log” means the report generated and maintained by the CM of all Design-Builder Submittals on this Project.
- 1.106 “Substantial Completion” means that point in time on the Project when all of the following have occurred: (i) all essential requirements of the Design Build Contract Documents and Construction Documents have been performed so that the purpose of Design Build Contract Documents and the Construction Documents is accomplished; (ii) a Certificate of Occupancy or Temporary Certificate of Occupancy has been issued by the Department of Community Affairs; (iii) the Punch list has been created; the Design-Builder has delivered to the Authority the key(s) and/or code(s) for operation of the elevators; (v) there are no material omissions or technical defects or deficiencies, as identified by the Authority; and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.
- 1.107 “Substantial Completion Date” means the date the Design-Builder is required to achieve Substantial Completion as identified in the Design-Build Contract Documents, or in the Authority’s Procedural Specification 01010, “Summary of Work”.
- 1.108 “Supplementary Conditions” means any additional terms or conditions that may be included in or attached to the Design-Build Contract Documents and which modify, replace or add to the terms of the Design-Build Contract Documents.
- 1.109 “Temporary Certificate of Occupancy” means the document issued to the Authority’s Design-Builder by the Department of Community Affairs (DCA), permitting temporary legal occupancy of a building.
- 1.110 “Term” means the term of this Agreement as set forth in Appendix B of this Agreement.
- 1.111 “Total Compensation Amount” means CM’s price for the Services required by this Agreement. The Total Compensation Amount is based on the Monthly Rate payable to CM for each of its staff members for the performance of Services during the duration of the Project. The Total Compensation Amount includes amounts for certain Specified Sum Services within the Basic Services, and may also include amounts for specified Contingent Additional Services included at execution of the Agreement, as well as Allowance Amounts that are payable to CM for the performance of properly authorized and validated Allowance Services, in accordance with the terms of this Agreement.
- 1.112 “Uniform Construction Code” or “Code” means the New Jersey Uniform Construction Code, as set forth in N.J.A.C. 5:23-1 et seq., including the International Building Code and all applicable Sub-codes, as amended from time to time.

- 1.113 “Work” or “Design-Builder’s Work” means all work to be performed by the Design-Builder and its Subcontractors and suppliers, including providing all material, equipment, tools and labor, necessary to complete the construction of the Project, as described in and reasonably inferable from the Design Build Contract Documents and Construction Documents, including all efforts necessary or appropriate to achieve Substantial Completion and Final Completion of the Project.
- 1.114 “Work Product” means all written or electronic information and materials gathered, generated, prepared or supplied by CM or its Subconsultants in connection with CM’s performance of its obligations under this Agreement, as more specifically defined in Section 10.3.1 of this Agreement.

2.0 RELATIONSHIP OF THE PARTIES AND OTHER ENTITIES

2.1 The Authority and CM

- 2.1.1 Relationship. CM agrees and acknowledges that the Authority is relying upon, and shall be entitled to rely upon, CM’s performance of the Services required of by this Agreement and upon CM’s experience and expertise in the construction industry in general and as a construction manager in particular. CM agrees to proceed with the Project on the basis of confidence, trust, good faith and fair dealing and shall fully cooperate with the Design-Builder and the Authority in furthering the Authority’s Project interests.
- 2.1.2 Standard of Care. CM covenants with the Authority to, at all times, furnish its Services, including, but not limited to, CM Deliverables and Work Product, in a manner fully consistent with the terms of this Agreement and the highest standards of skill, expertise, ability, judgment and diligence exercised by nationally recognized members of the construction management profession for projects of comparable size and complexity, and in accordance with applicable federal, state and local laws, codes, rules and regulations.
- 2.1.2.1 Further, and without limitation, CM shall perform its Services in:
- (a) an expeditious, efficient, economical and timely manner;
 - (b) a manner consistent with the interests of the Authority, including, but not limited to, the Authority’s interest in a quality and economical Project and the Authority’s interest in the Design-Builder’s timely and fully compliant performance of its Work; and
 - (c) a manner such as to avoid undue hindrance, interference, disruption, interruption or delay to the Project’s completion or increased construction costs. CM agrees and acknowledges that the Authority is relying upon, and shall be entitled to rely upon, CM’s experience and expertise in the construction industry in general and as a construction manager in particular.

2.1.2.2 CM represents and warrants to the Authority that:

- (a) CM is qualified to act as the CM on this Project and perform the Services required of CM under this Agreement;
- (b) CM has the capability and experience, including sufficient qualified and competent management and supervisory personnel, to efficiently and timely perform all of its Services called for under this Agreement;
- (c) CM shall, for the life of this Agreement, continuously furnish such sufficient qualified and competent management and supervisory personnel to perform CM's Services hereunder;
- (d) CM is financially solvent and possesses sufficient working capital to timely, competently and efficiently complete its Services hereunder;
- (e) CM shall comply with all Applicable Laws in rendering its Services hereunder;
- (f) CM assumes full and complete responsibility to the Authority for all acts, errors and omissions of its officers, directors, employees, Subcontractors, suppliers, and Subconsultants and all others, directly or indirectly, retained by CM or them in connection with the Services to be performed by CM hereunder;
- (g) CM shall designate, in writing, a CM Contact, who, at all times, shall be responsible for the supervision, coordination and proper performance of all Services to be provided by CM hereunder and shall have full authority to accept instructions, make decisions, communicate for, and act on behalf of, CM; and
- (h) CM shall, for the life of this Agreement, furnish and provide sufficient qualified staff ("CM Field Staff") to provide on-site monitoring, inspection, management, and administration of the on-site conditions and day-to-day construction activities for the Project, and such CM Field Staff shall be appropriately and effectively supervised and coordinated by the CM Contact.

2.1.3 Authority's Authorized Representative. Unless expressly provided to the contrary elsewhere in this Agreement, CM shall, subject to the limitations provided herein, act as the Authority's authorized representative with respect to the Construction Phase of the Project.

2.1.4 Limitation of CM's Authority. CM shall not have any authority to bind the Authority for the payment of any costs or expenses or grant time extension to the Design-Builder without the express, prior, written approval of the Authority. CM shall have authority to act on behalf of the Authority only to the extent expressly provided herein and in the Construction Contract, which is incorporated herein by reference. In the event of an emergency affecting the safety of persons, the Project or adjacent property, CM, without special

instruction or authorization from the Authority, shall act immediately and reasonably in order to prevent or minimize any such threatened damage, injury or loss. CM's authority to act on behalf of the Authority shall be modified only by a written amendment to this Agreement signed by both Parties.

2.1.5 Authority's Approval or Disapproval of CM's Services. The Authority shall, when well founded, have the right to reasonably disapprove, by written notice stating the reasons therefore, any portion or aspect of CM's Services. In the event that any of CM's Services are so disapproved, CM shall, when so requested in writing by the Authority, promptly proceed with revisions or improvements to its Services in an effort to satisfy the Authority's objections. CM acknowledges that any review or approval by the Authority of the CM's Services or the Authority's failure to disapprove or object to any aspect of CM's Services shall not relieve CM of its responsibility to properly and timely perform all such Services. If CM contends that any such disapproval and direction for change by the Authority is unreasonable, it, if so inclined, may assert a Claim for any resultant extra compensation and/or a time extension in accordance with applicable Claims procedures set forth herein. Both the Authority and CM shall exercise good faith efforts to amicably resolve such differences.

2.2 **The Authority and the Design-Builder**

2.2.1 Design-Builder Relationship. The Authority shall engage a Design-Builder to design and construct the Project. Nothing in this Agreement shall be construed to mean that CM assumes any of the responsibilities or duties of the Design-Builder. The Design-Builder will be solely responsible for construction means, methods, techniques, sequences and procedures used in the construction of the Project and for the safety of its personnel, property, and its operations and for performing in accordance with the Design Build Contract Documents.

3.0 THE CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

3.1 CM's Services

3.1.1 In general, and without limiting the scope of CM's Project responsibilities as more specifically described elsewhere in this Agreement, CM shall, as the Authority's Project administrator, consultant and adviser, furnish, on a daily, continuous, competent, non-negligent, efficient and economical basis, the following: administration, management, monitoring, supervision and inspection of the Project, as well as oversight of Design-Builder's scheduling and coordination of the Services and Work, and shall provide appropriate and effective supervision to ensure the satisfactory, timely and complete performance of CM's Field Staff in performing the following project responsibilities. CM shall:

- (a) verify and confirm that the Project is constructed consistent with the quality, schedule, cost, and safety objectives of the Authority;
- (b) verify and confirm that the Work of the Design-Builder is free from defects and strictly complies with the terms of the Design-Build Contract Documents, including the scheduling commitments therein;
- (c) analyze and advise the Authority concerning Claims by the Design-Builder for extra compensation and/or additional time;
- (d) inform and advise the Authority of Project problems and issues and promptly recommend to the Authority feasible and economical remedial measures;
- (e) guard the Authority against (1) unnecessary expense, (2) defective or nonconforming Work of the Design-Builder, (3) overpayment of the Design-Builder, and (4) any unnecessary increase in the Authority's Project cost or duration;
- (f) continually examine the potential for, and promptly advise the Authority of, any perceived methods of cost savings in the Project's construction without diminishing Project quality;
- (g) document the performance of the Design-Builder; and
- (h) protect and promote all aspects and facets of the Authority's interests in the Project and ensure that the Authority receives all that it is entitled to receive under the Design-Build Contract Documents.

3.1.2 The specifics of CM's Project obligations, as set forth elsewhere in this Agreement, are not intended to restrict or diminish these general obligations of CM. CM is responsible for the quality, technical accuracy, and timely

completion and delivery of all of its Services, including CM Deliverables and Work Product. The Authority's approval of interim CM Deliverables and Work Product shall not in any way relieve CM of its obligation to strictly and completely fulfill all of its obligations under this Agreement.

3.1.3 Acceptance of, or payment for, any of CM's Services, including CM Deliverables and Work Product shall not be construed as, or argued by CM as constituting, a waiver, release or modification by the Authority of any of its rights and entitlements under this Agreement or of any cause of action arising out of CM's performance or non-performance under this Agreement.

3.1.4 CM shall become familiar with the details of the Design-Build Contract Documents, which shall be incorporated herein by reference, to the extent that the Design-Build Contract Documents impact upon CM's scope of Services hereunder. To the extent that the Documents refer to a duty or responsibility of CM not specifically referenced herein, such duty or responsibility is incorporated herein as if fully set forth at length. Further, CM shall be familiar with the obligations and rights of the Design-Builder, as set forth in the form of Design-Build Agreement, insofar as the terms of the Design-Build Agreement impact upon CM's obligations set forth herein. Where this Agreement describes some right or obligation of the Design-Builder in a manner which conflicts with the form of Design-Build Agreement, the form of Design-Build Agreement shall control and any such inconsistency shall not warrant an award to CM of additional time or compensation.

3.2 **Performance as Directed.** At all times during the Term of this Agreement, including during the course of, and notwithstanding the existence of, any dispute, the CM shall perform as directed by the Authority, in a diligent manner and without delay, shall abide by the Authority's decisions, orders or formal Directives, and shall comply with all applicable provisions of the Agreement. The Authority may issue a formal Directive to the CM to enforce the CM's obligation to perform Services required by the Agreement. Such Directives from the Authority do not constitute a Change in the Services, and will not result in an increase in compensation or an extension of time. The CM shall perform the Services described in the Directive, even if the CM disputes that such Services are required by the Agreement.

3.3 **Review of Project Description.** CM acknowledges that it has carefully and thoroughly reviewed the Design-Build Contract Documents to determine the requirements of the Project as such requirements may impact the Services to be provided by CM under this Agreement, and any uncertainty on the part of CM in that regard has been the subject of a written inquiry and satisfactory written response by the Authority.

3.4 **Errors and Omissions.** CM shall, without additional compensation, promptly cure any errors, omissions, or other deficiencies in CM Deliverables. Any costs, direct and indirect, reasonably incurred by the Authority to correct any errors or omissions or

their reasonably foreseeable consequences will be deducted from any payments otherwise due CM, then or thereafter. If the payments then or thereafter due CM are not sufficient to cover the costs incurred by the Authority to correct such errors or omissions, CM shall, within ten (10) Days of its receipt of the Authority's written demand, pay the difference to the Authority. The Authority, in this regard, will take appropriate steps to mitigate any expenses it may incur in exercising its rights under this Paragraph. If CM fails to timely pay the Authority in this regard, the Authority shall be entitled to interest.

- 3.5 **Materials and Systems Standards.** CM shall review and be familiar with the **requirements** of the Materials and Systems Standards. CM shall review all Work of the Design-Builder on the Project for compliance with the Materials and Systems Standards.
- 3.6 **CM Staffing.** CM shall provide staffing in accordance with the requirements of the RFP and consistent with the CM's Staffing Proposal submitted in response to the RFP.
- 3.7 **Key Team Members.** Absent the Authority's written consent, CM shall staff this Project with the Key Team Members, including the CM Contact, identified in its response to the Authority's RFP and/or RFQ, for this Project. The Authority **has** the right to reject any such Key Team Member if, in its reasonable opinion, such Key Member is failing to properly perform or, in the reasonable opinion of the Authority, lacks the necessary background and experience. All substitutions proposed by CM must be approved in advance by the Authority in writing and such approval shall not be unreasonably withheld. CM shall provide written notice to the Authority in the event CM proposes to replace, add or remove any Key Team Member. Identified Key Team Members are expected to fulfill their assigned duties, as referenced by the Responding Firm in this Technical Proposal, throughout Final Completion of the Design-Builder's Agreement. Changes to Key Team Members will not be approved if the Key Team Member is actively working for the Firm. Any replacement Key Team Member must have equal or superior qualifications to the Key Team Member CM proposes to replace. CM shall submit to the Authority, for approval, the name and qualifications of all proposed Key Team Member substitutions. Any approval by the Authority of any Key Team Member shall not be construed as an admission by the Authority of such Key Member's competence and CM shall not argue to the contrary in connection with any dispute between the Parties. There will be no increase in fee or compensation to CM as a result of any Key Team Member substitution.
- 3.8 **Changes to Key Team Members.** The Authority may, at its option, review from time to time CM's Key Team Members. If, in the Authority's reasonable opinion, changes to Key Team Members are necessary, the Authority shall so notify CM in writing and, absent CM's written waiver of such requirement, provide the justification for such ordered replacement. Upon receipt of said notice, CM shall submit to the Authority, for approval, the name and qualifications of proposed Key Team Member substitutions. No changes to Key Team Members shall be permitted without the prior, written approval of the Authority, which shall not be unreasonably withheld.

- 3.9 **Design-Builder Deliverables.** CM is responsible for the coordination and timely delivery to the Authority of all Design-Builder Deliverables that are required by this Agreement or the Design Build Agreement to be coordinated or reviewed by CM for approval or comment before delivery to the Authority. The **Authority's** approval of interim Design-Builder Deliverables shall not in any way relieve CM of its obligation to fulfill all of its obligations under this Agreement. Acceptance of, or payment for, any of the Design-Builder Deliverables shall not be construed as, or argued by CM as constituting, a waiver or release by the Authority of any of its rights under this Agreement or of any cause of action arising out of CM's performance or non-performance under this Agreement.
- 3.10 **Performance of Subconsultants.** CM may hire a Subconsultant on this Project only with the prior, written consent of the Authority. Further, no Subconsultant may retain a Subconsultant absent the prior, written approval of the Authority. No Subconsultant shall be retained on terms inconsistent with the requirements of CM under this Agreement. It is expressly understood by CM that approval by the Authority of the subcontracting of any Services **under** this Agreement shall not relieve CM from its full responsibility for all of its obligations under this Agreement and CM represents that it will not argue to the contrary. CM shall continue to be contractually and otherwise responsible to the Authority for the proper performance of all Services and obligations required of CM by this Agreement, inclusive of those performed by any Subconsultant. Consent by the Authority to the hiring of a Subconsultant shall not be construed to be an approval of the Subconsultant's contract or any of its terms, but shall operate only as an approval of the hiring of the Subconsultant. CM shall oversee and be fully responsible and liable to the Authority for all Services performed by any Subconsultant, and CM shall cause all of its Subconsultants' Services to strictly conform to the provisions of this Agreement. The failure of any Subconsultant to strictly adhere to the terms of this Agreement may, in the Authority's discretion, be cause for termination of this Agreement. All Subconsultant agreements, regardless of tier, shall contain a provision acknowledging that any failure of a Subconsultant to properly perform its obligations thereunder, shall also, without waiving or diminishing the Authority's rights against CM or CM's liability to the Authority, give rise to a direct claim against such Subconsultant by the Authority, as an intended third party beneficiary, for breach of Subconsultant's contract and, if the circumstances warrant, for negligence and professional malpractice.
- 3.11 **Professional Advice and Support.** CM shall advise and make timely, appropriate, suitable, accurate and proper **recommendations** to the Authority regarding, and facilitate resolution of, any issue that will have an impact on the cost, schedule, compliance or successful delivery of the Project, including, but not limited to, safety, performance, compliance, environmental issues, approvals, personnel, procedures, payment, changes, training, document management, labor issues, quality control, building commissioning, and all other customary construction management tasks. CM shall promptly analyze any Contract Change Requests (CCRs) and claims submitted by the Design-Builder to the Authority and, if requested in writing by the Authority,

shall promptly provide to the Authority, in writing, its detailed analysis and recommendations as to resolution thereof.

- 3.12 **Accounting Requirements.** For all Services rendered, including Contingent Additional Services, and Subconsultant coordination and administration for Contingent Additional Services, CM shall, in accordance with generally accepted accounting principles and practices, maintain detailed, complete and accurate records of the Services performed **and** the cost thereof, including, but not limited to, time records, weekly payroll, overhead, cost and accounting records, as well as all other records CM may customarily maintain in its business. Such records, pertaining to all aspects of CM's Services, including, but not limited to, CM Deliverables and Work Product provided under this Agreement, regardless of whether the Services, CM Deliverables or Work Product are performed by CM or any Subconsultant, shall be maintained and made available for inspection by the Authority or any other State Agency on reasonable prior, written notice and during CM's regular business hours. All agreements with CM's Subconsultants, regardless of tier, shall impose this obligation on such Subconsultants and CM shall take timely, appropriate and effective steps to ensure its Subconsultants' compliance. CM shall maintain all such Project records for a period of, at least, five (5) years or such longer time period as may be required by Applicable Laws, or CM's or its Subconsultant's current document retention policy, during which time they shall continue to be available for inspection and copying by the Authority and its agents and representatives.
- 3.13 **Field Office Furniture, Supplies & Equipment.** Design-Builder will provide a field office, and other temporary facilities as required by the Design-Build Contract Documents. CM, at its sole expense, shall provide any additional office supplies and equipment reasonably necessary to manage the Project. This CM-provided equipment shall include, but not be limited to, digital video and still photography capability through smartphone or camera equipment, copiers, computers, software, printers (one for every two computers), scanner, 75" LED monitor with mobile stand and similar items. CM, at its own expense, shall also provide for any wireless communication devices (i.e., cell phone, etc.), high-speed data lines or other additional communication services that are reasonably necessary to properly and efficiently manage the Project.
- 3.14 **Reproduction Costs.** CM shall reproduce all tangible CM Deliverables and Work Product, including, **but** not limited to, reports, logs, charts, schedules, submittal drawings, and similar items required to be produced by CM pursuant to this Agreement at CM's own expense. The exact number of copies required will be as reasonably determined by the Authority.
- 3.15 **Hazardous Materials.** If CM suspects, learns of or discovers the existence of previously undetected asbestos, radon, lead, PCB's or other hazardous material at the Project, CM shall, immediately and in writing, report its findings to the Authority and assist in determining and implementing an appropriate course of action to safely and legally remove or eliminate such hazardous material from the Project.

- 3.16 **Other Consultants and Contractors.** The Authority may, in its sole discretion, engage one or more construction consultant(s), contractors or other Professional Services Consultants during the construction process. The services, duties, and responsibilities of any construction consultant, contractor or other Professional Services Consultant shall be described in an agreement between the Authority and such construction consultant, contractor or other **Professional Services Consultant** that will be furnished to CM upon written request, and CM is obligated to coordinate its Services hereunder with those of all such construction consultants, contractors or other Professional Services Consultants.
- 3.17 **Permits and Fees.** CM shall timely assist the Authority in obtaining building permits and any special permits, except for permits required to be obtained directly by the Design-Builder. If applicable, CM shall timely verify that the Authority has paid applicable fees and assessments. CM shall timely assist the Authority and Design Consultant in filing documents required for the approval of governmental authorities having jurisdiction over the Project.
- 3.18 **Errors and Omissions in the Construction Documents.** CM shall, in writing, promptly report to the Authority any errors, inconsistencies, defects or omissions that it discovers in the Construction Documents.

4.0 BASIC SERVICES

- 4.1 **Design Phase Services (THIS SECTION INTENTIONALLY OMITTED)**
- 4.2 **Submittal Services**

4.2.1 Commencement of Submittal Services. The CM's obligation to provide Submittal Services under this Agreement will commence upon the Authority's issuance of a CM Notice to Proceed with Submittal Services. The commencement of such Submittal Services may occur prior to the commencement of CM's other Basic Services, including Construction Phase Services.

4.2.2 Submittal Listing and Schedule. SDA will provide the Design-Builder with a comprehensive listing, by major divisions of the Construction Specification Institute (CSI) format, of all Submittals required of the Design Builder pursuant to the Design Build Contract Documents. Design-Builder is obligated to prepare a proposed Submittal Schedule, which is due within thirty (30) Days of the Notice to Proceed for Construction (or such other date as specified by the Authority). The CM shall review the proposed Design-Builder's Submittal Schedule for accuracy and completeness, and, within seven (7) Days of its receipt, shall provide to the Authority its written comments and recommendations for acceptance or rejection of same. The Authority shall accept, provide comments to, or reject the Design-Builder's

Submittal Schedule within fourteen (14) Days of receipt. Once accepted by the Authority, the Design-Builder's Submittal Schedule shall be used by the Authority and the CM to monitor the Design-Builder's progress in providing Submittals in a timely manner to avoid delays to the Work. If the Design-Build Contract Documents require a shorter approval time than indicated in this Section, CM shall ensure compliance with such shorter time frame.

- 4.2.3 Submittal Review. CM shall review all Submittals, including, but not limited to, shop drawings, test reports, samples and product data, for consistency and coordination with the Construction Documents and the Design-Build Information Package. CM shall, within seven (7) days of receipt of a given Submittal, submit a recommendation to the Authority for acceptance or rejection of the Submittal using the "CM Submittal Review and Recommendation Form" provided by NJSDA, and in accordance with the procedures described below.
- 4.2.3.1 CM shall reject any Submittal that: 1) does not show a stamp or marking indicating that such Submittal has been reviewed and approved by the Design-Builder's Design Consultant; 2) is incomplete, erroneous or unresponsive to prior comments from the Authority or CM; 3) is inconsistent with either the Design-Build Information Package or the Construction Documents; or 4) any Submittal dependent upon prior review of another Submittal that has not yet been prepared and submitted; and CM shall provide the Authority with comments supporting the recommendation of rejection.
- 4.2.3.2 For those Submittals not rejected by CM, CM shall, as part of its recommendation, provide written comments to the Authority regarding the Submittal and the Submittal's effect, if any, on matters of cost, scheduling and time of construction and the Submittal's consistency with the Construction Documents.
- 4.2.3.3 CM shall transmit each Submittal, with CM's recommendation and written comments, to the Authority for approval or rejection using the "CM/PMF Submittal Review and Recommendation Form" provided by NJSDA.
- 4.2.3.4 The Design-Builder's requests for "equal" substitutions shall also be accepted or rejected by CM within seven (7) days of receipt of any such request, unless a greater turnaround time is permitted under the Construction Documents.
- 4.2.4 Submittal Log. CM shall receive, date stamp, catalogue and process all Submittals, and shall log into the NJSDA database each submittal into the Authority's Documentation Database. CM shall prepare and maintain an updated Submittal Log within the NJSDA database to track the status of each Submittal through the Submittal review process. This Submittal Log shall be included as part of CM's Monthly Report to the Authority as required by Section 4.7.5(2) of this Agreement.

4.2.5 Submittal Turnaround. CM shall manage this Submittal review process in order to achieve a fourteen (14) day turnaround time to return Submittals to the Design-Builder. If a shorter turnaround time is required under the Design-Build Contract Documents, such shorter time shall control.

4.3 **Construction Phase Services**

4.3.1 Commencement of CM's Construction Phase Services. The CM's obligation to provide Basic Construction Phase Services under this Agreement will commence upon the Authority's issuance of a CM Notice to Proceed With Construction Phase Services, which may precede or coincide with commencement of the Project's Construction Phase as defined by the Design-Build Contract Documents.

4.3.2 Commencement of Project's Construction Phase. The Construction Phase for this Project will commence with the Authority's issuance to the Design-Builder of the Notice to Proceed with Construction Phase Services ("Construction NTP").

4.3.3 Administrative and Management Services. At all times during the Project's Construction Phase, CM shall maintain a continuous presence on the Project Site through the provision of experienced and qualified personnel ("CM Field Staff") to perform CM Services under this Agreement. CM shall provide administrative, management and related Services, as required, to monitor, verify, secure and direct the strict compliance of the Design-Builder with the Design-Build Contract Documents and the Authority's objectives for cost, schedule, and quality and, where applicable, coordinate the Work of, and promptly resolve disputes between, multiple Project contractors. CM shall ensure the satisfactory, timely, and complete performance of CM's Field Staff and any other CM employees or subcontractors charged with performing CM services under this Agreement.

4.3.4 Pre-Construction Conference. In consultation with the Authority's Project Manager, other Authority representatives, and Design Consultant, CM shall schedule and conduct a Pre-construction Conference with the Design-Builder after the Design-Build Agreement is signed. The agenda for the Pre-Construction Conference shall include, but not be limited to, a review of the Construction Documents, Subcontractors, key personnel, scheduling, Project staffing, contract administration procedures, Project requirements, procedures for processing field decisions, Submittals, substitutions, invoices and Change Orders and other pertinent issues consistent with Specification Section 01200 "Preconstruction Conference," as amended or superseded by the Design-Build Contract Documents. The CM shall schedule and conduct the Pre-Construction Conference within ten (10) Days of the Construction NTP Date or such different date as the Design-Build Agreement may require.

- 4.3.5 Quality Assurance/Quality Control (“QA/QC”) Program. CM shall review the Design-Builder’s Quality Assurance/Quality Control Program, recommend, in writing, its approval or rejection to the Authority, and monitor Design-Builder’s compliance with the Program. Once approved, CM shall endeavor to ensure that the Work accomplished meets or exceeds the approved QA/QC Program. In the event that the Design-Builder fails to comply with its QA/QC Program, CM shall notify the Authority, in writing, and assist the Authority in determining and implementing a course of action to address the Design-Builder’s failure to comply with the QA/QC Program. CM’s actions to verify the Design-Builder’s compliance with the QA/QC Program requirement shall not relieve the Design-Builder of its obligation to establish a QA/QC Program which fully satisfies the requirements of the Design-Build Contract Documents related to QA/QC.
- 4.3.6 Compliance with Legal Requirements. CM shall monitor the Design-Builder for compliance with Legal Requirements, as required for the construction of the Project, specifically including, but not limited to, the requirements of the New Jersey Uniform Construction Code, the International Building Code, the Occupational Safety and Health Administration, Soil, Erosion and Sediment Control Act, if applicable, and any other applicable codes, and shall promptly notify the Authority in writing of Design-Builder’s failure to comply with such requirements. The Monthly Report shall include the general status of the Design-Builder’s compliance and actions that have been taken to resolve any failure to comply.
- 4.3.7 Permit Applications. CM shall review all permit applications for accuracy and completeness. Such CM review shall not relieve the Design-Builder of its responsibility to fully comply with its contractual obligations regarding permits, bonds or insurance for this Project.
- 4.3.8 Daily On-Site Management and Construction Phase Communication Procedures. CM shall provide and maintain a management team on the Project Site to provide continuous daily Design-Build Contract administration and oversight, and shall provide such on-site management services whenever Work proceeds on the Project, including evening hours and on weekends and holidays, should the Design-Builder choose to conduct work on those days and/or at those times, with such weekend, evening and holiday administration and oversight services to be included in the Monthly Rates listed in the Price Proposal and at no additional cost to NJSDA. CM shall establish adequate procedures for such Project coordination and communication and shall manage and monitor the implementation and execution of such procedures.
- 4.3.9 Progress Meetings. CM shall schedule and administer weekly construction Progress Meetings throughout the progress of the Work in accordance with Specification Section 01220 “Project Meetings,” as amended or superseded by the Design-Build Contract Documents. Within three (3) Days of the progress

meetings, CM shall prepare and distribute detailed meeting minutes to the Authority and all other parties attending the meeting. All attendees receiving such minutes shall be asked in the CM's transmittal to advise CM, in writing and within three (3) Days of receipt, of any perceived error or omission in the minutes being transmitted by CM.

4.3.10 Construction Schedule Review.

4.3.10.1 Milestone Schedule. The Design-Builder shall submit a Milestone schedule for execution of the Services and Work to CM for review and acceptance by the Authority. CM shall review the Milestone Schedule and provide comment to the Authority, in writing, as to its acceptability within four (4) days of receipt. Once the Milestone Schedule is accepted by the Authority, CM shall transmit notice of the acceptance to the Design-Builder.

4.3.10.2 Proposed Project Schedule, Price Breakdown and Cost Requisition List.

a) The Design-Builder shall submit to the CM a detailed Schedule for execution of the Services and Work in CPM format, per the terms of the Design-Build Contract Documents and compatible with the Authority's Documentation Database software.

b) Along with the proposed Schedule, the Design-Builder shall also submit to CM a breakdown of its total Contract Price with dollar values assigned to each individual type of service and/or Work activity in the Schedule, coded with reference to the applicable performing contractor, subcontractor, consultant or subconsultant (the "Price Breakdown"). The Price Breakdown shall cumulatively equal the total Contract Price. Upon acceptance by the Authority, the values shown on the Price Breakdown will be used as a basis for determining progress payments.

c) The Design-Builder will also furnish the CM and Authority with a computer-generated cost requisition listing, which will provide a separate tabulation of each activity shown on the CPM schedule in order of bid item, trade responsibility code or similar signifier for services performed by consultants/subconsultants, in a level of detail as directed by NJSDA. This listing will show, for each activity, the Contractor/ Subcontractor/ Consultant/ Subconsultant performing the activity, the estimated dollar value of the Work in place or Services performed for totally-completed or partially-completed activities, including subtotals by bid items and grand totals for the entire Project. The cost requisition listing will also contain monthly activities reflecting the cost of Project overhead and administrative expenses, and activities reflecting the monthly cost of administering Project General Conditions.

- 4.3.10.3 CM's Review of Proposed Schedule and Associated Documents. Within fourteen (14) days of receipt, CM shall analyze the Design-Builder's proposed Schedule, Price Breakdown and Cost Requisition Listing (collectively, the "Proposed Schedule and Associated Documents"), and shall comment, in writing, as to the acceptability of the Proposed Schedule and Associated Documents. If the Proposed Schedule and/or Associated Documents is revised by the Design-Builder, CM shall, review, analyze and provide written comments and recommendations for acceptance or rejection of such revised documents within seven (7) days of receipt of any revised Proposed Schedule or revised Associated Documents. Once finally approved, the Construction Schedule shall constitute the official "Project Schedule" and will be used by CM to monitor the progress of the Design-Builder's Work.
- 4.3.10.4 Schedule Updates. The Design-Builder shall submit Project Schedule Updates to the CM on the 10th day of each month. CM, within five (5) Days of its receipt of such Project Schedule Updates, shall review them to ensure strict compliance with the approved Project Schedule and Construction Milestones. In the event that CM's review of the Project Schedule Updates indicates that Design-Builder will not meet the Construction Milestones, CM shall immediately alert the Authority, in writing, and assist the Authority in determining and implementing an appropriate course of action. This assistance shall include a comparison review of the schedule update against the Approved Schedule to identify activities that have caused the project to be delayed, and a review of daily construction reports identify material and resource deficiencies that have contributed to the delay. If the Design-Builder is required to produce a recovery schedule, CM, within five (5) Days of receipt of such recovery schedule, shall review, provide written comments and recommend, in writing, to the Authority its approval or rejection. CM, ultimately, shall advise the Design-Builder in writing of the Authority's position regarding its Project Schedule Updates and any recovery schedule that may have been submitted. The CM shall at all times monitor the progress of the Services and Work against the Project Schedule to ensure the Design-Builder is supplying adequate materials and resources to strictly comply with the approved Project Schedule and Construction Milestones. The CM shall also review the Project Schedule and provide written comments and recommendations as to efficiencies that may be available to advance the Work ahead of schedule. Such efficiencies include, but are not limited to: timely material and equipment procurement; re-sequencing of the Work; increased manpower; multiple trade crews, etc. Unless directed by SDA, the CM's efficiencies recommendations should not include compensable acceleration.
- 4.3.10.5 CPM Schedule Reviewer. CM shall employ or engage a person or persons to provide CPM Schedule Review and Analysis services including schedule analysis of cost-loaded and resource-loaded CPM Schedules, as well as

creation of cost-loaded and resource-loaded schedule projections and comparisons, to allow the Authority and CM to effectively evaluate the Design-Builder's proposed Project Schedule, and to effectively manage the Design-Builder and its Work with respect to the Project Schedule, schedule updates and recovery schedules.

a. The CPM Schedule Reviewer shall have at least six years of experience in CPM Schedule preparation, maintenance, and critical analysis on projects of similar size, scope and complexity. If the CM is itself prequalified by both the Department of Treasury-Division of Property Management and Construction and the NJSDA in the CPM Scheduling discipline (P030), then the CPM Schedule Reviewer may be an employee of the CM who has the requisite qualifications to fulfill the position. If the CM firm is not prequalified by both the Department of Treasury-Division of Property Management and Construction and the NJSDA in the CPM Scheduling discipline (P030), the CM must engage an entity that is prequalified by both the Department of Treasury-Division of Property Management and Construction and the NJSDA in the CPM Scheduling discipline (P030) to provide an appropriately-qualified person as CPM Schedule Reviewer.

b. The identification of the CPM Schedule Reviewer is not a pre-award requirement of the RFP, and such person need not be named in the CM's Technical Proposal. However, at or before commencement of services, CM shall identify by name the person proposed as the CPM Schedule Reviewer, and supply the appropriate experience and qualifications information for such person, so that the Authority may review the qualifications and experience information, and either approve or reject the person proposed for such role. If the person initially proposed as the CPM Schedule Reviewer is rejected by the Authority, or is initially approved by the Authority but the performance of such person is later found by the Authority to be inadequate or unsatisfactory, the CM must immediately replace the CPM Schedule Reviewer with another candidate of equal or superior qualifications who is acceptable to the Authority. Throughout the duration of the CM's engagement, the Authority reserves the right to require the immediate replacement of said Scheduler for any reason and at the sole discretion of the Authority.

c. The CPM Schedule reviewer shall review, analyze and evaluate the Design-Builder's Initial Milestone Schedule, to support the Authority's acceptance, rejection or commentary on the proposed Initial Milestone Schedule. In addition to the review, analysis, and evaluation required for approval of the Initial Milestone Schedule, the CPM Schedule Reviewer shall have a continuing duty to review, analyze and evaluate the Design-Builder's accepted baseline Construction Schedule, all monthly schedule updates submitted by the Design Builder, the most recently approved

construction recovery schedule (if any), and any requests for time extension(s) due to critical delays impacting the project schedule. The reviews shall confirm that the Design-Builder is in strict conformance with the Design-Builder's Contract requirements as outlined in Specification Section 01301 (Schedules and Reports) of the Design-Build Agreement. After completing its review of the abovementioned scheduling documents and thoroughly understanding the current status of the project and the remaining tasks to be completed, the CPM Scheduler shall continuously evaluate and determine whether the Design-Builder's current schedule (i.e., most recent monthly schedule update) provides a fair and reasonable projection for completing the project on or before the Design-Builder's projected completion date. The CPM Scheduler shall at all times monitor the progress of the work against the Project Schedule to ensure the Design-Builder is supplying adequate materials and resources to strictly comply with the approved Project Schedule and Construction Milestone.

d. In the event the Design-Builder is not in compliance with the accepted Project Schedule, the CPM Schedule Reviewer shall also be tasked with preparing a recommended Remaining Work Schedule for the project. The CPM Schedule Reviewer's Remaining Work Schedule shall identify practicable opportunities for the Design-Builder to re-sequence the remaining work to achieve maximum practical concurrence, and may also recommend targeted use of additional resources and/or extended work shifts (including overtime) for achieving completion of the project by the contractual completion date. The CPM Schedule Reviewer shall represent completion of major tasks and events by interim milestones as part of the remaining work schedule. If the CPM Schedule Reviewer determines that the project completion by the contractual date is not achievable, the CPM Schedule Reviewer shall provide an earliest achievable project completion date to the CM and the Authority. Additionally, to the extent possible, the CPM Schedule Reviewer's analysis shall include recognition of any potential added cost exposure identified in the recommended Remaining Work Schedule.

e. The CPM Schedule Reviewer shall provide to the Authority a written report of all schedule reviews performed, and a Monthly Schedule Report to be included as part of the CM's Monthly Report as identified in Section 4.7.5, below. The Monthly Schedule Report shall include, but not be limited to:

- i. A detailed narrative describing the schedule period being reviewed, analyzed and evaluated;
- ii. A description of the project progress and the reason for the review performed;

- iii. Identification of changes to milestones, activities, due dates, Design-Builder's projected completion date and Contract completion date;
- iv. Changes in activity duration for activities not started or partially started;
- v. Identification of the effect on the network of the modifications (critical path, activity duration, predecessors and successors);
- vi. Recommended changes in activity sequencing;
- vii. Changes for the purposes of regaining lost time or improving progress;
- viii. Recommended use of additional resources and/or extended work shifts (including overtime) for achieving completion of the project by the Contract completion date;
- ix. Identification of CM and/or Authority activities with the potential to impact the project schedule;
- x. A narrative summary section identifying and differentiating between the required and recommended actions/changes to the Project Schedule and Work.

4.3.11 Labor Relations. CM shall monitor overall labor relations and, if applicable, execute and administer the Authority's Project Labor Agreement (PLA), and ensure that the requirements of the PLA are fully met. CM shall coordinate and chair an initial PLA meeting with the Design Build Team and local building trades councils, and shall coordinate and chair any subsequent PLA meetings as necessary. CM shall be responsible for receiving and maintaining copies of all Letters of Assent executed by the Design-Builder and any Subcontractors performing Work that falls within the terms of the PLA. In the event of a labor dispute affecting the Project, CM shall immediately notify the Authority's Labor Relations Unit in writing and assist the Authority in determining and implementing the appropriate course of action.

4.3.12 Tracking Submissions for Approval by Regulatory Agencies. CM shall monitor the transmittal of documents to regulatory agencies for review and approval and shall be responsible to track submissions and note the scheduled periods for review of submissions, in order to track anticipated approvals and/or proactively prompt SDA regarding any necessary follow-up to secure approval of submissions. CM shall utilize this tracking information to promptly advise the Authority, in writing, of delayed approvals or other

potential problems and suggest solutions regarding completion of such reviews and approvals.

- 4.3.13 CM Review of Affirmative Action Plan. The CM shall review the Affirmative Action Plan prepared by the Design Builder, and shall provide comments to the Authority within four (4) days of receipt of the proposed Affirmative Action Plan.
- 4.3.14 Review of Site-Utilization/Logistics/Staging Plan. CM shall review the proposed Site-Utilization/Logistics/Staging Plan (“Site Utilization Plan”) for the entire Project site in which the Design-Builder identifies the Site areas available to: accommodate the means and methods for completion of the Project; ensure protection of adjacent buildings; limit and manage impacts to the Site; maintain the continuity of school operations; and illustrate impacts and potential impacts to the Site. CM shall review the Site Utilization Plan and shall, within five (5) days of receipt of the proposed Site Utilization Plan, provide comments and recommendations to the Authority for review. Once the Site Utilization Plan has been approved, CM shall include it in the Authority’s Documentation Database, and monitor the Design-Builder’s compliance with the approved Site Utilization Plan.

4.4 Cost Monitoring and Schedule of Values

- 4.4.1 For the Term of the Project, CM shall review and advise the Authority as to the validity of the Design-Builder’s proposed Schedule of Values and the actual costs of construction.
- 4.4.2 The Design-Builder shall prepare a Schedule of Values in accordance with the requirements of the Design-Build Contract Documents. The Design-Builder’s Schedule of Values shall constitute an itemized list prepared by the Design-Builder that establishes the value allocated to the various portions of the Design-Builder’s Work and supported by such substantiating data as the Authority may require. The Schedule of Values should be prepared fairly, without front-loading, imbalancing or overstatement of any element in excess of actual cost.
- 4.4.3 Within five (5) days of Design-Builder’s submission of a proposed Schedule of Values, CM shall review the proposed Schedule of Values and provide comments and recommendations to the Authority for acceptance or rejection of the Schedule of Values. If accepted by the Authority, this Schedule of Values shall be used as a basis for the Design-Builder’s invoices. If the Design-Build Agreement does not contemplate use of such a Schedule of Values to determine the Design-Builder’s compensation, CM shall comply with alternate compensation criteria set forth in the Design-Build Contract Documents. CM shall be responsible to input and upload data regarding the

Schedule of Values into the Authority's Documentation Database, and provide the Authority with data reports in an electronic format.

4.4.4 As part of its Monthly Report required by Section 4.7.5(2) of this Agreement, CM shall provide a construction cost summary with timely information as to the anticipated total cost of the Project, including changes to the Work.

4.4.5 CM shall notify the Authority, in writing, whenever the actual or projected construction costs may exceed the CCE and shall endeavor to timely provide cost reduction recommendations, corrective alternatives or adjustments to remedy the situation.

4.5 **Design-Builder Compliance Services.** CM shall provide compliance management services, which shall include, but not be limited to, monitoring and reporting to the Authority, in writing, on the Design-Builder's compliance with the following programs:

4.5.1 Affirmative Action Program. CM shall review and monitor the Design-Builder's compliance with the requirements of the Authority's Affirmative Action Program. CM shall report, in writing, to the Authority any failure by the Design-Builder to meet the requirements of the Affirmative Action Program and assist the Authority in determining and implementing an appropriate course of action to remedy the Design-Builder's failure to meet the requirements of the Affirmative Action Program. The general status of the Design-Builder's compliance with the Affirmative Action Program and actions that have been taken to resolve Design-Builder's failure to comply with the program shall be included in CM's Monthly Report to the Authority.

4.5.2 Prevailing Wage Act. CM shall monitor the Design-Builder's compliance with the State Prevailing Wage Act and promptly report in writing to the Authority any failure of the Design-Builder or any of its Subcontractors to meet the requirements of that Act, including the obligation to timely submit its and all Subcontractors' certified payrolls, and any actions taken or needed to be taken in order to resolve any such failure to comply. Additionally, the general status of the Design-Builder's compliance with the State Prevailing Wage Act and all efforts to correct the Design-Builder's or its Subcontractor's failure to comply with the State Prevailing Wage Act shall be included in CM's Monthly Report to the Authority.

4.5.3 Safety Plan. CM shall receive and review Design-Builder's Safety Plan for consistency with the Authority's requirements and policies based upon, but not limited to, the latest version of the Authority's Safety Manual and all governmental safety codes, rules, regulations and requirements, such as OSHA. CM shall then recommend to the Authority, in writing, approval or disapproval of the Design-Builder's Safety Plan. Once a Safety Plan is approved, CM shall review and monitor compliance with the Safety Plan. CM

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

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

taken by the Design-Builder over the course of the Project shall be taken from locations approved by the CM and submitted to the CM by the Design-Builder in digital electronic form and two (2) sets of prints. CM shall monitor the Design-Builder's compliance with this Design-Builder obligation to take photographs and promptly report to the Authority, in writing, any violation.

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

4.6 **Progress Payments**

- 4.6.1 Review of Pencil Copy. CM shall meet with the Authority to review the pencil copy of the Design-Builder's Progress Payment Invoice and determine whether the amount requested accurately reflects the progress of the Design-Builder's Work and the Design-Builder's monetary entitlement. CM and Authority shall make appropriate proposed adjustments to each Design-Builder Invoice and CM and the Authority shall meet with the Design-Builder on or about the 25th of each month to negotiate and resolve any such adjustments in the pencil copy of the Invoice. Thereafter, CM shall prepare and forward to the Authority the agreed-upon version of the pencil copy of the invoice.
- 4.6.2 Certification of Progress Payment. Once the Authority, the Design-Builder and the CM have negotiated and agreed to the form of the invoice, and the Authority has determined that the invoice is without deficiencies, CM shall approve the invoice for payment. The finalized progress payment invoice shall state the total Construction Contract Price, payments to date, current payment requested, retainage, actual amounts owed to the Design-Builder for the current pay period and any right of the Authority to withhold payment, in whole or in part, or impose payment reductions, as may be allowed and justified under the Design-Build Agreement and Applicable Laws.
- 4.6.3 CM's approval and CM's representative's execution of the invoice approval shall be completed within three (3) Days of CM's receipt of the Authority's determination that the invoice is without deficiencies. CM's approval shall constitute a representation to the Authority, based on CM's determinations at the Site and on data comprising the Design-Builder's Invoice, that, to the best of CM's knowledge, information and belief, the Work has progressed to the point indicated in the Design-Builder's Invoice and the quality of the Work is in accordance with the Design-Build Contract Documents. CM's approval of the invoice shall constitute a further representation by CM to the Authority that

all required paperwork related to such Design-Builder Invoices has been submitted and properly completed by the Design-Builder and that the Design-Builder has provided an acceptable Project Schedule or Project Schedule Update.

4.7 **Document Control and Information Management**

- 4.7.1 Management Information Systems. CM shall be required to input all Project data daily into the Authority's Documentation Database and provide the Authority with the data in an electronic format, upon written request. Such data shall include, but not be limited to, DCSIs, RFIs, CCRs, CCDs, Change Orders, Submittals, Design-Builder's Invoice information, construction reports, field reports, inspection reports, meeting minutes, Daily Logs, Daily Progress Photos, noncompliance notices, punchlists, close-out documents and initial Claims data (date submitted, amount of claim, etc.).
- 4.7.2 Job Records and Documentation. CM shall establish and maintain all Construction Phase records and technical documentation, consistent with the Authority's file documentation system. Such records or technical documentation may include, but are not limited to, project correspondence, the Design-Builder's daily reports, the Design Consultant's Field Reports, design plans, drawings, specifications, Submittals, all permits and approvals, samples, Design-Builder's Invoice information, bids, contracts, schedules, tests, inspections, payroll records, safety records and claims-related documentation. CM shall maintain such records for the Term of the Project and make them available and easily accessible to the Authority. Upon final completion of the Project, and before Final Payment will be made to the CM, all documents, files and records shall be turned over to the Authority in hard copy and electronic formats.
- 4.7.3 Project Directories. CM shall produce and issue "Project Directories," which shall consist of all information, including, but not limited to, names, company affiliations, business address, e-mail addresses, telephone and fax numbers (land line and cellular) necessary to allow proper communication among all persons involved in the Project.
- 4.7.4 Requests for Information (RFI). For RFI's that occur during the Construction Phase, within forty-eight (48) hours of a Design-Builder's uploading of an RFI into the Authority's Documentation Database, CM shall distribute each RFI to the appropriate person(s) for resolution, which may include the Authority (if the RFI pertains to the interpretation of the Design-Build Contract Documents) or the Design-Builder's Design Consultant (if the RFI pertains to the interpretation of the Construction Documents). CM shall receive comments and/or information resolving the RFI from the appropriate person(s) and deliver such information back to the Design-Builder within twenty-four (24) hours of receipt. CM shall monitor the most current information and

status of each RFI to track each question as well as the timeliness of the response, and shall report to the Authority monthly on the status of all RFIs. CM shall include documentation of this tracking of RFIs as part of CM's Monthly Report to the Authority as required by Section 4.7.5(2) of this Agreement. A response to an RFI does not constitute a Change Order and, therefore, does not effect a Change to the Design-Builder's Work. If the Design-Build Contract Documents require a shorter turnaround time on Design-Builder RFI's, CM shall ensure that such shorter time frame is met.

4.7.5 CM's Daily Logs and CM's Monthly Reports. In addition to the documentation requirements described in other Sections of this Agreement, CM shall develop the following accurate and detailed written records of the progress of the Project during the Construction Phase:

- 1) CM's Daily Log. CM shall prepare a Daily Log in the Authority's Documentation Database. Specifically, the Daily Log shall include:
 - a. the Work accomplished each day;
 - b. the identity, adequacy, and number of the Design-Builder's and any Subcontractor's personnel and equipment on Site each day, including identifying specific building areas upon which the Work was performed and the specific trade related activity performed;
 - c. the availability of necessary materials and supplies each day;
 - d. the weather conditions for each day;
 - e. Photographs of documenting the progress for each day;
 - f. any problems encountered each day, including, but not limited to, those which could result in Project delay or increased Project cost;
 - g. any equipment failures or breakdowns;
 - h. any jobsite accidents or injuries;
 - i. any safety issues;
 - j. any observations that would indicate that the Design-Builder's Work is noncompliant; and
 - k. any other similar relevant data as the Authority may expressly require in writing.
- 2) CM's Monthly Report. CM shall provide to the Authority a written Monthly Report, submitting three (3) hard copies and one electronic copy,

using the Authority's Documentation Database where appropriate. Such Monthly Report shall be submitted to the Authority within ten (10) Days immediately following the end of the month for which the report is prepared. The Monthly Report shall include, but not be limited to:

- a. a construction cost summary report;
- b. the Design-Builder's monthly Construction Schedule Update;
- c. CPM Schedule Reviewer's Monthly Report (as detailed in Section 4.3.10.5(e));
- d. any Construction Activity and/or Milestone Changes;
- e. a detailed narrative describing Project progress, any current issues, critical activities, adequacy of the Work, site manpower of the Design-Builder, percentage of Work completed, etc.;
- f. an updated CM Submittal Log;
- g. an updated CM RFI Log;
- h. an updated CM Change Order Log;
- i. current Change Order Report;
- j. a minimum of twelve (12) digital photographs taken by the Design-Builder at locations designated by the CM, and associated electronic files indicating Project status; All required photographs shall be noted with the date and time the photograph was taken, description of the photograph and information identifying directional information (e.g. "looking north").
- k. a detailed narrative describing the status of the Design-Builder's compliance with applicable Affirmative Action, Safety and Security Plan obligations, as well as State Prevailing Wage requirements; and
- l. a detailed Contract Activities completion list.

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

4.8 Tracking and Monitoring Changes to the Design-Build Contract

4.8.1 Coordination of Modifications and Revisions to the Design-Build Contract Documents. CM shall review and, in writing, comment upon and provide

recommendations to the Authority concerning any proposed revisions or changes to the Design-Build Contract Documents. Changes to the Design-Build Contract Documents can only be effected through a written amendment or Change Order executed by the Authority and the Contractor.

- 4.8.2 Change Orders. At the Authority’s written direction, CM shall prepare and issue to the Design-Builder appropriate Change Order documents. CM shall provide to the Design-Builder copies of all approved Change Orders. CM shall maintain an updated Change Order Log and shall track the progress of all Change Orders to ensure timely processing thereof. Change Orders must be executed by the Authority in order to be effective.
- 4.8.3 Contract Change Requests Initiated by the Design-Builder. CM shall receive, log, track and monitor all Contract Change Requests (CCRs) initiated by the Design-Builder.
- 4.8.3.1 CM shall review each CCR for timeliness, validity, reasonableness and impact on the Project’s cost and completion by 1) performing a detailed written estimate, of the costs of the work embodied in the CCR, in accordance with Specification Section 01080 “Change Order Procedures,” as amended or superseded by the Design-Build Contract Documents; 2) assembling and evaluating relevant information concerning the CCR; and 3) promptly providing a written analysis including but not limited to a side by side analysis including all cost reviews and revised proposals and recommendation to the Authority regarding the CCR within seven (7) days of the submission of the CCR.
- 4.8.3.2 CM shall assist the Authority in negotiating with the Design-Builder any time and/or cost modifications to the Design-Build Contract Documents resulting from the CCR.
- 4.8.3.3 For all Construction Change Requests, the CM shall create, in a format acceptable to the Authority, a detailed side-by-side comparison of: 1) the estimated costs of the CCR as provided in the Contractor’s Proposal; 2) the CM’s estimate as described in subsection 4.8.3.1 above, 3) the estimate prepared by NJSDA’s Contract Management Division; and 4) the final negotiated value of the Change Order resulting from the CCR.
- 4.8.4 Authority-Initiated Changes. CM shall promptly prepare all CCDs and Proposal Requests initiated by the Authority and provide them to the Design-Builder for a timely response. In response to any such Authority-initiated CCD or Proposal Request, CM shall obtain from the Design-Builder a detailed Proposal setting forth the price and time adjustments, if any, necessary to perform the proposed changed Work.

- 4.8.4.1 For each CCD or Proposal Request, CM shall prepare a detailed written estimate of the cost of the change in the Work to compare to the Design-Builder's written Proposal and to provide to the Authority for review. CM shall review the Design-Builder's Proposal, shall discuss the proposed changes with the Design-Builder, and shall determine the Design-Builder's basis for the price and time proposed to perform the Work.
- 4.8.4.2 CM shall, within seven (7) days of receipt of the Design-Builder's Proposal, make written recommendations to the Authority regarding Design-Builder's Proposal to perform the changed work identified in the CCD or Proposal Request.
- 4.8.4.3 CM shall assist the Authority in negotiating with the Design-Builder any time and/or cost modifications to the Design-Build Agreement resulting from the Authority-initiated CCD or Proposal Request.
- 4.8.4.4 For all CCDs or Proposal Requests for Changes in the Work, the CM shall create and maintain, in a format acceptable to the Authority, a detailed side-by-side comparison of: 1) the estimated costs of the CCR as provided in the Contractor's Proposal; 2) the CM's estimate as described in subsection 4.8.3.1 above, 3) the estimate prepared by NJSDA's Contract Management Division; and 4) the final negotiated value of the Change Order resulting from the CCR.
- 4.8.4.5 For all Allowance Authorizations for Allowance Work, the CM shall create and maintain, in a format acceptable to the Authority, a detailed side-by-side comparison of: 1) the estimated costs of the Allowance Work as provided in the Contractor's Proposal for the Allowance Authorization; 2) the CM's estimate of the Allowance Work, 3) if applicable, the estimate prepared by NJSDA's Contract Management Division; and 4) the final negotiated value of the Allowance Work resulting from the Allowance Authorization.
- 4.8.5 Differing Site Conditions. Whenever the Design-Builder timely notifies CM that a differing site condition, as defined in the Design-Build Contract Documents, has allegedly been encountered at or contiguous to the Project Site, CM shall promptly notify the Authority in writing.
- 4.8.6 Change Order Reports. During the Construction Phase, CM shall prepare and distribute monthly Change Order Reports. The Report shall list all approved Change Orders by number, a brief description of the Change Order Work, the cost established in the Change Order and the percent of completion of the Change Order Work. The Report shall also include similar information for potential Change Orders of which CM may be aware.

- 4.9 **Design-Builder's Claims.** During the term of the CM Agreement, CM shall track and coordinate all Design-Builder Claims, and the review and investigation thereof. With respect to any such Claim, CM shall assist the Authority in gathering and/or preparing all necessary documentation for the Authority's review and evaluation of such Claim, including, where deemed appropriate or advisable by CM, taking photographs or videotapes of relevant Site conditions and/or activities.
- 4.10 **FFTE Coordination Services**
- 4.10.1 Coordination of IT Systems and Other professional Consultants. CM shall cooperate with the IT Systems Integrator and any other Professional Services Consultant(s) engaged by the Authority to coordinate the installation and provision of information technology services, telecommunications and/or computer services to the Project in accordance with the Project Schedule.
- 4.10.2 Coordination of Furniture, Fixtures, Technology and Equipment Vendors and Installation. CM shall cooperate with the Authority's Furniture, Fixtures, Technology and Equipment staff ("FFTE Staff") to coordinate the work of any furniture, fixtures, technology and equipment supplier engaged by the Authority ("FFTE Vendor") to install furniture, fixtures and equipment within the Project, in accordance with the Project Schedule.
- 4.10.3 Communications with Vendors Regarding Delivery. CM shall be responsible for corresponding with FFTE Staff to coordinate and confirm the time, date and specific locations for delivery of FFTE materials, and to ensure site accessibility for the scheduled deliveries. CM shall copy the Authority's Project Manager on such communications with FFTE Staff.
- 4.10.4 Coordination of Schedule. FFTE Staff shall coordinate with CM and the Authority Project Manager to establish FFTE delivery dates consistent with the Project Schedule. The Authority Project Manager and CM shall advise the FFTE Staff of any anticipated changes in the Project Schedule that may affect FFTE delivery schedules. FFTE Staff shall advise the Authority Project Manager and CM of any communications with FFTE Vendors indicating changes in FFTE delivery schedules as soon as any such potential change in the FFTE delivery date is identified.
- 4.10.5 Confirmation of Readiness and Elevator Availability. Two weeks prior to the anticipated date of substantial completion, CM shall provide FFTE Staff with a confirmation that all rooms are cleaned, free of debris and ready to accept FFTE and that the elevator(s) are available for use by the FFTE Vendor(s).
- 4.10.6 Delays in Readiness. Ten days prior to expected delivery, CM shall contact and confirm site readiness with FFTE Staff. If site readiness or accessibility is delayed, CM shall immediately inform FFTE Staff as well as the Authority Project Manager.

- 4.10.7 Spotted Delivery. All FFTE Items will be procured for “spotted delivery,” meaning that the FFTE Vendors will be responsible for delivery, assembly and installation of the FFTE, as well as placement of the FFTE as per the Project drawings, and removal from the Site of all packing materials, discards and trash generated from delivery.
- 4.10.8 Placement of Items and Room Conversion Chart. While a delivery is in progress, CM shall provide direction to the FFTE vendors or delivery personnel to effect the placement of furniture to the correct location as stated on the purchase order. If room numbers for the Project change from the room numbers noted in prior versions of the construction documents, the CM shall provide a Room Conversion Chart to FFTE Staff.

4.11 **Inspections**

- 4.11.1 Monitoring of Code Inspections. Upon receipt of a notice from the Design-Builder that work of a particular discipline or trade and/or in a defined area is ready for inspection, the CM shall, within one business day of receipt of such notice, schedule the relevant code inspections to ensure that the Work fully complies with all applicable codes, rules, standards, regulations, laws and the Design-Build Contract Documents. CM shall be present for all Code Inspections for the Project, whether performed by code officials of the New Jersey Department of Community Affairs, Division of Codes and Standards, other state or local Authorities Having Jurisdiction or by certified special inspectors.
- 4.11.2 Tracking of Inspection Report Items. CM shall track and enter into the Authority’s Documentation Database the dates of all code inspections, including special inspections, as well as any Inspection Reports documenting the results of such inspections, whether generated by DCA officials, other Authorities Having Jurisdiction, certified special inspectors or alternate inspecting entities pursuant to the provisions of Sections 4.11.3 and 4.11.4 below. CM shall track any conditions or items identified in the Inspection Reports as incomplete, noncompliant with code, or otherwise in need of further attention from the Design-Builder, by documenting such items in hard copy and electronic form, and entering such items into the Authority’s Documentation Database. CM shall monitor and track the Design-Builder’s activities in following up on such incomplete, noncompliant or open items or conditions to ensure the completion of any action steps necessitated by such items or conditions and the resolution of any outstanding issues identified by the Inspection Reports.
- 4.11.3 Procurement and Engagement of Special Inspectors. CM shall be responsible for developing procurement documents for engagement of certified special inspectors to perform Special Inspections Services pursuant to the New Jersey Uniform Construction Code and Chapter 17 of the building subcode, such as

concrete inspections, steel welding, bolting and joint connections, and the like, as is necessary for the advancement of the Project. CM shall be responsible for procuring and engaging such certified special inspectors after receiving at least three competitive proposals for such special inspections services, pursuant to Section 4.15.5, below. The CM may be required to procure and engage such special inspectors before the commencement of any of CM's Construction Phase Services. The CM's only compensation for the costs of the procurement, selection and engagement of such special inspectors shall be the "Procurement of Special Inspectors Amount" included by CM in its price proposal.

- 4.11.4 Coordination and Scheduling of Special Inspections. CM shall be responsible to coordinate, schedule and monitor any Special Inspections required by the New Jersey Uniform Construction Code and Chapter 17 of the building subcode, such as concrete inspections, steel welding, bolting and joint connections. The costs for scheduling and coordinating special inspections shall be included as part of the Monthly Rates for CM staff. The fees for such special inspections shall be compensated as Allowance Services, in accordance with Sections 4.13 ("Testing and Inspection Services") through 4.15 ("Allowance Services") below. CM shall track, pursuant to Section 4.11.2 above ("Tracking of Inspection Report Items"), all open, incomplete or noncompliant items identified in any reports generated from such special inspections.
- 4.11.5 Quality Control General Inspections. CM shall review daily all work-in-progress for general compliance with the Design-Build Contract Documents and to guard the Authority against any defects. CM shall notify the Authority, in writing, of any Work not in conformance with the Design-Build Contract Documents and shall, consistent with the terms of the Design-Build Contract Documents, propose corrective action. With the Authority's prior review and written approval of a rejection of nonconforming work, CM shall transmit to the Authority and Design-Builder a written notice of nonconforming Work.
- 4.11.6 Correction of Nonconforming Work. CM shall, in writing, require timely correction by the Design-Builder of nonconforming Design-Builder Work and shall advise the Authority, in writing, as to whether such corrective action has been taken and whether such action corrected or is correcting the nonconforming Work. If nonconforming Work remains uncorrected for more than thirty (30) Days from receipt of notice by the Authority of the nonconforming work, CM shall recommend to the Authority that the next progress payment be reduced by an amount equivalent to the entire value of the nonconforming work, as if the nonconforming Work were 0% complete, CM shall maintain a continuing list of nonconforming Work as determined by CM and the Authority, and CM shall include such lists in CM's Monthly Report.

- 4.11.7 Limitations on CM Authority. CM is not authorized to change, revoke, alter, enlarge, relax or release any requirements of the Design-Build Contract Documents or to approve or accept any portion of the Work not fully and strictly conforming to the requirements of the Design-Build Contract Documents. Communication between CM and Design-Builder with regard to the quality of the Work shall not be construed as binding CM or the Authority or as releasing the Design-Builder from performing strictly in accordance with the terms of the Design-Build Contract Documents. CM will not be responsible for, nor control, the means, methods, techniques, sequences and procedures of construction for the Project. CM shall not have control over or charge of acts or omissions of the Design-Builder, Subcontractors, or their agents or employees or any other persons performing portions of the Project Work, unless such persons are directly employed by CM. No action taken by CM shall relieve the Design-Builder from its obligation to perform the Work in strict conformity with all of the requirements of the Design-Build Contract Documents, and in strict conformity with Legal Requirements.
- 4.11.8 Substantial Completion, Punchlist and Correction of Defective Work. The CM, with input from the Authority, shall determine the date that the Design-Builder achieves Substantial Completion for the Project. Once the Design-Builder believes it has reached Substantial Completion of the Project, but for preparation of the Punchlist, CM shall inspect the Project in conjunction with the Authority in order to determine if, in fact, Substantial Completion, as defined in the Design-Build Contract Documents, has been achieved. If the CM and Authority determine that Substantial Completion has, in fact, been achieved, but for preparation of the Punchlist, the CM in conjunction with the Authority and with input from the Design Builder, the Design-Builder's Design Consultant, and the Project School District, shall prepare a Punchlist, which shall be submitted to the Authority for review and approval. The Punchlist shall not include items that are necessary to be completed in order to secure a Certificate of Occupancy or Temporary Certificate of Occupancy. Once the Punchlist is prepared and approved, CM shall create and distribute to the Design-Builder a Certificate of Substantial Completion with the Punchlist attached. As the Design-Builder corrects the defective or incomplete Work on the Punchlist, the CM shall generate, monitor and maintain an updated Punchlist, and ensure and verify that the Design-Builder corrects the incomplete or defective Work, as required by the Design-Build Contract Documents.
- 4.11.9 Final Inspection and Final Completion. CM, with input and assistance from the Authority, shall determine the date of Final Completion of the Project. The Authority, CM and the Project School District, shall issue a Certificate of Final Completion. Final Completion means that point in time on the Project when the Project is 100% complete and: (i) all requirements of the Construction Documents have been fully and strictly satisfied, (ii) all items on the Punchlist have been properly performed, and (iii) a Certificate of Occupancy, or a

Certificate of Acceptance, as applicable, has been issued by DCA. Following the issuance of a Certificate of Substantial Completion for the Project and the CM's determination that the Punchlist Work has been completed, the CM shall evaluate the Work and notify the Authority when the Work is ready for final inspection. The CM shall, in conjunction with the Project School District and the Authority, conduct a final inspection of the Work to verify that all Punchlist Work has been completed and that all nonconforming and/or deficient Work has been properly corrected or remedied.

4.12 Close-Out Services

- 4.12.1 Start-Up Testing and Training. CM shall prepare and issue a written start-up and occupancy plan for the Project ("Start-up Plan") and shall submit such plan to the Authority for approval. The Start-up Plan shall include, but not be limited to: (1) all start-up testing and training required to comply with the Authority's standards for commissioning; and (2) the Design-Builder's requirements for start-up of the Project. CM shall, together with the maintenance personnel from the Project School District, observe the Design-Builder's inspection of utilities, operational systems and equipment for readiness, and assist in the Design-Builder's initial start-up and testing. CM shall coordinate operational testing and staff training, including, but not limited to: (1) preparing a start-up program to test, start and bring the Project to an operational level; (2) witnessing the test of all equipment to determine its compliance with codes, plans and specifications; (3) planning and assisting in the training of the Project School District's operating staff and ensuring that all maintenance and operating manuals, as well as video recordings - in the Project School District's maintenance personnel's desired format - of the training sessions are distributed; (4) supervising initial operations under the control of a start-up engineer; and (5) assisting in the coordination of the Commissioning Authority's work as outlined in ASHRAE Guideline 0-2005, Appendix F: Roles and Responsibilities. CM shall submit a written report to the Authority upon the completion of these activities and append it to its Monthly Report identified in Section 4.7.5(2) of this Agreement.
- 4.12.2 As-Built Drawings. CM shall monitor the Design-Builder's timely preparation and updating of "as-built" drawings. CM shall be responsible for verifying that the Design-Builder has adequately prepared a Site survey consistent with the Authority's Land Title Conveyance Survey Requirements as part of the required "as-built" documents. CM shall monitor the completion of the record drawings by the Design-Builder's Design Consultant pursuant to the Design Build Agreement and ensure proper turnover of those record drawings to the Authority and other appropriate entities.
- 4.12.3 Operation and Maintenance Materials. CM shall obtain from the Design-Builder operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. CM shall deliver this

information to the Authority and shall ensure that copies are distributed by Design-Builder to the Project School District.

- 4.12.4 Project Close-out Submission Checklist. CM shall create a Project close-out submission checklist. CM shall assist the Authority in obtaining all required documentation, certifications and other deliverables required of the Design-Builder to achieve Contract Completion under the Design-Build Contract Documents and identified on such checklist.
- 4.12.5 Insurance Transfer. Prior to Final Completion, CM shall assist, and/or coordinate with the Authority's Risk Management Unit, in transferring the Project from the Authority's builder's risk insurance policy to the Project School District's insurance program. When and where required, CM shall also coordinate with the Authority's Risk Management Unit regarding any other insurance-related matters or issues.
- 4.12.6 Final Payments. Once the Authority has issued a Certificate of Final Completion for the Project, CM shall review the final Design-Builder's Invoice and either approve it or return it to the Design-Builder for appropriate corrections. Upon receipt of an acceptable final Design-Builder's Invoice, CM shall submit the Final Invoice to the Authority with a written recommendation that the Authority approve and pay it.
- 4.12.7 Performance Evaluations. CM shall assist the Authority in preparing written evaluations of the Design-Builder's performance consistent with the Authority's Performance Evaluation Policy and Procedure, which will be made available to CM upon its written request. CM shall assist and cooperate with the Authority in undertaking any proceedings or actions resulting from such evaluations.
- 4.12.8 Warranty Issues. CM shall assist in the resolution of all warranty issues identified before expiration of the Design-Builder's warranty period. The provisions of this section shall survive the expiration or termination of this Agreement.

4.13 **Testing and Inspection Services**

- 4.13.1 From time to time, and as requested or directed by the Authority, CM shall be responsible for procuring and coordinating technical inspection and testing services for the Project. Such technical inspection and testing services as may be necessary during the construction phase for code-related or other requirements, including but not limited to, special inspections, shall be considered Allowance Services.
- 4.13.2 CM 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 and/or the Design-Build Contract Documents.

- 4.13.3 When procuring testing and technical inspection services for the Project that constitute Allowance Services or Additional Services, the Authority may require that the CM solicit fee proposals from three qualified testing and inspection firms and shall negotiate the fee, to secure appropriate services at a reasonable cost.
- 4.13.4 If an Allowance Amount has been established for some or all Testing and Inspection Services, then for those Testing and Inspection Services that are considered Allowance Services, and compensated through an Allowance Amount, the CM must comply with the provisions of Section 4.15 (“Allowance Services”) below, before procuring or performing Testing and Inspection Services or invoicing for such services.
- 4.13.5 CM shall direct, oversee and coordinate with the Professional Services Consultants providing testing and technical inspection services. The CM shall receive a copy of all inspection and testing reports from such Professional Services Consultants and shall provide a copy of such reports to the Authority and the Design-Builder. The CM shall review the inspection and testing reports prepared by the Professional Services Consultants and shall advise the Authority regarding the inspection and testing performed and the results of such inspection and testing. CM shall track any conditions or items identified in the inspection and testing reports as incomplete, noncompliant with code, or otherwise in need of further attention from the Design-Builder, by documenting such items in hard copy and electronic form, and entering such items into the Authority’s Documentation Database. CM shall monitor and track the Design-Builder’s activities 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 and testing reports.
- 4.13.6 CM shall require that, and monitor to ensure that, all testing and technical inspection by the Professional Services Consultants engaged by the CM conforms to the Testing Laboratory Requirements of Section 4.14.
- 4.13.7 The CM shall maintain all reports of tests and inspections in binders on the project site for review by the Authority and NJDCA.

4.14 Testing Laboratory Requirements

- 4.14.1 All testing laboratories engaged or utilized for testing and inspection services shall:
 - 1) Meet the “Recommended Requirements for Independent Laboratory Qualification” published by the American Council of Laboratories;

- 2) Meet basic requirements of ASTM E 329, “Standards of Recommended Practices for Inspection and Testing Agencies for Concrete and Steel as Used in Construction;
- 3) Be authorized to operate in the State of New Jersey; and
- 4) 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.

4.14.2 Testing laboratories are not authorized to:

- 1) Release, revoke, alter or enlarge on requirements of the Agreement or the Contract for Construction;
- 2) Approve or accept any portion of the Design-Builder’s Work; or
- 3) Perform any duties of the Design-Builder.

4.14.3 The CM shall require that Testing laboratories and Technical Inspection Firms engaged to provide testing and inspection services for the Project shall:

- 1) Cooperate with the CM and Design-Builder and provide qualified personnel after due notice;
- 2) Perform specified inspections, sampling and testing of materials and methods of construction;
- 3) Comply with the specifications of the Contract for Construction;
- 4) Ascertain compliance of materials with requirements of contract documents;
- 5) Furnish the CM with written evaluation of proposed concrete design mixes, and other materials, submitted by contractor for evaluation;
- 6) Notify the CM and Design-Builder immediately of observed work or materials which fail to meet the requirements of contract documents;
- 7) Perform additional tests as required by the CM or NJSDA; and
- 8) Promptly submit a written report of each test and inspection to the CM and the Design-Builder and to other entities as designated by the CM.

4.14.4 Each written report of a test or inspection shall include:

- 1) Date issued;

- 2) Project title and number;
- 3) Testing Laboratory name;
- 4) Name, signature, and NJDCA certification of laboratory inspector;
- 5) Date and time of sampling or inspection;
- 6) Record of temperature and weather conditions;
- 7) Date of tests;
- 8) Identification of items or products tested and relevant specification sections governing such items or products;
- 9) Location within the Project where sample was collected;
- 10) Type of inspection;
- 11) Results of tests and evaluation of test results with respect to compliance with contract documents; and
- 12) Interpretation of test reports, when requested by the Authority or the CM.

4.15 Allowance Services

- 4.15.1 If so indicated in the RFP, CM's Total Compensation Amount may include a designated amount or amounts set aside for certain specified Allowance Services, which Services may include, but are not limited to, code-related testing and inspection, concrete and masonry standards testing and/or other Construction Phase testing or special inspections testing services.
- 4.15.2 Such Allowance Services do not represent a change in the CM's Scope of Work, or constitute Contingent Additional Services. Allowance Services shall be invoiced against the designated Allowance Amounts described in the RFP.
- 4.15.3 Funds allocated as Allowance Amounts are to be utilized by the CM only as directed and approved by the Authority. The CM 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 CM to be compensated as an Allowance item shall be performed at the CM's own financial risk, unless the CM has received specific written authorization from the Authority to perform the Allowance services, and to invoice against dedicated Allowance funds.

- 4.15.4 For each request to utilize an Allowance, the CM 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.
- 4.15.5 The Authority may request as part of the justification for the proposed costs of Allowance Services that the CM prepare bid documents and solicit at least three (3) competitive proposals for the Allowance Services based on the defined scope of the services sought.
- 4.15.6 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.
- 4.15.7 Upon the CM's receipt of written authorization to perform the Allowance Services, approved and executed by the Authority, the CM shall proceed to perform or provide the described Allowance Services. The CM shall be responsible for the oversight of the Allowance Services in the same manner as specified by the Agreement for Basic Services.
- 4.15.8 If, upon completion of the Project, or upon completion of the CM's Basic Services, or at such other time as may be appropriate, an unused Allowance fund balance remains in an Allowance category, the CM shall credit the Authority in the amount of any remaining balance in such Allowance category.
- 4.15.9 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 Total Compensation Amount in accordance with the Operating Authority, to increase the funds available to perform the Allowance Services.

5.0 CONTINGENT ADDITIONAL SERVICES

- 5.1 **Nonexclusive list.** If requested by the Authority, CM shall provide the following **Contingent** Additional Services. Certain Contingent Additional Services may be expressly identified at time of contract execution as required base scope along with the Basic Services described herein, and if so identified and required, such Contingent Additional Services shall be included in the scope of work for this engagement. If not so identified at time of contract execution, provision or performance of Contingent Additional Services shall be requested at the sole discretion of the Authority and no such Contingent Additional Services may be offered or performed without formal authorization through a written amendment to this Agreement, executed by both Parties, in accordance with Section 7.0. This list of Contingent Additional Services is not exclusive. The Authority is in no way obligated to require these Contingent Additional Services.

- 5.1.1 Repairing, replacing, correcting or completing defective or incomplete Work of the Design-Builder;
- 5.1.2 Providing services to verify the accuracy of drawings or other information furnished by the Authority;
- 5.1.3 Providing consultation concerning replacement of the Design-Builder's Work damaged by fire or other cause during construction, except where the CM may be held responsible for such damage, and furnishing services required in connection with the replacement of such Work;
- 5.1.4 Providing services made necessary by the termination or default of the Design Consultant or the Design-Builder;
- 5.1.5 Providing technical inspection and testing for the Project. If so requested, CM shall, as needed, engage duly qualified Professional Services Consultants to provide the technical inspection and testing required by the Design-Build Contract Documents. CM shall direct, oversee and coordinate with these Professional Services Consultants. CM shall require that, and monitor to ensure that, all testing and technical inspection by the Professional Services Consultants engaged by CM conforms to the requirements of the Design-Build Contract Documents Specification Section 01410 "Testing Laboratory Services," as may be amended or superseded. CM shall receive a copy of all inspection and testing reports from the Professional Services Consultants and shall provide a copy of such reports to the Authority, Design-Builder and Design Consultant. CM shall review the inspection and testing reports prepared by the Professional Services Consultants and shall advise the Authority regarding the inspection and testing performed and the results of such inspection and testing.
- 5.1.6 If so requested, CM shall, as needed, engage duly qualified Professional Services Consultants to provide the Commissioning Authority (CxA) Services during the Construction Phase as required by the Design-Build Contract Documents or other requirements.
- 5.1.7 Providing services relating to analysis of Design-Builder Claims. If so requested, CM shall, in conjunction with the Authority and the Design Consultant, prepare a written analysis of Design-Builder Claims of a strictly advisory nature, and shall cooperate with the Authority: a) in the presentation of the Authority's defense, counterclaim or other position with respect to any such Claim; and b) at administrative hearings and conferences related to any such claim. CM shall provide its own legal representation at its own expense with respect to any such Claim made against CM. All such CM Services are to be reasonably and efficiently provided.

5.1.8 Providing services relating to mediation and litigation activities. If so requested, CM shall, as needed, assist and cooperate with the Authority in dealing with all Claims against the Authority and shall attend any public or private hearing, mediation, or legal proceeding that is related to or arises out of or in connection with the Project and in which action or proceeding the CM is not a named party.

6.0 COMPENSATION BASED ON ACTUAL DURATION

6.1 **Indefinite Duration.** The Term of this Agreement is Indefinite in duration, due to the indefinite nature of the construction period for the Project. CM shall be compensated during the anticipated Construction Phase of the Project by the Monthly Rates, as specified in the Price Proposal, for each employee or staff member performing services. Furthermore, CM shall be compensated for performance of Initial Schedule Review Services, Schedule Cost/Resource Review Services, and Procurement of Special Inspectors by the specified sums identified for such Services. In the event that, through no fault of CM, the Project's duration exceeds that as specified in the RFP for this engagement and Section 9.2.2.2 ("Anticipated Duration of Construction") of this Agreement, CM shall be compensated for such extended period based on the Monthly Rates specified in the Price Proposal for staff actually performing services during such extended periods. The Monthly Rates shall be prorated for periods less than a month. Furthermore, there shall be no entitlement to damages or additional compensation (beyond the specified Monthly rates) for any claimed delay under this Agreement. In the event of a delay caused by CM, CM shall not be entitled to compensation for any such period of delay. No additional compensation shall be provided for Initial Schedule Review Services, Schedule Cost/Resource Review Services, or Procurement of Special Inspectors, regardless of the duration of such Services.

6.2 **No Entitlement to Lump Sum; No Compensation for Unused Months.** The anticipated construction duration specified in the RFP and Section 9.2.2.2 ("Anticipated Duration of Construction") herein does not entitle CM to lump sum compensation for its Construction Phase Services (or other Services) in the event the duration for the Project is shorter than the anticipated duration specified in the RFP and Section 9.2.2.2 herein. CM shall be compensated by the Monthly Rates contained in the Price Proposal, but only for those months of the actual project duration for which CM provides Services, and there will be no entitlement to compensation or lost profit for any unused months, in excess of the actual duration, in the event the project duration is shorter than anticipated.

7.0 AMENDMENTS TO THIS AGREEMENT

7.1 **General.** The Authority, without invalidating this Agreement, may direct changes in CM's Basic Services, including the performance of Contingent Additional Services. Any change to this Agreement shall be made by written Amendment executed by CM and the Authority. Any Services performed by CM that differ from, or are in addition to, the Services set forth in this Agreement, **shall** be performed at CM's own financial

risk, unless such an Amendment has first been executed by CM and the Authority and authorizes such charged or additional work. However, if the terms of an amendment cannot be agreed upon, the Authority, in its discretion, may issue a directive, in writing, that such a change be implemented, based on terms acceptable to the Authority and with the right of CM to pursue a CM Claim against the Authority for additional time and/or compensation in accordance with the terms and conditions of this Agreement.

7.2 **Changes in CM’s Basic Services and Compensation.** In the event that the Authority directs a change to CM’s Basic Services in writing, CM shall promptly notify the Authority as to whether the change increases or decreases CM’s entitlement to compensation or to the Term of this Agreement, or both. If so, CM shall provide to the Authority: 1) a detailed cost breakdown of, and justification for, how the change increased or decreased CM’s compensation; and 2) a detailed explanation of precisely how each change impacts the Term of this Agreement.

7.3 **Adjustment to Compensation.** If the scope of CM’s Basic Services is changed due to no fault of CM, CM’s compensation may be modified, subject to any express limitations set forth elsewhere in this Agreement, including Section 6.0, “Compensation Based on Actual Duration.” CM shall give notice of a **proposed** change in its compensation (“Change Notice”) due to any change in the scope of the Basic Services within ten (10) Days of the occurrence of the event or condition giving rise to such proposed change. Within ten (10) Days of the issuance of the Change Notice, CM shall submit to the Authority a written proposal indicating the proposed change in compensation as a result of the change in the scope of the Basic Services. The amount of the change in compensation to be paid CM shall be determined on the basis of CM’s actual costs. A failure of CM to strictly comply with this 10-day period for issuing the Change Notice shall result in a waiver and release of any claim for increased compensation relating to the event or condition at issue.

7.4 **Authorization.** Changes in CM’s Basic Services and entitlement to additional compensation shall be made solely by a written Amendment to this Agreement executed by the Authority and CM. The Amendment shall be executed by the Authority and CM prior to CM performing the services required by the Amendment. CM shall proceed to perform the Services required by the Amendment only after receiving written notice from the Authority directing CM to proceed.

8.0 COMPENSATION

8.1 Total Compensation Amount

8.1.1 Components of Total Compensation Amount. CM shall be compensated for its Basic Services, and any Contingent Additional Services identified by the Authority in Appendix A (Supplementary Conditions), on the basis of a Total Compensation Amount comprised of Monthly Rates (as defined herein) for designated employees, as well as specified sums for various defined Specified

Sum Services categories, as described below and in the Price Proposal included as Appendix C to this Agreement.

- 8.1.2 Compensation for Initial Schedule Review. CM's sole compensation for the review of the Design-Builder's Initial Schedule, as described in Section 4.3.10.1, 4.3.10.2 and 4.3.10.3 herein, shall be the Initial Schedule Review Amount specified in the Price Proposal and the Compensation Section, which Amount shall be payable to CM on a percentage-complete basis with reference to the totality of CM's obligations under this Agreement for review of the Design-Builder's Initial Schedule. The Initial Schedule Review Amount shall compensate CM for all profit, overhead, and costs of the review of the Design-Builder's Initial Schedule, including, but not limited to: staff costs; home office labor costs; fringe benefits and labor burden; facilities costs; depreciation; general and administrative costs; as well as all direct and indirect costs relating to administrative activities, including all accounting, scheduling or coordination activities performed by non-Key Team Member CM staff.
- 8.1.3 Compensation for Schedule Cost/Resource Review. CM's sole compensation for the Cost/Resource review of the Design-Builder's Schedule, as described in Section 4.3.10.3 herein, shall be the Schedule Cost/Resource Review Amount specified in the Price Proposal and the Compensation Section, which Amount shall be payable to CM on a percentage-complete basis with reference to the totality of CM's obligations under this Agreement for Cost/Resource review of the Design-Builder's Schedule. The Schedule Cost/Resource Review Amount shall compensate CM for all profit, overhead, and costs of the Cost/Resource review of the Design-Builder's Schedule, including, but not limited to: staff costs; home office labor costs; fringe benefits and labor burden; facilities costs; depreciation; general and administrative costs; as well as all direct and indirect costs relating to administrative activities, including all accounting, scheduling or coordination activities performed by non-Key Team Member CM staff.
- 8.1.4 Compensation for Procurement of Special Inspectors. CM's sole compensation for the procurement and engagement of Special Inspectors shall be the Procurement of Special Inspectors Amount specified in the Price Proposal and the Compensation Section, which Amount shall be payable to CM on a percentage-complete basis with reference to the totality of Procurement of Special Inspectors obligations under this Agreement. The Procurement of Special Inspectors Amount shall compensate CM for all profit, overhead, and costs of the procurement and engagement of Special Inspectors, including, but not limited to: staff costs; home office labor costs; fringe benefits and labor burden; facilities costs; depreciation; general and administrative costs; as well as all direct and indirect costs relating to administrative activities, including all accounting, scheduling or coordination activities performed by non-Key Team Member CM staff.

8.2 General Provisions Regarding Compensation

- 8.2.1 The cost of all direct expenses to be incurred shall be included in the Monthly Rates or Specified Sum Amounts comprising the Total Compensation Amount.
- 8.2.2 Acceptance or approval of, or payment for, any of the Services performed by CM under this Agreement shall not constitute a release or waiver of any Claim the Authority has or may have against CM or any CM Subconsultants, including, but not limited to, claims for errors, omissions, breach, or negligence.
- 8.2.3 All payments by the Authority for Services under this Agreement will be made only to CM. CM is solely responsible for payments due to any of its Subconsultants.
- 8.2.4 Unless otherwise expressly set forth in writing by the Authority, CM's prices for Basic Services as set forth in the Total Compensation Amount as provided in the Price Proposal included as Appendix C hereto, shall be binding on CM and not subject to increase during the Project.
- 8.2.5 The Authority assumes no responsibility and no liability for costs incurred by CM prior to execution of this Agreement and thereafter unless explicitly set forth in this Agreement or a written amendment hereto signed by the Authority.

8.3 CM Schedule of Values for Specified Sum Services

- 8.3.1 If the Total Compensation Amount includes any specified sum compensation for a defined scope of work ("Specified Sum Services") including, but not limited to: Initial Schedule Review Services, Schedule Cost/Resource Review Services, or Procurement of Special Inspectors, the CM shall prepare a proposed CM Schedule of Values for such Specified Sum Services under this Engagement, allocating the specified-sum amount for such Specified Sum Services (as provided in Appendix C) among the various relevant phases and stages of the Agreement. The proposed CM Schedule of Values shall be submitted prior to the submission of CM's first invoice, and shall be prepared in such form, and shall be supported by such data, as the Authority may require to substantiate its accuracy. The CM Schedule of Values shall be prepared fairly, without front-loading, imbalancing or overstatement of any element in excess of actual cost.
- 8.3.2 Within five (5) days of CM's submission of a proposed CM Schedule of Values, the Authority shall review the proposed CM Schedule of Values and either accept or reject the proposed CM Schedule of Values. If accepted by the Authority, this CM Schedule of Values shall be used as a basis for calculating and validating the CM's Invoices for Specified Sum Services.

8.4 Compensation for Contingent Additional Services

- 8.4.1 As noted in Section 5.0 herein, specific Contingent Additional Services may be expressly identified at time of contract execution and included in the scope of work included in this engagement, and compensated by the Total Compensation Amount. If not so identified and included in the scope of work at time of contract execution, Contingent Additional Services shall be authorized only upon a properly-executed written amendment to this Agreement, in accordance with Section 7.0.
- 8.4.2 In the event that the Authority expressly authorizes, through a properly-executed Amendment, the performance by CM of Contingent Additional Services, such Contingent Additional Services beyond the Basic Services will be compensated as follows:
- 8.4.2.1 Compensation for Contingent Additional Services performed by CM shall be determined, in the sole discretion of the Authority, as either a negotiated lump sum for specific Contingent Additional Services, or based on actual costs as calculated and modified by the Multiplier Factor as described further in this Section 8.
- 8.4.2.2 If not subject to a negotiated lump-sum fee, compensation to CM for labor costs relating to Contingent Additional Services performed by CM staff will be capped at 1.9 times actual salary (exclusive of customary payroll benefits and burdens) of Key Team Members performing such Contingent Additional Services.
- 8.4.2.3 The 1.9 Multiplier Factor applied to actual salary of CM's Key Team Members is intended to compensate the CM for all indirect costs relating to Contingent Additional Services performed by CM's staff, including but not limited to the following: profit, bonds and insurance costs, home office labor costs, fringe benefits and labor burden, facilities costs, depreciation, and general and administrative costs; as well as all direct and indirect costs relating to administrative activities performed by non-Key Team Member CM staff, including all accounting, and scheduling and coordination activities performed in connection with such Contingent Additional Services.
- 8.4.2.4 If not subject to a negotiated lump-sum fee, compensation for CM's coordination and administration of Contingent Additional Services performed by Subconsultants will be capped at 5% of the NJSDA-approved Subconsultant fee. No additional hourly fees or percentage fees will be considered.

8.4.2.5 CM shall include the cost of Contingent Additional Services in its monthly invoice. Each CM invoice shall separately identify the amount requested for Contingent Additional Services.

8.4.2.6 The Authority shall have the right to challenge the reasonableness of the time expended for performance of Contingent Additional Services as claimed by the CM or any CM Subconsultants.

8.5 Invoices

8.5.1 On the fifth business day of each month, CM shall submit to the Authority a pencil copy of an invoice, in a form reasonably acceptable to the Authority and signed by CM, requesting payment for that percentage of the Basic Services, and any Specified Sum Services, performed during the prior month, relative to the CM Schedule of Values, and any approved Contingent Additional Services or approved Allowance Services. Such invoice shall properly differentiate all Basic Services from Contingent Additional Services or Allowance Services, if any, for which CM seeks payment. Each invoice shall include:

- 1) the Authority's contract number and the name of the Project;
- 2) all data supporting the amounts requested and any other documentation reasonably requested by the Authority;
- 3) A certification that all payments due to CM's subconsultants have been made from prior paid Invoices and that all Applicable Laws have been complied with;
- 4) information on forms provided by the Authority, showing, on a monthly and cumulative basis, the share of total contract dollars that CM has paid to subconsultants, and identifying such subconsultants as any of the following, if applicable: small businesses, minority-owned businesses, women-owned businesses, veteran-owned businesses, and disabled veteran-owned businesses. This information shall be provided in the form and manner required by the Authority
- 5) If CM is withholding payment from any subconsultant or supplier, a certification by the CM that a valid basis exists under the terms of the subconsultant's or supplier's contract to withhold payment, and a copy of the contract for the subconsultant in question; and
- 6) identification of anticipated and/or unresolved CM Claims which CM intends to pursue.

8.5.2 CM shall meet with the Authority to review the pencil copy of the CM's monthly invoice to determine whether the amount requested accurately reflects the CM's monetary entitlement, and to negotiate any adjustments in the pencil

copy to accurately reflect such entitlement. Once CM and the Authority have negotiated and resolved any such adjustments in the pencil copy of the Invoice, CM shall prepare and forward to the Authority the agreed-upon version of the pencil copy of the invoice.

- 8.5.3 Invoices submitted by the CM to the Authority shall be processed and paid only after the Authority reviews and determines that the invoice and backup is complete, with no deficiencies, and the Services for which payment is sought have been completed at the time and in the manner specified in this Agreement, as amended. Invoices will not be paid by the Authority if the Authority determines that the Services for which payment is sought by CM are incomplete or non-compliant or the Invoice is incomplete or materially non-compliant.
- 8.5.4 Payments and payment withholdings will conform to the applicable requirements of N.J.S.A. 2A:30A-2 and N.J.S.A. 52:32, et seq., i.e., payment shall be due within thirty (30) days of the billing date, assuming that CM's invoice was timely and otherwise properly submitted. The statutory periods for the Authority to make payment or to provide notice of payment withholding shall be extended if authority for payment by the Authority's Board of Directors is required. The Authority reserves the right to refuse payment in the amount specified in the invoice to the extent that CM fails to provide complete and sufficient documentation in support of the amounts claimed, including proof that it has timely paid its Subconsultants.
- 8.5.5 Each invoice signed by CM and submitted to the Authority for payment shall be a representation by CM that the services for which payment is sought were, in all respects, fully compliant with CM's obligations hereunder and all payments due its Subconsultants have been made and that all Applicable Laws have been complied with by CM and that there are no payment disputes with any of CM's Subconsultants.
- 8.5.6 The CM shall receive payment from the Authority by one of the following electronic payment methods: (1) the Automated Clearing House ("ACH") payment system, or (2) wire transfer. Any fees or costs associated with the use of either of the listed electronic payment methods shall be solely the CM's responsibility. The CM may obtain the documents required to use either electronic payment method from the Authority's website. The CM shall provide to the Authority all documents necessary to use the electronic payment method selected before any payment will be made to the CM by the Authority.
- 8.5.7 In the case of a dispute between the Authority and CM as to whether an amount is owed for certain CM Services, or as to whether an amount has been reasonably withheld by the Authority or offset by Claims by the Authority against CM, the Authority shall pay all amounts that are not in dispute, but shall not be required to pay the amount that is in dispute until the Parties settle

or otherwise resolve such dispute. As to any payment withholding, the Authority shall comply with all applicable provisions of N.J.S.A. 2A:30A-2. CM shall continue to perform all of its obligations under this Agreement notwithstanding any such payment dispute.

- 8.5.8 In the event CM improperly fails to pay its Subconsultants in a timely manner and in accordance with the requirements of N.J.S.A. 2A:30A-2 and the Authority is in full compliance with its obligations regarding timely payment of sums due CM, the Authority may, but is not obligated to, make payments directly to each Subconsultant or by means of two-party checks. Neither the Authority's discretion provided for in the preceding sentence nor the Authority's actual making of such payments to CM's Subconsultants will give rise to any liability of the Authority for making such payments and will not create any contractual relationship between the Authority and any Subconsultant. Payments by the Authority to CM's Subconsultants will not constitute acceptance of the adequacy of any services performed by CM or its Subconsultants.
- 8.5.9 If CM submits any false or fraudulent Invoice to the Authority for payment, CM shall be held liable and subject to all penalties and damages under New Jersey's False Claims Act, N.J.S.A. 2A:32C-1, et seq.

8.6 **Withholding of Payment**

- 8.6.1 If the Authority reasonably determines that any Services provided by CM for which payment is requested are incomplete or non-compliant, or if the Authority reasonably determines that the CM Deliverables and Work Product have not been delivered at the time and in the manner and form specified in this Agreement or are otherwise non-compliant, the Authority will return the relevant invoice to CM, who shall resubmit the invoice once all of the Services have been completed or corrected or the Deliverables have been corrected and/or delivered. Notice of such payment withholding and the precise basis therefor shall be communicated to CM within twenty (20) days of the Authority's receipt of CM's invoice in accordance with N.J.S.A. 2A:30A-2(b) or such greater period of time as such statute may permit.
- 8.6.2 The Authority's withholding of any sums pursuant to this Section shall not be construed as, or constitute in any manner, a waiver by the Authority of CM's obligation to timely furnish fully compliant Services, including, but not limited to, CM Deliverables and Work Product required under this Agreement. In the event CM fails to timely furnish the compliant Services, inclusive of CM Deliverables and Work Product required by this Agreement, the Authority shall have, in addition to the sums withheld in accordance with this Section, all rights and remedies provided by law, equity and elsewhere.

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

9.0 CM COMMENCEMENT DATE AND TERM

9.1 CM Commencement Date

9.1.1 The date for CM's commencement of Basic Services (or a specified portion thereof) shall be the date set forth in the initial CM Notice to Proceed issued by the Authority for some portion of the CM's Basic Services.

9.2 Term of Agreement

9.2.1 The Term of this Agreement shall be from the Effective Date and shall extend until all obligations of the CM 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.

9.2.2 The Term of this Agreement is indefinite, and is dependent upon the actual length of the construction duration of the Project, and the time needed for CM to complete Close-Out Services.

- 1) Construction Phase is Indefinite. This Agreement contemplates that the CM will provide Construction Administration Services and other Basic Services during the Construction Phase of the Project, which Phase commences on or about the time of the Authority's issuance to the Design Builder of the Construction Notice to Proceed for the Project, and extends until the Design Builder achieves Substantial Completion (as that term is defined in the Design Build Contract Documents) for the Project.
- 2) Specified Duration of Construction for Bidding Purposes Only. At the time of advertisement of this procurement, a construction duration was specified for bidding purposes only, but the actual construction duration may be

longer or shorter, depending upon the actual length of time needed to achieve Substantial Completion on the Project.

- 3) Close-Out Services. Notwithstanding the foregoing, CM's engagement also includes an unspecified duration for the performance of Project Close-Out tasks ("Close-Out Services"), the timing and length of which close-out period shall be dependent upon the CM's effectiveness in completing the Close-Out obligations of this Agreement.
- 4) Procurement of Special Inspectors. CM's engagement also includes services relating to the procurement of Special Inspectors, the performance of which may precede the performance of Construction Administration Services, or which may be performed simultaneously with the Construction Administration and other Basic Services under the Agreement. The commencement of the procurement of Special Inspectors shall be at the sole discretion of the Authority.
- 5) Submittal Review Services. Additionally, CM's engagement also includes Submittal Review services, the performance of which may precede the performance of Construction Administration Services, or which may be performed simultaneously with the Construction Administration and other Basic Services under the Agreement. The timing of the commencement of the Submittal Review Services shall be at the sole discretion of the Authority.

10.0 GENERAL COVENANTS

10.1 Insurance

10.1.1 Introductory Statement. This Agreement recognizes that the Authority has implemented a School Facilities Projects Owner Controlled Insurance Program ("OCIP") in accordance with N.J.S.A. 18A:7G-44. This OCIP provides certain types of insurance coverage for the CM and certain of its Subconsultants that are deemed eligible under the terms of the OCIP. Despite such OCIP coverage, the CM and the eligible Subconsultants are required to obtain certain insurance coverage of the types specified in Section 10.1.13 below. . In addition, the CM and eligible Subconsultants shall be required to comply with all provisions of the applicable Project Safety Manual and the OCIP Manual, as such compliance has a direct bearing on the insurance costs of the Authority.

10.1.2 This Agreement also recognizes that certain Subconsultants providing professional services, are ineligible for OCIP coverage (hereinafter, "Ineligible Subconsultants"), as set forth in Section 10.2 below. Such Ineligible

Subconsultants are required to obtain insurance coverage of the types specified in Section 10.2.4.

- 10.1.3 Owner Controlled Insurance Program. OCIP will provide on-site General Liability, on-site Employer's Liability and Workers' Compensation and on-site Excess Liability coverage. Through OCIP, the Authority shall provide coverage to CM and eligible Subconsultants of every tier providing on-site services on the Project, except as otherwise provided herein. Firms providing temporary labor services and leasing companies are to be treated as Subconsultants for OCIP enrollment purposes. The Authority shall pay all premiums associated with OCIP, including deductibles or self-insured retention, unless otherwise provided in this Agreement.
- 10.1.4 CM and Subconsultant Insurance Requirements. Although OCIP provides broad coverage and high limits, it is not intended to, nor does it, meet all of the insurance needs of CM and its Subconsultants. In addition to coverage provided by OCIP, an enrolled CM shall be responsible for providing proof that it and its Subconsultants have retained, at a minimum, the insurance coverage set forth in Section 10.1.15 below.
- 10.1.5 Risk Management Unit. Management of OCIP enrollment and other OCIP-related issues shall be handled by the Authority's Risk Management Unit and its OCIP Broker and OCIP Administration Services Provider (collectively, "RMU")(collectively, the "OCIP Management"). All OCIP questions are to be directed to OCIP Management.
- 10.1.6 Mandatory Enrollment. The CM's enrollment in OCIP is mandatory, but not automatic. The CM shall be required to notify OCIP Management of all Subconsultants of every tier providing direct labor on the Project and follow enrollment procedures as provided by the Authority in the NJSDA OCIP Insurance Procedures Manual ("OCIP Manual"). Any failure on the part of CM to comply with this notification requirement may negate coverage under OCIP, and CM shall bear all risk, financial and otherwise, associated with any such lack of coverage.
- 10.1.7 Coverage Term. The term of OCIP coverage shall extend and terminate as follows:
- 1) Coverage of CM. On-site General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage of the CM shall extend to and terminate upon the completion of all Punchlist Work.
 - 2) Coverage of Subconsultants. On-site General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage provided to any Subconsultant shall extend to and terminate upon the earlier of: (i) the occurrence of Final Completion of the Project, as such is defined in

Article 1 or (ii) the completion of the Subconsultant's Services at the Project.

10.1.8 Authority's Right to Terminate

- 1) Right to Terminate OCIP. The Authority, at any time, has the right to terminate or to modify OCIP or any portion thereof. To exercise such right, the Authority shall provide thirty (30) Days advance written notice of termination or material modification to CM and all Subconsultants covered by the affected OCIP coverage. In such event, CM and Subconsultants shall be required to obtain such replacement insurance coverage as may be specified by the Authority. Certificates of Insurance evidencing that such replacement insurance coverage has been obtained shall be provided to the RMU prior to the effective date of the termination or modification of OCIP coverage. The Authority shall reimburse CM and Subconsultants for the reasonable cost of such replacement insurance coverage. CM shall be required to submit an invoice to the Authority for the reasonable cost of such replacement insurance obtained by CM and its Subconsultants.

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

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

10.1.10 No Release. The provision of OCIP by the Authority shall in no way be interpreted as relieving CM of any other responsibility or liability under this Agreement or any applicable law, statute, regulation, including, but not limited to, the risk of loss and indemnification obligations under Section 10.15

10.1.11 Terms and Conditions of OCIP Provided Coverage. The terms and conditions of OCIP insurance policies or programs, as such policies or programs may be from time to time amended, are incorporated by reference. By entering this Agreement, CM agrees to be bound by the terms of coverage as contained in such insurance policies, and CM agrees to require its Subconsultants to be similarly bound by the terms of coverage as contained in such insurance policies. The terms of coverage of OCIP insurance policies or programs are set forth below.

- 1) Workers' Compensation and Employer's Liability Insurance shall be provided for the CM's employees and its Subconsultant employees working on the Site, in accordance with applicable state laws. Separate policies will be provided reflecting the following coverage and limits of liability:

Workers' Compensation Applicable Statutory Benefits

Employer's Liability

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

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

| | |
|-------------|---|
| \$2,000,000 | Bodily Injury and Property Damage Liability Combined Single Limit each occurrence (reinstated annually) |
| \$4,000,000 | General Aggregate Limit (each designated location, reinstated annually) |
| \$4,000,000 | Products and Completed Operations Aggregate (reinstated annually) |
| \$2,000,000 | Personal Injury and Advertising Injury |
| \$300,000 | Damage to Premise Rented to You (Fire, Explosion, Lightning, Legal Liability) |
| \$10,000 | Medical Expense (any one person) |

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

- (a) Occurrence Basis;
- (b) Products;
- (c) Completed Operations Extension (ten-year term after Project Substantial Completion);
- (d) Contractual Liability - including all Railroads;
- (e) Independent Contractor's Liability;
- (f) Personal Injury;
- (g) Explosion, Collapse, and Underground (X,C,U); and
- (h) Designated Construction Projects Only

- 3) Excess Liability Insurance shall be provided under a master excess liability program. Certificates of Insurance will be provided to the CM and all tiers of enrolled Subconsultants reflecting the following Limits of Liability:

\$100,000,000 Per Occurrence
 \$100,000,000 Aggregate

10.1.12 Builder's Risk Coverage

- 10.1.12.1 All Risk Coverage. Builder's Risk shall provide "All Risk" coverage on a replacement cost basis subject to standard exclusions, property limitations and conditions. Such insurance shall include the interests of the Authority, the Design-Builder, and any enrolled Subcontractor of any tier providing direct labor on the Project Site, with the following terms:

| | |
|------------------|---------------------------------|
| Primary Limit: | \$150,000,000 |
| Sublimits: | |
| Transit: | \$ 5,000,000 any one conveyance |
| Offsite Storage: | \$ 5,000,000 any one location |

- 10.1.12.2 Per Occurrence Deductible: The Design-Builder will be responsible for the policy "per occurrence" deductible in the amount of \$25,000 except for claims caused by the perils of Flood, Wind and Earthquake

- 10.1.12.3 The Builder's Risk policy shall not provide coverage against loss by theft or disappearance of any materials (unless the materials are to be incorporated into the School Facilities Project), tools or equipment of the Design-Builder or of any enrolled subcontractor of any tier, or of any other person furnishing labor or materials for the School Facilities Project.

- 10.1.13 Insurance Certificates and Policies. The CM and all tiers of enrolled Subconsultants shall receive Certificates of Insurance evidencing the General Liability and Excess Liability coverage. The related policies shall be available for review by the CM upon written request to the RMU. The CM and its Subconsultants shall be bound by the terms of coverage as contained in such insurance certificates and/or policies.

10.1.14 CM and Subconsultants' OCIP Responsibilities. The CM and its Subconsultants of any tier enrolled in OCIP shall cooperate with the Authority and RMU in the administration and operation of OCIP. Such responsibilities and cooperation shall include, but not necessarily be limited to, the following:

- 1) Ensuring that no enrolled Subconsultant shall commence Services at the project Site until it has received prior approval from the Authority.
- 2) Compliance with all applicable safety program, administrative, and claims procedures, as outlined in the respective manuals.
- 3) Promptly providing necessary contract, operations, safety, and insurance information.
- 4) Promptly responding to RMU or insurance company requests for claims, payroll, or other information.
- 5) Attending periodic meetings regarding administration, claims review, or safety.
- 6) Completing all OCIP forms required by the RMU or applicable manual.

10.1.15 Supplemental Insurance Requirements of CM and Subconsultants. Prior to undertaking any Services under this Agreement, the CM shall maintain, and/or cause its Subconsultants to maintain, at their own cost and expense, evidence of a policy or policies of insurance as enumerated below. The CM and its Subconsultants shall be responsible for maintaining such coverages after Final Completion and during the Design-Builder's warranty period for the Project.

As provided in this Section, the CM and its Subconsultants of every tier providing services or labor on the Project must, upon enrollment in OCIP, attach to the required enrollment forms, certificates of valid insurance evidencing current coverage for the On-site and Off-site exposures enumerated below. These exposures are not covered by OCIP. Insurance binders are not acceptable as proof of insurance coverage.

Such coverage must be purchased and maintained from insurance companies authorized to transact the business of insurance in the State of New Jersey and are rated "A- VIII" or better by A.M. Best Company.

In each policy, the CM 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 coverage required under this Section. The CM warrants that if the insurer, or coverage, is not subject to statutory or other provisions requiring thirty (30) Day 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.

The CM warrants that its insurance carriers are accurately informed regarding business activities of the CM and intend to insure those business exposures.

For purposes of this Section, "Off-Site" shall include, but not necessarily be limited to, CM's regularly established workplace, plant, factory, office, shop, warehouse, yard, or other property, even if such operations are for training of apprentices or for fabrication of materials to be used at the Project Site.

The following are the exposures on-Site and off-Site for which CM and its Subconsultants must obtain insurance coverage in addition to OCIP insurance requirements.

- 1) Professional Liability Insurance. Professional Liability Insurance (Errors & Omissions), with all coverage retroactive to the Effective Date of this Agreement, covering any claims arising from wrongful or negligent errors, acts, or omissions in the performance of professional services pursuant to this Agreement, in an amount not less than \$1,000,000 per claim and \$1,000,000 in the annual aggregate. CM warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years after the date of Final Payment by the Authority or if coverage is not commercially available for such period of time, then for such shorter period of time as such insurance is commercially available. CM warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of pollution conditions, asbestos related claims, testing, monitoring, measuring operations or laboratory analysis in connection with the Services performed pursuant to the Agreement. CM shall require its Subconsultants to maintain similar Professional Liability Insurance in an amount not less than \$1,000,000 per claim and \$1,000,000 in the aggregate for all operations conducted. The CM warrants that it will notify, or require its Consultant or Subconsultant to notify, the Authority in writing of any reduction in the aggregate coverage within thirty (30) Days of the policy holder's receipt of notice of such reduction.
- 2) Off-Site and On-Site Business Automobile Liability. Business Automobile Liability covering the operations, maintenance and use, loading and unloading of all owned, hired, and non-owned vehicles used for or in connection with the Project. The limits of liability shall not be less than \$1,000,000 combined single limit each accident. Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for covered autos endorsement, CA 99 48, shall be provided, and, if required by law, the Motor Carrier Act endorsement (MCS-90) shall be attached.

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

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

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

5) Off-Site/On-Site Contractors' Equipment. CM shall purchase and maintain CM's property insurance covering equipment, personal property and tools used by CM in the performance of the Services. Such coverage shall be written on a policy form at least equivalent to that provided by a Business Personal Property Policy or a "Contractor's Equipment Floater" as such is customarily defined within the insurance industry. CM shall notify all tiers of Subconsultants of their obligation to insure any, equipment personal property and tools used by the Subconsultants in the performance of the Services.

10.1.16Self-Insured Retention. Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be declared to and approved by the Authority and written using ISO endorsement CG 03 00 (or a substitute providing equivalent terms and conditions). CM shall not be permitted to have a SIR larger than \$100,000 unless it obtains the express, written consent of the Authority to the larger SIR. FAILURE TO COMPLY WITH THIS SECTION 10.1.16 IS A MATERIAL BREACH OF CONTRACT.

- 10.1.17Claims-Made Basis. If any of the aforementioned insurance is written on a “claims made basis”, the CM warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years after the date of Final Payment by the Authority and CM will provide Certificates of Insurance evidencing continuance of coverage with the original claims made retroactive date. Within the Certificate of Insurance, in the blocks designated "Policy Number," in addition to the policy number, CM shall insert a note "claims made retroactive date ___/___/___" (with the date inserted).
- 10.1.18Certificate of Insurance. Attached to this Agreement as Appendix D shall be a valid Certificate of Insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. A Certificate of Insurance must also be submitted and appended hereto to evidence each insurance renewal required by this Section 10.1. Failure of the Authority to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of CM’s obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this contract at the Authority’s option. CM shall provide certified copies of all insurance policies required within ten (10) days of the Authority’s written request for such policies.
- 10.1.19No Recourse. There shall be no recourse against the Authority, the State or the Project School District for payment of premiums or other amounts with respect to the insurance required by this Section.
- 10.1.20Disclaimer. CM and each of its Subconsultants is responsible to ensure that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage, at their own expense, that they deem advisable, whether or not specified herein.
- 10.1.21Liability in Excess of Coverage. By executing this Agreement, CM expressly agrees that any insurance protection required herein shall in no way limit CM's obligations under this Agreement and shall not be construed to relieve CM from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of this Agreement or otherwise in law or equity.
- 10.1.22Right to Remedy. If CM fails to obtain and/or maintain the insurance as required in this Section 10.1, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at CM’s expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make

payments due or coming due under other agreements between CM and the Authority; (iv) suspend performance by CM under this Agreement; or (iv) terminate this Agreement. Any funds retained pursuant to this Section 10.1 may be used, at the Authority's discretion, to renew or purchase CM's insurance for the periods and amounts as set forth in this Agreement. In the event the Authority purchases said insurance the Authority may, at its discretion, reduce CM's compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect CM and such coverage and limits shall not be deemed as a limitation on CM's liability under this Agreement. All exclusions added by endorsement to the aforementioned insurance shall be disclosed to the Authority.

10.2 **Subconsultants Ineligible for OCIP**

10.2.1 Types of Ineligible Subconsultants. Subconsultants of the types set forth below, or that solely provide the types of work or services enumerated below, shall not be eligible for enrollment in the OCIP (hereinafter cited as "Ineligible Subconsultants"). The Authority may, at its sole discretion, exclude other types of Subconsultants from enrollment in the OCIP. The following shall be Ineligible Subconsultants:

- 1) Professional Services Consultants;
- 2) Suppliers (that do not perform or subcontract installation);
- 3) Vendors;
- 4) Guard and security services;
- 5) Janitorial services;
- 6) Truckers/Haulers (including trucking to the Project Site where delivery or removal of materials is the only scope of work performed);
- 7) Any contractor or other person or organization that does not have dedicated payroll for employees at the "project site" for the "designated project"
- 8) Blasting contractors (unless approved in writing by the RMU);
- 9) Lead, asbestos, and hazardous materials abatement;
- 10) Off-site fabricators or manufacturers; and
- 11) Material Dealers.

10.2.2 Insurance Requirements of Ineligible Subconsultants. Unless otherwise directed by the Authority, the CM shall require all Ineligible Subconsultants to purchase and maintain at their own expense, the insurance coverages set forth below. Prior to permitting an Ineligible Subconsultant to perform any Services or Work, the CM must furnish OCIP Management with certificates of insurance together with declaration pages, in a form satisfactory to the Authority, showing that the Ineligible Subconsultant has complied with this

Section 10.2. Insurance binders are not acceptable as proof of insurance coverage.

10.2.3 Such coverage must be purchased and maintained from insurance companies authorized to transact the business of insurance in the State of New Jersey and are rated "A-VIII" or better by A.M. Best Company. In each policy, the CM 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 coverage required under this Section. The CM warrants that if the insurer, or coverage, is not subject to statutory or other provisions requiring thirty (30) Day 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.

10.2.4 The coverages enumerated below shall protect the CM, the Authority, the NJEDA, the New Jersey Department of Education, the State and the Project School District, and their respective directors, officers, members, employees and agents, against claims of, or relating to, personal and bodily injury (including death) to persons, or damage to property, which may arise from, or in connection with, the performance of the Services or Work (whether performed On-site or Off-site) by the Ineligible Subconsultant, its employees, officers, agents, subcontractors or other individuals or entities for whom the Ineligible Subconsultant may be contractually or legally responsible while performing Services or Work. The required coverages are as follows:

- 1) Professional Liability Insurance (Errors & Omissions). The CM shall require its Subconsultants to maintain Professional Liability Insurance, with coverage retroactive to the date of commencement of Services on the Project by such Subconsultant, sufficient to protect the Subconsultant 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 aggregate, for all operations conducted.

The CM warrants that it will require its Subconsultant to notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) Days of the policy holder's receipt of notice of such reduction.

The CM shall require its Subconsultants to warrant, that coverage shall not be circumscribed by any endorsements excluding coverage arising out of pollution conditions, asbestos related claims, testing, monitoring, measuring operations or laboratory analysis in connection with the Services performed pursuant to the Agreement.

- 2) Commercial General Liability. Commercial General Liability insurance is to be written as broad as the standard coverage form currently in use in the State of New Jersey, and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include coverage for contractual liability, products, completed operations and any explosion, collapse and underground (X,C,U) operations. Limits of liability shall not be less than \$5,000,000 combined single limit with excess or umbrella coverage with the same terms and conditions as the underlying coverage in an amount such that the primary and excess/umbrella coverage equals \$5,000,000.
- 3) Pollution Liability. In the event that the Ineligible Subconsultant's efforts involve a Pollution Liability exposure (including asbestos work, lead work, or hazardous material abatement, transportation and/or disposal), the Ineligible Subconsultant is required to maintain, or cause to be maintained, Pollution Liability insurance and, if necessary, Commercial Umbrella Insurance, with minimum limits of \$5,000,000 per occurrence and \$5,000,000 aggregate which protects the insureds from any and all claims that may arise out of or as a consequence of any Services or Work performed on this Project. Where the Ineligible Subconsultants are solely consultants, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy.
- 4) Off-Site/On-Site Contractor's Equipment. The Ineligible Subconsultants shall purchase and maintain Contractor's property insurance covering construction machinery (whether or not the capital value of which has been included in the Contract) equipment, and tools used by the Ineligible Subconsultants in the performance of Services or Work. Such coverage shall be written on a policy form at least equivalent to that provided by a "Contractor's Equipment Floater," as such is customarily defined within the insurance industry. The Ineligible Subconsultants shall notify all tiers of their Subconsultants of their obligation to insure any machinery, equipment and tools used by the subcontractors in the performance of Work. The Ineligible Subconsultants shall indemnify, defend, and hold the Authority and its officers, agents, and employees harmless from any such loss, theft, or disappearance
- 5) Business Automobile Liability. The Ineligible Subconsultants shall carry Business Automobile Liability Insurance covering the operations, maintenance, use, loading and unloading of all owned, hired, and non-owned vehicles used in connection with the Project. The limits of liability shall not be less than \$1,000,000 combined single limit each accident. Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for covered autos endorsement, CA 99 48, shall be provided, and, if required by law, the Motor Carrier Act endorsement (MCS-90) shall be attached.

- 6) Workers' Compensation, Employer's Liability. Workers' Compensation Insurance in accordance with the laws of the State of New Jersey and any other state or federal jurisdiction as is required to protect the employees of the Ineligible Subconsultants who will be engaged in the performance of the Services or Work. This policy shall include Employer's Liability protection with a limit of liability of not less than \$500,000, as follows:

| | |
|-------------------------------|------------------------|
| (a) Bodily Injury by Accident | \$500,000 per accident |
| (b) Bodily Injury by Disease | \$500,000 per employee |
| (c) Bodily Injury by Disease | \$500,000 policy limit |

10.2.5 Endorsement and Waivers. The Commercial General Liability Policy, Automobile Liability Policy, Pollution Liability and Excess/Umbrella Policies required to be provided by the Ineligible Subconsultants shall contain or be endorsed to contain the following provisions:

- 1) The CM, the Authority, the NJEDA, the New Jersey Department of Education, the State and the Project School District, and their respective directors, officers, members, employees and agents shall be covered as additional insureds.
- 2) For any claims related to the Project, the Ineligible Subconsultants' insurance coverage shall be primary insurance with respect to the CM, the Authority, the NJEDA, the New Jersey Department of Education, the State and the Project School District, and their respective directors, officers, members, employees and agents and CM warrants that coverage shall be required to continue for a minimum of two years notwithstanding the fact that the Ineligible Subconsultant has departed from the School Facilities Project site. Any insurance or self-insurance maintained by the Authority, the State or the Project School District, and their respective directors, officers, members, employees and agents, shall be excess of the Ineligible Subconsultants insurance, and shall not contribute with it.
- 3) Any failure on the part of the Ineligible Subconsultants to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of the Ineligible Subconsultants or others, any foreclosure related to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the CM, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Project School District and their respective directors, officers, members, employees and agents.
- 4) The Ineligible Subconsultants' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 10.2.6 Disclaimer. Ineligible Subconsultants shall be responsible for ensuring that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage that they deem advisable, whether or not specified herein.
- 10.2.7 No Recourse. There shall be no recourse against the Authority, the State or the Project School District for payment of premiums or other amounts with respect to the insurance required of Ineligible Subconsultants hereunder.
- 10.2.8 Right to Remedy. If an Ineligible Subconsultant fails to provide insurance as required herein, the Authority shall have the right, but not the obligation, to purchase such insurance. In such event, the CM's Contract Price shall be reduced by the amount paid for such insurance.

10.3 **Ownership of Documents**

- 10.3.1 In consideration of the Authority's execution of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by CM, CM hereby irrevocably grants, assigns and transfers to the Authority all of CM's right, title and interest of any kind in and to the following: all plans, ideas, methods, documents, drawings, specifications, flow charts, data, diagrams, samples, tests, surveys, models, material, computer discs, evidence, documentation, and all copyrightable materials gathered, originated or prepared by CM and its Subconsultants during the performance of the Services (the "Work Product"), in all copyrights resulting from the Work Product, and in all renewals and extensions of the copyrights that may be secured now or be hereafter in force and effect.
- 10.3.2 Ownership of all Work Product by the Authority shall commence immediately upon the Effective Date of this Agreement regardless of payment by the Authority of any compensation to CM therefor and regardless of the delivery of any of the Work Product to the Authority. Upon written request, all Work Product shall be delivered by CM to the Authority in a timely manner, clearly marked, identified and in good order.
- 10.3.3 The Authority has the right to reproduce, publish or otherwise use, and authorize others under contract with the Authority to use, any of the Work Product for any purpose without the approval of, and without any additional compensation to, CM. The Authority shall have such right even in the event this Agreement is terminated for any reason.
- 10.3.4 CM shall be permitted to retain a copy of all Work Product for its own files. Absent the prior, written consent of the Authority, neither CM, nor any Subconsultant of CM, shall use any of the Work Product for any other project or for CM's promotional and professional (or other) materials.

10.3.5 Neither CM, nor any CM Subconsultant shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Authority or the Design Builder or its Design Consultant. The Drawings, Specifications and other documents prepared by the Authority and its Design Builder, and Design Builder's Design Consultant, and copies thereof furnished to CM, are for use solely with respect to this Project. They are not to be used by CM on other projects without the specific written consent of the Authority.

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

10.4 Copyrights and Patents

10.4.1 If CM employs any design, device, material, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patent holder. CM shall assume all costs, including attorney's fees, arising from its use of patented or copyrighted designs, materials, equipment, devices, or processes for this Project.

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

10.5 Confidentiality

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

- 10.5.2 CM shall not disclose to any third party the contents of the information, reports, findings, analyses, surveys, data or any other materials generated or produced in performance of this Agreement, or provide copies of same, without the prior, written consent of the Authority, except where disclosure of such materials is required by Applicable Laws in which case CM shall provide immediate notice to the Authority of such order.
- 10.5.3 CM is required to use reasonable care to protect the confidentiality of the Project data by, among other things, requiring incorporation of this Section into its contract(s) with all Subconsultants, if any. Any use, sale or offering of this data in any form by CM, its officers, directors, shareholders, employees, Subconsultants or assignees will be considered a material breach of this Agreement. CM shall be liable for any and all damages arising from its breach of this confidentiality provision, including damages, costs and/or attorneys' fees. The Authority shall also have the right to terminate this Agreement for cause in the event of a breach of this confidentiality provision without the Authority being liable for damages, costs and/or attorney's fees.
- 10.5.4 Any publicity and/or public announcements pertaining to the Project shall not be made until and unless CM obtains the prior, written approval of the Authority.
- 10.5.5 CM warrants that its promotional, professional or other materials shall never include the Authority's confidential or proprietary information.

10.6 **Contractual Relationship**

- 10.6.1 Nothing in this Agreement shall be construed as creating a contractual relationship between any Subconsultants (regardless of tier) of CM and the Authority. However, the Authority is to be deemed a Third Party Beneficiary of all Project agreements with any Subconsultants of CM.
- 10.6.2 CM's status shall, at all times, be that of an independent contractor, not an employee of the Authority. CM agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof. CM will not, by reason hereof, make any claim, demand or application to any Authority officer or employee for any right or privilege afforded to an Authority officer or employee, including, but not limited to, workers' compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.
- 10.6.3 CM shall include in all of its Subconsultants' contracts a requirement that the Subconsultant is bound by the terms and conditions of this Agreement.
- 10.6.4 Nothing contained in this Agreement shall create a contractual relationship with a third party or create a cause of action in favor of a third party against

CM or the Authority. It is further intended that no individual, firm, corporation, or any combination thereof, which supplies materials, labor, services or equipment to CM for the performance of the Services becomes thereby a third party beneficiary of this Agreement.

10.6.5 The Authority and CM hereby bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement.

10.7 Assignment

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

10.7.2 In the event the Authority approves, in writing an assignment by CM, CM shall submit to the Authority: (i) corporate resolutions prepared by CM and the new entity ratifying this Agreement; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s); (v) acknowledgment and acceptance of all rights, duties and obligations of this Agreement without limitation by the new entity; and (vi) any other information which the Authority may reasonably require of CM in writing.

10.7.3 Notwithstanding anything to the contrary, under no circumstance shall CM assign its right to receive money under this Agreement for any purpose or to any person whatsoever without the prior, written approval of the Authority. The payments received by CM are to be regarded as trust funds, under N.J.S.A. 2A:44-148, and, as such, used strictly for the purpose of discharging obligations incurred on this Project.

10.7.4 The Authority may elect, in its sole discretion, to assign this Agreement to any other State agency, authority or other State instrumentality, or any local or municipal instrumentality, at any time during the Term of this Agreement. In such case, CM agrees to continue to perform all of its obligations as set forth in this Agreement. CM shall make no claim against the Authority in the event of such assignment and shall execute such certificates, documents and instruments as may be reasonably requested by the Authority, in writing, to effect such assignment.

10.8 Mergers, Acquisitions, and Dissolutions

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

CM shall immediately notify the Authority in writing and shall submit, in advance, documentation to the Authority describing the proposed transaction, including, but not limited to: (i) corporate resolutions prepared by the CM and the new entity ratifying acceptance of the CM Agreement; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures, where applicable; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s); (v) acknowledgment of the assumption of the CM Agreement by the new entity; and (vi) any other information the Authority may require.

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

10.8.3 After review of the relevant documentation regarding the proposed transaction, the Authority, in its sole discretion, may approve the continuation of this Agreement following the proposed transaction, or may terminate this Agreement for cause. The Authority will notify the CM of its decision within thirty (30) Days of receipt by the Authority of documentation from the CM describing the proposed transaction.

10.9 **Mandatory Compliance with Law**

10.9.1 CM must comply with any and all Applicable Laws in effect or hereinafter promulgated that apply to performance by CM under this Agreement. To the extent variances from such Applicable Laws are required, CM and the Authority shall cooperate to pursue such variances in the interests of the Project.

10.9.2 CM must review all documents that have been prepared and furnished by the Authority relevant to the Project and shall comply with all requirements contained therein.

- 10.9.3 Each and every provision required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision has been omitted or has not been correctly inserted, this Agreement shall be amended, upon application of either Party, to provide for such insertion or correction.
- 10.9.4 If the Authority determines that CM has violated or failed to comply with Applicable Laws, the Authority may withhold payments for such violation or failure and take such action that it deems appropriate until CM has complied with such Applicable Laws or has remedied such violation or non-compliance to the reasonable satisfaction of the Authority.
- 10.9.5 CM's compliance with Applicable Laws is mandatory and cannot be waived by the Authority.
- 10.9.6 CM shall insure that its payments to vendors and Subconsultants are made in compliance with the New Jersey Prompt Payment Law, N.J.S.A. 2A:30A-1 and -2, and the provisions of New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32, et seq., to the extent applicable, and all other Applicable Laws concerning or related to the prompt payment of CM's Subcontractors or Subconsultants.
- 10.9.7 CM shall fully and strictly comply with all legal prohibitions and reporting and disclosure requirements regarding political contributions, including, but not limited to, N.J.S.A. 19:44A-20.13, 14, 15, 18, 19 & 27 and Governor Jon S. Corzine's Executive Order No. 117, which became effective on November 15, 2008.

10.10 **Affirmative Action and Non-Discrimination**

- 10.10.1 General. CM 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.
- 10.10.2 Documentation. CM shall submit to the Authority, after notification of the award of this Agreement, but prior to execution, one of the following three (3) documents: (i) documentation (e.g., a Letter of Approval) sufficient to show that the CM 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.
- 10.10.3 CM and its Subconsultants shall furnish such reports or other documents to the Division as may be requested by the office from time to time in order to carry out the purposes of the Division's 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.

- 10.10.4 Required Language and Application to CM and Subconsultants. The CM shall abide by, and shall include language in all subcontracts with Subconsultants requiring that all Subconsultants abide by, the requirements of this Section 10.10, as well as the Mandatory Anti-Discrimination and Equal Opportunity Provisions contained in Appendix F to this Agreement.
- 10.10.5 Anti-Discrimination Obligations. CM shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq., and all rules and regulations issued thereunder, 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 F.

10.11 **Anti-collusion/ Anti-Trust**

- 10.11.1 CM, by submitting its response to the Authority's RFP and/or RFQ and by executing this Agreement, does hereby warrant and represent that this Agreement has not been solicited, secured or prepared, directly or indirectly, in a manner contrary to the laws of the State, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Services by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity, or consideration of any kind, direct or indirect, to any employee, officer, or board member of the Authority.
- 10.11.2 **Anti-Trust**. By executing this Agreement, the CM hereby warrants and represents that (1) this Agreement has not been executed in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; (2) that the CM's bid for the Project was genuine and not collusive or a sham; (3) that the CM has not directly or indirectly induced or solicited any other individual or firm to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any individual or firm or anyone else to put in a false or sham bid; (4) that the CM has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the CM or of any other individual or firm or to fix any overhead, profit, or cost element of such bid price; (5) that all statements of the CM are true; and (6) that the CM has not directly or indirectly, submitted a bid price or any breakdown thereof, divulged information or data relative thereto, paid any fee in connection therewith to any corporation, partnership, company, association, organization, bid depository, or any member or agent thereof.

10.11.3 The penalty for breach or violation of this Section 10.11 may, at the sole option of the Authority, result in: (i) the termination of this Agreement without the Authority being liable for damages, costs and/or attorney fees, and/or (ii) a deduction from the payments to be made by the Authority pursuant to this Agreement of the full amount of such commission, percentage, brokerage or contingent fee, in addition to any penalties prescribed by law.

10.12 Conflict of Interest

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

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

10.12.3 CM shall not directly or indirectly undertake any private business, commercial or entrepreneurial relationship (whether or not pursuant to employment, contract or other agreement, express or implied) with, or sell any interest in CM to, any Authority officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the Authority; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such Authority officer or employee is employed or associated, or in which such Authority officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee and upon a finding that the present or proposed relationship presents neither an actual conflict of interest, nor the potential for, or appearance of, such a conflict of interest.

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

- 10.12.5 CM shall not cause or influence, or attempt to cause or influence, any Authority officer or employees to use or attempt to use such officer's or employee's official position to secure unwarranted privileges or advantages for CM or any other person.
- 10.12.6 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 CM, its officers or employees, to any person employed by the Authority as grounds for debarment or suspension from submitting proposals and providing Services or materials to the Authority.
- 10.12.7 The provisions cited in this Section shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with CM under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines that the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.
- 10.12.8 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.

10.13 Affidavit Concerning Gifts to Authority Employees and Agents

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

10.14 Disclosure of Political Contributions

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

10.14.2 Political Contributions ELEC Filing. The CM shall comply with its responsibility to file an annual disclosure statement on political contributions with ELEC in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the CM's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC.

10.15 Indemnification

10.15.1 To the fullest extent permitted by law, CM shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority and the Project School District, as well as their respective agents, servants, officers, directors, shareholders and employees, from and against any claim, demand, liability, lawsuit, judgment, action or other proceeding including, but not limited to, all costs, fees and expenses, including, without limitation, attorney's fees and expenses, court costs, expert witness fees and expenses, any resulting settlement, judgement, award or other assessment of liability, interest and other expenses arising or resulting from any of the following:

- 1) the negligent acts or omissions of CM, its agents, servants, officers, employees, Subconsultants or any other person acting at CM's request, subject to its direction, or on its behalf, regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder;
- 2) the loss of life or property, including the Work itself, or injury or damage to the person, body or property, including the Work itself, of any person or persons whatsoever, that arises or results directly or indirectly, from the negligent performance of the Services by CM, its agents, servants, officers, employees, Subconsultants or any other person acting at CM's request, subject to its direction, or on its behalf, regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder;
- 3) violation of or non-compliance with Applicable Laws (including without limitation the Americans with Disabilities Act and OSHA Environmental Protection Act) arising from the performance or non-performance of, or arising out of conditions created or caused to be created by CM, its agents, servants, officers, employees, Subconsultants or any other person acting at CM's request, subject to its direction, or on its behalf, regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder; and
- 4) the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in CM's performance of its Services, regardless of whether caused in part by

the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder.

10.15.2 CM's indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Agreement.

10.15.3 CM agrees that any approval by the Authority of the Services performed, and/or reports, plans or specifications provided by CM shall not operate to limit the obligations of CM under this Agreement and that the Authority assumes no obligations to indemnify or hold harmless CM, its agents, servants, employees, or Subconsultants against any claims that may arise out of its performance or nonperformance under this Agreement. CM also agrees that the provisions of this indemnification clause shall in no way limit CM's obligations under this Agreement, nor shall they be construed to relieve CM from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of this Agreement or otherwise at law or equity.

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

11.0 TERMINATION AND SUSPENSION

Nothing contained in this entire Section 11.0 shall limit the right of the Authority to recover any and all costs and damages resulting from CM's failure to perform its Services in a manner consistent with all requirements of this Agreement.

11.1 Termination for Convenience of the Authority

11.1.1 Performance by CM of its obligations under this Agreement may be terminated by the Authority in accordance with this Section in whole or in part, whenever the Authority, in its sole discretion, determines that such termination is in its best interest. Such a termination shall be called a "Termination for Convenience".

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

11.1.3 Upon such Termination for Convenience, CM shall be entitled only to compensation for fully compliant Services actually performed by CM, less payments previously made to CM. The CM shall also be entitled to the reasonable costs and expenses attributable to such Termination for Convenience.

11.1.4 Upon a Termination for Convenience, CM shall furnish to the Authority, free of charge, such closeout reports, documents, and materials as may be reasonably required by the Authority.

11.2 Termination for Cause

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

11.2.2 Any such Termination for Cause shall be effected by delivery to CM of a "Notice of Termination for Cause" specifying the extent to which the Services under this Agreement are terminated, the rationale therefor, and the date upon which such termination becomes effective.

11.2.3 For all such grounds of Termination for Cause except those contained in subsections 11.2.1(ix) (misrepresentation or concealment of material fact) and 11.2.1(x) (insolvency) and those as to which a cure is not feasible, CM may avoid termination if, within seven (7) Days of receipt of the Notice of Termination for Cause, it commences an effective means of correction of such default, neglect or violation, with diligence and promptness, fully curing same within the time, if any, prescribed by the Authority within the Notice of Termination or within any extension to such cure period subsequently approved in writing by the Authority. Failure of CM to commence an effective means of correction of its default, neglect or violation within seven (7) Days

of receipt of the Notice of Termination for Cause, or to cure the same within the time prescribed by the Authority, shall result in a warranted and justified termination of this Agreement for cause. Assuming that no effective cure is timely commenced by CM, the Authority shall confirm in writing to CM the fact of its termination.

11.2.4 Upon termination for cause by the Authority pursuant to this Section, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Services that were required to be performed by CM by whatever methods the Authority may reasonably deem appropriate.

11.2.5 In the event this Agreement is terminated for cause pursuant to this Section, the Authority reserves the right not to make any further payments to CM and may require CM to repay all or a portion of the monies already paid. CM, at its own expense, shall be obligated to take any steps necessary to enable the Authority to complete the Services itself, or for the Authority to engage another construction manager to complete the Services. Such steps may include, but are not limited to, the prompt delivery to the Authority of all Deliverables, documents and Work Product identified herein and/or related to the Project. If the payments then or thereafter due CM are not sufficient to cover the Authority's cost to complete the Services itself or by means of another construction manager, CM shall pay, within ten (10) days, to the Authority the difference between what the Authority would have paid CM and the Authority's actual expense to complete, in addition to any other re-procurement expense, inclusive of professional fees incurred, inclusive of monies paid to the Design Consultant and The Authority's legal counsel and the Authority's own administrative or in-house expenses. If the Authority is required to file a legal action against CM in order to recover monies owed by CM on account of its termination for cause, CM shall be liable to the Authority for all legal fees so incurred, as well as all other litigation costs incurred. Further, CM shall be liable to The Authority for interest on all monies due and owing from CM to the Authority under this Section or any other Section thereof of this Agreement.

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

11.3 **Suspension of Services**

11.3.1 The Authority shall have the right to defer the CM's Commencement Date or to suspend the whole, or any part, of the Services required under this Agreement whenever, in the sole discretion of the Authority, it is necessary or expedient for the Authority to do so. The Authority shall, by written notice to CM, suspend performance of the Services and upon receipt of such notice,

unless otherwise directed in writing by the Authority, CM shall immediately discontinue all Services, except as necessary to properly secure the Project.

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

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

11.3.3 When the Authority has determined that a suspension is, in whole or in part, the fault of CM, the Authority may, at its sole option, suspend all payments to CM. Payment may be reinstated by the Authority upon completion of the Services in accordance with the other provisions of this Agreement, provided, however, that there shall be no upward adjustment in direct or indirect costs or in any other costs. Alternatively, the Authority may terminate this Agreement pursuant to Section 11.2, above, or carry out the Services as provided for in Section 11.4 below.

11.4 Authority's Right to Carry Out the Services

11.4.1 If CM fails to perform any obligation imposed under this Agreement, and fails, within seven (7) Days after receipt of written notice from the Authority, to commence and continue correction of such failure with diligence and promptness, the Authority may take steps to remedy such failure, at CM's sole expense, without prejudice to any other remedy the Authority may have. In such case, an appropriate written notice shall be issued by the Authority deducting from the payments then or thereafter due CM the cost of correcting such failure, including compensation for any additional services of other Professional Services Consultant(s), including legal counsel, or contractor(s) engaged as a result of such failure. If the payments then or thereafter due CM are not sufficient to cover such amount, CM shall, within ten (10) days, promptly pay the difference to the Authority upon written demand. A failure

to timely honor such payment demand shall entitle the Authority to interest, and, if the Authority files suit to collect, the Authority shall be entitled to recover its litigation costs, inclusive of its counsel fees.

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

12.0 CLAIMS

12.1 General

- 12.1.1 All CM Claims against the Authority shall be governed by the provisions of this Section 12.
- 12.1.2 Governing Law. All CM Claims asserted against the Authority shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- 12.1.3 Claim Form to Commence Process. CM shall file notice of its CM Claim on a form provided by the Authority (Form 505 Notice of Claim), which form shall be completed in its entirety and signed by CM. 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 given within the time limits established by N.J.S.A. 59:13-5.
- 12.1.4 False Claims Liability. CM 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.
- 12.1.5 Review of CM Claims. The administrative process for review of CM Claims is sequential in nature. The Authority's Claims Review Procedure is 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.

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

12.2 Step One: The Authority's Review

- 12.2.1 Required Documentation. The CM must provide to the Authority the required forms as required by this Section to comply with the New Jersey Contractual Liability Act in order to begin the Authority's administrative process for the review of Claims. The CM shall also submit to the Authority all documentation supporting the CM Claim. The documentation provided to the Authority will serve as the basis for evaluation of the CM's position regarding the Claim throughout Step One of the administrative process. The CM 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 Claim documentation from the CM.
- 12.2.2 Authority's Review and Decision. At the option of the Authority, a meeting may be scheduled with CM to discuss the CM's Claim. The Authority shall render its decision regarding CM's Claim in writing within ninety (90) Days of receipt of the necessary Claim forms and all information reasonably requested of CM or within ninety (90) Days of any meeting with CM, to review CM's Claim, whichever is later. This time limit may be extended by mutual written agreement of the Parties. CM, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject such decision in writing. If CM neither accepts nor rejects in writing the Authority's decision within 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 CM in the time and manner indicated in the following section ("Step Two Non-Binding Mediation").

12.3 Step Two: Non-Binding Mediation

- 12.3.1 If CM rejects in writing the decision of the Authority, there is no further automatic administrative review of the Claim. Within fifteen (15) Days after issuance of a Certificate of Occupancy or Certificate of Acceptance for this Project, CM may request in writing that any or all outstanding CM Claims regarding this Project, which have been processed through Step One of the claim resolution procedure, proceed to Step Two Non-binding Mediation. Such request for mediation must be in writing and must identify with specificity the claims to be mediated. Any Claim not specifically identified in the request for mediation shall be deemed withdrawn. No Claim will proceed automatically to Step Two and the Consultant must make a specific written request that the Claim be elevated to Step Two for review. 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 Claim to Step Two is agreed to by the CM and the Authority. The cost of non-binding mediation shall be shared equally by CM and the Authority. The mediator shall be selected by the Authority, with the written concurrence of CM. The rules for

the mediation shall be agreed to by the Authority, the CM and the mediator prior to the start of the mediation. The mediation will not proceed, however, if the Parties fail to agree on the rules for the non-binding mediation, in which case Step Two review will be deemed completed.

13.0 REPRESENTATIONS

CM hereby represents as follows:

- 13.1 CM is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the Services required under this Agreement.
- 13.2 CM is professionally qualified to act as CM for the Project, and has the capability and experience, including sufficient qualified and competent personnel, to efficiently and timely perform the Services. CM will continuously furnish sufficient personnel to perform the Services in a timely and proper manner.
- 13.3 CM is experienced, authorized to do business in the State of New Jersey, is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Project and CM, and has and shall maintain any and all licenses, permits and authorizations necessary to act as CM for the Project and to perform the Services required hereunder.
- 13.4 CM's execution of this Agreement and its performance hereunder is within its duly authorized powers.
- 13.5 CM certifies that it has investigated the conditions of the Project and that it fully understands the conditions of the Project and its obligations pursuant thereto. CM agrees that it will not make any CM Claim for, or be entitled to, cancellation or relief from this Agreement without penalty because of its misunderstanding or lack of information related to the conditions of the Project and its obligations pursuant thereto.
- 13.6 CM certifies that all representations made by it in any of the documents constituting this Agreement are true, subject to penalty of law. CM understands and agrees that its violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact may be cause for termination of this Agreement for cause. CM understands and agrees that CM's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact shall serve as a legal bar to CM's enforcement of its rights under this Agreement, including any and all CM Claims at law or equity.

- 13.7 CM is currently pre-qualified by the Authority.
- 13.8 CM and any Subconsultant have provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to N.J.S.A. 52:32-44b. CM shall not enter into any subcontract with a Subconsultant that has not provided it and the Authority with proof of its valid business registration. CM 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.
- 13.9 CM assumes full responsibility to the Authority for the acts and omissions of its officers, employees, subcontractors, Subconsultants, and others employed or retained by it in connection with the performance of the Services for this Project.
- 13.10 The representations and warranties enumerated in this Section operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required of CM by this Agreement or by Applicable Laws.

14.0 AUTHORITY'S RIGHTS AND RESPONSIBILITIES

14.1 Authority's Rights

- 14.1.1 The Authority shall have the right to perform Services related to the Project and to award contracts in connection with the Project that are not part of CM's responsibilities under this Agreement.
- 14.1.2 The Authority shall have the right, in its sole discretion, to accept or reject personnel provided by CM for the performance of the Services under this Agreement. CM shall make a timely and prompt re-submittal to provide other personnel to replace any that are rejected by the Authority, both in the initial proposal or any subsequent rejection or substitution of personnel.
- 14.1.3 The Authority shall have the right to remove any of CM's or its Subconsultants' employees from the Project at any time during the Term of this Agreement if that employee is reasonably deemed by the Authority not to be of the level of competence or ability required under this Agreement, or if said CM employee is for any reason found to be unsuitable to perform pursuant to this Agreement, as determined by the Authority in its sole discretion. In such case, CM shall promptly submit the name and qualifications of a replacement for the Authority's written approval.

- 14.1.4 The Authority shall have the right to evaluate CM's performance pursuant to the Authority's Performance Evaluation Policy and Procedures. The Authority shall also have the right to consider CM's evaluation as a factor used in the technical ranking of CM with respect to any submission by CM in response to future Requests for Proposals issued by the Authority. The Authority's action in this regard shall be immune from any Claim of any type or nature by CM or any of CM's Subconsultants. If any Subconsultant of CM makes any such Claim, CM shall defend, indemnify and hold the Authority harmless with respect thereto. If the Authority has to commence a legal action in order to enforce its rights under this Section, it shall be entitled to recover all expenses so incurred, including, but not limited to, its reasonable counsel fees.
- 14.1.5 The Authority may, during the Term of this Agreement, engage another entity to assume certain of the Authority's day-to-day responsibilities for the Project. In such event, the Authority shall notify CM, in writing, that such entity has been engaged and in such notice shall set forth the reporting requirements of CM with respect to such entity.
- 14.1.6 The Authority's approval, acceptance, use of, or payment for, all or any part of CM's Services hereunder or in connection with the Project shall in no way alter CM's obligations under this Agreement.
- 14.1.7 The Authority and its representatives and agents, the Office of the State Comptroller, or any other State inspecting or oversight agencies reserve the right to audit (or have their agents audit) the records of CM in connection with all matters related to this Agreement. If, as a result of such audit, CM is discovered, for any reason, to owe any money or refund to the Authority, the Authority may, without limitation, reduce CM's invoice amount to an amount considered commensurate with the actual Services provided.
- 14.1.8 The Authority, the Office of the State Comptroller, or any other State inspecting or oversight agencies have the right to request in writing, and CM agrees to furnish free of charge, all information and copies of all records, documents or books the Authority and the Office of the State Comptroller or any other State inspecting or oversight agencies may request of CM and its Subconsultants. CM and its Subconsultants shall allow representatives of the Authority, the Office of the State Comptroller or any other State inspecting or oversight agencies to visit the office(s) of each periodically, upon reasonable notice, in order to review any information, records, documents or books related to this Agreement or to otherwise monitor any Services being performed by CM and its Subconsultants pursuant to this Agreement.

14.2 Authority's Responsibilities

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

- 14.2.2 The Authority shall designate in writing a representative authorized to act on the Authority's behalf with respect to the Project, i.e., its Managing Program Officer. This representative 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/Governance/OperatingAuthority> and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.
- 14.2.3 Notwithstanding any actions of the Authority or its Managing Program Officer, CM's responsibility for the undertaking and completion of the Project shall be as set forth in this Agreement.
- 14.2.4 Prompt written notice shall be given by the Authority to CM if the Authority becomes aware of any fault or defect in the Project or nonconformance with the Design-Build Contract Documents.
- 14.2.5 The Authority reserves the right to perform construction and operations related to the Project with the Authority's own forces and to award contracts in connection with the Project which are not part of CM's responsibilities under this Agreement. CM shall promptly notify the Authority, in writing, if any such independent action will interfere with CM's ability to perform CM's responsibilities under this Agreement.
- 14.2.6 Information or services under the Authority's control, which are reasonably needed by CM to properly discharge its obligations hereunder and which are not CM's contractual responsibility, shall be furnished by the Authority to CM with reasonable promptness.
- 14.2.7 The Authority shall promptly furnish all required reviews and approvals or other appropriate action with respect to all Submittals, samples, estimates, schedules, and other items submitted and/or proposed by CM.
- 14.2.8 The Authority shall send to CM and shall require the Design-Builder to send to CM copies of all notices and communications sent to or received by the Authority or the Design -Builder relating to the Project and as to which CM ought to be made aware.
- 14.2.9 The Authority shall furnish CM with two (2) sets of the Design-Build Contract Documents, as they become available, including two (2) sets of approved plans and specifications, as well as two (2) sets of any related documents, and any other Professional Services Consultant Agreement(s). CM is charged with knowledge of the Design-Build Contract Documents and the description therein of CM's duties and obligations and the Design-Builder's activities, which CM is responsible to monitor.

14.2.10 The services, information and reports required in this Section shall be furnished at the Authority's sole expense.

15.0 MISCELLANEOUS

15.1 **Notices.** All notices, requests or other communications required under this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by FedEx or similar guaranteed overnight courier and shall be deemed to have been given on the day after depositing in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A to this Agreement.

15.2 **Incorporation by Reference.** This Agreement incorporates by reference, as if set forth herein, all of the documents constituting this Agreement in their entirety, including, but not limited to, this Agreement and its appendices (A-G), the RFP and/or RFQ and the responses thereto, any Amendments and any addenda to such documents, and the Design-Build Construction Documents.

15.3 **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 - Supplementary Conditions
2. Appendix B - Project Description
3. This Agreement, and any Amendments hereto
4. Design-Build Construction Documents
5. Request for Proposals and/or Request for Qualifications
6. Appendix C – Total Compensation Amount (Price Proposal)
7. Appendix D - Certificate(s) of Insurance
8. Appendix E - Other Documentation

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, CM 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.

15.4 **No Waiver of Warranties or Legal/Equitable Remedies.** Nothing in this Agreement shall be construed to be a waiver by the Authority of any warranty, expressed or implied, or any remedies at law or equity, except as specifically and expressly stated in a writing executed by the Authority.

- 15.5 **Procedural Requirements.** CM shall promptly comply with all written procedural instructions that may be issued from time to time by the Authority.
- 15.6 **Governing Law.** This Agreement, and any and all litigation arising therefrom or related thereto, shall be governed by the applicable laws, regulations and rules of the State of New Jersey without reference to conflict-of-laws principles.
- 15.7 **Forum and Venue.** The Parties may only bring a legal action to resolve a dispute or Claim arising from this Agreement in a state court in the State of New Jersey.
- 15.8 **Time is of the Essence.** All time limits stated in this Agreement are of the essence.
- 15.9 **Entire Agreement.** This Agreement represents the entire and integrated agreement between CM and the Authority and supersedes all prior negotiations, representations or agreements, either written or oral.
- 15.10 **Severability.** In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.
- 15.11 **Waiver of Breach.** In the event that any provision of this Agreement is breached by either Party and such breach is thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach. Any written consent by the Authority to a delay in CM's performance of any obligation shall apply only to the particular obligation or transaction to which it relates, and it shall not apply to any other obligation or transaction. Any delay in the Authority's enforcement of any remedy in the event of a breach by CM of any term or condition of this Agreement or any delay in the Authority's exercise of any right under this Agreement shall not be construed as a waiver. A "waiver" of a Party's breach of this Agreement shall only occur if there is a specific provision in this Agreement which expressly describes the Party's conduct or inaction as constituting a waiver or if there is a writing signed by the waiving Party expressly, specifically and unequivocally waiving such breach.
- 15.12 **Provisions Required By Law Deemed Inserted.** Each and every provision of law required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and, if through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, then, upon the application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction.
- 15.13 **Representation of No Solicitation.** CM warrants and represents to the Authority that: (a) no person, firm, entity or organization has, directly or indirectly, been employed or retained by CM to solicit or secure this Agreement upon an agreement, promise or understanding for payment of a commission, percentage, brokerage, or contingent fee and CM has not, and will not, pay any such commission, percentage, brokerage, or contingent fee; and (b) neither in exchange for assistance in CM's procurement of this

Agreement or otherwise in connection herewith, shall CM, directly or indirectly, give anything of value, either as compensation, gift or gratuity, to any agent, representative, officer or employee of the Authority or to any officer or employee of the State of New Jersey or to any other person, firm or organization.

- 15.14 **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. Each individual who executes this Agreement certifies and affirms that he/she is fully authorized to do so on behalf of the Party for whom he/she has signed and that his/her signature duly binds said Party.
- 15.15 **Office of the State Comptroller.** The Office of the State Comptroller, the Office of the State Inspector General, or any other State inspecting or oversight agencies may, at their discretion, investigate, examine and inspect the activities of CM and all other parties involved with the Project relating to the design, construction and financing of the Project and to the implementation of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The Office of the State Comptroller, the Office of the State Inspector General, or any other State inspecting or oversight agencies may require CM or any other party involved with the Project to submit duly verified reports which shall include such information and be in such form as they may require. In addition to the foregoing, the Office of the State Comptroller, the Office of the State Inspector General, or any other State inspecting or oversight agencies may investigate, examine, inspect, or audit in any manner and at such times as they may deem necessary. CM shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the Office of the State Comptroller, the Office of the State Inspector General, or any other State inspecting or oversight agencies, in their discretion, to investigate, examine, inspect or audit in any manner and at such times as they may deem necessary. Pursuant to N.J.S.A. 52:15C-14d, CM shall maintain all documentation related to products, transactions or services under this contract for a period of at least 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,
- 15.16 **Limitation of Liability.** Whether as a result of breach of Contract, tort (including negligence), or otherwise, the Authority will not be liable to the CM for any special, consequential, incidental, or penal damages, including, but not limited to, loss of profit or revenues, loss of rental value for CM-owned equipment, damages to associated equipment, cost of capital, punitive damages or interest of any nature.
- 15.17 **Security Clearance.** CM and all of its personnel, as well as all Professional Services Consultants, and Subconsultants, and their personnel, shall be subject to such security clearance at the Project as the Authority may require.
- 15.18 **Captions & Titles.** Captions and titles of the different Sections of this Agreement are solely for the purpose of aiding and assisting in the location of different material in

this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

15.19 **Words of Obligation or Duty.** Whenever in this Agreement any words of obligation or duty regarding any Party are used, they shall have the same force and effect as if stated in the form of an express covenant.

15.20 **No Individual Liability.** No personal liability arising out of this Agreement shall accrue against any individual, officer, director, employee, shareholder, representative or fiduciary of the Parties.

15.21 **Parties are not Joint Venturers or Partners.** Nothing contained in this Agreement shall be construed to mean that CM and the Authority are joint venturers or partners.

15.22 **Notice of State Vendor Set-Off For State Tax**

15.22.1 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.

15.22.2 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.

15.23 **All Services to be Performed in the United States.** CM shall have a continuing duty to comply with Executive Order No. 129 (2004) ("EO 129"), and with P.L. 2005, c. 92, as applicable. By executing this Agreement, CM agrees that all Services performed by CM and/or its Subconsultants pursuant to this Agreement shall be performed within the United States. If, during the Term, CM or a subcontracted firm proceeds to shift the performance of the Services outside of the United States, CM 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.

- 15.24 **Equal Pay Act Compliance.** The 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

Union City New 7-9 School

Contract No. HU-0029-M01

APPENDIX A

SUPPLEMENTARY CONDITIONS

A.1 Notices.

Notices to the Parties pursuant to Section 15.1 of the Agreement shall be addressed as follows:

To Authority: New Jersey Schools Development Authority
32 East Front Street
P.O. Box 991
Trenton, NJ 08625-0991
Attention: Manuel Da Silva

To Construction Manager: ADDRESS

Attention:

A.2 Allowance Categories and Allowance Amounts.

1. Testing and Inspection Allowance Services: Allowance Amount \$350,000

CM shall provide Testing and Inspection Services for the Project as directed or requested by the Authority. Such Services shall be performed and compensated as Allowance Services in accordance with the provisions of Sections 4.11, 4.13, 4.14 and 4.15 of this Agreement. This Allowance shall also be used for payment of the direct costs or fees for Special Inspections, but shall not be used to compensate CM for the costs of scheduling or coordinating such Special Inspections, as indicated in Section 4.11.4 of the Agreement (“Coordination and Scheduling of Special Inspections”).

2. Cleaning Services: Allowance Amount \$20,000

An Allowance for the provision of Cleaning Services for the Project, as directed or requested by the SDA in writing. The Cleaning Services provided pursuant to this Cleaning Services Allowance shall be provided and procured by, and subcontracted to, the CM, and are distinct and separate from those provided by the General Contractor pursuant to the General Construction Construct Documents. The Cleaning Services provided pursuant to this Allowance, if requested, may occur at a time as directed in

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writing by the SDA, and shall be performed and compensated as allowance Services in accordance with 4.15 of this Agreement. This Allowance shall be used for payment of the direct costs or fees for Cleaning Services Allowance Services and the costs of CM's procurement, scheduling, coordinating, supervision and management of such Services.

3. FFTE Services: Allowance Amount \$15,000

An Allowance for the provision of FFTE Services for the Project, as directed or requested by the SDA in writing. The FFTE Services provided pursuant to this Allowance shall be provided by the CM, and are distinct and separate from those coordination activities in accordance with 4.10 of this Agreement. The FFTE Services provided pursuant to this Allowance, if requested, may occur at a time as directed in writing by the SDA, and shall be performed and compensated as allowance Services in accordance with 4.15 of this Agreement. This Allowance shall be used for payment of the direct costs or fees for an FFTE Coordinator to be on site for the delivery and receipt of FFTE equipment. The FFTE Coordinator would receive all FFTE, confirming delivery against the FFTE purchase orders, and making any appropriate submissions or entries utilizing the Authority's FFTE Receiving Software. The FFTE Coordinator shall verify quantities, note on the delivery paperwork and bills of lading any shortfalls, backorders and/or damages, and shall signoff and safeguard all delivered furniture. If there are any shortfalls, back orders and/or damages, the FFTE Coordinator shall prepare an exception list detailing each missing, backordered or damaged item, and noting the room number/location for each such item. The FFTE Coordinator shall prepare and immediately transmit the exception list in both paper and electronic format (utilizing the FFTE Receiving Software, as appropriate) to the designated FFTE Contact listed on the purchase order. Upon completion of FFTE deliveries, the FFTE Coordinator shall e-mail a copy of the delivery documents, along with a completed NJSDA FFTE Delivery Transmittal Form to the Authority's Project Manager and FFTE Staff, and shall make any and all appropriate notations and submissions using the Authority's FFTE Receiving Software. In addition, the FFTE Coordinator shall incorporate copies of the purchase orders, original delivery documentation and any supporting materials in the FFTE Binder. This binder shall serve as the project close-out documentation that will be handed over to the district as part of the closeout process.

A.3 Modifications to Terms of CM Agreement.

None.

Union City New 7-9 School
Contract No. HU-0029-M01

APPENDIX B

**TERM OF AGREEMENT AND
PROJECT DESCRIPTION**

TERM OF CM AGREEMENT:

The Term of this Agreement shall be from the Effective Date and shall extend until all obligations of the CM 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.

1. Indefinite Term. The Term of this Agreement is indefinite, and is dependent upon the actual length of the construction duration of the Project, and the time needed for CM to complete Close-Out Services.
2. Construction Phase is Indefinite. This Agreement contemplates that the CM will provide Construction Administration Services and other Basic Services during the Construction Phase of the Project, which Phase commences on or about the time of the Authority's issuance to the Contractor of the Construction Notice to Proceed for the Project, and extends until the Contractor achieves Substantial Completion (as that term is defined in the Construction Contract Documents) for the Project.
3. Anticipated Duration of Construction. At the time of advertisement of this procurement, the Construction Phase for the Project is currently anticipated as a thirty-four month duration, but this duration may be increased or decreased, depending upon the actual length of time needed to achieve Substantial Completion on the Project.
4. Close-Out Services. Notwithstanding the foregoing, CM's engagement also includes an unspecified duration for the performance of close-out and contract completion tasks ("Close-Out Services"), the timing and length of which close-out period shall be dependent upon the CM's effectiveness in completing the Close-Out obligations of this Agreement.
5. Procurement of Special Inspectors. CM's engagement also includes services relating to the procurement of Special Inspectors, the performance of which may precede the performance of Construction Administration Services, or which may be performed simultaneously with the Construction Administration and other Basic Services under the Agreement. The commencement of the procurement of Special Inspectors shall be at the sole discretion of the Authority.

Union City New 7-9 School
Contract No. HU-0029-M01

PROJECT DESCRIPTION:

| | |
|-----------------------------------|---------------------------|
| Construction Contract No.: | HU-0029-B01 |
| Contract Name: | Union City New 7-9 School |
| Contractor: | TBD |
| District: | Union City |
| Anticipated NTP for Construction: | July 18, 2022 |
| Anticipated NTP for CM Services: | September 9, 2022 |

Brief Description of Work:

Construction Management (CM) services for a new 130,000 square foot facility educating approximately 827 students in grades Seven through Nine. The building will encompass six stories and approximately 130,000 square feet. The associated site improvements will include a play area, a service yard and a pedestrian walkway between 36th Street and 37th Street. The Project will be constructed on property owned by Union City Public Schools and the Authority. Site work includes site preparation, liquid and gas site utilities improvements, site electrical improvements, as well as earthwork and installation of play areas, paving, fencing, exterior walks, stairs and ramps, and retaining walls.

CM shall, as the Authority's Project administrator, consultant and adviser, furnish, on a daily, continuous, competent, non-negligent, efficient and economical basis, the following: administration, management, monitoring, supervision and inspection of the Project, as well as oversight of Contractor's scheduling and coordination of the Services and Work, and shall provide appropriate and effective supervision to ensure the satisfactory, timely and complete performance of CM's Field Staff.

Note: This project will be governed by the NJSDA PLA.

Status of Project/ Project Schedule:

The advertisement of the contract for Design-Build Services for the Union City New 7 through 9 School in Union City, New Jersey was on November 15, 2021.

The Project is anticipated to achieve Substantial Completion within 1,066 calendar days from the Commencement Date, and is anticipated to achieve Final Completion within 1,155 calendar days of the Commencement Date.

Union City New 7-9 School
Contract No. HU-0029-M01

Key Dates (Anticipated):

The Project milestones listed below are anticipated at this time and subject to change:

| | |
|-----------------------------|--------------------|
| NTP Construction & Sitework | July 18, 2022 |
| NTP CM Services | September 9, 2022 |
| Substantial Completion: | June 18, 2025 |
| Final Completion | September 15, 2025 |

Additional NJSDA Consultants and Contractors:

| | |
|--------------------|-------------------------|
| Design Consultant: | French and Parello |
| | 1800 NJ-34, Suite 101 |
| | Wall Township, NJ 07719 |

APPENDIX C

TOTAL COMPENSATION AMOUNT – PRICE PROPOSAL

{See the Attached Sheets}

APPENDIX D

CERTIFICATE(S) OF INSURANCE

{See the Attached Sheets}

APPENDIX E

OTHER DOCUMENTATION

{See the Attached Sheets}

- 1. BUSINESS REGISTRATION**
- 2. PL 2005, CHAPTER 51 APPROVAL**
- 3. SBE/DVOB APPROVAL**
- 4. EO129 CERTIFICATION**
- 5. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**
- 6. ADDENDA (IF ANY)**
- 7. ADVERTISEMENT**
- 8. NOTICE OF AWARD**

APPENDIX F

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 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

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at 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. 17:17-1.1 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

DESIGN-BUILD INFORMATION PACKAGE (DBIP)

{DBIP to be made available via NJSDA's secure FTP site to Firms submitting a valid Notice of Intent to Participate in accordance with the terms of this RFQ/RFP}