

**NEW JERSEY SCHOOLS DEVELOPMENT  
AUTHORITY**

**MASTER AGREEMENT FOR GENERAL  
CONSTRUCTION SERVICES**

**GENERAL CONDITIONS**

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## 1.0 DEFINITIONS

- 1.1 “Authority”, “New Jersey Schools Development Authority”, or “NJSDA” means the public body corporate and politic established in, but not of, the Department of Treasury pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:17G-1 et seq. The Authority is the Party that has engaged the Contractor pursuant to the Contract. The definition of “Authority” includes the employees and designated agents of the NJSDA.
- 1.2 “Authority having Jurisdiction” means any local, State, national or Federal entities with jurisdiction over the Project and the Contractor.
- 1.3 “Authority’s Project Manager” means the Authority’s employee representative for the Project who administers the Contract and manages the Project on behalf of the Authority. The Authority’s Project Manager shall have that authority specified in the Levels of Operating Authority Policy which document can be found on the Authority’s website:

[https://www.njsda.gov/njsda/BM/Operating\\_Authority.html](https://www.njsda.gov/njsda/BM/Operating_Authority.html)

- 1.4 “Certified Clean Fill” means fill that is used for remedial purposes which is: 1) supported by analytical testing data and analysis demonstrating that the fill material does not contain constituents of concern in excess of NJDEP Soil Remediation Standards; or 2) supported by documentation in accordance with NJDEP Technical Requirements for Site Remediation (7:26E and the NJDEP Fill Material Guidance for SRP Sites, April 2015, Version 3.0). This documentation shall be in the form of a written certification provided by the supplier of the fill stating: (a) that the fill is clean, virgin material from a commercial or non-commercial source, or is decontaminated recycled soil; (b) the name of the affiant and relationship to the source of the fill; the location where the fill was obtained, including the street, town, lot and block, county, and state, and a brief history of the site which is the source of the fill; and (c) a statement that to the best of the affiant's knowledge and belief the fill being provided is not contaminated pursuant to any applicable remediation standards and a description of the steps taken to confirm such.
- 1.5 “Change in the Work” means a change in the Work or the Contract Documents, including, but not limited to, an increase or decrease in the scope of the Work, or an acceleration of time for the performance of the Work, or a change in the sequence in which the Work is to be performed.
- 1.6 “Change Order” means, for a Project procured on a lump-sum basis, a written order directing or authorizing a Change in the Work executed by the Authority



and the Contractor and shall include adjustments, if any, to the Contract Price and extensions of time, if any, to the Contract Time.

- 1.7 “Claim” means a demand by the Contractor for (1) a time extension which is disputed by the Authority or (2) the payment of money or damages, arising from work performed by or on behalf of the Contractor in connection with the Contract Documents, which is disputed by the Authority.
- 1.8 “Commencement Date” or “NTP Date” means the date set forth in the Notice to Proceed on which the Contractor shall begin performing Work pursuant to the Contract Documents.
- 1.9 “Commissioning Authority” or “CxA” means the person, persons or firm engaged by the Authority or the Contractor to provide full building commissioning of the Project.
- 1.10 “Compensation” means payment(s) due to the Contractor for Work performed under the Contract Documents.
- 1.11 “Construction Change Directive” or “CCD” means a written order by the Authority directing or authorizing some change to the Contract Documents for which Compensation and/or Contract Time extension, if appropriate, has not yet been determined. Upon agreement on Compensation and/or Contract Time extension, for a CCD, if any, a Change Order shall be issued resolving the CCD.
- 1.12 “Construction Management Firm” or “CM” means the firm, if any, that may be engaged by the Authority to act as the Authority’s representative on the Project, and to provide construction management services, including oversight and reporting services in connection with the construction of the Project. If a CM is engaged for the Project, the Authority will identify the CM in the Supplementary Conditions by the Effective Date of the Contract or by other means if a CM such is engaged during the Term. In the event that the Authority elects not to engage a Construction Manager for the Project, the term “Construction Manager” as used herein shall be understood to refer to the Authority’s identified Project representative.
- 1.13 “Construction Milestones” mean the dates identified in the Project Schedule by which the Contractor must complete certain critical activities in construction of the Project
- 1.14 “Contract” or “Agreement” means the agreement executed between the Contractor and the Authority.
- 1.15 “Contract Change Request” or “CCR” means a written request by the Contractor for a modification to the Contract Documents or an extension of Contract Time,

or for a Project procured on a lump-sum basis, an adjustment in the Contract Price.

- 1.16 “Contract Documents” means the Contract executed between the Authority and the Contractor, together with the General Conditions, Supplementary Conditions, Plans, Specifications, Scope of Work, the Request for Qualifications and/or the Request for Proposals, Instructions To Bidders and Addenda, price and technical proposals, Change Orders, other amendments, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials.
- 1.17 “Contract Price” means, for a Project procured on a lump-sum basis, the amount stated in the Contract, as it may be adjusted in accordance with the Contract Documents, representing the total amount payable by the Authority to the Contractor for performance of the Work.
- 1.18 “Contract Time” means the number of calendar days within which the Contractor is required to achieve Substantial Completion. The Contract Time is calculated from the Commencement Date.
- 1.19 “Contractor” means that person, persons, firm, firms, joint venture or other entity engaged by the Authority for construction of the Project in accordance with the Contract Documents.
- 1.20 “Contractor’s Project Manager” means that person designated by the Contractor to serve as its representative for the Project and the Contract and who shall have the non-exclusive authority to bind the Contractor in all matters relating to the Contract Documents.
- 1.21 “Cost Multiplier” means the factor that modifies the amounts claimed as Time and Materials Costs on the Project, and which, when applied to the Time and Materials Costs for the Work, is intended to compensate the Contractor for all indirect costs for the Project, including, but not limited to the following: profit; insurance costs; home office labor costs, fringe benefits and labor burden; facilities costs; depreciation; and general and administrative costs.
- 1.22 “Day” means calendar day, unless otherwise specifically defined.
- 1.23 “DCA” means the New Jersey Department of Community Affairs.
- 1.24 “Design Consultant” means the architect, engineer or other licensed Professional Services Consultant engaged by the Authority to provide services, including oversight of construction for conformance with design, Submittal review and reporting, in connection with the design and construction of the Project.
- 1.25 “Design Manual” means the latest edition of the NJSDA’s 21st Century Schools Design Manual available at the time the Contract is executed by the Parties.

- 1.26 “Directive” means an order by the Authority directing the Contractor to perform Work under the Contract Documents. A Directive by the Authority requires the Contractor to perform the directed Work, even if there remains a dispute as to whether the Directive constitutes a Change in the Work or warrants additional Compensation.
- 1.27 “DOE” means the New Jersey Department of Education.
- 1.28 “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.
- 1.29 “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.
- 1.30 “Effective Date” means the date on which the Contract has been fully executed by the Parties.
- 1.31 “ELEC” means the New Jersey Election Law Enforcement Commission established pursuant to N.J.S.A. 19:44A-5, et seq.
- 1.32 “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.
- 1.33 “Final Completion” means that point in time on the Project when the Project is 100% complete and: (i) all requirements of the Contract Documents have been completed, (ii) all items on the Punchlist have been performed, (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, or a Certificate of Acceptance, as applicable, has been issued by DCA.
- 1.34 “Force Majeure Event” means an unforeseeable event beyond the control of the Contractor that is not due to an act or omission of the Contractor (or any Subcontractor or other person or entity for which the Contractor may be contractually or legally responsible) that materially and adversely affects the

Contractor's obligations under this Agreement to the extent that such event (or the effects thereof) could not have been avoided or mitigated by due diligence and use of reasonable efforts by the Contractor. Force Majeure Events may include wars, floods, hurricanes, tornadoes, acts of terrorism, earthquakes, and other acts of God.

- 1.35 "Impacted Materials" means fill or other materials that contain compound concentrations in excess of NJDEP Residential Direct Contact Soil Remediation Standards.
- 1.36 "Imported Fill" means fill transported onto a Project Site from an off-site location for use in the performance of Work associated with a Project Site, including but not limited to, the backfilling of utility trenches and basements, construction of play areas and play fields, construction of engineered soil caps, changing the topographic elevation of a Project Site, or backfilling of excavations.
- 1.37 "Invoice" means a request for payment submitted by the Contractor to the Authority requesting payment for a portion of the Contractor's Work completed during each month.
- 1.38 "Legal Requirements" means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the Contractor's performance of the Work under the 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.
- 1.39 "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 the time of execution of this Agreement. (See <https://www.njsda.gov/njsda/Design/MSS.html>)
- 1.40 "Not to Exceed Amount" means the amount listed in the Notice of Award for a Project bid on a time and materials basis, which amount represents the maximum that may be paid against a Contractor's invoices on the Project, unless an adjustment of the Not to Exceed Amount is specifically authorized by the Authority.
- 1.41 "Notice of Award" means a notice from the Authority to the Contractor that its bid has been accepted and that the Authority intends to enter into a contract with the Contractor for the work set forth in the Request for Proposals, upon submission of additional materials specified in the Notice of Award.

- 1.42 “Notice to Proceed” or “NTP” means a written notice from the Authority to the Contractor authorizing the Contractor to proceed with the Work or a specific portion thereof, and setting the Commencement Date on which the Contractor shall begin performing such Work.
- 1.43 “Parties” means the Authority and the Contractor.
- 1.44 “Product data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system proposed for use in some portion of the Work.
- 1.45 “Professional Services Consultants” means consultants providing professional 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.
- 1.46 “Project” means the demolition, construction, improvement, repair, alteration, modernization, renovation or reconstruction of all or any part of the School Facility identified in the Contract Documents or of any personal property necessary for or ancillary to the School Facility identified in the Contract Documents.
- 1.47 “Project School District” means the school district in which the Project is located.
- 1.48 “Proposal” means a written description of certain proposed Work, setting forth the price and time adjustments, if any, necessary to perform the proposed Work, prepared by the Contractor in response to a “Proposal Request” issued by the Authority recognizing a contemplated change to the Construction Contract.
- 1.49 “Proposal Request” means a written request issued by the Authority recognizing a contemplated change to the Construction Contract and seeking the Contractor’s Proposal for the performance of Work to accomplish the contemplated Change in the Work.
- 1.50 “Punchlist” means the list of incomplete or defective Work to be performed or remedied by the Contractor to fully complete the Project. The Punchlist shall not include items that are necessary to be completed in order to secure a Temporary Certificate of Occupancy.
- 1.51 “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.

- 1.52 “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.
- 1.53 “Safety Manual” means the latest edition of NJSDA’s Safety Manual available at the time this Agreement is executed by the Parties.
- 1.54 “Sample” means physical examples that illustrate materials, equipment or workmanship, and establish standards by which the Work will be judged
- 1.55 “Schedule” means the approved bar chart schedule prepared and submitted by the Contractor to the Authority in accordance with Section 5.4 herein and Section 01310 of the Specifications, wherein the Contractor identifies all critical and certain non-critical activities, including Construction Milestones and the projected and actual time periods for completing such activities and Construction Milestones.
- 1.56 “Schedule of Values” shall mean an itemized list prepared by the Contractor that establishes the value allocated to the various portions of the Work and supported by such substantiating data as the Authority may require. If accepted by the Authority, this Schedule of Values shall be used as a basis for the Contractor's Invoices. .
- 1.57 “School Facility” means and includes any structure, building or facility used wholly or in part for academic purposes, and any property, structure, or area ancillary or appurtenant thereto.
- 1.58 “Shop drawings” means drawings, diagrams, schedules and other data prepared specifically for the Work by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work
- 1.59 “Site” means the geographical location of the site(s) proposed or selected for the Project.
- 1.60 “Specifications” means a written description attached hereto and made a part hereof setting forth the detailed, technical and functional characteristics of, or the discrete design for, an item of material, equipment or Work to be incorporated

into the construction, or a requirement of the Work to be performed under the Contract. The Specifications may include a statement of any of the Authority's requirements and may provide for inspection, testing or the preparation of a construction item before procurement.

- 1.61 "State" means the State of New Jersey.
- 1.62 "Subcontractor" means the party to whom the Contractor or other subcontractor subcontracts part or all of the Work for which the Contractor or other subcontractor is ultimately responsible. As used in this Agreement, the term "Subcontractor" shall include sub-subcontractors of any tier.
- 1.63 "Submittal" means documents or other tangible items required to be prepared by the Contractor for review by the Design Consultant, CM and/or the Authority. Examples of Submittals include, but are not limited to, shop drawings, product data and samples.
- 1.64 "Substantial Completion" means that point in time on the Project when all of the following have occurred: (i) all essential requirements of the Contract Documents have been performed so that the purpose of the Contract Documents is accomplished; (ii) a Certificate of Occupancy or Temporary Certificate of Occupancy has been issued by the Department of Community Affairs; (iii) the Punchlist has been created; (iv) there are no material omissions or technical defects or deficiencies, as identified by the Authority; and (v) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.
- 1.65 "Substantial Completion Date" means the date the Contractor is required to achieve Substantial Completion as identified in the Contract Documents.
- 1.66 "Supplementary Conditions" means any supplemental or additional general conditions that may be attached to this Contract and/or that apply to the Work, and which add to or modify the terms herein.
- 1.67 "Temporary Certificate of Occupancy" means the document issued to the Contractor by the Department of Community Affairs.
- 1.68 "Term" means the duration of this Contract, which shall be from the Commencement Date and shall extend until all obligations of the Contractor to perform Work pursuant to the Contract Documents have been performed to the satisfaction of the Authority, unless extended or sooner terminated as set forth in this Agreement.
- 1.69 "Time and Materials Costs" means the direct costs of labor and materials as defined and limited by Section 13.2 of this Agreement, including direct labor, labor fringe benefits, labor burden costs, bonds and insurance, materials, equipment and subcontractor and disposal costs as more specifically defined in

that Section. Time and Materials Costs shall not include indirect costs such as overhead and profit.

- 1.70 “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 Subcodes, as amended from time to time.
- 1.71 “Work” means all work performed by the Contractor and its Subcontractors and suppliers, including providing all material, equipment, tools, labor, services, transportation and supplies, as described in and reasonably inferable from the Contract Documents, including all efforts necessary or appropriate to achieve Substantial Completion and Final Completion.

## **2.0 INTERPRETATION AND INTENT**

### **2.1 Intent**

This Agreement is intended to permit the Parties to complete the Work and all obligations required by the Contract Documents within the Contract Time, and if the contract was procured on a lump-sum basis, for the Contract Price. The terms of this Contract are intended to be complementary and interpreted in harmony so as to avoid conflict.

### **2.2 Interpretation**

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes," and "include" shall be deemed to be followed by the words "but not limited to;" unless otherwise indicated, references to articles, sections, appendices or schedules are to this Contract; words such as "herein," "hereof," "hereunder," and "foregoing" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined, which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; and words of any gender used herein shall include the other gender, where appropriate. When two or more interpretations of the same requirement of the Work exist, the most stringent, as determined by the Authority in its sole discretion, shall apply. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.



### **2.3 Referenced Standards**

Unless otherwise specified by the Authority, any reference in the Contract Documents to a publication, statute, code section, regulation or other reference shall be deemed to mean the latest edition or revision thereof, including amendments and supplements thereto.

### **2.4 Notification of Errors in the Contract Documents**

The Contractor shall promptly notify the Authority of all obvious, patent and readily observable errors, omissions, inconsistencies or other defects (including inaccuracies) which it may, or reasonably should, discover in the Contract Documents. The Contractor may be requested to provide written recommendations regarding changes or corrections to resolve any such error, omission, inconsistency, conflict or other deficiency. The Contractor must obtain the Authority's acceptance before proceeding with the Work thereby affected by any such obvious, patent and readily observable error, omission, inconsistency, conflict or other deficiency. The Contractor shall not make a claim premised upon any obvious, patent and readily observable error, omission, inconsistency or defect in the Contract Documents, unless the Contractor has first provided appropriate and timely notice to the Authority of such error, omission, inconsistency, conflict or other deficiency.

### **2.5 Approvals, Acceptances, Consents and Determinations of the Authority**

In all cases where acceptances, approvals, consents or determinations are required to be provided under the Contract Documents, such acceptances, approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably, except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an acceptance, approval, consent, determination or other decision, such decision shall not be subject to dispute resolution hereunder.

### **2.6 Plans and Specifications**

- 2.6.1 All Work performed shall be in conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, shown in the Contract Documents. The Plans shall consist of general drawings and shall show such details as are necessary to give a comprehensive representation of the construction contemplated. Omissions from the plans or Specifications of details of Work which are reasonably inferable to carry out the intent of the Contract Documents, or which are customarily included, shall not relieve the Contractor from including such omitted details of Work, and they shall be included as if fully and correctly set forth and described in the Plans and Specifications, without entitlement to a Change Order hereunder. Only where the Contract Documents

specifically describe a portion of a Project as being performed by others is such portion deemed not to constitute part of the Contractor's responsibility.

- 2.6.2 The parties realize that in performing the Work, field conditions may require modifications in the Plans, Specifications and quantities of Work involved. Work must be performed in accordance with these field conditions to the satisfaction of the Authority and in accordance with its directions and the Contract Documents.
- 2.6.3 The Contractor shall maintain at least one set of the DCA-approved Plans and Specifications on site at all times.

## 2.7 **Order of Precedence**

Each document that comprises the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The documents comprising the Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the event of any conflict among the documents comprising the Contract Documents, they shall be considered in the following descending order of precedence:

- (a) Executed Change Orders
- (b) Special and Supplementary Conditions
- (c) Contract and General Conditions
- (d) Specifications
- (e) Large Scale Drawings
- (f) Small Scale Drawings

In the event there is a conflict between terms or provisions contained in any of the above-referenced Contract Documents, the Contractor will provide the more stringent standard or the higher quality of work, which shall be determined by the Authority in its sole discretion.

## 3.0 **THE AUTHORITY'S RESPONSIBILITIES**

- 3.1 The Authority is responsible for the administration of the Contract. The Authority will decide all questions regarding the quality and acceptability of the Work, all questions regarding interpretation of the Contract Documents, all questions regarding the Contractor's compliance with the Contract Documents, and all questions as to Compensation and requests for time extensions.
- 3.2 The Authority shall designate, in writing, one or more representatives who shall have express authority to bind the Authority with respect to certain matters requiring the Authority's approval, acceptance or authorization under the Contract

Documents, except that any such approval shall be subject to the limits of the Authority's Policy on Levels of Operating Authority.

- 3.3 Unless otherwise provided in the Contract Documents, upon Contract award, the Authority will furnish to the Contractor, free of charge, six (6) copies of the Contract Documents, and any additional instructions by means of addenda, supplemental drawings, manuals or other documents reasonably necessary for the proper execution of the Work.
- 3.4 The Authority and its Professional Services Consultants shall provide all information and responses required pursuant to the Contract Documents with reasonable promptness in order to permit orderly progress of the Work.
- 3.5 The Authority shall pay for the New Jersey Uniform Construction Code building permit, and assist the Contractor in obtaining this permit, which the Contractor shall be responsible to apply for and obtain. The Authority shall not be responsible for obtaining or paying for any other permits, licenses, approvals, government charges or inspection fees required by any governmental or quasi-governmental Authority Having Jurisdiction over the Project except that the Authority, directly or through an Allowance to the Construction Manager, shall be responsible to pay the fees for special inspectors for the Project.
- 3.6 The Authority will furnish pre-construction surveys describing the Project Site, as applicable. The Contractor shall be entitled to rely on the accuracy of this information, but, to the extent that the Contractor discovers, or could have discovered, through its pre-bid Site inspection described in Section 4.4.2, obvious, patent and readily observable information in conflict with any such Authority-furnished survey information, the Contractor shall not be entitled to a Change Order for any costs or delays relating to such a conflict.
- 3.7 Should the Authority determine that a separate Construction Management firm will not be retained for this Project, throughout the provisions of this Agreement, all references to the Construction Manager shall be interpreted as referring to the Authority or the Design Consultant as its designee.

#### **4.0 CONTRACTOR'S RESPONSIBILITIES**

##### **4.1 Responsibility for the Work and Performance as Directed**

- 4.1.1 The Contractor shall furnish all construction and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate to complete the Work in accordance with the requirements of the Contract Documents, the Plans and Specifications, the Project Schedule, all Legal Requirements, the accepted Quality Assurance and

Quality Control program, the accepted Contractor's Safety Plan, , taking into account the physical limits of the Site, and all other applicable constraints affecting each Project, so as to achieve Substantial Completion and Final Completion on or before the deadlines specified herein, and otherwise perform the Work in a timely manner in accordance with the Contract Documents.

- 4.1.2 The Contractor shall supervise and be solely responsible for the acts and omissions of the Contractor's employees, agents, officers, Subcontractors, Professional Service Consultants and any other persons performing portions of the Work for the Contractor, as though all such persons were directly employed by the Contractor.
  - 4.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by reviews, tests, inspections or approvals performed by any person, or by the failure of any person to take such action.
  - 4.1.4 At all times during the Contract Term, including during the course of, and notwithstanding the existence of any dispute, the Contractor shall perform as directed by the Authority, in a diligent manner and without delay, shall abide by the Authority's decision or order, and shall comply with all applicable provisions of the Contract Documents. The Authority may issue a formal Directive to the Contractor to enforce the Contractor's obligation to perform Work required by the Contract Documents. Such Directives from the Authority do not constitute a change to the scope of the Work or Services and will not result in an increase in the Contract Price (if the Project was procured on a lump-sum basis) or an adjustment to the Contract Time. The Contractor shall perform the Work described in the Directive, even if the Contractor disputes that such Services or Work are required by the Contract Documents, and any claims resulting from such Directives may be asserted and processed in accordance with the claims provisions provided in this Agreement.
- 4.2 **Permits.** Except as explicitly identified in Section 3.5, the Contractor shall obtain and pay for all permits, fees, approvals, licenses, government charges and inspection fees necessary for the proper execution and completion of the Work and/or required for the Project by any government or quasi-government Authority Having Jurisdiction over the Project, including, but not limited to, soils erosion permits, construction trailer permits, water permits, utility permits and street opening permits.
- 4.3 **Pre-Construction Conference.** The Contractor is required to attend and participate in a Pre-Construction Conference with the Authority, its Project Manager, the Design Consultant and representatives of major Subcontractors. The anticipated agenda for the Pre-Construction Conference shall include, but not

be limited to, a review of the Contract Documents, a discussion of Subcontractors, key personnel, the Project Schedule and the Contractor's Safety Plan, and procedures for processing field decisions, Submittals, substitutions, invoices and change orders. The Authority or the Construction Manager shall schedule the Preconstruction Conference within ten (10) Days of the Construction Notice to Proceed. The Contractor shall submit its Safety Plan at, or in advance of, the Preconstruction Conference.

#### 4.4 **Review and Inspection of Contract Documents and Site.**

4.4.1 Review of Documents. The Contractor acknowledges that, prior to submitting its bid on the Project, it carefully studied and reviewed all Documents relevant to the Project that have been prepared and furnished by the Authority, including but not limited to, the Contract Documents, any geotechnical reports or surveys of the Site, and, if applicable, the Remedial Action Work Plan. If at any time during the Term of the Contract, the Contractor requires information or documentation that has not been provided by the Authority, but is only available to the Authority, the Contractor must request such information from the Authority. Failure to request and review such information waives any Claim by the Contractor that such information was necessary to fulfill its obligations pursuant to the Contract Documents and/or this Agreement. At all times during the duration of the Contract, the Contractor shall promptly notify the Authority of all obvious, patent and readily observable errors, omissions, inconsistencies or other defects (including inaccuracies) which it may, or reasonably should, discover in the Contract Documents. The Contractor may be requested to provide written recommendations regarding changes or corrections to resolve any such error, omission, inconsistency or defect. The Contractor must obtain the Authority's acceptance before proceeding with the Work thereby affected by any such obvious, patent and readily observable error, omission, inconsistency or defect. The Contractor shall not make a claim premised upon any obvious, patent and readily observable error, omission, inconsistency or defect in the Contract Documents, unless the Contractor has first provided appropriate and timely notice to the Authority of such error, omission, inconsistency or defect.

4.4.2 Review of Project Site. The Contractor further acknowledges that, prior to submitting its bid (or proposal), in accordance with prudent and generally accepted construction practices, it inspected and examined the Project Site and surrounding locations and undertook other appropriate activities sufficient to familiarize itself with the readily observable conditions at the Site. As a result, the Contractor warrants that it is familiar with and accepts the physical requirements of the Work.

- 4.5 **Quality Assurance / Quality Control Program.** The Contractor shall have full responsibility for quality assurance and quality control through Final Completion of the Project. The Contractor shall prepare and submit to the Authority a detailed Quality Assurance/ Quality Control (QA/QC) Program at or prior to the Preconstruction Conference. The Authority shall review the Contractor's QA/QC Program and will either accept or reject the Contractor's QA/QC Program within fifteen (15) Days of receipt. If the Authority rejects the Contractor's QA/QC Program, the Contractor shall revise and resubmit the QA/QC Program to the Authority until it is accepted. Once the QA/QC Program is accepted, the Authority shall monitor the Contractor's compliance with the Program to ensure that the Work meets or exceeds the accepted QA/QC Program. As part of the Contractor's QA/QC Program, the Contractor shall designate one (1) full-time employee whose responsibility it is to maintain and monitor the Contractor's compliance with its accepted QA/QC Program. If the Contractor's Work fails to meet the accepted QA/QC Program, the Authority will implement a course of action to address the Contractor's failure to comply with its QA/QC Program. The Authority's actions to verify the Contractor's compliance with its QA/QC Program shall not relieve the Contractor of its obligation to establish a QA/QC Program, comply with the QA/QC Program or meet the requirements of the Contract Documents. The Contractor's failure to comply with the requirements of this Section 4.4 shall be deemed an Event of Default under this Agreement. Such Event of Default may trigger Default remedies as stated in Section 11.2.
- 4.6 **Project Meetings.** The Contractor's Superintendent and Project Manager are required to attend weekly construction meetings throughout the progress of the Work. The anticipated agenda for the weekly construction meetings shall include, but not be limited to, a review of the Contractor's progress and daily manpower, field observations and problems, review of Submittals, Project Schedules and delivery Schedules, proposed Changes and Change Orders, and other issues relating to the Work. The Authority's Project Manager shall be responsible for scheduling and administering the weekly construction meetings, providing advance notice of the meetings and distributing meeting minutes.
- 4.7 **Safety Program.** The Contractor shall have full responsibility for safety at each Project Site at all times prior to Substantial Completion of the Project. The Contractor shall provide and comply with a Project safety program, meeting all of the requirements contained in the Supplementary Conditions, and Article 14 herein, including the submission of an appropriate Safety Plan at or before the Preconstruction Conference.
- 4.7.1 The Authority has implemented an OCIP in accordance with N.J.S.A. 18A:7G-44. The Contractor and its subcontractors shall be required to cooperate with the insurance carriers risk control engineer's safety issues and/or related recommendations.

- 4.8 **Monthly Status Report.** On or before the tenth day of the month, the Contractor shall provide the Authority and the Design Consultant with a monthly status report detailing the progress of its Work, including (i) the actual progress of the Work for the prior month according to the Schedule; (ii) discrepancies, conflicts, or ambiguities that exist in the Contract Documents that require resolution; (iii) health and safety issues that exist in connection with the Work; (iv) notice of potential Claims; and (v) other items that require resolution in order that the Contractor can complete the Work within the Contract Time.
- 4.9 **Performance as Directed.** At all times during the term of the Contract, including during the course of, and notwithstanding the existence of, any dispute, the Contractor shall perform as directed by the Authority, in a diligent manner and without delay, shall abide by the Authority's decision, or order or formal Directive, and shall comply with all applicable provisions of the Contract Documents.
- 4.10 **Site Utilization/Staging Plan.** The Contractor shall develop a Site Utilization/Logistics/Staging Plan ("Site Utilization Plan") for the entire Project Site, and shall submit the Site Utilization Plan at, or prior to, the Preconstruction Conference. The Site Utilization Plan shall identify areas of the Site available for the Contractor to accommodate all of its means and methods for completion of the Project, to ensure protection of adjacent buildings, to limit and manage impacts to the Site, and to maintain the continuity of school operations (if applicable). The Site Utilization Plan shall illustrate impacts and potential impacts to the Site. The Contractor shall provide this Site Utilization Plan, in both visual and narrative form, to the Authority for review and acceptance and shall modify this Plan, as necessary, to obtain the Authority's written approval. Once accepted by the Authority, the Contractor shall include the Site Utilization Plan in the Authority's Expedition Database, and shall keep the Site Utilization Plan current. All material and equipment must be stored as outlined by the approved plan and to the satisfaction of the Authority. Any changes or updates to the plan must be approved by the Authority. The location of a Contract waste container is to be at the discretion of the Authority for each work location. Containers must be covered at all times and removed daily when full. Debris piles or bulk storage of refuse is strictly prohibited on this project site.

## 5.0 TIME, PROJECT SCHEDULE AND PROGRESS

### 5.1 Time is of the Essence

The Contractor acknowledges that time is of the essence in this Contract.

- 5.2 **Deadlines for Substantial Completion and Final Completion.** The Contractor shall achieve Substantial Completion and Final Completion on or before the dates

set forth in the Supplementary Conditions or other Contract Documents, as those dates may be modified by approved Change Orders. Failure to achieve Substantial Completion or Final Completion by the dates established by the Contract Documents will result in the Authority's assessment of Liquidated Damages in accordance with Section 12.2.

5.2.1 Specific Durations. The dates and durations listed below shall be incorporated into the Contractor's Schedule and shall be adhered to unless modified in writing by mutual agreement between the Contractor and the Authority. The only exceptions to these durations are defined in the General Conditions under Section 8.5 "Force Majeure And Other Changes Warranting An Adjustment In The Contract Time."

A. Commencement Date: The date set forth in the written Notice to Proceed issued by the Authority.

B. Substantial Completion: Substantial Completion of the Work under the Contract Documents shall be achieved no later than the Substantial Completion Date identified in the Supplemental Conditions or the Authority's Procedural Specification 01010 ("Summary of the Work") (the "Substantial Completion Date).

C. Final Completion: : Final Completion of the Work under the Contract Documents shall be achieved no later than the Final Completion Date identified in the Supplemental Conditions or the Authority's Procedural Specification 01010 (Summary of the Work) (the "Final Completion Date).

5.3 **Contract Time/Notice to Proceed.** The Contract Time shall begin on the Commencement Date set forth in the Notice to Proceed. The Notice to Proceed will be issued by the Authority after receipt and acceptance of properly executed Contract Documents, including, but not limited to, performance and payment bonds and insurance certificates in a form acceptable to the Authority. Unless otherwise directed by the Authority in writing, the Contractor shall initiate Work within five (5) Days of the Commencement Date. The Contractor shall not be entitled to any Claim for delay, disruption, acceleration or any other Claims arising from the timing of the Authority's issuance of the Notice to Proceed. The Contractor shall perform no Work on the Project prior to the issuance of the Notice to Proceed.

#### 5.4 **Schedule**

5.4.1 Scheduling of the Work is and shall be the Contractor's responsibility. The Contractor shall determine the most feasible order for the Work commensurate with the requirements of the Contract Documents. Within four (4) Days after the Commencement Date, the Contractor shall prepare



and submit to the Authority a milestone Schedule for the execution of the Work, for review and acceptance. Within fourteen (14) Days after initial submission of the milestone Schedule, the Contractor shall submit to the Authority a Bar Chart Schedule for execution of the Work, for review and acceptance by the Authority. The Bar Chart Schedule shall indicate: (1) the dates for the start and completion of the various stages of the Work, (2) Construction Milestones; (3) critical and certain non-critical activities, (4) dates that the Contractor is required to provide Submittals to the Design Consultant and dates for the completion of review of such Submittals by the Construction Manager, Design Consultant, and the Authority in accordance with the review periods established in these General Conditions; (5) [deliberately omitted]; and (6) dates when Authority and/or Design Consultant information or acceptances are required to enable the Contractor to achieve completion of the Work within the Contract Time. The proposed Schedule shall meet the format and content requirements of Specification Section 01310 (“Schedules and Reports”). The Contractor shall include in the Schedule ample time for review of specific Deliverables by DOE and DCA, including time for receipt of comments from these entities, time for any modification of documents by the Contractor to accommodate such comments, and time for subsequent review by DOE or DCA of any modifications to the documents. Construction of the Project shall be undertaken and completed in accordance with the Project Schedule prepared by the Contractor and approved by the Authority. The Project Schedule shall, among other things, provide that Substantial Completion and Final Completion shall be achieved by the dates required by the Contract Documents.

- 5.4.2 The Authority shall review the proposed Schedule submitted by the Contractor and shall accept or reject the Schedule within five (5) Days of receipt of the proposed Schedule. Once accepted by the Authority, the Schedule shall be used by the Authority to monitor the Contractor’s progress.
- 5.4.3 If a Schedule is rejected, revisions are required or deficiencies are identified by the Authority, the Contractor shall revise and resubmit the Schedule within three (3) Days of the rejection.
- 5.4.4 Failure to provide a Schedule acceptable to the Authority within the time specified in Section 5.4.1, and/or failure to provide updated Schedules in a timely fashion will result in withholding of payment pursuant to Section 13.5, an event of default pursuant to Section 11.1.1(h), or other negative consequences as provided by this Agreement.
- 5.4.5 The Contractor shall submit monthly Project Schedule updates to the Design Consultant and the Authority on the 10th day of each month. Such updates will be used by the Authority and the Design Consultant to verify

the Contractor's compliance with the Project Schedule and progress in timely achieving Construction Milestones. In the event that review of the Project Schedule update by the Authority or the Design Consultant reveals that the Contractor will not meet the Construction Milestones within the time set forth in the Project Schedule, the Authority and/or the Design Consultant shall so advise the Contractor, and the Contractor shall be required to prepare and submit a recovery Project Schedule to the Authority and the Design Consultant for review and acceptance by the Authority.

- 5.4.6 The Contractor is required to provide to the Authority and the Design Consultant at each Project Meeting a two-week "look ahead" schedule defining the Work to take place over the next two weeks, in advance of such work. Safety issues shall be included in this "look ahead" schedule, and target milestones shall be identified in the "look ahead" schedule to assist in tracking results.
- 5.4.7 Any such updates or revisions to the Project Schedule shall not relieve the Contractor of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents. Neither the Authority's review and acceptance of the Project Schedule, nor the Design Consultant's review and comment upon the Schedule (including any recommendations from the Design Consultant, if offered) shall be construed as relieving the Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- 5.4.8 The Contractor agrees that it will commence performance of the Work and direct the Work to provide an orderly progression of the Work to achieve Substantial Completion and Final Completion, including furnishing such employees, materials, facilities and equipment and working such hours, including extra shifts and overtime hours, as may be necessary to achieve such goal, all at the Contractor's own expense.
- 5.4.9 Float time shown on the Project Schedule is not for the exclusive use of either the Contractor or the Authority. Float time is available for use by both Parties to facilitate the effective use of available resources and to minimize the impact of problems that may arise during construction. No time extension will be granted as a result of any problem, Change Order or delay that only results in the loss of available positive float on the Project Schedule. Float time shown on the Project Schedule shall not be used by the Contractor in a manner that, in the reasonable opinion of the Authority, is detrimental to the interests of the Authority

- 5.5 **Submission of Daily Field Reports and Sign-In/Sign-Out Sheets.** The Contractor shall submit the previous day's Daily Field Report and Daily Sign-Out Sheets to the Authority before 10:00 AM. These documents shall be in a form

acceptable to NJSDA. Copies of all Daily Field Reports and Sign-In/Out Sheets for the Contractor and all Subcontractors are to be maintained on site by the Contractor for the duration of the project.

- 5.6 **Submission of Certified Payroll Records.** The Contractor shall submit to the Authority certified payroll records for its own employees and for its subcontractors for each payroll period, within ten (10) days of payment of wages, in accordance with N.J.A.C. 12:60-5.1 and N.J.A.C. 19:39-2.1(b)5. In no event shall certified payroll records be submitted later than the seventh business day of the month following payment of wages, if such payroll records are submitted with the monthly workforce report, Form AA-202, required by N.J.A.C. 19-2.1(b)4. The certified payroll records shall be submitted to the NJSDA's Vendor Services Division in a form acceptable to NJSDA, which may include electronic media, in a manner accessible to the Authority. The Authority shall have the right to request paper copies of certified payroll records at any time, and the Contractor shall produce such records within five (5) days of a request from the Authority.

## **6.0 PROSECUTION AND PROGRESS OF THE WORK**

### **6.1 Supervision**

- 6.1.1 The Contractor shall supervise and direct the Work, including all portions of the Work performed by any Subcontractor. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Authority and its contractors, Professional Services Consultants, agents and employees in every way possible.
- 6.1.2 Prior to the execution of this Agreement, the Contractor shall designate in writing an individual satisfactory to the Authority who is thoroughly experienced in the Work being performed, as the Contractor's Superintendent. The Contractor's Superintendent shall, so long as his/her performance is acceptable to the Authority, be responsible for the Contractor's Work through Final Completion of the Project. The Superintendent shall be capable of identifying existing and predictable hazards on the Site and working conditions that are unsanitary, hazardous, or dangerous to employees and shall have the authority to take prompt corrective measures to eliminate such hazards and conditions. The Contractor's Superintendent shall have authority to receive and transmit instructions and information and render decisions related to the Project on

behalf of the Contractor, and shall have the authority to promptly secure or supply such materials, equipment, tools, labor, and incidentals as may be required. The Superintendent shall have the non-exclusive authority to bind the Contractor in all decisions, changes or other matters relating to the Project. All directions given to the Contractor's Superintendent shall be binding as if given to the Contractor. The Superintendent shall only perform construction supervisory activities for the Project and shall not perform Construction Work. The Superintendent shall not perform administrative support functions in addition to his/her construction supervisory duties. Upon the request of the Authority, the Contractor shall replace the Superintendent with a candidate acceptable to the Authority if the Authority determines that the Superintendent's performance is no longer satisfactory.

- 6.1.3 The Contractor, at its discretion, may designate additional Superintendents, and, if it does so, shall provide to the Authority, in writing, the name and qualifications of the additional superintendent(s) as well as the authority granted to such additional superintendent(s).
- 6.1.4 At least one superintendent shall be present at the Site at all times while Work is being performed. When Work is not in progress, the Contractor shall have a plan, acceptable to the Authority, for responding to an emergency situation that requires the presence of the Contractor's superintendent. Such plan shall be communicated to the Authority in writing.
- 6.1.5 If a superintendent is not present at the Site when Work is being performed, or is not present at the site of any performance of a portion of the Work, the Authority may suspend all of the Work until a superintendent is present. Such suspension shall not be the basis of any Claim to the Authority for additional costs or a time extension.

## 6.2 **Cooperation**

- 6.2.1 The Contractor shall cooperate with other contractors, subcontractors, Professional Services Consultants and other entities engaged by the Authority to work on the Project. The Authority will identify in the Contract Documents such Professional Services Consultants, contractors and/or subcontractors and their roles on or before the Effective Date or within a reasonable time after the retention of such entities. At the direction of the Authority, the Contractor shall also cooperate with the Project School District and its personnel and any other applicable State agencies.

- 6.2.2 In the event that the Authority retains a Commissioning Authority, the Contractor shall cooperate with the Commissioning Authority and coordinate its Work with the Commissioning Authority.
- 6.2.3 If there is a difference of opinion as to the respective rights of the Contractor and others performing work within the limits of or adjacent to the Site, the Authority, in its sole discretion, will decide as to the respective rights of the various parties involved. The decision of the Authority is final and binding and is not cause for a Claim by the Contractor for additional compensation or delay.
- 6.2.4 The Contractor acknowledges that other entities will be performing work on the Site during the Contract Term. The Contractor hereby waives any and all Claims against the Authority for additional compensation, delay and/or inefficiencies that may arise due to other entities working on the Site.
- 6.2.5 The Contractor shall coordinate the Work and shall place and dispose of materials so as not to interfere with the work of the other entities on the Project. The Contractor shall coordinate its Work with the work of the other entities and shall perform its Work in proper sequence to allow other entities to complete their work accordingly.
- 6.2.6 All communications with the Authority shall be sent to the Authority's Project Manager. Where communications are required by the Contract Documents to be directed to persons other than the Authority, the Contractor shall furnish the Authority with a copy of such communications.
- 6.2.7 The Contractor's bid shall include all costs for coordinating the work between all trades. Should a question of union jurisdiction arise, The Contractor shall take immediate steps to settle such disputes and shall use such labor as may be determined by union jurisdiction, at no additional cost to owner. Should he fail to take expeditious actions, he will be responsible for any time lost due to delays arising from such disputes

**6.3 E-Rate Vendors and Installers (DELETED)**

**6.4 Utility Rebate Programs**

In addition to the requirements set forth in Section 6.3 above, the Contractor shall construct the Project to maximize all discounts, rebates and/or reimbursements for the Project available under any applicable State, local or Federal utility rebate and/or reimbursement program, including but not limited to, the N.J. Smart Start Buildings Program.

**6.5 LEED™ (DELETED)**

## 6.6 Inspection of Work

- 6.6.1 Each part or detail of the Work performed by the Contractor is subject to inspection by code officers, the Design Consultant, the Authority or its representatives, and may be the subject of special inspections. Code officers, the Design Consultant, Construction Manager, special inspectors engaged by the Authority or the CM and/or the Authority and its representatives shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. When code officers, the Design Consultant, the Construction Manager, special inspectors engaged by the Authority or the CM and the Authority or its representatives are on the Project Site in the course of their employment, they shall be deemed conclusively to be invitees of the Contractor.
- 6.6.2 The Contractor shall notify the Design Consultant and the Authority in writing at least 72 hours prior to the need for required code inspections or special inspections. It shall be the responsibility of the Contractor to schedule and arrange for all required code inspections (other than special inspections) from DCA, at the appropriate time and in accordance with established DCA procedures. All communications with DCA shall be copied to the Authority.
- 6.6.3 All special inspections required by code shall be scheduled, arranged by, and paid for by the Construction Manager for the Project, or by the Authority. It shall be the responsibility of the Contractor to give adequate notice to CM or the Authority to permit the timely scheduling of special inspections. Contractor shall be responsible to ensure the work is ready for such inspection when notifying CM or the Authority of the need to schedule a special inspection.
- 6.6.4 During official inspections, The Contractor is to provide proper supervision, labor and equipment to facilitate the inspection at no additional cost to the contract. The Contractor is to fully cooperate and provide supervision, standby labor, and equipment during all inspections, including providing all required documentation, all drawings approved or released by the code official, shop drawings, etc. as needed.
- 6.6.5 Inspectors, whether Authority employees, representatives or third-parties engaged by the Authority, are authorized to inspect all Work. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials and equipment to be used. Inspectors are not authorized to alter or waive any requirements of the Contract Documents. Inspectors are not authorized to issue instructions contrary to the Contract Documents or to direct or otherwise supervise the

Contractor. Inspectors have the authority to reject Work subject to confirmation by the Authority.

6.6.6 The Contractor shall not cover up any work that is subject to code inspection but which has not yet been inspected or approved by a code officer.

6.6.7 The Authority may order any Work done without the required inspection to be removed and replaced. The Authority may order the removal and replacement of Work that covers or conceals other items of Work that have not yet received code official inspection. The Contractor will be responsible for the costs of uncovering, removing, and/or replacing the uninspected Work.

## 6.7 **Correction of Nonconforming or Defective Work**

6.7.1 Repair and Replacement. In the event that the Authority determines that any of the Work performed or any of the materials furnished or equipment supplied, or any of the finished Work in which such materials are used or such equipment is installed, are not in strict conformity with the requirements of the Contract Documents or are otherwise defective, the Work, materials and/or equipment shall be removed, repaired, replaced or otherwise brought into strict compliance with the requirements of the Contract Documents by and at the sole cost and expense of the Contractor.

6.7.2 Correction of Nonconforming or Defective Work. The Authority shall require timely correction by the Contractor of nonconforming Work. If nonconforming Work remains uncorrected for more than thirty (30) Days from the Contractor's receipt of notice of the nonconforming Work from the Authority, its Project Manager, the Design Consultant, or DCA, the next Invoice to the Contractor may be reduced by an amount equivalent to the entire value of the nonconforming Work, as if the nonconforming Work is 0% complete. The Authority shall maintain a continuing list of nonconforming Work as determined by the Authority and shall make such list available to the Contractor. If the Contractor fails to repair, replace, remove or otherwise remedy any nonconforming or defective Work in accordance with this Section, the Authority shall repair, replace, remove or otherwise remedy the Contractor's nonconforming or defective Work at the Contractor's expense. In such case, an appropriate written notice shall be issued by the Authority to the Contractor notifying the Contractor of the Authority's decision to repair, replace, remove or otherwise remedy the nonconforming or defective Work and deducting from the payments then or thereafter due the Contractor the cost of repairing, replacing, removing or otherwise remedying the Contractor's nonconforming or defective Work. If the payments then or thereafter due the Contractor are not sufficient to

cover such amount, the Contractor shall pay the difference to the Authority upon demand.

## **6.8 Submittals**

- 6.8.1 The Contractor shall prepare and submit to the Authority and the Design Consultant all Submittals required by the Contract Documents within five (5) days of the Commencement Date. The Design Consultant shall provide to the Authority written comments and recommendations for acceptance or rejection of the Submittal within seven (7) days of receipt of the Submittal. The Authority shall return the reviewed Submittal to the Contractor with comments or reject or accept the Submittal within seven (7) days of receipt of the comments and recommendations from the Design Consultant. Submittal review by the Authority and the Design Consultant shall be solely for the purpose of determining whether the items or equipment specified in Submittals are consistent with the requirements of the Contract Documents, and is not deemed to be undertaken for any other purpose, including: 1) determining the accuracy and completeness of each Submittal; 2) determining that any other details such as dimensions and quantities have been complied with; 3) substantiating instructions for installation and performance of equipment or systems designed by the Contractor; 4) approval of safety precautions; or 5) approval of construction means, manners, methods, techniques, sequences or procedures, all of which shall remain the Contractor's responsibility. The review of specific items also shall not indicate review of an assembly of which the item is a component.
- 6.8.2 Prior to submission, the Contractor shall stamp each Submittal with a stamp certifying that by preparing and providing Submittals, the Contractor has (1) verified all materials, field measurements and field construction criteria related thereto, (2) coordinated the information contained within such Submittals with the requirements of the Work and the Contract Documents, and (3) verified that the Submittals conform to the Contract Documents.
- 6.8.3 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Authority's acceptance of any Submittal, unless the Contractor has specifically informed the Authority in writing of such deviation at the time of submission and the Authority has issued written approval to the specific deviation.
- 6.8.4 If a Submittal is rejected by the Authority, the Contractor shall revise and resubmit the Submittal within three (3) Days of the rejection.
- 6.8.5 In the event that the Contractor is required to revise and resubmit any Submittal, the Contractor shall identify, in writing, all revisions made by the Contractor.



- 6.8.6 No portion of the Work requiring submission of a Submittal shall be commenced until the Submittal has been accepted by the Authority and returned to the Contractor marked “accepted.” All such portions of the Work shall be performed in accordance with accepted Submittals.
- 6.8.7 The Contractor acknowledges that the Authority may require the Contractor to make a reasonable number of changes to the Submittals in response to Authority comments, prior to the Authority’s acceptance of such Submittals. However, if a submittal has been initially rejected by the Authority with comments provided by the Authority, the Design Consultant or the CM, and the submittal is subsequently resubmitted by the Contractor without addressing the comments previously provided, the Authority shall reject the resubmitted submittal, and, at the sole discretion of the Authority, the Contractor shall be responsible for the costs relating to the third review, and any subsequent review, of such resubmitted submittal, by the Construction Manager, the Design Consultant and/or the Authority
- 6.8.8 The Contractor is required to maintain all submitted submittals, including shop drawings, on the jobsite at all times. The submitted submittals shall be organized and filed by specification number and review status (i.e. “accepted,” “rejected” or “pending” submittals). Copies shall be supplied to the Design Consultant and the Authority for the record as required or requested.

## 6.9 Substitutions

- 6.9.1 Whenever materials or equipment are specified or described in the Contract Documents by using the brand name of an item or the name of a particular manufacturer, the use of the brand name or manufacturer name is intended to establish the type, function, and quality required for the materials or equipment. Unless the name is followed by words indicating that no approved equal is permitted, material and equipment of other manufacturers may be accepted, but only if the Contractor receives Authority approval after the Contractor submits a written request to use an approved substitute including the following information regarding the proposed substitute for the Authority’s review and approval:
- 6.9.1.1 Manufacturer or supplier data sheets providing detailed Specifications and product Data;
- 6.9.1.2 A written statement from the Contractor or its Subcontractor stating the reasons that the proposed item or supplier is necessary or preferred for use on the Project;

- 6.9.1.3 A cost analysis identifying the cost savings to the Authority if the proposed substitute is used, and a commitment to execute a credit change order to credit back such savings to the Authority; and
- 6.9.1.4 Any other relevant information to be considered by the Authority in evaluating the Contractor's proposed substitute.
- 6.9.2 Proposed substitutes will be compared against the criteria provided in the Contract Documents, and evaluated for cost savings to the Authority. The Authority will either accept or reject the proposed equal within ten (10) Days of receipt of the Contractor's written request for the proposed substitution with all of the required information necessary for the Authority to review the request. Authority acceptance of a substitute item does not release the Contractor of its responsibility under the terms of the Contract Documents to perform Work in conformity with the requirements of the Contract Documents.
- 6.9.3 The Authority will not permit any increases in the Contract Price (if lump-sum) or extensions of the Contract Time as a result of the use of approved substitutes.
- 6.9.4 The Authority may require the Contractor to furnish, at no cost to the Authority, a special performance guarantee or other security with respect to any substitution.
- 6.9.5 When the Contract Documents permit the use of more than one type of a particular material, equipment or product, the Contractor shall choose and use only one acceptable, approved type of material, equipment or product for installation on the entire Project.

#### **6.10 As-Built Plans and Drawings and Project Closeout Procedures**

- 6.10.1 Requirements. In addition to the requirements for Final Payment included in Section 13.10 of this Agreement, the Contractor shall comply with the following requirements and procedures concerning As-Built Plans and Drawings and Project Closeout.
- 6.10.2 As-Built Documents. The Contractor shall keep on the Project Site, and make available to the Authority at all times, one set of Plans and Specifications to be marked "As-Built" (the "As-Built Documents"). During the course of the Project, the Contractor shall regularly mark the As-Built Documents with colored pencils to reflect any changes, as well as the dimension and the location of all pipe runs, conduits, traps, footing depths or any other information not already shown on the plans or differing therefrom. All buried utilities outside the Building shall be located by a survey performed by a licensed surveyor, who shall certify as to the

accuracy of the surveys. The As-Built Documents and survey shall be made available to the Authority upon request at any time during the progress of the Work.

- 6.10.3 Certification of As-Built Documents. The Contractor shall submit the final As-Built Documents to the Authority with a certification as to the accuracy of the information thereon at the time of Final Completion and before Final Payment is made to the Contractor. Submission of the As-Built Documents and certification are explicitly required as a condition precedent to Final Payment.
- 6.10.4 As-Built Survey to DCA. The Contractor shall submit to DCA prior to issuance of a Certificate of Occupancy an “as-built” survey showing to scale the size and location of all repairs and new construction and all existing structures on the site, distances from lot lines and the established street grades; accessible route(s) for buildings required by N.J.A.C. 5:23-7 to be accessible; and it shall be drawn in accordance with an accurate boundary line survey along with any additional documentation required by the Authority for issuance of the Certificate of Occupancy.
- 6.10.5 Project Closeout. Upon Final Completion of the Project, the Contractor shall also submit to the Authority as “as built” documentation three (3) sets of all shop drawings and/or erection drawings prepared by the Contractor. Additionally, Contractor shall provide three sets of all Operating, Instruction and Maintenance manuals for Equipment as required by the Contract Documents. The Contractor shall also provide video training to instruct Project School District personnel to properly operate and maintain systems, equipment and similar items provided as part of the Contractor’s Work.

## 6.11 **Testing**

- 6.11.1 The Contractor shall bear the cost of material and equipment testing specifically required by Code, the Contract Documents, any manufacturer or supplier, and all other testing performed, except for testing in support of N.J. Uniform Construction Code Special Inspections, and such additional testing as may be requested by the Authority pursuant to Section 6.11.3 below. Prior to the initiation of any testing required by applicable Legal Requirements, the Contract Documents or any manufacturer or supplier, the Authority will provide the Contractor with the names of approved testing laboratories, firms or services for use on the Project. The Contractor shall utilize only testing laboratories, firms or services approved or otherwise provided by the Authority. Failure to use such approved entities shall be grounds for rejection of the inspection or test as nonconforming.

- 6.11.2 The Contractor shall notify the Authority's Project Manager in writing of all scheduled testing of materials or equipment. The notice shall be provided no later than seven (7) Days prior to the scheduled test.
- 6.11.3 The Authority may direct, in writing, that testing be performed in addition to the testing required by Code, the Contract Documents or any manufacturer or supplier. The Contractor shall retain the testing firm and coordinate such additional testing and shall invoice the Authority for such additional testing. The Authority shall bear the costs of such additional testing and shall reimburse the Contractor for such additional testing after the testing report is complete, unless the test report for the additional testing requested by the Authority pursuant to this Section 6.11 reveals that the Work does not comply with the requirements of the Contract Documents. If the test report for the additional testing reveals that the Work does not comply with the requirements of the Contract Documents or is defective, the Contractor shall bear any and all costs of such testing. The Contractor shall cooperate fully with, and shall give site access to, any firm or entity retained by the Authority or the Design Consultant, to provide testing services on the Project.
- 6.11.4 All test reports shall be submitted to the Authority's Project Manager and shall be accompanied by a certification signed by the Contractor attesting to the Contractor's knowledge of the contents of the Submittal, acceptance by the Contractor of the test and/or inspection findings, acknowledgment that the materials and/or equipment tests meet the required standards, and a certification that the test and/or inspection report is accurate. Failure to provide the written certification shall be grounds for rejection of the Submittal.

## **6.12 Equipment and Materials**

- 6.12.1 The Contractor warrants to the Authority that all materials and equipment furnished under the Contract Documents will be new, unless otherwise specified, and that all Work will be of good quality, free from faults, defects, and in conformance with the Contract Documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected by the Authority. If required by the Authority, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to, and not in lieu of, any other warranty or guarantee provided for in this Agreement and/or by a manufacturer.
- 6.12.2 The Contractor shall furnish and deliver the necessary equipment and materials in ample quantities and as frequently as required to avoid delay in the progress of the Work and shall store them so as not to cause interference

with the orderly progress of a Project. The Contractor shall have a representative at the Site to accept delivered equipment and materials, as such equipment and materials will not be accepted for delivery by the Authority.

6.12.3 The Contractor shall provide the necessary protection to stored materials and work in place to prevent damage, injury or loss of work in progress and to preclude the formation of extraneous substances like mold on work in place and stored materials.

6.12.4 The Contractor shall provide reasonable protection to prevent damage, injury or loss to the Work and the materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under the care custody or control of the Contractor or any of its Subcontractors or suppliers. Such reasonable protections under this Section 6.12.4 shall include at a minimum, the following:

6.12.4.1 Storage of materials is the responsibility of the Contractor. Materials shall be stored immediately on delivery, whether delivered to the Project Site or to an off-Site location, in accordance with manufacturer's instructions, to ensure the preservation of their quality and fitness. Stored materials, even if accepted before storage, may again be inspected prior to their use on the Project. Stored materials shall be located so as to facilitate their prompt inspection and maintenance

6.12.4.2 Any materials or equipment susceptible to damage from the elements shall be stored in weather-tight enclosures. The Contractor shall maintain the temperature and humidity in the enclosed areas within the ranges stated in the manufacturer's instructions. The Contractor shall also store unpacked and loose products on shelves, in bins, or in neat groups of like items within the enclosed areas.

6.12.4.3 For exterior storage of materials or equipment, the Contractor shall provide substantial platforms, blocking, or skids, to support products above ground. The Contractor shall protect materials and equipment from soiling and staining and, for materials and equipment that are subject to discoloration or deterioration from exposure to the elements, the Contractor shall cover such equipment and materials with impervious sheet metal and provide ventilation to prevent condensation. The Contractor shall store granular materials on clean, solid surfaces such as pavement, or on rigid sheet materials to prevent mixing with foreign matter. The Contractor shall also provide surface drainage to prevent erosion and ponding of water in areas where materials and equipment are stored.

- 6.12.4.4 Any materials or equipment for the Project stored off-Site by the Contractor shall be stored in a bonded and insured warehouse.
- 6.12.4.5 With the acceptance of the Authority, portions of a Project Site may be used for storage purposes and for the placing of the Contractor's plant and equipment, but additional space, as required, must be provided by the Contractor at its expense. Private property shall not be used for storage purposes without written permission of the owner or lessee of such property. Copies of such written permission shall be furnished to the Authority prior to use of private property for storage. Contractor shall restore storage sites to their original condition once the site is no longer used by the Contractor for storage, at no cost to the Authority.
- 6.12.4.6 No materials, equipment, or supplies for use on the Project shall be subject to any lien or encumbrance or other agreement by which an interest is retained by the seller or any other person or entity. The Contractor warrants by signing its Invoice that it has good and sufficient title to all material, equipment and supplies used by it in the Work, free from all liens, claims or encumbrances.

### **6.13 Acceptance and Rejection of Materials, Equipment Assemblies and Furnishings**

- 6.13.1 When specified by the Contract Documents, materials, equipment, assemblies and furnishings will be accepted only if the Contractor provides the Authority with such materials, equipment, furnishings or assemblies that are fully compliant with all requirements. The Contractor's incorporation of any and all materials, equipment, furnishings or assemblies into the Work shall constitute the Contractor's acknowledgement that such materials, equipment, furnishings or assemblies are compliant with all applicable requirements.
- 6.13.2 All materials, equipment, assemblies and furnishings, whether in place or not, which are not compliant with the requirements of the Contract Documents shall be considered as unacceptable, and shall be rejected and removed immediately from the Project Site. Rejected materials, equipment, assemblies or furnishings, the defects of which have been corrected, shall not be used unless and until accepted by the Authority.

### **6.14 Use of Explosives**

- 6.14.1 The use of explosives in the performance of the Work of the Project is discouraged and must be approved in writing by the Authority. If the use of explosives is necessary for the prosecution of the Work, and the Authority has approved the use of explosives, the Contractor shall exercise the utmost

care not to endanger life or property, including the Work. The Contractor shall be solely and strictly liable for all damage resulting from the use of explosives.

- 6.14.2 The Authority shall schedule a pre-blast meeting with the Contractor and the New Jersey Department of Labor and Workforce Development Safety Compliance Unit. No blasting will be permitted prior to the pre-blast meeting.
- 6.14.3 Prior to performing any blasting or use of explosives, the Contractor shall carefully document the existing condition of all adjacent properties by taking a minimum of twelve (12) digital photographs of each adjacent property, including the structures thereon, and by documenting the condition of the same in a video recording of sufficient length and detail as to capture all existing conditions. The Contractor shall submit copies of such photographs in digital and hard copy format, and shall submit copies of the video in DVD format.
- 6.14.4 If approved by the Authority for use on the Project, explosives on the Project Site shall be stored safely under lock and key. The storage places shall be expressly marked DANGEROUS EXPLOSIVES. The storage, handling and use of explosives and highly inflammable materials shall conform to the regulations of DCA, the New Jersey Department of Labor and any local Authority Having Jurisdiction over the Project. Proper means shall be used to avoid blasting damage to public and private property. All persons within the danger area shall be warned and given time to withdraw.

## 6.15 Utilities

- 6.15.1 Prior to commencing any excavation activity, the Contractor shall contact the proper utility companies and/or the State, County or City to identify the location of any existing utility lines, pipes or other equipment, whether in use or not. The Contractor shall be solely responsible for locating existing utilities, and shall be solely responsible and liable for any damages, fees, fines, claims or other costs associated with any damage or interruption to such utilities.
- 6.15.2 The Contractor shall protect all utilities encountered while performing the Work, regardless of whether such utilities are indicated in the Contract drawings. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same or better condition as existed prior to starting the Work, at no cost to the Authority. The Contractor shall maintain existing utilities and other services, even if they are shown to be abandoned on the Contract drawings, in service until new facilities are installed, tested and approved for use.

- 6.15.3 All cut-overs of mechanical and electrical services to existing buildings and/or School Facilities shall be approved, scheduled and coordinated in advance with the relevant municipal utility and the District, and must be performed at a time convenient to the occupants of the existing building and/or School Facility so as not to unreasonably interfere with their operations.
- 6.15.4 The Contractor shall not shut down any service or utility without prior coordination with the relevant municipal utility, written approval of such municipal utility, and notification of the Authority, the Design Consultant and the Project School District. The Contractor shall issue written notification of any service or utility shut-down, to the Design Consultant, the Authority and all utilities, agencies or other state and local authorities having jurisdiction, a minimum of 48 hours in advance. All utilities are to be connected or disconnected by a qualified and licensed professional (i.e. electrician, plumber, HVAC technician).

#### **6.16 Layout and Dimensional Control**

- 6.16.1 Except to the extent required in Section 2.6 herein, the Contractor shall be responsible for locating and laying out the Project, including, but not limited to, the School Facility and all of its components on the Site, in strict accordance with the Contract Documents, and shall accurately establish and maintain dimensional control on the Site. The Contractor shall employ the services of a competent and licensed New Jersey engineer or land surveyor, as appropriate, to perform all layout work on the Project. The Contractor shall furnish Submittals to the Authority including certifications of all survey and layout information collected by the Contractor and/or its engineer/land surveyor.
- 6.16.2 The Contractor is responsible for establishing all points, lines, elevations, grades and bench marks for proper control and execution of the Work. The Contractor shall establish a single permanent benchmark, to which all three coordinates of dimensional control shall be referred. The Contractor shall verify all Authority-furnished topographical and utility survey data and all other points, lines, elevations, grades and benchmarks provided by the Authority. The Contractor shall maintain and protect all monuments and control points and shall re-establish those that are lost. All Subcontractors shall have access to the monuments/control points/marks under the control of the Contractor.
- 6.16.3 Should any discrepancies be found between information provided in the Contract Documents and the actual Site conditions, the Contractor shall immediately notify the Authority in writing of such discrepancy, and shall not proceed with any Work affected until the Contractor receives receipt of written instructions from the Authority.



## 6.17 Security

- 6.17.1 The Contractor shall be responsible for preparing and submitting a Security Plan to the Authority. The Contractor shall prepare and submit the Security Plan at or before the Preconstruction Conference. Within five (5) Days of receipt of the Contractor's Security Plan, the Authority will either accept or reject the Contractor's Security Plan. If the Contractor's Security Plan is rejected, the Contractor shall revise and resubmit its Security Plan to the Authority until it is accepted. Once the Contractor's Security Plan is accepted, the Authority shall monitor the Contractor's compliance with the Security Plan to ensure that the Contractor meets or exceeds the accepted Security Plan.
- 6.17.2 At a minimum, the Contractor's Security Plan shall require the Contractor to provide all fences, gates, barriers, locks, doors and security necessary to secure the School Facility and Site until Substantial Completion of the Project. In addition, the Contractor shall be responsible for the security of any stored materials and/or temporary structures that it has located on the Project Site or elsewhere. The Contractor shall provide all Site fencing, gates, locks, security personnel, security services, and security structures and equipment required by the Contract Documents, or otherwise necessary to properly protect the Site and the Work.
- 6.17.3 All Contractor and Subcontractor personnel must sign in and out daily. Each day the Contractor shall supply to the Authority a copy of the Daily Sign-in/Sign-out sheet for the previous day's activity.
- 6.17.4 At no time will any gate, door, fence or other exterior site access be left unsecured, unguarded or temporarily barricaded.
- 6.17.5 The Contractor shall issue security identification badges to all employees, subcontractors, subcontractor employees, and other persons authorized by the Contractor to enter the Site. Such badges shall display the name and logo of the Contractor issuing the badge, as well as a photo of the individual issued the badge, and his or her name, job title and employer, and, if applicable, the name and logo of the Subcontractor or other entity employing the individual. Persons without a security identification badge shall not be permitted at or on the Project Site unless accompanied by an authorized employee of the Authority, the Design Consultant or the Contractor.
- 6.17.6 Alcohol, drugs and weapons shall not be allowed on the Site under any circumstances, and shall be cause for immediate expulsion. In addition, only those persons directly involved with the project will be allowed on the site. Anyone under the influence of alcohol or drugs will be immediately and permanently removed from the jobsite.

- 6.17.7 In no event will minors be admitted to the jobsite.
- 6.17.8 Contractor will provide safety sidewalk bridging on all public walks as required or when directed by the Authority or Design Consultant. Public safety and workers' safety shall be the Contractor's highest priority.

**6.18 Temporary Facilities**

- 6.18.1 The Contractor shall also provide such storage areas, staging areas, excavation borrow/spoils designated areas, commercial canteen areas, telephones, toilet facilities, and other temporary facilities, as well as employee vehicular parking areas, as are necessary to perform the Work, or as are required under the Contract Documents. The Contractor shall locate such areas to suit Project requirements, subject to acceptance of the Authority, and the Contractor shall be responsible for maintaining such facilities.
- 6.18.2 The Contractor shall provide such temporary electricity, water, or other utilities, and shall secure the necessary permits for such utilities, which are necessary to perform the Work. The Contractor shall also supply such temporary enclosures and heat as are necessary to perform the Work and meet the Milestone dates in the Schedule. If the Project Schedule as initially accepted or as later modified, requires the performance of Work at a time of year when supplied heat or ventilation is required to perform certain Work, then the Contractor shall provide the required heat/ventilation at its own cost with no expectation of additional compensation from the NJSDA.

**6.19 Photographs**

- 6.19.1 Within forty-eight (48) hours of the issuance of the Notice to Proceed, the Contractor shall take as many digital photographs, but in no event fewer than twenty-four (24) photographs, of the Project as necessary to record the existing conditions of the Site. The Contractor shall submit these photographs to the Authority within seven (7) Days of the Notice to Proceed.
- 6.19.2 The Contractor shall submit with its monthly Invoice a minimum of twelve (12) digital photographs documenting in detail the progress of the Work during the prior month for which the Invoice is submitted. Each photograph shall be noted with the date and time the picture was taken, the name of the Project, description of the photograph and information identifying directional information (e.g. "looking north").
- 6.19.3 Within five (5) Days of receiving a Certificate of Substantial Completion, or a Certificate of Acceptance, as applicable, the Contractor shall take a minimum of twenty-four (24) digital photographs, providing the

information noted in 6.19.2 for each photograph, and a video recording, with sound that describes what is being shown, in DVD format of the Project. The video and digital photographs required by this Section 6.19.3 shall be submitted to the Authority within ten (10) Days of the Contractor's receipt of a Certificate of Substantial Completion.

- 6.19.4 All digital photographs submitted by the Contractor under this Section 6.19 shall be taken from locations approved by the Authority's Project Manager or the Design Consultant and two copies thereof shall be submitted to the Authority's Project Manager and the Design Consultant in digital electronic form (i.e. two CD's shall be submitted). All digital photographs submitted by the Contractor shall become the property of the Authority, and the Authority shall become the owner of any and all copyright and intellectual property rights created or existing under state or federal law in such photographs. The Authority may thereafter utilize such photographs for any purpose.

**6.20 Construction Web Camera (DELETED)**

**6.21 Repair of Finished Surfaces, Applied Finishes, Other Materials**

- 6.21.1 Before Substantial Completion of the Project, the Contractor shall replace all broken, scratched or otherwise damaged glass or other materials installed by it or its Subcontractors on the Project regardless of the cause of the breakage or damage. Between Substantial Completion and Final Completion, the Contractor shall replace all broken, scratched or otherwise damaged glass or other materials damaged by it or its Subcontractors on the Project.
- 6.21.2 The Contractor shall clean all glass on the Project on both sides at Final Completion, or when directed, removing all paint spots, stains, plaster, or other foreign material from the glass.
- 6.21.3 Until the Contractor achieves Substantial Completion, the Contractor shall be solely responsible for any repairs required due to any cracking, delamination, peeling or dislodging of finished surfaces such as concrete, pre-cast concrete, cast stone, natural stone, unit masonry, millwork, plaster and the like, and applied finishes such as paint and special coatings, regardless of the cause of such required repairs. Subsequent to Substantial Completion and prior to achieving Final Completion, the Contractor shall be responsible for any repairs required due to any cracking, delamination, peeling or dislodging of finished surfaces such as concrete, pre-cast concrete, cast stone, natural stone, unit masonry, millwork, plaster and applied finishes such as paint and special coatings, if the damage to the aforementioned finished surfaces results from the actions or inaction of the Contractor or its Subcontractors. The requirements of this Section 6.21.3

shall in no way relieve or reduce the Contractor's warranty requirements pursuant to the Contract Documents.

## **6.22 Access, Roads and Walks**

- 6.22.1 The Contractor shall not obstruct any road or traffic area in connection with the Project. The Contractor shall provide, place, grade and compact all necessary materials to maintain such routes in good condition. The Contractor shall remove snow and debris as necessary to provide and maintain in serviceable condition the access roadbed as well as pedestrian ways. The Contractor shall keep adjacent streets free of any dirt coming from the Site. The Contractor shall provide all sediment control protection required by the Authority Having Jurisdiction over the Project. The entire Project Site shall be fenced in with wind screens for dust control.
- 6.22.2 If the Contractor seeks to use for construction purposes any existing driveways or parking areas outside the boundaries of the Project Site, the Contractor shall obtain permission in writing from the owners of such driveways or parking areas before using. If permission is obtained, the Contractor shall maintain such driveways and areas in good condition during the construction period, and at Final Completion, shall leave them in the same condition as they were at the start of the Work.
- 6.22.3 The Contractor, its employees, Subcontractors and/or Subconsultants shall not park trucks or vehicles on streets adjacent to the Project Site
- 6.22.4 The Contractor is responsible for the sidewalks, curbs, streets and other property that may become damaged during its operations. The Contractor shall replace said property to the satisfaction of the Design Consultant, the Authority and the adjacent affected property owner (if applicable), at its own expense.

## **6.23 Building and Site Cleanup**

- 6.23.1 In addition to any other requirements set forth in the Contract Documents, the Contractor shall keep the Building, Site and surrounding streets and sidewalks reasonably free from debris, trash and construction waste to allow the Contractor to perform the Work efficiently, safely and without interfering with the use of adjacent land. The Contractor shall be responsible for providing snow removal, grass maintenance and litter removal.
- 6.23.2 The Building and Site must be cleaned daily. All work areas and adjoining roads and walkways used by the public, must be broom swept and all debris must be removed at the end of every shift or at appropriate intervals during the workday, to the satisfaction of the Authority's Project Manager, to

ensure safety and proper housekeeping to minimize risk of injury, fire, or other impacts to worker or public safety.

- 6.23.3 If the Contractor fails to properly and completely clean up after each shift, the next scheduled shift may be utilized by the Authority to complete cleaning prior to the Contractor being allowed to proceed with any contract scopes of work. The Contractor is to provide full time dedicated labor forces to provide ongoing cleaning services. Failure to so provide will result in lost time at no additional cost to the Authority. In the event the Authority is required to retain outside cleaning services to perform the obligations of the Contractor under this Section, the Contractor will be backcharged for the full cost of such services plus the cost of supervision by the Authority, if applicable.
- 6.23.4 Throughout the duration of the Project, the Contractor shall sort and separate construction debris for recycling as required by USGBC LEED criteria.
- 6.23.5 Upon Substantial Completion of the Work, or a portion of the Work, the Contractor shall remove all debris, trash, construction waste, materials, equipment, machinery and tools or applicable portions thereof to permit the Authority to occupy the Project or a portion of the Project for its intended use.

## 6.24 **Importation and Exportation of Fill Materials**

### 6.24.1 Importation of Fill Materials

- 6.24.1.1 All Imported Fill brought onto the Project Site shall be suitable for the Project from both an engineering and environmental quality perspective. The environmental quality of the Imported Fill utilized on the Project shall not negatively affect the environmental classification of the Project Site.
- 6.24.1.2 Only “Certified Clean Fill” shall be imported to the Project Site for use in any remedial action or for geotechnical or geoenvironmental purposes. In the absence of the appropriate certification in accordance with NJDEP Technical Requirements for Site Remediation (N.J.A.C. 7:26E and the Fill Material Guidance for SRP Sites, April 2015, version 3.0), Imported Fill to be used in a remedial action must be supported by analytical test results from a New Jersey-certified laboratory documenting that the fill has been tested and does not contain constituents of concern in excess of NJDEP Soil Remediation Standards. The Contractor shall provide to the Authority the analytical test results for all Imported Fill before such Imported Fill is brought onto the Site. The Contractor shall be

responsible for the costs of any testing to satisfy the requirements of this Section 6.24.1.

6.24.1.3 Unless an alternative sampling program is approved by the Authority and deemed acceptable to NJDEP, all Imported Fill to be used for remedial actions shall be analyzed for Extractable Petroleum Hydrocarbons (“EPH”) Diesel Range Organics (“DRO”), Target Contaminant List (“TCL”) volatile organic compounds (“VOCs”), TCL semivolatile organic compounds (“SVOCs”), TCL pesticides and herbicides, polychlorinated biphenyls (“PCBs”), Target Analyte List (“TAL”) metals, hexavalent chromium and cyanide. A library search for tentatively identified compounds (“TICs”) shall be included with the VOC and SVOC analysis (e.g. VOC+15, SVOC+25). The Contractor shall submit laboratory test data for the proposed imported fill and/or topsoil at a frequency that complies with Table 2: Sampling Frequency Guide for Clean Fill, as found in the NJDEP Fill Material Guidance for SRP Sites, April 2015, Version 3.0.

6.24.1.4 Sampling of soil or fill will be in conformance with the latest versions of the Technical Requirements for Site Remediation and the NJDEP’s Field Sampling Procedures Manual.

#### 6.24.2 Exportation of Fill Materials

6.24.2.1 Excess fill to be removed or exported from the Site shall be exported in a manner and disposed at a receiving site such that the environmental quality of the excess fill shall not cause the environmental classification of the destination property, if an unrestricted use, to change to a restricted use.

6.24.2.2 The Contractor shall provide testing of all excess fill to be exported from the Site, for the purpose of classifying any contaminants contained therein, and to allow for proper disposal at qualified facilities. The Contractor shall be responsible for the costs of any testing to satisfy the requirements of this Section 6.24.2.

6.24.2.3 No Impacted Materials identified on the property (including “historic fill”) shall be exported for reuse, unless the reuse destination is permitted by law to accept these materials.

6.24.2.4 Prior to exportation of fill from the Project Site, the Contractor shall (1) provide the Design Consultant (or its authorized environmental consultant) with the name and address of the fill destination; and (2) provide the Design Consultant (or its authorized environmental consultant) with documentation affirming that the destination

property is permitted to accept the fill; and (3) provide a letter from the receiving facility that they agree to accept the material.

- 6.24.2.5 Upon exportation of fill from the Project Site, the General Contractor shall quantify the amount of fill exported from the site, and provide proof of such quantities removed, including copies of properly executed manifests, to the Design Consultant (or its authorized engineer) the Construction Manager, and the Authority.
- 6.24.2.6 Reuse of concrete and masonry as fill shall be in accordance with NJDEP guidance.
- 6.24.2.7 All fill importation and exportation shall be managed in accordance with local, state, and federal laws and regulations.

## 7.0 SUBCONTRACTORS

- 7.1 **General.** In the event the Contractor hires, employs or otherwise engages Subcontractors, the Contractor shall be considered the sole point of contact with regard to all matters relating to the Contract. All communication between Subcontractors and the Authority shall pass through the Contractor. All subcontracts must be memorialized in a writing signed by a representative of the Contractor and the Subcontractor, and the terms of each such subcontract must be clearly specified therein. Upon request of the Authority, the Contractor shall immediately produce the original written Subcontract.
- 7.2 **Approval by the Authority.** The Contractor must: (i) when required under Section 7.4 below, select only Subcontractors that have been pre-qualified by the Authority, and (ii) in all cases, obtain the consent and approval of the Authority, as detailed in Section 7.3 below, prior to the engagement of any Subcontractors.
  - 7.2.1 The Contractor will not be permitted to subcontract to entities or individuals suspended or debarred by the State of New Jersey, or to entities or individuals that are otherwise not eligible to perform as Subcontractors on the Project pursuant to regulation, the Authority procedures or the requirements of the Contract Documents.
  - 7.2.2 The Contractor shall list in its bid proposal all Subcontractors required by statute or Authority regulation to be named, or as otherwise required to be named by the terms of the Authority's RFP for the Project.
- 7.3 **Approval of Subcontractors.** As soon as a potential Subcontractor has been identified by the Contractor, but in no event less than twenty (20) Days prior to the scheduled commencement of work by such Subcontractor, the Contractor shall notify the Authority in writing, using the Forms and Procedures approved by

NJSDA, of the name and address of such Subcontractor and shall request that the Authority approve such Subcontractor. The Authority shall respond to the Contractor's request within fourteen (14) Days of submission, and shall approve or reject the named Subcontractor.

7.3.1 If the Authority rejects a Subcontractor submitted by Contractor, the Authority shall notify the Contractor as to the grounds on which such rejection is based. Contractor shall submit a new Subcontractor for approval. In no event shall a Subcontractor commence work on the Project prior to approval by the Authority.

7.4 **Pre-Qualification of Subcontractors.** The Contractor shall comply with the Authority's regulations and standards for the prequalification of Subcontractors for certain types of Work on the Project. For that type or quantity of work for which prequalification is generally required by the Authority, the Contractor shall only employ Subcontractors who are pre-qualified by the Authority to perform such Work.

7.5 **Responsibility for Subcontractors.**

7.5.1 The Contractor shall be responsible for all Work performed by its Subcontractors and any acts and omissions in connection with such performance. It is expressly understood by the Contractor that the consent of the Authority to the subcontracting of any Work under the Contract Documents shall not relieve the Contractor from performing its obligations under the Contract Documents. Consent by the Authority to any subcontracting of any part of the Work shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as consent to the engagement by the Contractor of a particular Subcontractor. The Contractor shall coordinate the activities of all Subcontractors.

7.5.2 Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the Authority and any Subcontractor, including any third-party beneficiary rights.

7.6 **Payments to Subcontractors.** The Contractor shall comply with the provisions of N.J.S.A. 2A:30A-2, concerning the prompt payment of Subcontractors.

7.7 **Substitution of Subcontractors.** The Contractor shall make no substitution of any subcontractor previously approved by the Authority without written notification to the Authority and the receipt of the Authority's written approval for such substitution. The Contractor shall submit substitutions for any contractor no less than fourteen (14) days prior to the initiation of work by the Subcontractor



## **8.0 CHANGES IN THE WORK**

### **8.1 General**

- 8.1.1 The Authority reserves the right to make such alterations, deviations, additions to, or omissions from the Work as it deems necessary for the satisfactory completion of the Project. Such increases, decreases, alterations or omissions shall not invalidate the Contract or release the Contractor's surety.
- 8.1.2 Changes in the Work may only be accomplished by Change Order or Construction Change Directive consistent with the procedures and requirements set forth in this Section 8. Submission or review of a Submittal or RFI does not constitute a Change in the Work. Any work or services performed or undertaken by the Contractor that differ from, or are in addition to, the Work defined in the Contract, shall be performed at the Contractor's own financial risk, unless such additional or different work constituting a Change in the Work is specified in an executed and approved Change Order or Construction Change Directive.

### **8.2 Change Orders**

- 8.2.1 A Change Order shall not be effective for any purpose unless appropriately executed by the Authority (consistent with the requirements of the Authority's Operating Authority) and the Contractor.
- 8.2.2 A Change Order may be executed by the Contractor and the Authority for the purpose of (a) modifying the scope of the Work; (b) revising the Contract Time; (c) adjusting the Contract Price to reflect changes in the scope of the Work (if the Project was bid on a lump sum basis); or (d) revising other terms and conditions of the Contract Documents.
- 8.2.3 All changes to the scope of the Work authorized by Change Order shall be performed pursuant to the terms of a Change Order, including, but not limited to, any drawings or Specifications provided as part of the Change Order.
- 8.2.4 All requests for adjustment to the Contract Time and/or Contract Price, and all Change Orders resulting in adjustment to the Contract Time and/or Contract Price, shall contain a written representation by the Contractor that the requested adjustments include all known and anticipated delay impacts or costs, and that the Contractor, in executing the Change Order, waives any and all claims for other or additional compensation relating to the Change in the Work, whether such claims constitute direct damages, or noncompensable indirect or consequential damages that are otherwise precluded pursuant to Section 8.6 herein.

### 8.3 **Contract Change Requests, Proposal Requests and Construction Change Directives.**

- 8.3.1 Contractor-Initiated Contract Changes. The Contractor may initiate a Change in the Contract by issuing a Contract Change Request. The Contractor shall notify the Authority in writing of an event necessitating a Change in the Work by issuing a Contract Change Request within three (3) Days of encountering a condition, event or occurrence that allegedly causes or necessitates a Change in the Work. Contract Change Requests may be issued by the Contractor, and if approved, a Change Order will be issued accordingly. A Contract Change Request does not authorize the Contractor to perform the change to the Work requested, but may trigger the issuance of either a Change Order or a Construction Change Directive by the Authority.
- 8.3.2 The Request shall include a complete explanation of the relevant circumstances, and provide a detailed description of the support for any adjustment to the Contract Price (if a lump-sum contract) or Contract Time that Contractor is claiming for the Change in the Work. Requests for adjustments to Contract Time shall conform to the requirements of Sections 8.3.4 and 8.5 of these General Conditions.
- 8.3.3 Authority-Initiated Contract Changes and Proposal Requests. The Authority may initiate changes in the Contract by appropriately issuing a Construction Change Directive or by issuing a Proposal Request that identifies a Change in the Work, and requests a proposed price (if the contract was bid on a lump-sum basis), and other information, from the Contractor for the Work identified in the Proposal Request. Upon receipt of a Proposal Request from the Authority, the Contractor shall review the Proposal Request, and within three (3) Days of receipt of the Proposal Request shall prepare a Proposal identifying in writing any adjustment to the Contract Price or Contract Time that the Contractor claims is necessitated by the proposed Change in the Work, and providing adequate support for any such adjustments to Contract Price (if lump-sum) or Contract Time. The Contractor's Requests for adjustments to Contract Time shall conform to the requirements of Sections 8.3.4 and 8.5 of these General Conditions.
- 8.3.4 All requests for adjustment to the Contract Time shall be accompanied by copies of both the current accepted Project Schedule (i.e., most current, accepted Schedule update) and a proposed revision to that Schedule incorporating the changed Work and the effect the Change in the Work is expected to have on the Schedule. Failure to provide the required Schedule data shall be grounds for rejection of the Contract Change Request.
- 8.3.5 Following the submission of a Proposal or Contract Change Request by the Contractor, or receipt of a Proposal Request from the Authority, the

Contractor shall diligently continue performance of all other Work in accordance with the Contract Documents, unless otherwise directed by the Authority.

- 8.3.6 Construction Change Directive. The Authority may initiate changes in the Contract by issuing a formal Construction Change Directive (CCD), directing or authorizing some change to the Contract Documents for which Compensation and/or Contract Time extension, if appropriate, has not yet been determined or agreed. The CCD shall be issued in a zero-dollar amount while negotiations regarding any entitlement to additional compensation or time extension progress, and upon agreement on Compensation and/or Contract Time extension, if warranted for the Change in the Work, a Change Order shall be issued resolving the CCD. The Contractor shall proceed to perform the Work described in the CCD without delay and notwithstanding any ongoing negotiations as to entitlement to compensation or time extension, and regardless of the existence of any dispute as to entitlement to additional Compensation or Time Extension with respect to such CCD. Any claims resulting from such Construction Change Directives may be asserted and processed in accordance with the Claims resolution provisions of this Agreement.

#### 8.4 **Calculation of Adjustments to the Contract Price for Lump-Sum Contracts**

- 8.4.1 In the event that the Authority issues a Change Order including an adjustment to the Contract Price, the Authority shall be the sole arbiter as to whether the Contract Price shall be adjusted on a lump sum or time and materials basis.
- 8.4.2 The Authority may request a lump-sum cost proposal for a proposed Change in the Work. Within five (5) Days of such a request by the Authority, the Contractor shall submit a lump sum cost proposal for the Change in the Work. The Contractor's proposal shall itemize the labor and material costs for the various components of the Change in the Work, shall conform to the instructions regarding the pricing of additive and deductive changes set forth in Section 01080 of the Specifications, and shall be accompanied by the signed proposals of all Subcontractors who will perform any portion of the Change in the Work and of all suppliers who will furnish materials or equipment for incorporation therein.
- 8.4.2.1 The cost of any increase in the Contractor's bond premium and insurance costs caused by a Change in the Work shall be considered a direct cost and is to be added to the Contractor's proposal after overhead and profit have been calculated. In instances where bond premium and insurance costs are a calculated percentage, the percentage shall be applied to the cost of the Work excluding any overhead or profit. Proof of any increase in insurance or bonding cost

shall be provided upon request, and may be evidenced by correspondence from the Contractor's surety and/or insurance provider or broker confirming the increase.

- 8.4.2.2 In its lump sum proposal for work related to the Change in the Work, the Contractor may include a markup for work performed by its own workforce, in an amount no greater than fifteen percent (15%) of direct costs for such self-performed work, allocated as ten percent (10%) for overhead and five percent (5%) for profit. Where the Work is performed by a Subcontractor, the Contractor may include a five percent (5%) markup for Subcontractor work performed, except that the Contractor's markup on materials procured by a subcontractor may not exceed \$5,000 over the amount of the subcontractor's cost to procure the materials.
- 8.4.3 In the event that the Contractor fails to submit its lump sum proposal within the designated time, or in response to other circumstances, the Authority may issue a zero-dollar Construction Change Directive in accordance with Section 8.3.6 above, and order the Contractor to proceed with the Change in the Work while the Contractor and the Authority negotiate a Change Order for the Change in the Work.
- 8.4.4 In the event that the Contractor and the Authority are unable to agree as to the reasonable cost and time to perform the Change in the Work based upon the Contractor's lump sum proposal, the Authority may elect to have the Contractor perform the work on a time and materials basis.
  - 8.4.4.1 The Authority may issue a Change Order authorizing the Contractor to perform the Change in the Work on a time and materials basis, which shall be binding on the Contractor.
  - 8.4.4.2 In the event that the Authority elects to have the Change in the Work performed on a time and materials basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors, at actual cost to the entity performing the Change in the Work, calculated in accordance with the instructions regarding the pricing of additive and deductive changes set forth in Section 01080 of the Specifications. The Contractor shall submit to the Authority daily time and materials tickets, including the location and description of the Change in the Work, the names and classification of labor employed, the materials used, the equipment rented, not including tools, and such other evidence of cost as the Authority may require.
- 8.4.5 Failure of the Parties to reach agreement regarding the cost and time of performing the Change in the Work and/or any objection by the Contractor as to the terms of a Change Order shall not relieve the Contractor of its

obligation to perform the Work identified in a Change Order or Construction Change Directive promptly and expeditiously.

- 8.4.6 The Authority reserves the right to reject the Contractor's proposal for an adjustment in the Contract Price and to elect to perform the Change in the Work using those of a separate contractor.

## **8.5 Force Majeure and Other Changes Warranting an Adjustment in the Contract Time**

- 8.5.1 If the Contractor is delayed in completion of the Work by a Force Majeure Event as defined in these General Conditions, the Contract Time may be extended upon request by the Contractor to the Authority.

- 8.5.1.1 The Contractor shall not be entitled to an extension of the Contract Time for a weather-related delay unless it demonstrates that the weather conditions during the relevant time period were particularly severe as compared to the normal weather conditions at the Site during that time of year, and that these unusually severe weather conditions adversely impacted the Project's critical path, as defined in the most current, accepted Project Schedule.

- 8.5.1.2 If unusually severe or abnormal weather conditions are shown to have affected the Project's critical path, a non-compensable extension to the Contract Time may be granted. Under no circumstances will the Contractor be entitled to a compensable delay due to weather-related delays.

- 8.5.2 No request for an extension of the Contract Time will be granted unless the Contractor makes a written request for an extension of time to the Authority within seven (7) Days of the event that causes the delay. The request shall include the nature of the delay, the commencement date of the delay, activities on the Project Schedule affected by the delay depicted in a separate Schedule, and recommended action to minimize the delay. In no event will an extension of time be granted where it is determined that the Contractor could have avoided the circumstances that caused the request for the extension.

- 8.5.3 The Contractor shall be fully compensated by an extension of the Contract Time for any Force Majeure delays, and shall make no claim for damages or additional compensation for any delay in, or hindrance to, its performance of the Work occasioned by any reason enumerated in this Article, or any act or omission by the Authority or any of its representatives, unless the delay or hindrance is caused by the negligence, bad faith, active interference or other tortious conduct of the Authority or its employees. If the delay is caused by such negligence, bad faith, active interference or

tortious conduct, the Contractor shall be entitled to compensation on a time and materials basis, as provided in Section 13.2 of this Agreement and Section 01080 of the Specifications.

- 8.5.4 The burden of proof for substantiating a request for an extension of Contract Time shall be on the Contractor, and shall include evidence that the cause was beyond the control of the Contractor, and was without fault or negligence of the Contractor, as well as any other justification and supporting evidence that the Authority requires to evaluate the Contractor's request.

#### **8.6 No Claims for Indirect Costs**

The Contractor shall not be entitled to any amount for indirect costs, consequential damages or expenses, including labor inefficiency, wage, material or other escalations beyond the lump sum, unit price or time and materials calculations provided for in this Section 8.0 and in Section 01080 of the Specifications, regardless of any delays, interference, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all Changes in the Work performed pursuant to this Section 8.0. It is understood and agreed that the Contractor's sole and exclusive remedy in the event of a Change in the Work shall be the recovery of its direct costs and an extension of the Contract Time, as per the requirements of this Section 8.0. In no case shall the Contractor be entitled to damages or compensation for lost profit or lost opportunity; damages or compensation under theories of "total cost," "loss of productivity," or "cumulative impact;" compensation for extended, unabsorbed or under-absorbed home office overhead or damages calculated under the Eichleay formula or under any other formula used by the Contractor to calculate damages for lost profit or lost opportunity, or extended, unabsorbed or under-absorbed home office overhead; or any other kind of consequential or indirect cost or damage as a result of any claim for delay or Change in the Work under this Section 8.0.

#### **8.7 Differing Site Conditions**

- 8.7.1 Differing Site Conditions shall be defined herein as concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in work of the character and in the location of the Project Site. If the Contractor encounters a Differing Site Condition, the Contractor may be entitled to an adjustment in the Contract Price (if the Project was bid on a lump-sum basis) and/or the Contract Time to the extent the Contractor's costs and/or time of performance are adversely impacted by the Differing Site Condition. Any

request for adjustment in the Contract Time or Contract Price as a result of a Differing Site Condition shall comply with the requirements of this Article 8.

- 8.7.2 Upon encountering a Differing Site Condition, the Contractor shall provide prompt written notice to the Authority of such condition, which notice shall not be later than seven (7) Days after such condition has been encountered and before the Differing Site Condition has been substantially disturbed or altered. The Contractor waives any right to an adjustment in the Contract Time or the Contract Price for a Differing Site Condition unless the Contractor provides timely written notice as required under this Section.

## **8.8 Hazardous or Contaminated Materials**

Should the Contractor discover previously undetected or suspected asbestos, contaminated soils, radon, lead, PCBs or other hazardous or contaminated material, the Contractor shall report its findings immediately to the Authority. During any remedial action undertaken by the Authority or any other Party, the Contractor may be required to cease working on the Project, if so directed by the Authority. If the Contractor is required to cease performance of Work due to the discovery of hazardous or contaminated materials, such Work stoppage shall be deemed a suspension governed by Section 10.1. The Contractor will resume Work at the direction of the Authority and the terms and conditions of the Contract Documents shall remain in full force and effect.

## **9.0 BONDS AND INSURANCE**

### **9.1 Performance and Payment Bonds**

- 9.1.1 The Contractor shall furnish within five (5) Days of receipt of the Notice of Award both a performance bond and a payment bond, each in a form satisfactory to the Authority, in an amount equal to one-hundred percent (100%) of the Contract Price, guaranteeing the timely performance of all obligations of the Contractor under the Contract Documents. No contract shall be executed by the Authority unless and until the required bonds are submitted and accepted by the Authority.
- 9.1.2 The surety issuing the bonds must be currently authorized to do business in the State of New Jersey.
- 9.1.3 The bonds shall cover all guarantees and warranties required by the Contract Documents, and all alterations, extensions of Contract Time, Changes in the Work and other changes authorized by the Contract Documents, without the need to secure the consent of the surety or sureties.

9.1.4 The bonds must be legally effective as of the date the Contract is executed. Each bond must indicate the Contractor's name exactly as it appears in the Contract. Current attorney-in-fact instruments and financial statements of the surety must be included for each bond. An authorized officer or agent of the surety must execute the bonds. All bonds and the sureties that write them must conform in all respects to the requirements of applicable State law.

## 9.2 Insurance – Introductory Statement

9.2.1 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 Contractor and certain of its Subcontractors that are deemed eligible under the terms of the OCIP. Despite such OCIP coverage, the Contractor and the eligible Subcontractors are required to obtain certain insurance coverage of the types specified in Section 9.15 below.

9.2.2 This Agreement also recognizes that certain Subcontractors, and all consultants and subconsultants providing professional services, are ineligible for OCIP coverage (hereinafter, “Ineligible Subcontractors/Subconsultants”), as set forth in Section 9.16 below. Such Ineligible Subcontractors/Subconsultants are required to obtain insurance coverage of the types specified in Section 9.16.5.

9.2.3 The terms and conditions of this Article 9 addressing OCIP and the Contractor insurance requirements, shall apply during the Term of this Agreement. In addition, the Contractor and its subcontractors and subconsultants shall be required to comply with all provisions of the applicable NJSDA Safety Manual and the OCIP Manual, as such compliance has a direct bearing on the insurance costs of the Authority.

9.3 **Owner Controlled Insurance Program Coverage.** OCIP will provide on-site General Liability, on-site Employer's Liability and Workers' Compensation, Builder's Risk and on-site Excess Liability coverage. Through OCIP, the Authority shall provide coverage to the Contractor and eligible Subcontractors of every tier providing direct labor on the Project, except as otherwise provided herein. Firms providing temporary labor services and leasing companies are to be treated as Subcontractors for OCIP enrollment purposes. The Authority shall pay all premiums associated with OCIP, including deductibles or self-insured retention, with the exception of Builders' Risk deductibles as indicated in Section 9.12.2, or unless otherwise provided in this Agreement.

9.4 **Contractor and Subcontractor 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 the Contractor and its Subcontractors. In addition to coverage provided by OCIP, therefore, the Contractor shall be responsible for providing proof that it and its Subcontractors have retained, at a minimum, the insurance coverage set forth in Section 9.15.

- 9.5 **Risk Management Unit.** Management of OCIP enrollment and other OCIP-related issues shall be handled by the Authority's Risk Management Unit and OCIP Administration Services Provider (collectively, "RMU"). All OCIP questions are to be directed to the RMU.
- 9.6 **Mandatory Enrollment.** The Contractor's enrollment in OCIP is mandatory prior to the first Construction Notice to Proceed. Prior to undertaking any Work, enrollment in OCIP is mandatory for all eligible subcontractors, but is not automatic. The Contractor is required to notify RMU of all Subcontractors of every tier providing direct labor on the Project and follow enrollment procedures as provided by the Authority in the NJSDA OCIP Insurance Procedures and Enrollment Manual ("OCIP Manual"). Any failure on the part of the Contractor to comply with this notification and enrollment requirement may negate coverage.
- 9.7 **Coverage Term.** The term of OCIP coverage shall extend and terminate as follows:
- 9.7.1 Coverage of the Contractor . Builder's Risk coverage shall extend to and terminate upon the occurrence of Substantial Completion of the Project, as such is defined herein. On-site General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage of the Contractor shall extend to and terminate upon the occurrence of Final Completion of the Work, as defined herein.
- 9.7.2 Coverage of Subcontractor. On-site General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage provided to any Subcontractor shall extend to and terminate upon the earlier of: (i) the occurrence of Final Completion of the Project, as such is defined in Section 1 or (ii) the completion of the Subcontractor's work at the Project Site.
- 9.7.3 Warranty Work Exclusion. The Contractor and any Subcontractor of any tier shall be ineligible for participation in the OCIP and thus shall be responsible for purchasing and maintaining its own insurance coverage in accordance with Section 9.16 for the performance, after Final Completion of the Project, as such is defined herein, of any warranty Work on the Project pursuant to Section 19.0, and in no event shall such Work be subject to coverage under the OCIP.

## 9.8 **Authority's Right to Terminate OCIP Insurance Coverage.**

9.8.1 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 the Contractor and all Subcontractors covered by the affected OCIP coverage. In such event, the Contractor and its Subcontractors 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 the OCIP coverage. The Authority shall reimburse the Contractor and Subcontractors for the reasonable cost of such replacement insurance. The Contractor shall be required to submit an invoice to the Authority for the reasonable cost of such replacement insurance obtained by the Contractor and its Subcontractors.

9.8.2 The Authority has the right to terminate enrollment of the Contractor or any of its Subcontractors 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 the Contractor or Subcontractor. In such event, the Contractor or Subcontractor 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 the Contractor and its Subcontractors for the reasonable cost of such replacement insurance coverage. The Contractor shall be required to submit an invoice to the Authority for the reasonable cost of such replacement insurance coverage obtained by the Contractor and its Subcontractors. Notwithstanding anything to the contrary, in the event that this Agreement is Terminated for Convenience or Terminated for Default, OCIP coverage shall terminate as set forth in the Notice of Termination for Convenience or Notice of Termination for Cause, as appropriate.

9.9 **Waiver of Subrogation.** The Contractor waives all rights of subrogation and recovery against the Authority, any Professional Services Consultants, agents or employees of the Authority, and Subcontractors 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 Contractor shall require all Subcontractors of any tier enrolled in OCIP to include in their contracts with the Contractor the same waiver of their rights to subrogation and recovery.

9.10 **No Release.** 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, Contractor agrees to be bound by the terms of coverage as contained in such insurance policies, and Contractor agrees to require its Subcontractors 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.

9.11 **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, Contractor agrees to be bound by the terms of coverage as contained in such insurance policies, and Contractor agrees to require its Subcontractors 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.

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

Workers' Compensation	Applicable Statutory Benefits
Employer's Liability	
\$1,000,000	Bodily Injury by Accident
\$1,000,000	Bodily Injury by Disease - Policy Limit
\$1,000,000	Bodily Injury by Disease - Each Employee

9.11.2 Commercial General Liability Insurance shall be provided on an "occurrence" form under a master liability policy. Certificates of Insurance will be provided to the Contractor and all tiers of enrolled Subcontractors 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 project (reinstated annually)
\$4,000,000	Products/Completed Operations Aggregate (reinstated annually)
\$2,000,000	Personal Injury and Advertising Injury
\$ 300,000	Damage to Premises 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

9.11.3 Excess Liability Insurance shall be provided under a master excess liability program. Certificates of Insurance will be provided to the Contractor and all tiers of enrolled Subcontractors reflecting the following Limits of Liability:

\$200,000,000 Per Occurrence  
 \$200,000,000 Aggregate

**9.12 Builder’s Risk Coverage.**

9.12.1 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 Contractor, 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

9.12.2 Per Occurrence Deductible: The Contractor 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.

9.12.3 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 Contractor or of any enrolled subcontractor of any tier, or of any other person furnishing labor or materials for the School Facilities Project.

9.13 **Insurance Certificates and Policies.** The Contractor and all tiers of enrolled Subcontractors shall receive Certificates of Insurance evidencing the General Liability and Excess Liability coverage. The related policies shall be available for review by the Contractor upon request to the RMU. The Contractor and its

Subcontractors shall be bound by the terms of coverage as contained in such insurance certificates and/or policies.

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

9.14.1 Ensuring that no enrolled Subcontractor shall commence Work at the Project Site until it has received prior Subcontractor approval from the Authority as set forth in Section 6.4.6 of this Agreement.

9.14.2 Compliance with all applicable safety program, administrative, and claims procedures, as outlined in the respective manuals.

9.14.3 Promptly providing necessary contract, operations, safety, and insurance information.

9.14.4 Promptly responding to RMU or insurance company requests for claims, payroll, or other information.

9.14.5 Attending periodic meetings regarding administration, claims review, or safety.

9.14.6 Completing all OCIP forms required by RMU or the applicable manual.

9.15 **Supplemental Insurance Requirements of the Contractor and Eligible Subcontractors.** Prior to undertaking any Work under this Agreement, the Contractor shall maintain, and/or cause its Subcontractors to maintain, at their own cost and expense, evidence of a policy or policies of insurance as enumerated below. The Contractor and its Subcontractors shall be responsible for maintaining such coverages after Final Completion and during the warranty period for the Project.

9.15.1 As provided in this Section 9.15, notwithstanding enrollment in OCIP, the Contractor and its Subcontractors of every tier providing direct labor on the Project must, upon enrollment in OCIP, attach to the required enrollment forms, certificates of valid insurance evidencing current coverage for the On-Site and Off-Site exposures enumerated below. These exposures are not covered by OCIP. Insurance binders are not acceptable as proof of insurance coverage.

9.15.2 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.

- 9.15.3 In each policy, the Contractor 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 Contractor 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.
- 9.15.4 The Contractor warrants that its insurance carriers are accurately informed regarding business activities of the Contractor and intend to insure those business exposures.
- 9.15.5 For purposes of this Section, “Off-Site” shall include, but not necessarily be limited to, the Contractor’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.
- 9.15.6 The following are the exposures, on-Site and off-Site, for which the Contractor and its Subcontractors must obtain insurance coverage in addition to OCIP insurance requirements:
- (a) Pollution Liability. In the event that the Contractor’s and/or its Subcontractors’ efforts involve a Pollution Liability exposure (including asbestos work, lead work, or hazardous material abatement, transportation and/or disposal), the Contractor and/or its Subcontractors are 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 Service or Work performed on this Project. Where the Contractor and/or its Subcontractors are solely consultants, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy.
  - (b) Off-Site and On-Site Business Automobile Liability. 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.

- (c) 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 Contractor's employees or any of its Subcontractors engaged in the performance of Work on the Project. This policy shall include Employer's Liability protection with a limit of liability of not less than the following:

Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

- (d) 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.

- (e) Off-Site/On-Site Contractor s' Equipment. The Contractor shall purchase and maintain the Contractor's property insurance covering construction machinery (whether or not the capital value of the machinery has been included in the Contract) equipment, and tools used by the Contractor in the performance of the 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 Contractor shall

notify all tiers of its Subcontractors of their obligation to insure any machinery, equipment and tools used by the Subcontractors in the performance of the Services or Work.

- 9.15.7 Self-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). The Contractor 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 9.15.7 IS A MATERIAL BREACH OF CONTRACT.**
- 9.15.8 Claims-Made Basis. If any of the aforementioned insurance is written on a "claims made basis," the Contractor warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years after the date of Final Payment by the Authority and the Contractor will provide Certificates of Insurance evidencing continuance of coverage with the original claims made retroactive date. Within the Certificate of Insurance, in the blocks designated "Policy Number," in addition to the policy number, the Contractor shall insert a note "claims made retroactive date \_\_\_/\_\_\_/\_\_\_" (with the date inserted).
- 9.15.9 Certificate of Insurance. Attached as Appendix D to this Agreement 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 9.15. 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 the Contractor's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this contract at the Authority's option. The Contractor shall provide certified copies of all insurance policies required within ten (10) Days of the Authority's written request for such policies.
- 9.15.10 Right to Remedy. If the Contractor fails to obtain and/or maintain the insurance as required by this Section 9.15, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at the Contractor'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 the Contractor and the Authority; (iv) suspend performance by the Contractor under this Agreement; or (iv)



terminate this Agreement. Any funds retained pursuant to this Section 9 (Bonds and Insurance) may be used, at the Authority's discretion, to renew or purchase the Contractor's insurance for the periods and amounts as set forth in this Agreement. In the event that the Authority purchases said insurance, the Authority may, at its discretion, reduce the Contractor'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 the Contractor and such coverage and limits shall not be deemed as a limitation on the Contractor's liability under this Agreement. All exclusions added by endorsement to the aforementioned insurance shall be disclosed to the Authority.

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

9.15.12 Disclaimer. The Contractor and each of its and Subcontractors 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.

9.15.13 Liability in Excess of Coverage. By executing this Agreement, the Contractor expressly agrees that any insurance protection required herein or by the Construction Contract shall in no way limit the Contractor's obligations under this Agreement and shall not be construed to relieve the Contractor 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..

#### **9.16 Subcontractors/Consultants/Subconsultants Ineligible for OCIP**

9.16.1 Types of Ineligible Subcontractors/Subconsultants. Subcontractors and Consultants or 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 Subcontractors/Subconsultants"). The Authority may, at its sole discretion, exclude other types of Subcontractors, Consultants or Subconsultants from enrollment in the OCIP. The following shall be Ineligible Subcontractors/Subconsultants:

- a) Professional Services Consultants;
- b) Suppliers (that do not perform or subcontract installation);
- c) Vendors;
- d) Guard and security services;

- e) Janitorial services;
- f) Truckers/Haulers (including trucking to the Project Site where delivery or removal of materials is the only scope of work performed);
- g) Any contractor or other person or organization that does not have dedicated payroll for employees at the “project site” for the “designated project”
- h) Blasting contractors (unless approved in writing by the RMU);
- i) Lead, asbestos, and hazardous materials abatement;
- j) Off-site fabricators or manufacturers; and
- k) Material Dealers.

9.16.2 Insurance Requirements of Ineligible Subcontractors/ Subconsultants.

Unless otherwise directed by the Authority, the Contractor shall require all Ineligible Subcontractors/ Subconsultants to purchase and maintain at their own expense, the insurance coverages set forth below. Prior to permitting an Ineligible Subcontractor or Subconsultant to perform any Services or Work, the Contractor must furnish the RMU with certificates of insurance together with declaration pages, in a form satisfactory to the Authority, showing that the Ineligible Subcontractor or Subconsultant has complied with this Section 9.16. Insurance binders are not acceptable as proof of insurance coverage.

9.16.3 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 Contractor 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 Contractor 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.

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

9.16.5 The coverages enumerated below shall protect the Contractor , the Authority, the NJEDA, the New Jersey Department of Education, the State, the Construction Manager 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 Subcontractor/Subconsultant, its employees, officers, agents, subcontractors or other individuals or entities for whom the Ineligible Subcontractor/Subconsultant may be contractually or legally responsible while performing Services or Work. The required coverages are as follows:

- (a) Professional Liability Insurance (Errors & Omissions). The Contractor shall require the Contractor's Design Consultant and any other Consultants or Subconsultants to maintain Professional Liability Insurance, with coverage retroactive to the date of commencement of Services on the Project by such Contractor's Design Consultant or Subconsultant, sufficient to protect the Contractor's Design Consultant or 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 Contractor 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.

The Contractor shall warrant, and shall require the Contractor's Design Consultant and 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.

- (b) 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.

- (c) Pollution Liability. In the event that the Ineligible Subcontractor/Subconsultant's efforts involve a Pollution Liability exposure (including asbestos work, lead work, or hazardous material abatement, transportation and/or disposal), the Ineligible Subcontractor/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/Subcontractors are solely consultants, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy.
  
- (d) Off-Site/On-Site Contractor's Equipment. The Ineligible Subconsultants/Subcontractors 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/Subcontractors 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/Subcontractors shall notify all tiers of their Subconsultants/Subcontractors of their obligation to insure any machinery, equipment and tools used by the subcontractors in the performance of Work. The Ineligible Subconsultants/Subcontractors shall indemnify, defend, and hold the Authority and its officers, agents, and employees harmless from any such loss, theft, or disappearance.
  
- (e) Business Automobile Liability. The Ineligible Subconsultants/Subcontractors 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.

- (f) 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/Subcontractors 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

9.16.6 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/Subcontractors shall contain or be endorsed to contain the following provisions:

- a) The Contractor, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Construction Manager, and the Project School District, and their respective directors, officers, members, employees and agents shall be covered as additional insureds.
- b) For any claims related to the Project, the Ineligible Subconsultants/Subcontractors' insurance coverage shall be primary insurance with respect to the Contractor, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Construction Manager, and the Project School District, and their respective directors, officers, members, employees and agents and Contractor warrants that coverage shall be required to continue for a minimum of two years notwithstanding the fact that the Ineligible Subconsultants/Subcontractors 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/Subcontractors' insurance, and shall not contribute with it.

- c) Any failure on the part of the Ineligible Subconsultants/Subcontractors to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of the Ineligible Subconsultants/Subcontractors 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 Contractor, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Project School District, the Construction Manager and their respective directors, officers, members, employees and agents.
- d) The Ineligible Subconsultants/Subcontractors' 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.

9.16.7 Disclaimer. Ineligible Subconsultants/Subcontractors 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.

9.16.8 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/Subcontractors hereunder.

9.16.9 Right to Remedy. If an Ineligible Subconsultant/Subcontractor 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 Contractor's Contract Price shall be reduced by the amount paid for such insurance.

## **10.0 SUSPENSION OF THE WORK**

10.1 **Suspension of the Work for the Authority's Convenience.** The Authority shall have the right to defer the Commencement Date or to suspend the whole, or any part, of the Work required under the Contract Documents whenever, in the sole discretion of the Authority, it is necessary or expedient for the Authority to do so. The Authority shall by notice to the Contractor suspend performance of the Work and upon receipt of such notice, unless otherwise directed in writing by the

Authority, the Contractor shall immediately discontinue all Work, except as necessary to properly secure the Project.

10.1.1 In the event of a suspension by the Authority pursuant to this Section, the Contractor shall be entitled to an extension of the Contract Time equivalent to the duration of the suspension, and Compensation, if any, shall be determined as follows:

10.1.1.1 If the Authority determines that the Work has been suspended for a period cumulatively totaling less than forty-five (45) Days, or if the Project was procured on a time-and-materials basis, there shall be no additional compensation paid to the Contractor.

10.1.1.2 If the Authority determines that the Work has been suspended for a period cumulatively totaling forty-five (45) Days or more on a project procured on a lump-sum basis, and if the Authority determines that the suspension has resulted from no fault of the Contractor, the Parties may amend the Contract Documents to provide an adjustment to the Contract Price (if lump sum) in an amount deemed proper by the Authority and the Contractor after a review of the Contractor's submissions relating to the increased costs actually incurred by the Contractor as a direct result of the suspension. No such adjustment to the Contract Price will change any of the other terms of the Contract Documents. In no case shall the Contractor be entitled to profit or overhead on the direct costs asserted. In no case shall the Contractor be entitled to damages or compensation for lost profit or lost opportunity; compensation for extended, unabsorbed or under-absorbed home office overhead or damages calculated under the Eichleay formula or under any other formula used by the Contractor to calculate damages for lost profit or lost opportunity, or extended, unabsorbed or under-absorbed home office overhead; or any other kind of consequential or indirect cost or damage as a result of any suspension.

10.1.1.3 When the Authority has determined that a suspension is the fault of the Contractor, the Authority may, in its sole discretion, suspend all payments to the Contractor. Payment may be reinstated by the Authority upon completion of any appropriate corrective action or upon completion of the Work in accordance with the other provisions of the Contract Documents. Alternatively, the Authority may terminate the Contract or carry out the Work pursuant to Section 11.0.

10.2 **Suspension of the Work for Failure to Comply with the Contract Documents.** The Authority may suspend the Work, in whole or in part, for such period as the Authority deems necessary if the Contractor fails to carry out orders given by the

Authority or to comply with any requirements of the Contract Documents. The Contractor shall promptly comply with the written order of the Authority to suspend the Work in whole or in part. The suspended Work shall resume when appropriate corrective action, as approved by the Authority, has been taken by the Contractor. The Contractor shall not be entitled to an adjustment in the Contract Price or the Contract Time if the Work is suspended pursuant to this Section 10.2

- 10.3 **Requirement to Secure the Site Upon Suspension of the Work.** In the event that a suspension of Work is ordered under this Section 10.0, the Contractor shall perform all Work necessary to ensure the safety of the public, the Authority, the employees and guests of the Project School District, and to secure all of the completed and partially completed Work.

## 11.0 DEFAULT AND TERMINATION

### 11.1 Events of Default

11.1.1 The Contractor shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions (“Events of Default”), following notice and opportunity to cure (if applicable), as specified in Section 11.1.2

- (a) The Contractor fails to either (i) promptly begin the Work under the Contract Documents, or (ii) prosecute the Work in accordance with the Project Schedule;
- (b) The Contractor fails to perform the Work in accordance with the Contract Documents;
- (c) The Contractor refuses to remove and replace rejected materials or nonconforming, defective or unacceptable Work;
- (d) The Contractor fails to resume performance of Work which has been suspended or stopped within a reasonable time after receipt of notice from the Authority to resume Work after a suspension or stoppage;
- (e) The Contractor disregards or otherwise fails to comply with any applicable Legal Requirements;
- (f) The Contractor refuses or otherwise fails to properly staff the Project;
- (g) The Contractor fails, absent a valid dispute, to make payments to Subcontractors for materials, labor or services in



accordance with the respective agreements between the Contractor and its Subcontractors;

- (h) The Contractor fails to maintain or produce any Documents or other records required by the Contract Documents to be so maintained or produced;
- (i) The Contractor fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of the Contract Documents;
- (j) The Contractor fails to obtain and properly maintain the level of insurance coverages outlined in the Contract Documents;
- (k) The Contractor fails to obtain and properly maintain the level of bonding outlined in the Contract Documents;
- (l) The Contractor assigns or transfers its obligations, privileges or rights under the Contract Documents without the prior, written consent of the Authority;
- (m) The Contractor fails to comply with requirements of the Contract Documents regarding prevailing wage payments, equal employment opportunity or affirmative action requirements;
- (n) The Contractor makes any misrepresentation or conceals any material fact;
- (o) The Contractor commences or has commenced against it any action under the United States Bankruptcy Code or any State or Federal insolvency law, the commencement of which, in the Authority's judgment, may effectively impair the ability of the Contractor to perform its obligations under the Contract Documents;
- (p) The Contractor fails to discharge or obtain a stay of any judgment or order for the payment of money arising out of the prosecution of the Work (provided that for purposes hereof, posting of a bond in the amount of 124% of such judgment or order shall be deemed an effective stay);
- (q) The Contractor fails to perform Work as required under the Contract Documents;

- (r) The Contractor fails to pay applicable Prevailing Wage rates on the Project or otherwise violates the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.
- (s) The Contractor fails to comply with a Directive or a Contract Change Directive from the Authority; or
- (t) The Contractor violates or breaches the Contract Documents or any material provision or term thereof.

11.1.2 The Authority shall provide the Contractor and its surety with written notice of the Contractor's default ("Notice of Default"). For all such Events of Default except those contained in subsections 11.1.1 (n) (misrepresentation or concealment) and 11.1.1 (o) (bankruptcy or insolvency action) (and any other such default that by its nature cannot be cured), the Contractor may, within seven (7) Days of receipt of the Notice of Default, commence correction of such default, neglect or violation, with diligence and promptness, fully curing the same within the time prescribed by the Authority, if any, within the Notice of Default. If the Contractor's default is capable of cure, but by its nature, cannot be cured within seven (7) Days, such additional period of time shall be allowed as may reasonably be necessary to cure the default, provided that the Contractor or its surety commences such cure within such seven (7) Day period and thereafter diligently prosecutes such through completion. Failure of the Contractor to commence correction of its default, neglect or violation within seven (7) Days of receipt of the Notice of Default, or to cure the same within the time prescribed by the Authority, shall allow the Authority to issue a Notice for Termination for Cause as per Section 11.2 of this Agreement.

## 11.2 Termination for Cause

- 11.2.1 If any default described in Section 11.1 above is not subject to cure or is not cured within the period specified in 11.1.2, the Authority may terminate the Contract for cause. Any such Termination for Cause shall be effected by delivery of a "Notice of Termination for Cause" to the Contractor and its Surety specifying the extent to which the Work under the Contract is terminated and the date upon which such termination becomes effective.
- 11.2.2 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 Work that was required to be performed by the Contractor by whatever methods the Authority may deem appropriate.
- 11.2.3 In the event the Contract is terminated for cause pursuant to this Section, the Authority reserves the right not to make any further payments to the Contractor and may require the Contractor to repay all or a portion of the

monies already paid. The Contractor or its surety, at their own expense, shall be obligated to take any steps necessary to enable the Authority to complete the Work itself, or for the Authority to engage the surety or another contractor to complete the Work. Such steps may include, but are not limited to, the prompt delivery to the Authority of all Submittals, Documents and Work Product identified herein and/or related to the Project.

- 11.2.4 Materials obtained by the Contractor for the Project that have not yet been incorporated into the Work, or paid for by the Authority, may, at the option of the Authority, be purchased from the Contractor at the Contractor's actual cost and delivered to a prescribed location or otherwise disposed of as mutually agreed. Upon Authority's request to purchase such materials, the Contractor shall assure that such materials are protected as per the requirements of Section 6.13.
- 11.2.5 In the event the Contractor is terminated for cause pursuant to this Section, the Contractor shall take the steps necessary to secure and protect the completed and partially-completed Work and materials and equipment, whether or not such materials and equipment are incorporated into the Work and whether or not such materials and equipment are on the Project Site or stored off-site. The Contractor and its Surety shall be liable for all costs incurred by the Authority as a result of the Contractor's failure to adequately secure and protect the Work, materials and/or equipment after receiving a Notice of Termination for Cause.
- 11.2.6 All costs and charges incurred by the Authority in completing the Work will be deducted from any monies due or that may become due to the Contractor and the Surety. If the payments then or thereafter due the Contractor and the Surety are not sufficient to cover the Authority's cost to complete the Work itself or to engage another contractor to complete the Work, the Contractor and the Surety shall pay the difference to the Authority upon demand.
- 11.2.7 The Contractor and the Surety shall not be relieved of liability for Liquidated Damages on account of any action taken by the Authority under this Section 11.2.
- 11.2.8 The rights and remedies of the Authority under this Article are in addition to any other rights and remedies provided by law or equity or provided under the Contract or the Performance or Payment Bonds.
- 11.2.9 If the Authority's Termination for Cause pursuant to the provisions of this Section 11.2 is found by a court of competent jurisdiction to have been unjustified, the Contract will be treated as if it was terminated for convenience and the Contractor shall be compensated in accordance with the provisions of Section 11.3.

- 11.2.10 No action by the Authority pursuant to this Section shall operate to waive or release any claims that the Authority may have against the Contractor or the Surety under the Contract Documents.

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

- 11.3.1 Performance by the Contractor of its obligations under the Contract Documents may be terminated by the Authority 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."
- 11.3.2 Any such Termination for Convenience shall be effected by delivery of a "Notice of Termination for Convenience" specifying the extent to which the Work under the Contract is terminated and the date upon which such termination becomes effective.
- 11.3.3 Upon receipt of a Notice of Termination for Convenience, the Contractor shall complete all Work necessary to ensure the safety of the public, the Authority, employees and guests of the Project School District, and such Work as is necessary to properly secure and protect the completed and partially-completed Work and materials and equipment, whether or not such materials and equipment are incorporated into the Work and whether or not such materials and equipment are on the Project Site or stored off-site. The Contractor shall also perform all other Work requested by the Authority in the Notice of Termination for Convenience, which may include items of work not in the original Contract. The Contractor and its Surety shall be liable for all costs incurred by the Authority as a result of the Contractor's failure to adequately secure and protect the Work, materials and/or equipment after receiving a Notice of Termination for Convenience.
- 11.3.4 The Authority reserves the right to declare in default a Contractor who fails to perform all of the items of Work set forth in an Order of Termination for Convenience.
- 11.3.5 Upon such Termination for Convenience, the Contractor shall be entitled to Compensation for the Work actually and satisfactorily performed by the Contractor, less payments previously made. The Contractor shall also be entitled to the reasonable costs and expenses attributable to such Termination for Convenience.
- 11.3.6 Upon a Termination for Convenience, the Contractor shall furnish to the Authority, free of charge, such closeout reports, Documents, and materials as may be reasonably required by the Authority. Materials purchased by the Contractor for the Project that have not yet been incorporated into the Work may, at the option of the Authority, be purchased from the Contractor at the

actual cost and delivered to a prescribed location or otherwise disposed of as mutually agreed.

- 11.3.7 Within sixty (60) days of the effective termination date, the Contractor shall submit to the Authority claims for any other costs that were incurred but that are not already addressed by this Section 11.3. No claim will be allowed for anticipated profits on Work that has not been performed. The Contractor's failure to submit a claim to the Authority within sixty (60) Days of the effective termination date shall constitute a waiver of any and all claims.

#### **11.4 The Authority's Right to Complete the Work**

- 11.4.1 If the Contractor fails to perform any obligation imposed under the Contract Documents within seven (7) Days after receipt of written notice to commence and continue correction of such failure with diligence and promptness, the Authority may take steps to remedy such failure without prejudice to any other remedy the Authority may have. In such case, an appropriate written notice shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such failure, including Compensation for any additional work or services of other contractors and/or Professional Services Consultants engaged as a result of such failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Authority upon demand.
- 11.4.2 Any action by the Authority under this Section shall be without prejudice to the Authority's rights under the Contract Documents and shall not operate to release the Contractor from any of its obligations under the Contract Documents.

#### **11.5 In Terminating a Contract for Convenience or Cause Pursuant to this Article:**

- 11.5.1 The Contractor shall make cost records available to the extent necessary to determine the validity and amount of each item for which it seeks compensation.
- 11.5.2 The Contractor shall not be relieved of contractual responsibilities for the Work completed, nor shall the Surety be relieved of its obligations for any just claim arising out of the Work performed.
- 11.5.3 The Contractor shall, if so directed by the Authority, remove promptly any or all of its equipment and supplies from each Project Site or other property of the State. If the Contractor fails to remove the equipment and supplies as

directed, the Authority may remove such equipment and supplies at the expense of the Contractor.

## **12.0 SUBSTANTIAL COMPLETION AND FINAL COMPLETION**

### **12.1 Substantial Completion**

12.1.1 Requirements for Substantial Completion. The Design Consultant and the Authority shall determine the date that the Contractor achieves Substantial Completion for the Project. In order to achieve Substantial Completion, the Contractor must have achieved the following on the Project: (i) all essential requirements of the Contract Documents have been performed so that the purpose of the Contract Documents have been accomplished, (ii) a Temporary Certificate of Occupancy (or Temporary Certificate of Acceptance, if applicable) has been issued by the Department of Community Affairs, (iii) a Punchlist has been created by the Design Consultant and approved by the Authority, (iv) [deliberately omitted] (v) there are no material omissions or technical defects or deficiencies, identified by the Authority or the CM or Design Consultant, and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.

12.1.2 Punchlist and Certificate of Substantial Completion. Once the Contractor believes that it has reached Substantial Completion of the Project but for preparation of the Punchlist, the Authority shall inspect the Project in conjunction with Design Consultant. If the Authority and the Design Consultant determine that Substantial Completion has been achieved but for preparation of the Punchlist, the Design Consultant, with input from the the Authority and the Project School District, shall prepare a Punchlist, which shall be submitted to the Authority for approval. The Punchlist shall not include items that are necessary to be completed in order to secure a Temporary Certificate of Occupancy. Once the Punchlist is prepared and approved, the Authority or the Design Consultant shall distribute to the Contractor a Certificate of Substantial Completion with an attached Punchlist. As the Contractor corrects the Work identified on the Punchlist, the Design Consultant shall update the Punchlist and verify that the Contractor corrects the incomplete or defective Work necessary as required by the Contract Documents.

### **12.2 Final Completion**

12.2.1 Completion of Punchlist Work. After Substantial Completion, the Contractor shall perform all remaining Punchlist work. Upon the completion of the Punchlist work, the Contractor shall notify the Authority

that the Work is ready for final inspection to determine whether all Punchlist work has been completed. The Design Consultant, CM and the Authority shall inspect the Project and the Design Consultant, with input from the CM and the Authority, shall determine whether the Punchlist work has been completed and whether all nonconforming and/or deficient Work has been corrected or remedied. The determination that Punchlist work has been completed shall be a prerequisite to achievement of Final Completion.

- 12.2.2 The Authority, with input from the Design Consultant and the CM, shall issue a Certificate of Final Completion and determine the date of Final Completion of the Project. Final Completion means that point in time on the Project when the Project is 100% complete and: (i) all requirements of the Contract Documents have been completed, (ii) all items on the Punchlist have been performed, (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, 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 Design Consultant's determination that the Punchlist Work has been completed, the Design Consultant shall evaluate the Work and notify the Authority when the Work is ready for final inspection. The Design Consultant shall, in conjunction with the Project School District and the Authority, conduct a final inspection of the Work to verify that all Punchlist Work has been completed and all nonconforming and/or deficient Work has been corrected or remedied. The Design Consultant shall assist the Authority in issuing a Certificate of Final Completion

### 12.3 **Liquidated Damages**

- 12.3.1 Inasmuch as delays in the completion of the Work may result in an increase in costs to the Authority and/or the Project School District, the precise amount of which may be difficult to ascertain, it is hereby agreed that if Substantial Completion does not occur on or before the Substantial Completion Date (as extended pursuant to the provisions of the Contract Documents), the Contractor shall pay the Authority the amount of Liquidated Damages specified in this Agreement or the Supplementary Conditions or in a Change Order issued hereafter, for each Day that Substantial Completion extends beyond the Substantial Completion Date ("Substantial Completion Liquidated Damages").
- 12.3.2 The Contractor further agrees that if Final Completion does not occur on or before the Final Completion Date (as extended pursuant to the provisions of the Contract Documents), the Contractor shall pay the Authority the amount of Liquidated Damages specified in the Supplementary Conditions for each

Day that Final Completion extends beyond the Final Completion Date (“Final Completion Liquidated Damages”).

- 12.3.3 In the event that Liquidated Damages are to be assessed for any day for both Substantial Completion pursuant to Section 12.3.1 and Final Completion pursuant to Section 12.3.2, the Contractor shall only be liable to the Authority for Liquidated Damages related to Substantial Completion pursuant to Section 12.3.1 above.
- 12.3.4 The Authority and the Contractor agree that the actual damages that would be suffered by the Authority if Substantial Completion and/or Final Completion of the Work is delayed are speculative and not susceptible of precise determination and that the specified Liquidated Damages amounts identified either in the Contract Documents or in any Change Order represent a reasonable estimate of the damages that the Authority would suffer in such event, and therefore do not constitute a penalty.
- 12.3.5 The Authority shall have the right to deduct Liquidated Damages from any amounts, including Retainage, owed by the Authority to the Contractor or its Surety. If Liquidated Damages are not deducted from such amounts, Liquidated Damages shall be payable by the Contractor to the Authority within ten (10) Days after receipt by the Contractor of a demand for payment by the Authority.
- 12.3.6 The Substantial Completion Liquidated Damages amount shall be \$1,500.00 per Calendar Day. The Final Completion Liquidated Damages amount shall be \$1,500.00 per Calendar Day.

## **13.0 PAYMENT AND CONTRACT COMPLETION**

### **13.1 Compensation for Lump Sum Contracts**

If the Project is bid on a lump sum basis, or if the Authority determines to advance some portion of the work on a fixed-cost basis, the Compensation shall be as follows: As full compensation for the Work to be performed under the Contract, and subject to the limitations contained herein, the Authority shall pay to the Contractor the Contract Price identified in the Contract Documents, as such amount may be adjusted from time to time by Change Orders.

- 13.1.1 The Contractor acknowledges and agrees that, subject only to the Contractor’s ability to seek an adjustment pursuant to Article 8.0 of this Agreement, the Contract Price includes:
  - (a) All equipment; materials; labor; services; insurance and bond premiums; home office, jobsite and all other overhead; and



profit relating to the Contractor's performance of its obligations under the Contract Documents (including all work, equipment, materials, labor and services provided by subcontractors and intellectual property rights necessary to perform the Work);

- (b) Performance of each and every portion of the Work;
- (c) The cost of obtaining all approvals and permits, with the exception of the Uniform Construction Code permit to be secured by the Authority; and
- (d) Payment of any duties, permit fees or other fees or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein.

13.1.2 The Contractor's lump sum Contract Price shall include all escalation costs for the complete execution and duration of this Contract. No subsequent claim of escalation charges will be permitted for work completed. All after-hours and weekend work necessary to meet the project schedule is to be included as part of the lump sum bid. The Contractor's bid shall also include the cost for all overtime, premium time, and shift costs as necessary to maintain the schedule through project completion.

13.1.3 The lump sum Contract Price shall be increased or decreased only in accordance with the requirements of Section 8.0 of this Contract.

13.1.4 Schedule of Values. For Projects bid on a lump sum basis, or if the Authority determines to advance some portion of the work on a fixed-cost basis, before submitting its first Invoice for work to be compensated on a lump-sum or fixed-cost basis, the Contractor shall submit to the Authority a Schedule of Values. The Schedule of Values shall be prepared in such form as the Authority may require and supported by such data to substantiate its accuracy. If accepted by the Authority, this Schedule of Values shall be used as a basis for the Contractor's Invoices and only for this purpose. Adjustments to the Schedule of Values must be approved in writing by the Authority.

13.1.5 The Contractor shall not front-end load its Schedule of Values, but the Contractor may include in its Schedule of Values a line item for the reasonable value of the Contractor's mobilization, and a line item for the reasonable costs of bonds and insurance.

## 13.2 Compensation for Work Performed on a Time and Materials Basis.

If the Project is bid on a time and materials basis, the Compensation shall be as follows: As full compensation for the Work to be performed under the Contract, and subject to the limitations contained herein, the Authority shall pay to the Contractor an amount equal to the Contractor's invoiced Time and Materials Costs for the Work, (if approved by the Authority on the basis of supporting documentation supplied as proof of such costs) as modified by the Cost Multiplier supplied by the Contractor's Price Proposal.

13.2.1 Direct Costs for Time and Materials Contracts. If the Contract specifies that Work is to be performed on a time and materials basis, the Contractor may invoice for the following "Direct Costs" when evidenced by the daily or shift reports for time and materials costs, and/or other necessary backup documentation. The Authority will review the Contractor's invoices and backup documentation supplied in support of such costs, and if approved, the Authority will make payment for the following "Direct Costs":

13.2.1.1 Direct Labor. The Authority will make payment for all necessary direct labor and the supervising foreperson of the specific operation, whether the employer is the Contractor, or subcontractor, based on the gross rate of wage paid to the employee as shown in the employer's certified payrolls for each and every hour that said labor and foreperson are actively engaged in such work.

(a) For specific extraordinary operations, the Authority may allow supervising or other special types of employees, which would usually be considered as overhead, to be considered direct labor (i.e. a "working foreman"), but only for that time allowed by the Authority. Submit justification in writing for the Authority's approval before using such employees.

(b) Note that the Authority's contract requires that the Contractor's Superintendent be present on site during the performance of any and all labor. Costs associated with the Superintendent's supervision of operations are to be considered "overhead" and shall not be compensated as "direct labor" except in specific extraordinary situations, and only for such situations and for such time periods as are allowed by prior written approval of the Authority

13.2.1.2 Labor Fringe Benefits. The Authority will make payment for the cost of benefits paid by the Contractor to or on behalf of workers when required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed on the work, for those direct labor costs allowed under Section 13.2.1.1.

13.2.1.3 Labor Burden Costs. The Authority will make payment for the cost of FICA, Workers Compensation Insurance (if applicable), Federal and State unemployment insurance and other payroll taxes paid by the Contractor on direct labor costs allowed under Section 13.2.1.1.

13.2.1.4 Materials. The Authority will make payment for the cost of materials and shipping charges as evidenced by paid invoices, except as follows:

- (a) If a cash or trade discount is offered by the actual supplier or available to the purchaser, the Authority shall be entitled to a credit for such discount, even if such discount may not have been taken, or if such discount is not shown on the paid invoices or receipts.
- (b) If materials are procured by the purchaser by any method that is not a direct purchase from and a direct billing by the actual supplier to such purchaser, then the Authority will calculate the cost of such materials as the price paid to the actual supplier, as determined by the Authority, plus the costs, if any, incurred in the handling of such materials
- (c) If in the opinion of the Authority the cost of such materials is excessive, then the Authority will limit the cost of such materials to the prevailing market price for such materials as are available in the quantities concerned, delivered to the Project Site, and deducting any discounts as specified in Section 13.2.1.4(a).
- (d) For materials not incorporated into the permanent construction, the Authority will deduct the reasonable salvage value of the material after the performance of the work.
- (e) The Authority will only allow sales tax on materials that are not permanent and do not qualify for an exemption under the State Sales Tax Act.
- (f) The Authority reserves the right to furnish materials, and the Authority will not make payment for costs and markup on such materials.

13.2.1.5 Permitting and Disposal Expenses. The Authority will make payment for permit and disposal fees, if approved before incurring the cost and evidenced by paid invoices. If the cost is, in the opinion of the Authority, excessive, then the Authority will limit the

payment for such expenses to reasonable costs as available in the prevailing market.

- (a) “Disposal fees” shall refer to charges for disposal of soils or other excavated materials removed from the project site as part of excavation activities and the like. The Authority will not make payment for costs of basic garbage removal or dumpster charges for disposal of waste materials from the construction process, as those costs shall be included in the Contractor’s overhead and compensated through the application of the Cost Multiplier.
- (b) Note that the Authority will secure the building permits for the project, but the Contractor shall be responsible for securing all other necessary permits.

13.2.1.6 Equipment. The Authority will make payment for Contractor-owned or rented equipment required for the work performed on a time and materials basis. The Authority will not provide payment for equipment that is determined to be unsuitable by the Authority for the work performed on a time and materials basis or that is inoperable due to breakdown or during periods of repair. In the event the Contractor proposes to use equipment of a higher cost than that suitable for the work, the Authority will make payment at the rate applicable to the suitable equipment. The Authority will make payment for Contractor-owned or rented equipment as follows:

- (a) Contractor-Owned Equipment. For equipment owned directly by the Contractor or by entities that are divisions, affiliates, subsidiaries, or in any other way related to the Contractor or its parent company, submit in writing to the Authority for approval the type of equipment and proposed cost before starting the work. The Authority will make payment for equipment rental, operating, and idle time costs based on the calculated cost. The Authority will determine the calculated cost using the Rental Rate Blue Book (Blue Book), published by Equipment Watch, as follows:
  - i. The Authority will calculate the “rental” hourly rates by dividing the monthly rate by 220. The Authority will not use weekly, daily, or hourly rates. The Authority will apply rental hourly rates for every hour the equipment is in active use, except that for any 30-day period, the Authority will limit the total amount paid for each piece of equipment to a maximum of 80 percent of the monthly rate

- ii. The Authority will apply the operating cost rate for every hour the equipment is active
- iii. The Authority will apply the rental and operating rates that are current on the first day that the equipment is in use for the work performed on a time and materials basis throughout the next 6 months that the work is in progress. The Authority will apply updated rates for every following 6 month period the force account is in progress. Submit to the Authority documentation establishing the Blue Book rates for the equipment proposed and the age of the equipment. The Authority will adjust rates for each 6-month period thereafter.
- iv. The Authority will not permit area adjustments. The Authority will adjust rental rates for equipment age adjustments according to the rate adjustment tables.
- v. The Authority will not make payment for idle time for equipment required for only portions of the work performed on a time and materials basis, except where the equipment has been held on the work site on a standby basis at the request of the Authority and, but for this request, would have left the work site. Portions of the work include hours when the equipment is inactive within a working day. For the idle time for each piece of equipment, the Authority will make payment at one-half the rate established as specified in 104.03.08.7.a.1. Idle time is limited to the Contractor's normal working hours. Idle time is further limited to a maximum of eight hours a day and a maximum of 176 hours in a 30-day period.
- vi. The payment established is full payment for all equipment costs, including the cost of fuel, oil, lubrication, supplies, attachments, repairs and maintenance of any kind, depreciation, storage, and all incidentals. Furthermore, the payment established above is also full payment for all costs (including labor and equipment) for transporting equipment to, on, and away from the work site.
- vii. If a rate is not established in the Blue Book for a particular piece of equipment, the Authority will establish a rate for that piece of equipment that is consistent with its cost and use in the industry.

- (b) Rented Equipment. In the event that the Contractor does not own a specific type of equipment and must obtain it by rental, the Contractor shall submit in writing to the Authority for approval of the need to rent the equipment and the rental rate for that equipment before using it on the work. If the need for such equipment and the rental rate is approved, the Authority will make payment for the rental of the equipment as specified in the rental agreements and as evidenced by paid invoices for the time that the equipment is used to accomplish the work, plus the cost of moving the equipment to, on, and away from the work site.

13.2.1.7 Subcontractors. The Authority will make payment for work performed by subcontractors in the same manner as described above for the Contractor with respect to costs for direct labor, labor fringe benefits, labor burden, materials, permitting and disposal expenses, and equipment.

13.2.1.8 The Authority will make payment for a Subcontractor's markup on second-tier subcontracted work at the rate of 5 percent applied on the total amount of all costs for second-tier subcontracted work performed on a time and materials basis, except that the subcontractor's markup on second-tier subcontractor-procured materials may not exceed \$5,000 over the amount of the subcontractor's cost to procure the materials.

13.2.1.9 Bonds and Insurance. The Authority will make payment for bonds and insurance costs directly attributable to this Agreement.

13.2.2 Cost Multiplier for Time and Materials Contracts. The Contractor's Cost Multiplier is intended to compensate the Contractor for all indirect costs for the Project, including, but not limited to the following: profit; home office labor costs, fringe benefits and labor burden; facilities costs; depreciation; and general and administrative costs. Accordingly, the Contractor shall not invoice for any amounts related to these indirect costs.

13.2.2.1 The Contractor's Cost Multiplier, when applied to all direct costs for the time and materials work, shall be full compensation for the Contractor's field and home office overhead including, but not limited to, the following:

- (a) Salaries and expenses of executive officers, supervising officers, or supervising employees, except as provided for specific extraordinary operations under Section 13.2.1.1;

- (b) Salaries and expenses of clerical and administrative employees;
- (c) Charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, and other miscellaneous supplies and services; and equipment consumed during operations, such as saw blades, drill bits, and milling teeth;
- (d) Charges for basic mechanized equipment where normally associated with a specific function called for in the specifications, such as a screw gun for drywall installation, or a mortar mixer for masonry repair; and
- (e) Costs for preparing documents and records, including reproduction and mailing costs.

**13.3 Conversion of Time and Material Contract to Fixed Cost Basis at Construction NTP .** For a contract awarded on a time and materials basis, after the completion of Construction Documents produced by the Design Consultant, the Authority may convert the remaining work of the Contract to a fixed-cost arrangement if the Authority determines that, in the interest of proceeding with the most efficient means of managing the construction phase of the project, the remaining Work of the Contract for the Construction and Close Out phases (or a portion thereof) should be billed on a fixed-cost or lump-sum basis, rather than on a Time and Materials basis. In such case, the Authority and the Contractor shall agree to a fixed cost price for the portion of the Work in question, and the contractor shall submit a Schedule of Values for the invoicing of the fixed fee work. The Fixed Fee work shall be invoiced according to the terms and conditions outlined in Section 13.1, "Compensation for Lump Sum Contracts" and in accordance with the provisions on invoicing of lump-sum contracts contained in Section 13.4 (Invoices).

13.3.1 For Projects bid on a lump sum basis, before submitting its first Invoice, the Contractor shall submit to the Authority a Schedule of Values. The Schedule of Values shall be prepared in such form as the Authority may require and supported by such data to substantiate its accuracy. If accepted by the Authority, this Schedule of Values shall be used as a basis for the Contractor's Invoices and only for this purpose. Adjustments to the Schedule of Values must be approved in writing by the Authority.

13.3.2 The Contractor shall not front-end load its Schedule of Values, but the Contractor may include in its Schedule of Values a line item for the reasonable value of the Contractor's mobilization, and a line item for the reasonable costs of bonds and insurance.

## 13.4 Invoices

- 13.4.1 On or about the twenty-fifth day of each month, the Contractor shall submit to the Design Consultant and the Authority a pencil copy of its proposed monthly Invoice, in a form acceptable to the Authority, identifying the percentage of the Contractor's Work completed during the prior month (if the Project was bid as a lump sum), or the Time and Materials costs for labor performed and/or materials purchased during the prior month (if the Project was bid on a time and materials basis), so that the Design Consultant and the Authority may request any revisions to the pencil copy before the Contractor submits its Invoice on the first day of the following month, as required pursuant to this Section 13.4.
- 13.4.2 On the first weekday of each month, the Contractor shall submit to the Design Consultant and the Authority its Invoice. If the Project was bid on a lump sum basis, or the Authority determines to advance some part of the Work on a lump-sum basis, the Invoice shall request payment for the percentage of the Contractor's Work completed during the prior month. If the Project was bid on a time and materials basis, the Invoice shall request payment for the Contractor's Time and Materials Costs for labor performed and/or materials purchased during the prior month, as modified by the Cost Multiplier factor included in the Contractor's Price Proposal in response to the RFP. Each Invoice shall include:
- (a) the Authority's contract number and name of the Project;
  - (b) all data supporting the amounts requested and any other documentation reasonably requested by the Authority;
  - (c) a certification by the Contractor that all payments due its Subcontractors have been made from prior paid Invoices and that all Legal Requirements have been complied with; and
  - (d) if the Contractor is withholding payment from any Subcontractor or supplier, a certification by the Contractor that a valid basis exists under the terms of the Subcontractor's or supplier's contract to withhold payment, and a copy of the contract for the Subcontractor in question.
  - (e) a copy of the current schedule update, reflective of current conditions and showing any schedule recovery requirements due to delays, if any.
- 13.4.3 Invoices shall show either the percentage of completion of each portion of the Work as of the end of the prior month covered by the Invoice as specified in Section 13.4.2, above, or the Time and Materials Costs for



Work performed as of the end of the prior month covered by the Invoice, as specified in Section 13.2. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed during the prior month. The Time and Materials Costs shall be those costs for labor actually performed and/or materials actually purchased, for the Project during the prior month.

- 13.4.4 Invoices submitted to the Design Consultant and the Authority shall be processed and paid only after the Design Consultant reviews and determines that the Work for which payment is sought has been completed at the times and in the manner specified by the Contract Documents. Invoices will not be processed by the Authority or the Design Consultant if the Contractor has failed to provide an acceptable Project Schedule or Project Schedule update. Invoices will not be paid by the Authority if the Authority or the Design Consultant determines that the Work for which payment is sought is incomplete or unsatisfactory.
- 13.4.5 Invoices may request payment for equipment and materials not yet incorporated into the Project, provided that (i) the Design Consultant is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance (if stored equipment and materials are of a total value in excess of OCIP Builder's Risk coverage per Section 9.12.2 above (currently \$5 million limit for any one location) and (iii) upon payment, the Authority will receive the equipment free and clear of all liens and encumbrances.
- 13.4.6 If the Project was bid on a lump sum basis, invoices may request payment for the Contractor's general conditions costs only to the extent that such costs are properly allocated to the percentage of Work completed by the Contractor during the prior month.
- 13.4.7 Contractor 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 Contractor's responsibility. Contractor may obtain the documents required to use either electronic payment method from the Authority's website. The Contractor shall provide to the Authority the documents necessary to use the electronic payment method selected before any payment will be made to the Contractor by the Authority.
- 13.4.8 Within thirty (30) Days after receipt of the Contractor's properly supported Invoice, the Authority, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 2A:30A-2, will make payment of the approved amount of such Invoice, unless within twenty (20) Days of receipt the Authority issues a

notice in accordance with N.J.S.A. 2A:30A-2 indicating that funds will be withheld, the amount of the funds to be withheld and the reason for such withholding. The twenty (20) Day period for providing notice to the Contractor that the Authority will withhold funds shall be extended if authority for payment by the Authority's Board of Directors is required. The thirty (30) Day payment requirement shall be extended if the Contractor fails to provide complete and sufficient documentation in support of the amounts claimed and the Authority reserves the right to refuse payment as a result.

- 13.4.9 If the Contractor submits any false or fraudulent Invoice to the Authority for payment, the Contractor shall be held liable and subject to all penalties and damages under the New Jersey False Claims Act, N.J.S.A. 2A:32 et seq.
- 13.4.10 In the event the Contractor fails to pay its Subcontractors in a timely manner and the Authority is in full compliance with its obligations regarding timely payment of sums due the Contractor, the Authority may, but is not obligated to, make payments directly to each Subcontractor or by two-party checks. The Authority's decision to make such payments to the Contractor's Subcontractors will not give rise to any liability of the Authority for making such payments, will not in any way require the Authority to exercise its option to make such payments, and will not create any contractual relationship between the Authority and any Subcontractor. Payments to Subcontractors will not constitute acceptance of the adequacy of Work performed by the Contractor or its Subcontractors. In the event the Authority makes direct payment to a Subcontractor, or pays a Subcontractor through a two-party check, the Authority may, in its sole discretion, deduct from the Contract Price an amount equal to a five percent (5%) markup on the payment made directly to the Subcontractor.
- 13.4.11 In the event of a dispute between the Authority and the Contractor as to whether an amount is owed for certain Work, or as to whether an amount has been reasonably withheld by the Authority, the Authority shall pay all amounts that are not in dispute, but shall not be required to pay the amount that is in dispute until the Parties settle or otherwise resolve such dispute. The Contractor shall continue to perform all of its obligations under the Contract Documents notwithstanding such dispute.
- 13.4.12 Failure by the Authority to pay any amount in dispute shall not postpone, alleviate, diminish or modify in any respect the Contractor's obligation to perform under the Contract Documents, including the Contractor's obligation to achieve Substantial Completion of all Work in accordance with the Contract Documents, and the Contractor shall not cease or slow down its performance under the Contract Documents on account of any such amount.

- 13.4.13 No payment will be processed or owing to the Contractor for Work during any time when: 1) the Contractor has failed to provide a project Schedule or updated Schedule acceptable to the Authority; 2) the Contractor has refused to advance the work or to perform as directed; 3) an Event of Default has been declared; or 4) as otherwise stated herein.

### **13.5 Withholding of Payment**

- 13.5.1 The Authority may deny the Contractor's Invoice, in whole or in part, if: (a) the Work has not progressed to the point represented by the Contractor in its Invoice; (b) the quality of the Work does not conform to the Contract Documents; (c) defective or nonconforming Work has not been timely corrected; (d) the Contractor has caused damage to the Authority, the Authority's property or to another contractor; (e) reasonable evidence exists that, due to the fault of the Contractor, the Work will not be completed within the Contract Time, or that Construction Milestones identified in the Schedule will not be achieved by the dates in the approved Schedule; (f) the Contractor has failed or refused to properly schedule and coordinate the Work, or to provide Project Schedules and updates; or (g) the Contractor has failed or refused to comply with any material term in the Contract Documents.
- 13.5.2 If the Authority determines that a sufficient basis exists to withhold payment from the Contractor pursuant to Section 13.5.1 above, the Authority will either: (i) retain for payment the relevant Invoice (or portion thereof) until the reason for the withholding of payment has been eliminated or corrected, or (ii) return the relevant Invoice to the Contractor, who shall resubmit the Invoice once the reason for the withholding of payment has been eliminated or corrected.
- 13.5.3 The withholding of any sums pursuant to this Section shall not be construed as, or constitute in any manner, a waiver by the Authority of the Contractor's obligation to perform the Work required under the Contract Documents. In the event that the Contractor fails to perform any Work required by the Contract Documents, the Authority shall have, in addition to the sums withheld in accordance with this Section, all rights and remedies provided by law, equity and the Contract.
- 13.5.4 In addition to any other right to withhold payments under the Contract Documents, the Authority shall have the right to withhold from payments due the Contractor such sums as necessary to protect the Authority against any loss or damage which may result by reason of: (a) any willful misconduct or wanton or negligent act, error or omission by the Contractor or any Subcontractor, or any of their employees, representatives or agents which gives, or may give, rise to a claim by the Authority or by some other person or entity against the Authority; (b) the Contractor's breach of any of

its material obligations under the Contract; (c) reasonable evidence that the Contractor will not complete the Work required by the Contract Documents within the Contract Time, and that the unpaid balance will not cover the actual damages suffered for the delay; and (d) the Contractor's inability or failure to complete any of the Work required by the Contract Documents.

### **13.6 Retainage**

13.6.1 Except as otherwise provided herein, the Authority shall withhold funds ("Retainage") from payments made to the Contractor in accordance with this Section. The Authority shall withhold five percent (5%) of the Compensation as Retainage from all invoiced amounts.

13.6.2 At the time of Substantial Completion, the Contractor may request that the Authority reduce Retainage. The Authority in its sole discretion may reduce the percentage of Retainage withheld or may release the total amount of Retainage being withheld by the Authority if the Authority determines that such action is warranted by the progress and quality of the Work. Any request by the Contractor for a reduction in retainage must be accompanied by the following documents, available on the SDA website:

- (a) A Certificate of Substantial Completion (Form 701), in cases in which a Certificate of Occupancy or Temporary Certificate of Occupancy has been issued; or a Confirmation of Contract Compliance (Form 702), in cases in which a Certificate of Occupancy will not issue (i.e. where a Certificate of Acceptance will issue); and
- (b) Consent to Surety Reduction in or Partial Release of Retainage (Form 814); and
- (c) Request for Reduction of Retainage (Form 816), signed by the Authority approving the reduction in retainage to the new percentage or amount.

13.6.3 At the time of Final Payment, the Authority shall release to the Contractor all Retainage other than amounts applied to the payment of liquidated damages or amounts which the Authority in its sole discretion deems necessary to retain to cover any existing or threatened claims or liens, or any amounts otherwise due the Authority under the Contract Documents.

### **13.7 Other Deductions**

13.7.1 In addition to Retainage, the Authority may deduct from any progress payment the following:

- (a) any liquidated damages which have accrued as of the date of the Invoice;
- (b) any sums expended or expected to be expended by the Authority in performing any of the Contractor's obligations under the Contract Documents which the Contractor has failed to perform or has deficiently performed; and
- (c) any other sums which the Authority is entitled to recover from the Contractor under the terms of the Contract Documents.

13.7.2 The Contractor agrees that, to the extent that the Authority may deduct or withhold money from the Contractor pursuant to the terms of this Contract, the Authority has available to it any monies due or that may become due the Contractor under other contracts between the Contractor and the Authority. Such other contracts shall include joint ventures in which the Contractor is a participant, but only to the extent of its participation. The right to recover against the Contractor as herein provided is in addition to and does not affect the right of the Authority to seek recovery against the Contractor or Surety under the Contract, bonds, or as otherwise allowed by law.

### **13.8 Certificates for Payment**

13.8.1 The Authority will, after receipt of the Contractor's Invoice, and within the time set forth in the Specifications, either issue a Certificate for Payment for such amount as the Authority deems properly due, including deductions as allowed in this Section 13.0, or notify the Contractor in writing of its reasons for withholding a Certificate for Payment, as provided below.

13.8.2 The submission and approval of the Project Schedule and monthly updates thereof as required by the Contract Documents shall be an integral part and basic element of the application upon which progress payments shall be made. The Contractor shall be entitled to progress payments only as determined from the currently approved and updated schedule.

### **13.9 Progress Payments**

13.9.1 After a Certificate for Payment has been issued, the Authority shall make payment in the manner and within the time provided in the Contract Documents.

13.9.2 Upon receipt of payment from the Authority, the Contractor shall promptly pay each of its Subcontractors the amount due to such Subcontractor. The Contractor shall require that each of its Subcontractors make timely payments to its sub-subcontractors in a similar manner.

- 13.9.3 The Authority shall have no obligation to make direct payment to any of the Contractor's Subcontractors.
- 13.9.4 No Certificate for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Authority or Project School District, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

### **13.10 Contract Completion and Final Payment**

- 13.10.1 After Substantial Completion, the Contractor shall perform all remaining Punchlist work. Upon the completion of the Punchlist work, the Contractor shall notify the Authority that the Work is ready for final inspection to determine whether all Punchlist work has been completed. The Authority shall inspect the Project and determine whether the Punchlist work has been completed and whether all nonconforming and/or deficient Work has been corrected or remedied.
- 13.10.2 If the Authority is satisfied that the punchlist work has been completed, and after receipt of the documentation required by the Contract Documents, including, but not limited to, the requirements of Section 13.10.4 below, the Authority will issue a Certificate of Final Payment, which shall constitute evidence that Contract Completion has been achieved.
- 13.10.3 Final Payment shall be made in accordance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-2, provided that the requirements of the Contract Documents have been fulfilled. The Final Payment shall include payment for all Work performed under the Contract, including all Retainage held by the Authority, less any amount the Authority is entitled to deduct or withhold pursuant to the terms of the Contract Documents.
- 13.10.4 Prior to issuance of the Final Payment, the Contractor shall submit to the Authority the following documents and information:
- (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Authority may in any way be responsible, have been paid or otherwise satisfied;
  - (b) consent of Surety to final payment in the form of AIA Form G707;
  - (c) other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Authority;

- (d) written certification that the Work is complete in all respects, and that the Work complies in all respects with the requirements of the Contract Documents;
- (e) written certification that all equipment and systems have been installed in accordance with the Contract Documents and have been started and tested in accordance with the Contract Documents, the Code, and manufacturers' and/or suppliers' requirements;
- (f) completed Form 710 "Construction Contract Final Completion Checklist," found on the SDA webpage; and
- (g) in compliance with the Prevailing Wage Act, written statements from the Contractor and all Subcontractors, certifying to the amounts then due and owing from the Contractor and Subcontractors to any and all workers for wages due. The statements shall contain the names of the persons whose wages are unpaid and the amount due to each respectively. The statements shall be verified by the oath of the Contractor or Subcontractor, as the case may be, that said party has read such statement subscribed by it; that said party knows the contents thereof; and that the statements are true of the party's own knowledge. If any Subcontractor refuses to furnish a release or waiver required by the Authority, the Contractor may furnish a bond satisfactory to the Authority to indemnify the Authority, the State and the Project School District against any loss. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Authority all monies that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees. The Authority may withhold from the final payment any sum that the Authority has reason to believe may be needed to satisfy any lien, claim or threat of lien arising from the Work.

13.10.5 The tendering of Final Payment shall not constitute a waiver of any claims by the Authority against the Contractor. Available claims may include, but are not limited to:

- (a) unsettled liens and claims against the Authority, the State, the School Facility, or the Project School District, or any of their employees, officers, agents, or representatives;
- (b) faulty, defective or nonconforming Work;

- (c) failure of the Work to comply with the requirements of the Contract Documents;
- (d) any warranties contained in or required by the Contract Documents;
- (e) damages incurred by the Authority, the State or the Project School District resulting from lawsuits brought against them, their agents, employees, officers or representatives because of failures or actions on the part of the Contractor, its Subcontractors, or any of their officers, employees, agents or representatives;
- (f) fraud or bad faith committed by the Contractor or any Subcontractor during performance of the Work, discovered by the Authority after Final Payment;
- (g) any and all claims pursuant to the New Jersey False Claims Act, N.J.S.A. 2A:32C et seq.; and
- (h) any other claims cognizable at law or equity.

### **13.11 Contractor's Release**

- 13.11.1 The acceptance of Final Payment by the Contractor shall constitute a waiver of all claims by the Contractor against the Authority and the Design Consultant, except those expressly reserved by the Contractor in writing at the time of Final Payment. Such reservation of rights shall state the specific amounts of the claims being reserved and the bases for such claims. Failure to state the specific amount of a claim shall result in a waiver of that claim. The Contractor shall be deemed to have waived all claims for which the notices required by law and the Contract Documents have not been provided.
- 13.11.2 Acceptance or approval of, or payment for, any of the Work performed by the Contractor shall not constitute a release or waiver of any claim the Authority has or may have against the Contractor for latent defects, errors, omissions, deficiencies, breach of contract, or negligence. If the Authority discovers latent defects, errors, omissions or deficiencies in the Work after Final Release, the Contractor shall correct any such defects, errors, omissions or deficiencies in the Work at no expense to the Authority.
- 13.11.3 Notwithstanding any other provision of the Contract, for a period of three (3) years after Final Completion of the Project, all estimates and payments made pursuant to the Contract Documents, including the Certificates of Final Completion and Final Payment, are subject to correction and



adjustment for clerical or other errors in the calculations involved in the determination of the amount of the payments. The Contractor and the Authority agree to pay to the other any sum due under the provisions of this Section, provided, however, that if the total sum to be paid is less than \$100, payment will be waived.

- 13.12 **Eleven-Month Inspection.** Approximately eleven (11) months after Substantial Completion, the Authority shall conduct, in conjunction with the Design Consultant, an inspection of the Project and the Work. The Contractor shall, at no cost to the Authority, participate in the inspection, and correct deficiencies, latent defects or warranty work discovered in the Eleven-Month warranty inspection, or discovered before the expiration of the Contractor's one year warranty period.

## **14.0 PROTECTION OF PERSONS AND PROPERTY.**

### **14.1 Safety of Persons and Property**

- 14.1.1 The Contractor shall be responsible for preparing a Safety Plan for the Project which recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Submission of an appropriate Safety Plan is a statutory requirement under N.J.S.A. 18A:7G-37(b).
- 14.1.2 The Contractor shall prepare and submit the Safety Plan to the Authority at the time of, or prior to, the Preconstruction Conference. The Authority's Project Manager and/or the Authority's safety division shall review Contractor's Safety Plan for consistency with the Authority's requirements and policies, based upon the latest version of the Authority's Safety Manual, which is incorporated into this Agreement by reference, and all other applicable Legal Requirements, including, but not limited to, governmental safety codes, rules, regulations and requirements, such as OSHA. Within ten (10) Days of receipt of the Contractor's Safety Plan, the Authority's Project Manager and/or the Authority's Safety Division shall recommend to the Authority acceptance or rejection of the Contractor's Safety Plan. The Authority will either accept or reject the Safety Plan within five (5) Days of the Authority's Project Manager's and/or the Authority's Safety Division's recommendations. The Contractor shall continue to submit its Safety Plan to the Authority's Project Manager and/or the Authority's Safety Division until it is accepted.

- 14.1.3 Once the Contractor's Safety Plan is accepted, the Authority's Project Manager and/or the Authority's Safety Division shall monitor the Contractor's compliance with the Safety Plan throughout the Term of this Agreement to ensure that the Contractor meets or exceeds the accepted Safety Plan. If, at any time any part of the Project Site is deemed unsafe by the Design Consultant, the Authority's Project Manager and/or the Authority's Safety Division, the Authority may require the Contractor to stop performance and to take immediate corrective measures. Additionally, as the Authority has implemented a School Facilities Projects OCIP in accordance with N.J.S.A. 18A:7G-44, the Site and work areas of the Contractor and its Subcontractors, if enrolled in the OCIP, shall be subject to inspection by the OCIP insurance carrier's risk control engineer, and the Contractor and its Subcontractors are required to cooperate with safety recommendations made by such risk control engineer.
- 14.1.4 The Contractor shall at all times secure and protect the Authority's property and the adjacent property of others from injury or loss. All passageways, guard fences, lights and other facilities reasonably required for protection must be provided and maintained by the Contractor.
- 14.1.5 The Contractor shall provide winter protection to the Project, including, but not limited to, providing temporary heat to maintain the Project buildings at a temperature of at least forty (40) degrees Fahrenheit or greater, as may be required for the construction activity.
- 14.1.6 Notification to the Contractor by the Authority or any other person or entity of a safety hazard or violation shall in no way relieve the Contractor of sole and complete responsibility to perform the Work in a safe and workmanlike manner, or of its sole liability for any fees, fines, damages or other costs resulting from such hazard or violation.
- 14.1.7 The Contractor acknowledges that the safety of the public, the Project School District's students, employees, and guests is of the utmost importance. The Contractor shall take no action which would jeopardize the safety of such students, employees, or guests and, without the Authority's written approval, shall take no action which would interfere with the activities of the Project School District, its students, employees or guests, at the Site.
- 14.1.8 The Contractor must fully comply with the terms of the NJSDA Safety Manual, and all Federal, State and local job safety requirements. All costs associated with such safety compliance shall be included in the Contractor's lump sum bid.
- 14.1.9 Alcohol, drugs and weapons shall not be allowed on the jobsite under any circumstances, and shall be cause for immediate expulsion. In addition, only

those persons directly involved with the project will be allowed on the site. In no event will minors be admitted to the Construction site. Anyone under the influence of alcohol or drugs will be immediately and permanently removed from the jobsite. In no event will minors be admitted to the jobsite.

- 14.2 **Emergencies.** In any emergency affecting the safety of persons or property, the Contractor shall act at all times to prevent threatened damage, injury or loss. If immediate action is required, the Contractor shall notify the Authority of the situation and all necessary actions shall be immediately taken upon recognition of an emergency, or as soon thereafter as is practicable. If the Contractor fails to so notify the Authority, the Contractor shall be solely liable for any damage, injury or death resulting from such an emergency that could have been prevented by the Contractor's prompt and immediate action.

## 15.0 DOCUMENTS AND RECORDS

- 15.1 **Maintenance and Retention of Contract Records.** For all Work performed, the Contractor shall, in accordance with generally accepted accounting principles and practices, maintain certified weekly payroll, workers' compensation payroll, overhead, cost and accounting records, as well as all other records that the Contractor may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority, and any State oversight or inspecting agency, as to all aspects of the Work and materials provided under the Contract Documents, whether the Work is performed by the Contractor, its Subcontractors or any other entity. Before Final Payment will be made to the Contractor, the Contractor must provide all such original records to the Authority. The Contractor is required to retain copies of all such records for a period of at least five years.
- 15.2 **Right to Audit.** The Authority, EDA or any other State inspecting or oversight agencies reserve the right to audit (or to have their agents audit) the records of the Contractor in connection with all matters related to the Contract Documents. If, as a result of such audit, the Contractor is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Contractor's Invoice amount to an amount considered commensurate with the actual work performed..
- 15.3 **Records Supporting Claims.** No claim by the Contractor for payment which is premised to any degree upon actual costs of the Contractor shall be recognized or payable by the Authority, except to the extent that such actual costs are substantiated by records required to be maintained under this Article.

## **16.0 RISK OF LOSS AND INDEMNIFICATION**

### **16.1 Risks Assumed by the Contractor.**

- 16.1.1 Until Substantial Completion, the Contractor shall bear the risk of loss or damage to the permanent construction, temporary construction, and materials, whether or not the Contractor has received payment for such construction or materials.
- 16.1.2 The Contractor shall bear the risk of claims by third parties made against the Contractor or the Authority, on account of injuries (including wrongful death), loss, or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Work. The risk of claims, whether or not actually caused by or resulting from the performance of the Work or out of or in connection with the Contractor's operations or presence at or in the vicinity of the Project Site or on Authority premises, and whether such injuries, loss, and damages are sustained, applies at any time both before and after Final Completion.
- 16.1.3 The Contractor shall bear the risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Authority for loss or damage to any property of lessors, Subcontractors, materialmen, workers, and others performing the Work. Said risk is assumed during all times prior to removal of the property from the Site.

### **16.2 Indemnification**

- 16.2.1 To the fullest extent permitted by law, the Contractor shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority, the Design Consultant and the Project School District, as well as their respective agents, servants, officers, directors 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, judgment, award or other assessment of liability, interest and other expenses arising out of or resulting from any of the following:
  - 16.2.1.1 the negligent acts or omissions of the Contractor, its agents, servants, officers, employees, Subcontractors or any other person acting at the Contractor'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;

- 16.2.1.2 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 acts or omissions by the Contractor, its agents, servants, officers, employees, Subcontractors or any other person acting at the Contractor'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;
- 16.2.1.3 violation of or non-compliance with all Legal Requirements, including, but not limited to, Federal, State, local and municipal laws and regulations, ordinances, building codes (including without limitation the Americans with Disabilities Act) arising from the performance or non-performance of, or arising out of conditions created or caused to be created by the Contractor, its agents, servants, officers, employees, Subcontractors, or any other person acting at the Contractor'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.
- 16.2.2 The Contractor's indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in the Contract. The Contractor expressly understands and agrees that the insurance provided by the Authority under the Authority's OCIP pursuant to Article 9 is in addition to, and does not limit the Contractor's defense and indemnification obligations.
- 16.2.3 The Contractor agrees that any acceptance by the Authority of the Work performed and materials provided by the Contractor shall not operate to limit the obligations of the Contractor under the Contract Documents and that the Authority assumes no obligations to indemnify or hold harmless the Contractor, its agents, servants, employees or Subcontractors against any claims that may arise out of its performance or nonperformance under the Contract. The Contractor also agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations under the Contract Documents, nor shall they be construed to relieve the Contractor from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of the Contract Documents or otherwise at law or equity.
- 16.2.4 The provisions of this Section 16.2 shall survive the expiration or termination of the Contract.

## 17.0 CLAIMS

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

17.1 **General.** All Claims asserted by the Contractor against the Authority shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., and the New Jersey False Claims Act, N.J.S.A. 2A:32 et seq.

17.2 **Notice of Claim.** The Contractor shall file notice of its Claim on forms provided by the Authority (NJSDA Form 505, Notice of Claim, and NJSDA Form 505a, Checklist Attachment), which forms shall be completed in its entirety and signed by the Contractor. Incomplete forms will be rejected and have no effect. Submission of completed notice forms shall constitute compliance with the notice provisions of the New Jersey Contractual Liability Act if such notices are provided within the time limits established by N.J.S.A. 59:13-5.

17.3 **Review of Claim.** The administrative process for review of Claims is sequential in nature. The Authority's Claims 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.

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

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

17.5.1 The Contractor must provide to the Design Consultant and 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 (NJSDA Form 505 Notice of Claim and NJSDA Form 505a Checklist Attachment). The Contractor shall also submit to the Authority all documentation supporting the Contractor's Claim. The documentation provided to the Authority will serve as the basis for evaluation of the Contractor's position regarding the Claim throughout Step One of the administrative process. The Contractor shall submit additional information upon request of the Authority. No formal action will

be taken by the Authority unless and until the Authority receives complete Claim documentation from the Contractor.

17.5.2 Authority Review and Decision. At the option of the Authority, a meeting may be scheduled with the Contractor, the Authority, the CM and the Design Consultant to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within ninety (90) Days of the receipt of the complete supporting documentation or within ninety (90) Days of any meeting with the Contractor, the Authority the Design Consultant and the CM, whichever is later. This time limit may be extended by mutual agreement of the Parties, or by the Authority, when additional time is required by the Authority to properly review and respond to the claim. The Contractor, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If the Contractor neither accepts nor rejects in writing the Authority's decision within this fifteen (15) Day period, the NJSDA 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 Contractor in the time and manner indicated in Section 17.6 ("Step Two Non-Binding Mediation").

17.6 **Step Two: Non-Binding Mediation.** If the Contractor 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, the Contractor may request in writing that any or all outstanding Claims regarding this Project, which include any or all Claims that have been processed through Step One of the Claim resolution process, proceed to Step Two, Non-binding Mediation. Such request for mediation must be in writing and must identify with specificity the claimst to be mediated Any Claim not specifically identified shall be deemed withdrawn. No Claim will proceed automatically to Step Two and the Contractor must make a specific written request that the Claim be elevated to Step Two for review. Step Two review will not be available until after the issuance of a Certificate of Occupancy or Certificate of Acceptance, unless an earlier time for submission of the Claim to Step Two is agreed to by the Parties. The cost of non-binding mediation shall be shared equally by the Contractor and the Authority. The mediator shall be selected by the Authority, with the concurrence of the Contractor. The rules for the mediation shall be agreed to by the Authority, the Contractor and the mediator prior to the start of the mediation. The mediation will not proceed, however, if the Parties fail to agree on the rules for the mediation, in which case Step Two will be deemed complete.

## **18.0 AFFIRMATIVE ACTION AND NON-DISCRIMINATION**

- 18.1 **General.** The Contractor and its Subcontractors shall abide by the affirmative action program 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, (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.
- 18.2 **Documentation.** The Contractor shall submit to the Authority, after notification of award but prior to execution of this Agreement, one of the following three documents: (i) documentation (e.g., a Letter of Approval) sufficient to show that the Contractor 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. The Contractor shall not enter into a subcontract unless the Subcontractor has submitted to the Contractor one of the three documents required in this Paragraph above, unless such Subcontractor has four (4) or fewer employees.
- 18.3 **Required Language and Application to Contractor and Subcontractors.** The Contractor shall abide by, and shall include language in all subcontracts with Subcontractors requiring that all Subcontractors abide by the requirements of this Section 18, as well as the Mandatory Antidiscrimination and Equal Opportunity Provisions contained in Appendix B to this Agreement.
- 18.4 **Antidiscrimination Obligations.** The Contractor 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 B.
- 18.5 **Monitoring and Enforcement of Workforce Affirmative Action Compliance and Procedures.**
- 18.5.1 The Contractor's employee liaison designated in accordance with N.J.A.C. 19:39-2.1(a) shall meet, when requested, with the Authority's compliance inspector and/or other Authority representatives to ensure compliance with this section and the Contractor's affirmative action plan.
- 18.5.2 The Authority's compliance inspector shall conduct on-site visits and/or attend Project meetings and, at reasonable times and in a reasonable manner, may enter the Contractor's business facility or construction Project site for the purpose of determining whether the Contractor is complying with its affirmative action plan and is otherwise in compliance with the procedures set forth in this Section.



- 18.5.3 The Authority's compliance inspector may investigate to determine if there is a violation of this Section or the Contractor's affirmative action plan. If the Authority determines there is substantial probability that a violation is occurring, it may issue a written alert notice to the Contractor. The written alert notice shall provide details of the alleged violation.
- 18.5.4 If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the Authority within three (3) business days after it is received by the Contractor, the Authority representative shall issue a violation notice to the Contractor. Said violation notice shall provide details of the continuing violation.
- 18.5.5 After the Authority's issuance of a notice of violation, the alleged violator shall submit, within seven (7) business days, a written statement explaining why it is not in violation of this Section or the affirmative action plan or an explanation of how it will correct any such violation. The Authority shall review the written statement, and if the Authority determines that the violator has not adequately explained why it is not in violation or determines that the violation is continuing to occur, then the Authority shall conduct an investigatory conference to determine whether there is a violation and/or if corrective measures must be taken. The conference may also be conducted to discuss and resolve issues before taking any action pursuant to Section 18.4.8 (Sanctions) below, and/or N.J.A.C. 19:39-3.2. Such investigatory conference shall be conducted within thirty (30) business days of the contractor's submission of its written statement. The Authority may conduct interviews of relevant parties and may request from appropriate parties the submission of additional information as is considered necessary to determine whether the alleged violation has occurred.

**18.6 Set Asides and Goals for Small Business Entities on Authority Projects.**

- 18.6.1 At the time of each school facilities project advertisement, the Authority shall announce the SBE requirements for the Contract, and the Contractor shall be required to make a good faith effort to comply fully with the SBE subcontracting goals.
- 18.6.2 The good faith efforts of the Contractor to meet the SBE goal on the Projects shall include, but not be limited to, the following measures:
- 18.6.2.1 Sending solicitation letters to SBE firms registered with the New Jersey Department of the Treasury, Division of Revenue Selective Assistance Vendor Information List and to pre-qualified SBE firms on a list that is available from the NJSDA's website at [www.njsda.gov](http://www.njsda.gov);

- 18.6.2.2 Making follow-up telephone calls to firms solicited in (a) above, and keeping a log of such calls and responses;
  - 18.6.2.3 Breaking the work into smaller subcontracts, to make it easier for SBE firms to compete;
  - 18.6.2.4 Contacting community groups, including, but not limited to, groups listed by the NJSDA for this purpose, for assistance in identifying SBE firms;
  - 18.6.2.5 Placing advertisements in local newspapers, construction trade letters, magazines, or special publications aimed at SBEs;
  - 18.6.2.6 Negotiating in good faith with interested SBE subcontractors, so as not to disqualify a prospective subcontractor without good cause; and
  - 18.6.2.7 Assisting potential SBE subcontractor firms by acting as a reference for the subcontractor, or by referring the subcontractor to the surety agent or bank officer of the contractor or consultant to satisfy bonding, insurance, or credit requirements.
- 18.6.3 If the Authority determines that a Contractor has failed to comply with its good faith obligations to meet the specified SBE subcontracting goal, the Authority may pursue any of the sanctions available pursuant to Section 18.4.8 (Sanctions) below, and/or N.J.A.C. 19:39-3.2.

## **18.7 Affirmative Action and Small Business Compliance.**

- 18.7.1 The Contractor shall designate an employee who shall serve as a liaison with the Authority and who shall be responsible for coordinating the firm's affirmative action program, maintaining all records required by this Section and submitting the forms required by this Section through the Authority's website, or as otherwise directed, to the Authority's designated employee or representative
- 18.7.2 The Contractor, after notification of award, but prior to the Authority's execution of this Agreement, shall submit to the Authority an SBE Form B and one or more Form Cs.
- 18.7.3 The Contractor shall complete and submit the following forms available from the Authority, at the times and in the manner and form (whether hard-copy or electronic) specified by the Authority:
  - 18.7.3.1 An SBE Form A, together with all SBE Form Cs, at the time of bid or at any other time specified by the Authority;

- 18.7.3.2 An initial Project workforce report, Form AA-201, upon notification of award;
- 18.7.3.3 A subcontractor projection report, Form AA- 201A, within seven (7) business days of the Notice to Proceed issued to the Contractor by the Authority, and as updated during the duration of the Contract;
- 18.7.3.4 A monthly Project workforce report, Form AA-202, submitted in electronic form no later than the seventh business day of each month for the duration of the contract; and
- 18.7.3.5 A certified payroll report within ten (10) days of the end of each pay period.

## 18.8 Sanctions.

- 18.8.1 If the Authority determines that the Contractor is in violation of the Authority's affirmative action regulations, or the terms of this Agreement, or its affirmative action plan, the Authority shall enforce the aforesaid obligations and the requirements of the affirmative action plan by any or all of the following actions:
  - 18.8.1.1 Reduce the Contractor's performance evaluation;
  - 18.8.1.2 Reduce the Contractor's Project rating on subsequent bid proposals;
  - 18.8.1.3 Reduce the Contractor's Compensation by a maximum of one and one-half percent of the Contract Price (if lump sum) or the Compensation (if time and materials) if the Contractor is found not to have in good faith satisfied the hiring requirements set forth in the Contract, because the SDA cannot and will not pay for contractual services that are not performed or contractual obligations that are not met. This reduction in the Contract Price (or Compensation) may be effectuated either by the withholding of all or part of future payments to the Contractor or by a reduction in the amount of Retainage otherwise due for release to the Contractor under the Contract;
  - 18.8.1.4 Pursue any of the sanctions available under N.J.A.C. 19:38A-4, including revocation of the Contractor's pre-qualification and/or suspension or debarment from NJSDA contracting; and/or
  - 18.8.1.5 Terminate this Agreement.

## 18.9 Subcontractor Replacement on School Facilities Projects.

- 18.9.1 The Contractor shall not replace an SBE Subcontractor, except where such Subcontractor is in breach of its subcontract and the NJSDA has provided the Contractor its prior written consent to the replacement.
- 18.9.2 A request for replacement shall be in writing, on forms specified by the Authority, and must be accompanied by complete justification for the request. The Contractor must have the written approval of the Authority, in a form issued by the Authority, before such a replacement can be made, regardless of the reason for the replacement.
- 18.9.3 The Contractor shall make a good faith effort to find another SBE to perform at least the same amount of work as had been allocated to the original SBE Subcontractor.

## 19.0 WARRANTIES

- 19.1 **General.** The Contractor warrants to the Authority that the construction, including all materials and equipment furnished as part of the construction, shall be new, unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 19.2 **Commencement of Contractor Warranties.** The warranties shall commence upon Substantial Completion of the Project and continue for one (1) year, unless otherwise stated in the Contract Documents. Should any warranty commence earlier than the Substantial Completion Date, the Contractor shall extend the warranty to one (1) year past the Substantial Completion Date. The Contractor's warranty obligations exclude defects caused by abuse, alterations, or failure to maintain the Work by persons other than the Contractor. Nothing in this Section is intended to limit any manufacturers' warranties which provide the Authority with greater warranty rights than set forth in this Section or the Contract Documents. The Contractor will provide the Authority with all manufacturers' warranties upon Substantial Completion.
- 19.3 **Subcontractor Warranties.** The Contractor shall obtain appropriate warranties, guarantees and obligations with respect to materials, workmanship, equipment, tools and supplies furnished by any and all Subcontractors and suppliers, and shall cause such warranties, guarantees and obligations to be extended to the Authority without derogating the Contractor's own representations and warranties to the Authority for such Work. The foregoing warranties, guarantees and obligations shall be in effect for periods of time co-extensive in duration with the Contractor's warranty for such Work. All such warranties, guarantees and obligations shall be in writing and shall run directly to and be jointly and severally enforceable by the Contractor and/or the Authority and their respective successors

or assigns. The Contractor shall be responsible for enforcing such warranties, guarantees and obligations, at its own expense, in the name of and on behalf of the Authority if the Authority so requests.

- 19.4 **Systems and Equipment Warranties.** For all materials, systems and equipment required by the Contract Documents to be covered by a manufacturer's or other warranty, the Contractor shall obtain and supply the required warranties in accordance with the specific requirements for each such warranty as set forth in the Contract Documents plans and specifications, with particular reference to the term, duration and value of each such warranty as specified in the Contract Documents. The Contractor shall ensure that all such warranties shall commence upon Substantial Completion and shall extend from the time of Substantial Completion for the specified terms and durations as indicated for each type of warranty required by the Contract Documents. The duration of any warranty coverage required by the Contract Documents for any material, system or equipment provided by the Contractor shall not be limited or diminished by any period of time during which the Contractor has put such materials, equipment or systems into service or beneficial use, prior to Substantial Completion. If the Contractor puts materials, equipment or systems into service or beneficial use prior to Substantial Completion, the Contractor shall secure, at its own cost and expense, extensions of the warranty period or additional warranties sufficient to provide the Authority and/or the Project School District with the warranty coverage specified in the Plans and Specifications, as measured from the date of Substantial Completion.

## **20.0 SOLID WASTE, HAZARDOUS WASTE, UNDERGROUND STORAGE TANKS AND ASBESTOS TRANSPORTATION AND DISPOSAL**

### **20.1 General Requirements**

- 20.1.1 The Contractor will be responsible for the loading, transportation, and proper disposal of Solid Waste, as defined at N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-1.6, encountered at the Project Site. The Contractor must meet all applicable federal, state and local requirements, laws, or ordinances for the handling, transportation and disposal of Solid Waste.
- 20.1.2 The Contractor may subcontract the transportation, disposal and/or brokering of the Solid Waste in accordance with Article 7 of these General Conditions, but only to subcontractors who are licensed under the New Jersey Solid Waste Management Act and who comply with all conditions of this Article 20. The Contractor will assume responsibility for its own and its subcontractors' compliance with all applicable legal requirements for the handling, loading, transportation and disposal of all Solid Waste until completion of disposal.

- 20.1.3 Transportation of Solid Waste for disposal must be done by a licensed New Jersey Solid Waste Transporter, and all equipment utilized in the transportation work must be properly registered in accordance with New Jersey law and this Article 20. All waste generated in a County which has waste flow restrictions must be handled in accordance with the specific requirements of that County.

## 20.2 **Transportation Requirements**

- 20.2.1 By executing this Agreement, the contractor warrants that it has, and shall maintain during the term of this Contract, all licenses, certifications, authorizations, and any documents required by the Federal government, State government, County and Municipal governments, and international authorities, necessary to legally and properly perform this Contract.
- 20.2.2 A-901 License. The Contractor warrants that it, and/or each of its subcontractors who performs any activities involving the transportation and disposal of Solid Waste, shall be currently approved by the New Jersey Department of Environmental Protection (“NJDEP”) and the New Jersey Attorney General’s Office as required by N.J.S.A. 13:1E-126, et seq., and that it and/or each such subcontractor possesses current valid “A-901” licenses for each such corporation and its principals. The Contractor shall immediately notify the Authority should there be any change in the legal status, ownership or management of any firm or business contracting with the Contractor to handle Solid Waste.
- 20.2.3 Solid and Hazardous Waste Vehicle Registration. The Contractor warrants that either it, or all subcontractors who perform any activities involving the transportation and disposal of Solid Waste, shall utilize in the transportation and disposal of all Solid Waste for the Project, only tractors, trailers, trucks, containers and other equipment that are properly registered with the New Jersey Department of Environmental Protection and validly placarded with the necessary identifying information, including valid NJDEP decals issued in the name of the company transporting the waste.
- 20.2.4 Certificate of Public Convenience and Necessity. The Contractor warrants that either it, or each of its subcontractors who performs activities involving the transportation and/or disposal of Solid Waste, including brokering, shall have a valid NJDEP Certificate of Public Convenience and Necessity, as required by N.J.S.A. 48:13A-6.
- 20.2.5 Hazardous Waste. Hazardous waste transportation and disposal shall be performed in accordance with the laws of the State of New Jersey, and shall be performed only by a company licensed to handle hazardous waste in New Jersey.

- 20.2.6 Underground Storage Tanks. The Contractor, or each subcontractor designated to perform underground storage tank removal, closure, abandonment, subsurface evaluation or remedial work, shall possess a valid NJDEP certification under the Underground Storage Tank Certification Program for UST Closure and Subsurface Evaluation (pursuant to P.L. 1991, C.123).
- 20.2.7 Licenses, Certifications and Training. The Contractor shall provide appropriately licensed, certified and trained subcontractors and staff needed to perform work relating to Solid Waste disposal, Hazardous Waste handling or removal, or Underground Storage Tank removal, closure or subsurface evaluation. Upon request of the Authority, the Contractor will be required to identify the appropriately licensed staff for such work.
- 20.2.8 Certified Laboratory for Testing. Any testing or analysis required or advisable under the terms of the Agreement shall be performed by an NJDEP certified laboratory.
- 20.2.9 Asbestos. If asbestos or asbestos-containing materials are present or suspected on the Site, the Contractor or designated subcontractors shall handle, containerize and remove the asbestos, asbestos containing materials, or other building materials contaminated with asbestos. The Contractor or subcontractor(s) designated to perform asbestos removal work shall possess a New Jersey Asbestos Contractors Type A license from the New Jersey Department of Labor (NJDOL), Office of Asbestos Control and Licensing and the individuals working on sites to remove asbestos shall have Asbestos Worker Permits or Supervisor Permits. Workers shall be trained in accordance with all OSHA regulations including: 29 CFR 1910.1001, 29 CFR 1910.1101 and 29 CFR 1926.58 including amendments.
- 20.2.9.1 The Contractor and/or each Subcontractor performing asbestos removal work shall warrant that the firm and its employees are familiar, experienced and compliant with the following regulations:
- (a) U.S. Environmental Protection Agency (EPA): 40 CFR Part 61 Subparts A, B and M of the National Emissions Standards for Hazardous Air Pollutants and Amendments;
  - (b) State of New Jersey: Asbestos Control and Licensing Act (P.L. 1984 C.173) N.J.A.C. 12:120 and N.J.A.C. 8:60 and Amendments;
  - (c) State of New Jersey: Asbestos Hazard Abatement Subcode, Subchapter 8, N.J.A.C. 5:23-8.

20.2.9.2 Compliance with this section 20.2.9 shall be determined by verification of supervisor and worker asbestos licenses.

20.2.9.3 The Authority may provide additional requirements for the handling of asbestos in additional contract requirements when it deems additional requirements necessary.

20.2.10 Obligation to Update Information. The Contractor warrants that either it, or each of its subcontractors or waste brokers who performs any activities involving the transportation and disposal of Solid Waste, shall be currently authorized to handle Solid Waste in the State of New Jersey, and further warrants that the Contractor shall immediately notify the Authority should any action be initiated by any state or governmental entity to debar, revoke, or suspend any of its licenses or approvals necessary to properly handle or transport Solid Waste, or to debar, revoke or suspend any of the licenses or approvals of its subcontractors or brokers necessary to properly handle or transport Solid Waste.

### **20.3 Tracking and Documentation Of Solid Waste Disposal**

20.3.1 The Contractor shall track and document all waste shipments that leave the project site and shall be responsible for ensuring that all Solid Waste has been disposed of in accordance with the applicable laws of the State of New Jersey, and the applicable laws of any other State in which Solid Waste originating from the Project Site is disposed.

20.3.2 The Contractor shall provide written verification of the location(s) of disposal and tonnage for all Solid Waste originating at the Project Site. The Authority reserves the right to conduct a waste or environmental audit of the operations of the Contractor and any subcontractors involved in solid waste disposal, to evaluate compliance with all applicable laws.

### **20.4 Classification of Solid Waste, Hazardous Waste, Recycled Materials and/or Beneficial Use Materials**

20.4.1 The Contractor shall properly classify material as Solid Waste, Hazardous Waste or fill material in accordance with NJDEP standards and requirements, and in consideration of any testing results or data received from the Authority regarding evaluation of the materials at the Site. The Authority reserves its right to verify the status of material as Solid Waste, Hazardous Waste or otherwise. In the event of a question or dispute as to the proper classification of any material, the final determination shall be made by the Authority in consultation with its consultants and/or independent testing laboratory.



- 20.4.2 If the material is classified as a “Solid Waste” then the Contractor shall be responsible for arranging to handle, transport and dispose of the material as a Solid Waste as required by applicable law and this Article 21. If the material is classified not as a waste, but as a beneficial use, such as landfill cover, then the Contractor shall arrange for the proper transportation and disposal of such material as permitted by law and this Agreement.

## **21.0 LEGAL RELATIONS AND ADDITIONAL PROVISIONS**

- 21.1 **Notices.** All notices or other communications required by this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by FedEx or similar guaranteed overnight courier and shall be deemed delivered on the day after the notice or other communications was deposited in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A.
- 21.2 **Governing Law.** The Contract Documents, and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of the State of New Jersey without reference to conflict-of-laws principles.
- 21.3 **Forum and Venue.** Any legal action to resolve a dispute or Claim filed under the terms of the Contract Documents shall be brought only in a state court in the State of New Jersey.
- 21.4 **Legal Requirements.** The Contractor shall keep fully informed of all Legal Requirements, including, but not limited to, all Federal, State and local laws, ordinances and regulations and all orders and decrees of bodies or tribunals having jurisdiction or authority, which in any manner may affect those engaged or employed to perform Work on the Project, or which in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with, and shall cause its agents and employees to observe and comply with, all such laws, ordinances and regulations orders and decrees, and shall protect and indemnify the Authority and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree whether by the Contractor or its employees, agents, Subcontractors of any tier, suppliers or materialmen. If any discrepancy is discovered between the Contract Documents and any such law, ordinance, regulation, order or decree, the Contractor shall immediately report the same to the Authority in writing.
- 21.5 **State Comptroller.** The Office of the State Comptroller, or any other State inspecting or oversight agency may, at its discretion, investigate, examine and inspect the activities of the Contractor and all other parties involved with the Project relating to the construction and financing of the Project and to the

implementation of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The Office of the State Comptroller, or any other State inspecting or oversight agencies may require the Contractor 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 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. The Contractor shall include in any and all contracts with Subcontractors a provision requiring such Subcontractors to permit the Office of the State Comptroller, or any other State inspecting or oversight agencies, in their discretion, to investigate, examine, inspect or audit in any manner and at such times as they may deem necessary.

- 21.6 **State Sales Tax.** Materials, supplies or services for exclusive use in erecting the structures or buildings or otherwise improving, altering or repairing the School Facility pursuant to the Contract Documents are exempt from New Jersey State sales tax. Purchases or rentals of equipment are not exempt from any tax under the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq. The Contractor hereby warrants that it will not pay, and will not cause the Authority to pay, charges for sales tax for exempt items.
- 21.7 **Assignment of Contract Funds and Claims.** The Contractor shall not transfer or assign to any party any Contract funds, due or to become due, or claims of any nature it may have against the Authority, without the written approval of the Authority. The Authority, in its sole discretion and considering the interests of the Authority, the State and the Project School District, may grant or deny such approval.
- 21.8 **Independent Contractor.** The relationship of the Contractor to the Authority is that of an independent contractor, and the Contractor, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it shall neither hold itself out as nor claim to be an officer or employee of the Authority. The Contractor shall not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Authority, including, but not limited to, workers compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
- 21.9 **Third Party Beneficiary Clause**
- 21.9.1 It is specifically agreed between the parties executing this Contract that no provision of the Contract is intended to make any other person, company or entity, including, but not limited to, any member of the public, a third party beneficiary to this Contract or the Contract Documents, or to authorize

anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

- 21.9.2 No individual, firm, corporation, or any combination thereof, that supplies materials, labor, services, or equipment to the Contractor for the performance of the Work shall be considered a third party beneficiary of the Contract.
- 21.10 **Limitation of Liability.** Whether as a result of breach of Contract, tort (including negligence), or otherwise, the Authority will not be liable to the Contractor for any special, consequential, incidental, or penal damages including, but not limited to, loss of profit or revenues, loss of rental value for Contractor-owned equipment, damages to associated equipment, cost of capital, punitive damages or interest of any nature.
- 21.11 **Affidavit Concerning Gifts to Authority Employees and Agents.** The Contractor shall not give any gifts of any nature, nor any gratuity in any form whatsoever, nor loan any money or anything of value to any Authority employee or relative thereof. The Contractor shall not rent or purchase any equipment or supplies of any nature whatsoever from any Authority employee or relative thereof. Similarly, such gifts, gratuities, loans, rentals or purchases shall not be given to or made from any agent of the Authority during the period of time that such agent is performing any function related in any way to the Project. Before receiving final payment, the Contractor shall execute, under oath, any affidavit, on forms provided by the Authority, stating under oath that it has given no such prohibited gift, gratuities, or loans nor made any such prohibited rentals or purchases.
- 21.12 **Disclosure of Political Contributions**
- 21.12.1 Political Contributions Disclosure Form. Pursuant to law, the Contractor shall, on a continuing basis, disclose and report to the Authority any “contributions,” as that term is defined in P.L. 2005, c. 51, made during the Term of the Contract by the Contractor or any “Business Entity,” as that term is defined in P.L. 2005, c. 51, associated with the Contractor, on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made.
- 21.12.2 Political Contributions ELEC Filing. The Contractor shall comply with its responsibility to file an annual disclosure statement on political contributions with ELEC in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Contractor’s responsibility to determine if filing is necessary. .
- 21.13 **Personal Liability of Public Officials.** In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within

the scope of the Contract, no officer, member of the Board, or employee of the Authority shall be liable either personally or as officials of the Authority, it being understood that in all such matters these individuals act solely as agents and representatives of the Authority.

21.14 **No Waiver of Legal Rights.** A waiver on the part of the Authority of any breach of any part of the Contract is not to be held to be a waiver of any other or subsequent breach by any party.

21.15 **Prevailing Wage.** The Contractor and each of its subcontractors shall comply with the New Jersey Prevailing Wage Act Laws of 1963, Chapter 150, (N.J.S.A. 34:11-56.25 et seq.) and all amendments thereto. The Contractor and its subcontractors shall certify their compliance with this law on forms satisfactory to the Authority prior to receiving payment.

21.15.1 In accordance with the Prevailing Wage Act, in the event it is found that any worker, employed by the contractor or any subcontractor covered by the contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the public body, may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise.

#### 21.16 **Copyrights and Patents**

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

21.16.2 The Contractor shall defend, indemnify and hold harmless the Authority, the Project School District and the State from any and all claims for infringement by reason of the use of any patented design, device, material, equipment or process, or any trademark, copyright, trade secret or any other material protected in any manner from use or disclosure, and shall indemnify the Authority, the Project School District and the State for any costs, expenses and damages, including attorney's fees, that it may incur by reason of an infringement at any time during the performance, or after the acceptance, of the Work.

21.17 **Security Clearance.** The Contractor and its personnel, and its Subcontractors, and their personnel, shall be subject to such security clearance at the Project as the Authority may require.

21.18 **Environmental Protection.** The Contractor shall comply with all applicable Federal, state and local Legal Requirements concerning protection of the environment, including but not limited to, any Remedial Action Work Plan applicable to the Project. Necessary precautions shall be taken to prevent pollution of streams, lakes, ponds, rivers, wetlands, groundwater, and reservoirs with chemicals, fuels, oils, bitumens, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

21.19 **Performance of Work within the United States**

21.19.1 Buy American Requirements. The Contractor shall comply with N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1 et seq., which prohibit the use by the Contractor or any Subcontractor of materials or farm products produced and manufactured outside of the United States on any public work. The Authority interprets this requirement consistent with analogous federal guidance, which provides that goods may be considered “produced or manufactured in the United States,” without regard to the origin of components or subcomponents used in such manufactured goods, as long as the manufacturing (which includes assembly) occurs in the United States.

21.19.2 Services to be Performed within the United States. The Contractor shall have a continuing duty to comply with the provisions of N.J.S.A. 52:34-13.2, as applicable, which requires that Services and Work under state government contracts be performed within the boundaries of the United States. By executing this Contract, the Contractor agrees that all Work performed by the Contractor pursuant to the Contract Documents shall be performed within the United States. If, during the Term, the Contractor or a subcontracted firm proceeds to shift the performance of the Work outside of the United States, the Contractor shall be deemed in breach of the Contract 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.

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

21.20.1 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.

- 21.20.2 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.

APPENDIX A  
Special Conditions

- A.1 Project School District: \_\_\_\_\_ School District
- A.2 Project Name & Address: **[INSERT PROJECT NAME]**  
**[INSERT PROJECT ADDRESS]**  
NJSDA Contract No.: **[INSERT CONTRACT NUMBER]**

A.3 Substantial Completion shall be achieved within \_\_\_\_\_ days from the Commencement Date.  
Final Completion shall be achieved within \_\_\_\_\_ days from the Substantial Completion Date.

A.4 Required Subcontractor(s) (if applicable):

\_\_\_\_\_

\_\_\_\_\_

A.5 Required Subconsultant(s) (if applicable):

\_\_\_\_\_

\_\_\_\_\_

A.6 Notices shall be addressed as follows:

Authority: NEW JERSEY SCHOOLS  
DEVELOPMENT AUTHORITY  
32 East Front Street  
P.O. Box 991  
Trenton, NJ 08625-0991

Attention:

Title: Program Director

Bidder: NAME  
ADDRESS

Attention: \_\_\_\_\_

Title: \_\_\_\_\_

## APPENDIX B

### **MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE AND ANTIDISCRIMINATION PROVISIONS FOR NJSDA CONSTRUCTION AGREEMENTS**

For all regulatory and statutory language cited below, all references to “contractor” shall be deemed to refer to the Bidder, and “subcontractor” shall be deemed to refer to subcontractors of every tier.

### **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 B**

(Exhibit B Language - Construction 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, up-grading, 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 or workers' representative of the contractor's commitments under this act 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.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring

minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
- (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
  - (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
  - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
  - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
  - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
  - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
    - (i) The contractor or subcontractor shall interview the referred minority or women worker.
    - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity

with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which

result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA 201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program 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 Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (NJAC 17:27)**.

## **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.*).

APPENDIX C  
Modifications for Task Orders Requiring Engagement of Design Consultant

## APPENDIX C

### (Modifications for Task Orders Requiring Engagement of Design Consultant)

This Appendix shall apply to those Task Orders assigned or awarded under the Contract for General Construction Services (Pursuant to “Task Orders”) which require the Contractor to engage and work with a design professional to investigate a defined condition or conditions at a particular Project site, and design a remedy or solution for such condition or conditions, in consultation with the Authority. This Appendix, if incorporated into a particular Task Order, modifies and supersedes the specific parts of the original Agreement as indicated below and the provisions of this Appendix shall become a part of the original Agreement as if incorporated therein.

1. The following terms and definitions shall be added to the Definitions section:

“Architect” or “licensed professional architect” means a person holding a current valid license pursuant to N.J.S.A. 45:3-1 and the regulations promulgated thereunder, or the firm employing such a licensed professional architect. An Architect may be engaged by the Contractor as the Design Consultant for the Project, to provide design plans, specifications, computations, calculations and technical data needed to describe, identify and perform the Work under the Contract Documents, and to provide oversight of the Contractor’s Construction Work to ensure that the Work conforms to and satisfies the plans and specifications and the Construction Documents. If the Contractor has engaged an Architect to act as the Design Consultant for the Project, the plans and specifications for the Work shall be prepared and signed and sealed by a licensed professional architect responsible for the design as required by N.J.A.C. 5:23-2.15

“Construction Documents” means the plans, Specifications and any other documents prepared by the Design Consultant 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 Contract Documents, including the Performance Specifications and Prescriptive Specifications. The Construction Documents shall be consistent with the Authority’s requirements as expressed in the Contract Documents.

“Construction Notice to Proceed” means a written notice from the Authority to the Contractor authorizing the Contractor to proceed with the Construction Work.

“Deliverables” means any documents required to be produced by, or work product generated by, the Contractor and/or its Design Consultant pursuant to the Contract Documents.

“Engineer” or “licensed professional engineer” means a person holding a current valid license pursuant to N.J.S.A. 45:8-27 and the regulations promulgated

thereunder, or the firm employing such a licensed professional engineer. An Engineer may be engaged by the Contractor as the Design Consultant for the Project, to provide design plans, specifications, computations, calculations and technical data needed to describe, identify and perform the Work under the Contract Documents, and to provide oversight of the Contractor's Construction Work to ensure that the Work conforms to and satisfies the plans and specifications and the Construction Documents. If the Contractor has engaged an Engineer to act as the Design Consultant for the Project, the plans and specifications for the Work shall be prepared and signed and sealed by a licensed professional engineer responsible for the design as required by N.J.A.C. 5:23-2.15.

"Initial Notice to Proceed" or "NTP" means a written notice from the Authority to the Contractor authorizing the Contractor to proceed with the Services or Work, and setting the Commencement Date on which the Contractor shall begin performing Services or Work.

"Performance Specification" means a written document issued by the Authority providing parameters for the Contractor and its Design Consultant in terms of 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 and specified by the Contractor's Design Consultant. 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 by the Design Consultant or procurement of the item by the Contractor.

"Prescriptive Specification" means a written document issued by the Authority, providing detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or Work to be incorporated by the Contractor and its Design Consultant 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 by the Design Consultant or procurement of the item by the Contractor.

"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.

2. The following existing definitions shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

"Commencement Date" or "NTP Date" means the date set forth in the **Initial** Notice to Proceed on which the Contractor shall begin performing **Services or** Work pursuant to the Contract Documents.



“Contract Documents” means the Contract executed between the Authority and the Contractor, together with the ~~Agreement, Plans,~~ **Prescriptive Specifications, Performance Specifications and Procedural Specifications,** the Scope of Work, the Request for Qualifications and/or the Request for Proposals, **any** Addenda, price and technical proposals, Change Orders, other amendments, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials.

“Design Consultant” means, **for purposes of this Agreement, the licensed, prequalified** architect, **or** engineer ~~or other licensed Professional Services Consultant~~ engaged by the Authority **Contractor** to provide services, including **investigation of existing conditions, design and** oversight of construction for conformance with design, Submittal review and reporting, in connection with the design and construction of the Project.

“Notice to Proceed” or “NTP” means a written notice from the Authority to the Contractor authorizing the Contractor to proceed with ~~the Work, and setting the Commencement Date on which the Contractor shall begin performing~~ **a particular phase or portion of the Services or** Work.

“Product data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor **and/or its Design Consultant** to illustrate a material, product or system proposed for use in some portion of the Work.

“Professional Services Consultants” means consultants **engaged by the Authority,** providing professional 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.

“Project” means the demolition, **design and specification of construction,** construction, improvement, repair, alteration, modernization, renovation or reconstruction of all or any part of the School Facility identified in the Contract Documents or of any personal property necessary for or ancillary to the School Facility identified in the Contract Documents.

“Shop drawings” means drawings, diagrams, schedules and other data prepared specifically for the Work by the Contractor or **its Design Consultant, or** any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Specifications” means a **the** written description ~~attached hereto and made a prepared by the Design Consultant as part hereof~~ **of the 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 construction, or a requirement of the Work to be performed under the Contract. ~~The Specifications may include a statement of any of the Authority’s requirements and~~

~~may provide for inspection, testing or the preparation of a construction item before procurement~~ **Specifications shall augment and complement the drawings and plans prepared by the Design Consultant. 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.**

“Submittal” means documents or other tangible items required to be prepared by the Contractor for review by the Design Consultant and/or the Authority. Examples of Submittals include, but are not limited to, shop drawings, product data and samples. **As used in this Agreement, “Submittals” shall not include design submissions prepared by the Design Consultant for review by the Authority.**

3. The following provisions of the Agreement shall be amended to read as follows:

Section 2.1 “Intent” shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

This Agreement is intended to permit the Parties to complete the **Services and** Work and all obligations required by the Contract Documents within the Contract Time, and if the contract was procured on a lump-sum basis, for the Contract Price. The terms of this Contract are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards.

Section 2.6.1 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

All Work performed shall be in conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, shown in the **Construction Documents prepared by the Design Consultant in conformance with the** Contract Documents. The Plans shall consist of general drawings and shall show such details as are necessary to give a comprehensive representation of the construction contemplated. Omissions from the plans or Specifications of details of Work which are reasonably inferable to carry out the intent of the Contract Documents, or which are customarily included, shall not relieve the Contractor from including such omitted details of Work, and they shall be included as if fully and correctly set forth and described in the Plans and Specifications, without entitlement to a Change Order hereunder. Only where the Contract Documents specifically describe a portion of a Project as being performed by others is such portion deemed not to constitute part of the Contractor’s responsibility.

Section 2.7 “Order of Precedence” shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Each document that comprises the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The documents comprising the Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the event of

any conflict among the documents comprising the Contract Documents, they shall be considered in the following descending order of precedence:

- (a) Executed Change Orders
- (b) Supplementary Conditions
- (c) Contract and General Conditions
- (d) **Authority's Prescriptive Specifications**
- ~~(e) Large Scale Drawings~~
- ~~(f) Small Scale Drawings~~
- (e) Authority's Performance Specifications**
- (f) Authority's Procedural Specifications**

In the event there is a conflict between terms or provisions contained in any of the above-referenced Contract Documents, the Contractor will provide the more stringent standard or the higher quality of work, which shall be determined by the Authority in its sole discretion.

Section 3.4 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Authority ~~and its Professional Services Consultants~~ shall provide all information and responses required pursuant to the Contract Documents with reasonable promptness in order to permit orderly progress of the Work.

Sections 4.1.1 and 4.1.2 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

4.1.1 The Contractor shall furnish all construction and other services, **including investigation, design and/or engineering services as indicated in Section 4.11 herein**, provide all materials, equipment and labor and undertake all efforts necessary or appropriate to complete the Work in accordance with the requirements of the Contract Documents, the Project Schedule, all Legal Requirements, the accepted Quality Assurance and Quality Control program, the accepted Contractor's Safety Plan, **and** the Plans and Specifications **prepared by the Design Consultant and accepted by the Authority**, taking into account the physical limits of the Site, and all other applicable constraints affecting each Project, so as to achieve Substantial Completion and Final Completion on or before the deadlines specified herein, and otherwise perform the Work in a timely manner in accordance with the Contract Documents.

4.1.2 The Contractor shall supervise and be solely responsible for the acts and omissions of the Contractor's employees, agents, officers, Subcontractors, ~~Professional Service Consultants~~ **and the Design Consultant**, and any other persons performing portions of the Work for the Contractor, as though all such persons were directly employed by the Contractor.

Section 4.6 “Project Meetings” shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

#### 4.6 Project Meetings

4.6.1 **Initial Meeting.** ~~The Authority will schedule a meeting between the Contractor, the Design Consultant and the Authority to be held within seven (7) Days after the Commencement Date to discuss issues affecting the administration of the Services and/or Work and to implement the necessary procedures and deadlines, including those relating to design submissions, Submittals and payment, to facilitate the ability of the Parties to perform their obligations under this Agreement and the Contract Documents and to ensure a Project that is designed and constructed in a manner consistent with the Contract Documents.~~

4.6.2 **Preconstruction Conference.** ~~The Contractor is required to attend and participate in a Pre-Construction Conference with the Authority, its Project Manager, the Engineer and representatives of major Subcontractors. The anticipated agenda for the Pre-Construction Conference shall include, but not be limited to, a review of the Contract Documents, a discussion of Subcontractors, key personnel, the Project Schedule and the Contractor’s Safety Plan, and procedures for processing field decisions, submittals, substitutions, invoices and change orders. The Authority shall schedule the Preconstruction Conference within five (5) days of the Construction Notice to Proceed. The Contractor shall submit its Safety Plan at, or in advance of, the Preconstruction Conference.~~

4.6.3 **Construction Meetings.** The Contractor’s Superintendent and Project Manager are required to attend weekly construction meetings throughout the progress of the Work. The anticipated agenda for the weekly construction meetings shall include, but not be limited to, a review of the Contractor’s progress and daily manpower, field observations and problems, review of Submittals, Project Schedules and delivery Schedules, proposed Changes and Change Orders, and other issues relating to the Work. The Authority’s Project Manager shall be responsible for scheduling and administering the weekly construction meetings, providing advance notice of the meetings and distributing meeting minutes.

4. Insert the following new Section 4.11, “Contractor’s Engagement of a Design Consultant to Perform Investigation and Design Services”:

#### 4.11 Contractor’s Engagement of a Design Consultant to Perform Investigation and Design Services

4.11.1 **General Obligations. This Agreement requires the Contractor to engage a licensed architect or licensed professional engineer, properly prequalified by NJSDA in the respective discipline, to serve as the Design Consultant for the Project. The Contractor's agreement with the Design Consultant shall include specific language, requiring that the Design Consultant shall:**

- (a) **perform services to design the Work in accordance with the Contract Documents, in particular the Performance Specifications and Prescriptive Specifications issued by the Authority, as well as the Authority's Materials and Systems Standards as applicable;**
- (b) **prepare signed and sealed Plans and Specifications to describe and specify the Work, which plans and specifications shall conform to DCA submission requirements and the Authority's Deliverable requirements as indicated in Specification Section 01010, and shall be submitted to the Authority for review and acceptance, and shall thereafter be submitted to DCA for review and approval;**
- (c) **in the event of DCA rejection of, or comments to, the Plans and Specifications, the Design Consultant shall modify or redesign the Plans and Specifications as many times as is necessary to respond to DCA comments and achieve DCA plan release and issuance of a permit, while still achieving the Authority's goals for the project;**
- (d) **be responsible for the completeness, accuracy and constructibility of the plans and specifications;**
- (e) **oversee and monitor the Contractor's Work to ensure that the Work conforms with the Design Consultant's plans and specifications;**
- (f) **review Contractor submittals to determine conformance with and acceptability under the plans and specifications prepared by the Design Consultant and accepted by the Authority**
- (g) **perform all of its design Services consistent with the degree of judgment, knowledge, skill and care ordinarily possessed and exercised by average members of the engineering or architectural profession, currently practicing under similar conditions at the same time and locality of the Project. The Design Consultant shall perform all design Services as expeditiously as is consistent**

with such professional skill and care and the orderly progress of the Project;

- (h) perform all of its services in recognition that the Authority and the Project School District are the intended beneficiaries of the Design Consultant's services, and as such the Design Consultant has a duty to protect and advance the interests of the Authority and the School District when performing Services under its agreement with the Contractor; and
- (i) communicate directly with the Authority throughout the project, and especially in the event the Contractor's work or performance does not comply with the Construction Documents or any of the terms of the Contract Documents;
- (j) maintain insurance coverages required under Sections 9.15 and 9.16 herein, as well as Professional Liability Insurance as described in Section 9.17 herein; and
- (k) perform the predesign and design Services in distinct phases, as described in Section 4.12 below. The requirements of each phase and the Services required of the Design Consultant are identified below.

4.12 Investigation and Predesign Services to be Performed by Contractor and Contractor's Design Consultant

4.12.1 Predesign Services. Upon receipt of the Initial Notice to Proceed, the Contractor and its Design Consultant shall commence to provide Predesign Services as identified in the attached scope of work description included as Appendix B. The Contractor and its Design Consultant shall use their best efforts to perform an interior and exterior survey of the project site that includes the examination of the conditions specified and outlined in the Project Description, and shall prepare a Draft Emergent Conditions Report, followed by a Final Emergent Conditions Report, for submission to the Authority. All of the terms of this Agreement shall apply to any Predesign Services required to be provided by the Contractors and its Design Consultant.

4.12.2 Preliminary Design Phase. Upon receipt of the Authority's acceptance of the Predesign Services, including the Final Emergent Conditions Report, and the Authority's written Notice to Proceed authorizing the Contractor to proceed with the Preliminary Design Phase, the Contractor and its Design Consultant shall commence Preliminary Design Phase Services, as follows.

4.12.3 **Before preparation of any Preliminary Design Documents as described below, the Contractor and/or its Design Consultant shall meet with the SDA and Project School District to:**

- (a) **Review and confirm the nature and scope of the emergent condition(s) to be addressed, as well as any proposed or contemplated actions;**
- (b) **Develop and confirm a strategy for addressing the need(s) identified in the Emergent Conditions Report, including a specific plan with respect to the Design Phase and Construction Phase Services and Deliverables;**
- (c) **Review and confirm any logistical constraints, including the Project School District's schedule for use and occupancy of the facility, which may impact when and how Work may be undertaken;**
- (d) **Identify any additional or supplemental information which may be necessary in order to proceed with design.**

4.12.4 **The Contractor and/or its Design Consultant shall review, confirm, and document all current codes and regulatory requirements applicable to design of the Project.**

4.12.5 **Based on the recommendations made in the Final Emergent Conditions Report and the determinations reached at the meetings described in Section 4.11.3, above, and any additional or subsequent comments from the Authority or the Project School District, the Contractor and/or its Design Consultant shall prepare the following Draft Preliminary Design Documents, which shall be submitted to the Authority as three (3) hard copies and an electronic copy in native electronic format acceptable to the Authority:**

- (a) **A narrative description of the proposed scope of work to remediate the emergent condition(s) at issue;**
- (b) **Sketches or annotated floor plans and other diagrams, to the extent that such are needed to adequately describe the scope of the work;**
- (c) **A completed NJDOE Project Application Form, including cost estimate;**
- (d) **An updated Schedule; and**

(e) A Construction Cost Estimate (CCE), based on the Preliminary Design Documents.

- 4.12.6 Within seven (7) Days of the submission of Draft Preliminary Design Documents as described above, the Authority shall review the Draft Preliminary Design Documents and either accept or reject the Draft Preliminary Design Documents. The Authority shall provide the Contractor and its Design Consultant with comments and a detailed explanation if the Draft Preliminary Design Documents are rejected in whole or in part. In the event that any Draft Preliminary Design Documents are rejected by the Authority, the Contractor and its Design Consultant shall resubmit any such Draft Preliminary Design Documents until they are accepted by the Authority. In the event of such rejection and resubmission, the Contractor and its Design Consultant shall make all reasonable efforts to eliminate any schedule impact caused by the need to make such revisions, and the Contractor shall not receive any additional compensation or time extension in connection with revisions prompted by an Authority rejection of documents.
- 4.12.7 Once the Draft Preliminary Design Documents are accepted by the Authority, the Contractor and its Design Consultant shall submit the Preliminary Plans and related Project documents required by N.J.A.C. 6A:26-5.3 (the “Final Preliminary Design Documents”) to DOE for review and approval. In the event that the Final Preliminary Design Documents are rejected by the DOE in whole or in part, the Design Consultant shall revise and resubmit any such Preliminary Design Documents until they are accepted by DOE and DOE has issued Preliminary Educational Approval (“PEA”) and Preliminary Eligible Cost (“PEC”) approval.
- 4.12.8 Construction Documents Phase. Upon receipt of NJDOE’s and the Authority’s acceptance of the Preliminary Design Documents, and the Authority’s written Notice to Proceed permitting the Contractor and its Design Consultant to proceed with the Construction Documents Phase, the Contractor and its Design Consultant shall commence Construction Documents Phase Services.
- 4.12.9 Schedule for Submission of Draft Construction Documents. At the Initial Meeting described in Section 4.5.1, the Contractor, the Design Consultant and the Authority shall, consistent with any applicable provisions of the Contract Documents, agree upon a schedule for the Contractor to provide Draft Construction Documents to the Authority. The dates for the Contractor’s submission of Draft Construction Documents shall be included on



**the Project Schedule and all Draft Construction Documents shall be submitted in accordance with the requirements set forth in Section 4.12, below.**

4.12.10 **The Deliverables for the Construction Documents Phase shall consist of preparation of the following Construction Documents, which shall be submitted to the Authority as three (3) hard copies and an electronic copy in native electronic format acceptable to the Authority:**

- (a) **Drawings sufficient to document and describe the design of the proposed scope of work to remediate the emergent condition(s) at issue;**
- (b) **Specifications sufficient to adequately describe the scope of the work;**
- (c) **Where necessary, the construction documents shall include any required asbestos, lead, PCB or other hazardous material abatement, and the Design Consultant shall incorporate all ACM and LBP Inventory Reports and PCB Reports into the abatement and demolition construction documents. The Design Consultant shall submit to the Authority a cost estimate for demolition and any related hazardous materials abatement required on the Site. These cost estimates should provide a detailed breakdown of the estimated demolition cost for each individual building within the proposed school project site.**
- (d) **An updated Schedule;**
- (e) **An updated CCE, based on the Construction Documents and reconciled with the prior Approved CCE. The Contractor and its Design Consultant may not proceed to the Bidding and Award Phase until the CCE for the Construction Documents Phase is reconciled with the prior Approved CCE, or is otherwise approved by the Authority. Unless otherwise indicated by the Authority, the Design Consultant shall engage in Value Management and Engineering review at the completion of the Construction Documents Phase if the CCE does not reconcile with the prior Approved CCE; and**
- (f) **Any other documentation needed for successful bidding and construction of the Projects.**

4.12.11 **The Contractor shall require the Design Consultant, consistent with the Standard of Care applicable to a similarly-situated Design**

**Consultant, to prepare the Construction Documents to comply with all applicable codes, standards and other Legal Requirements.**

- 4.12.12 **The Contractor and its Design Consultant shall coordinate the Construction Documents across all design disciplines in an effort to minimize potential construction conflicts between trades during construction.**
- 4.12.13 **The Contractor shall require the Design Consultant to provide sufficient detail in the Construction Documents at a sufficient scale to adequately convey design intent of all intersecting planes.**
- 4.12.14 **The Contractor's Design Consultant shall affix professional Architect and/or professional Engineer seals upon all Construction Documents, in accordance with applicable Legal Requirements.**
- 4.12.15 **The Contractor and its Design Consultant may not deviate from the Approved CCE or Schedule for construction without written approval of the Authority for such deviation.**
- 4.12.16 **Following the Authority's acceptance of 65% Construction Documents, or at such other point designated by the Authority, the Contractor and/or its Design Consultant shall submit to DOE for review and approval detailed plans and specifications in accordance with N.J.A.C. 6A:26-5.4.**
- 4.12.17 **The Contractor and its Design Consultant cannot complete the Construction Documents phase unless and until final approval of the educational adequacy of the Project, and issuance of the Final Eligible Costs determination (FEC) pursuant to N.J.A.C. 6A:26-3.5 is received from DOE, and the Authority has accepted the FEC determination. In the event that final approval of the Project's Educational Adequacy is not issued by DOE, the Contractor shall require its Design Consultant to revise and resubmit the detailed plans and specifications until they are accepted by DOE. In the event of such resubmission, the Contractor and its Design Consultant shall make all reasonable efforts to eliminate any schedule impact caused by the need to make such revisions, and the Contractor shall not receive any additional compensation or time extension in connection with revisions prompted by a DOE rejection or failure to approve final educational adequacy or final eligible costs of the Project.**
- 4.12.18 **Within fourteen (14) Days of the submission of the DOE-approved Construction Documents to the Authority, the Authority shall review the Construction Documents and either accept or reject the Construction Documents. The Authority shall provide the Contractor and its Design Consultant with a detailed explanation if**

the Construction Documents are rejected. In the event that any Construction Documents are rejected by the Authority, the Contractor and its Design Consultant shall resubmit any such Construction Documents until they are accepted by the Authority. In the event of such rejection and resubmission, the Contractor and its Design Consultant shall make all reasonable efforts to eliminate any schedule impact caused by the need to make such revisions, and the Contractor shall not receive any additional compensation or time extension in connection with revisions prompted by a DOE rejection of documents.

- 4.12.19 The Contractor and its Design Consultant shall submit to the governmental agencies having jurisdiction over the design of the Project the accepted Construction Documents to initiate the process of plan review and approval that must precede the issuance of building permits. Final application for building permits will also be initiated by the Contractor and its Design Consultant. The Authority shall be responsible for the payment of all governmental fees required for the building permit process.
- 4.12.20 DCA Plan Release. Once the Contractor and/or its Design Consultant has secured DCA's release of the Construction Documents, the Contractor shall notify the Authority of the nature and extent of the DCA plan release, and shall submit three (3) sets of DCA-approved Construction Documents to the Authority prior to commencement of the Construction Work.
- 4.12.21 DCA Approval and Permits. Before commencing any phase of Construction Work, the Contractor and/or its Design Consultant must receive the Authority's acceptance of the Construction Documents, and must secure all necessary approvals from DCA, DEP, and any other entity, agency or Authority having jurisdiction over the Project.
- 4.12.22 Construction Notice to Proceed. Upon notification to the Authority that the Contractor and/or its Design Consultant has received DCA's release of the Construction Documents, and has received all other necessary approvals or permits for the Work, the Authority will issue a Construction Notice to Proceed, and the Contractor shall thereafter proceed with Construction Work in accordance with the Construction NTP and the DCA-approved and released Construction Documents.
- 4.12.23 The Contractor shall maintain on-site at all times at least one set of the DCA-approved Plans and Specifications.

4.12.24 **Effect of the Authority's Review.** **The review undertaken by the Authority pursuant to this Section 4.12 shall not be deemed to be undertaken for the purpose of determining the accuracy and completeness of any drawing or Specification, determining that any other details such as dimensions and quantities have been complied with, or of substantiating instructions for installation and performance of equipment or systems designed by the Contractor, all of which shall remain the responsibility of the Contractor and/or its Design Consultant. The Authority's acceptance of any Draft or Final Construction Documents shall not be deemed to transfer any liability from the Contractor to the Authority.**

4.12.25 **Ownership of Documents**

4.12.25.1 **The Authority and the Contractor acknowledge that during the course of, and as a result of, the performance of the Contractor's Services, the Contractor and/or its Design Consultant will create written materials, plans, drawings, specifications, computer files, or other tangible manifestations of the Design Consultant's efforts in fulfillment of this Agreement and the Contract Documents, including architectural works, as that term is defined in the Architectural Works Copyright Protection Act of 1990 (hereinafter individually or collectively referred to as "Work Product"). All Work Product furnished or prepared by the Contractor, its Design Consultant, or any subcontractors or subconsultants pursuant to this Agreement shall at all times be property of the Authority, and may be used by the Authority to complete the Project in the event that the Authority elects to terminate or cancel this Agreement pursuant to any provision hereof, or for any other purpose as set forth in Section 4.11.25.4 below. The Authority's ownership of the Work Product shall commence immediately upon the Effective Date of this Agreement, and shall commence regardless of payment by the Authority of any compensation to the Contractor and regardless of delivery of any such Work Product to the Authority.**

4.12.25.2 **The Contractor hereby assigns, and agrees to require its Design Consultant to assign, to the Authority sole ownership of any copyrights or other intellectual property rights created or existing under state or federal law in any and all Work Product prepared by the Contractor or its Design Consultant pursuant to this agreement.**

4.12.25.3 **All Work Product (including the original of any item of Work Product, one (1) set of electronic copies in AutoCAD,**

**native format, or other format acceptable to the Authority, one (1) set of electronic copies in .pdf format, and two (2) sets of hard copies thereof) shall be delivered to the Authority in accordance with the Deliverables requirements of this Agreement, or upon the termination or expiration of this Agreement, except that the Contractor may, subject to any confidentiality obligations under this Agreement, retain one or more record sets of the Work Product.**

4.12.25.4 **All Work Product may be referred to freely by the Authority for the purpose of for information and reference in connection with the School District's use and occupancy of the Project, for appending any addition to and integrating the same with the Project, performing any alterations or repairs of any portion of the Project, or designing or constructing other similar school facilities, buildings or projects whenever or wherever the Authority shall desire; provided, however, that the Contractor and/or its Design Consultant shall not be responsible for any use, misuse, alteration or adaptation of the Work Product beyond the scope of the Contractor's engagement under this Agreement.**

4.12.25.5 **In the event that the Authority terminates this Agreement for cause, or the Contractor fails to perform in accordance with this Agreement, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Contractor's performance of this Project by whatever methods the Authority deems appropriate. Upon termination or the Contractor's failure to perform, the Authority may retain the Design Consultant directly, or may engage a substitute design consultant to complete the Contractor's performance using the Work Product and any other Project-related documents or data to make changes, corrections or additions for the purpose of completing, using and maintaining the Project(s).**

4.12.25.6 **If the Contractor is terminated under this Agreement and the Authority retains a substitute design consultant to complete the Work Product, neither the Contractor nor its Design Consultant shall have any liability to the Authority for modifications to the Work Product made by others.**

4.12.25.7 **The Contractor shall be liable to, and hereby agrees to indemnify and hold harmless the Authority, the State of New Jersey, the Project School District, and CM, from and against all claims made against any of them for infringement of any copyright or patent arising out of the Work Product**

**prepared or furnished by the Contractor in the performance of this Agreement.**

4.13 **Design Document Submission General Requirements.**

4.13.1 **Contractor shall require the Design Consultant to ensure that all design submissions conform to the following requirements:**

- 4.13.1.1 **All drawings, narratives, specifications and any other design submissions shall include the Name of the Project, School District, Contractor's Name, Construction Manager (if applicable), NJSDA package number and DOE project number.**
- 4.13.1.2 **All drawings, narratives, specifications and any other design submissions shall include original document date and current revision date (if applicable), formatted: YYMMDD.**
- 4.13.1.3 **All drawings shall be submitted on consistent sheet sizes of either "Arch D", 24" x 36" or "Arch E1", 30" x 42" with all lettering at least 1/8" high.**
- 4.13.1.4 **Site Plan(s) and a landscape plan(s): minimum scale: 1/32"=1'-0" or 1" = 30'-0"; except where a smaller scale is necessary for an overall site plan.**
- 4.13.1.5 **All Floor Plans (all trades), Reflected Ceiling Plans: minimum scale: 1/8"=1'-0".**
- (a) **Building floor plans showing the overall floor layout shall be provided at a minimum scale of 1/16" = 1'-0"**
- 4.13.1.6 **Enlarged Area Plans: minimum scale: 1/4"=1'-0"**
- 4.13.1.7 **Other drawings, Wall Sections, Schedules and Details: As applicable to accurately, completely and legibly portray the scope of work.**
- 4.13.1.8 **Elevations: minimum scale: 1/16"=1'-0" with appropriate enlargements at 1/4" scale indicating all materials, floor to floor heights, section references, etc.**
- 4.13.1.9 **Color rendering: two copies of an exterior original, framed with matte and glazing, required minimum size: 20"x30" plus a high resolution digital scan(s) on CD.**
- 4.13.1.10 **Interior finish color/material selection board(s) "Arch D" (24" x 36") or "Arch C" (18" x 24") format.**

4.13.1.11 **Specifications: 8 1/2" x 11", utilizing the latest version of CSI/MasterFormat.**

4.13.1.12 **Other reports, including calculations, to be issued 8 1/2" x 11" in paper, native electronic and PDF file format.**

4.13.2 **File Naming**

4.13.2.1 **All electronic drawing files (DWG, DWF & PDF) shall be named as to refer to the sheet number referenced therein and include current revision date (formatted: YYMMDD).**

4.13.2.2 **All other electronic files shall be named so as to be readily identifiable and to include current revision date (formatted: YYMMDD).**

4.13.3 **Draft Construction Documents Submission.**

4.13.3.1 **Contractor shall require and ensure that Design Consultant's Draft Construction Documents Submission consists of six complete, full sized sets of all deliverables (as indicated in Design Consultant's proposal and schedule developed in accordance with Section 4.11 herein) and one half sized set of all large format deliverables; and one complete electronic set of documents on CD or DVD, all in native electronic format (AutoCAD [DWG & DWF], MS Word, MS Excel and any graphic format such as jpg, bmp, etc.) and Adobe PDF format.**

5. The following provisions of the Agreement shall be amended to read as follows:

Section 5.2.1 "Specific Durations," Subsection A shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

A. Commencement Date: The date set forth in the written **Initial** Notice to Proceed issued by the Authority.

Section 5.3 "Contract Time/Notice to Proceed" shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contract Time shall begin on the Commencement Date set forth in the **Initial** Notice to Proceed. The **Initial** Notice to Proceed will be issued by the Authority after receipt and acceptance of properly executed Contract Documents, including, but not limited to, performance and payment bonds and insurance certificates in a form acceptable to the Authority. Unless otherwise directed by the Authority in writing, the Contractor shall initiate

Work within five (5) Days of the Commencement Date. The Contractor shall not be entitled to any Claim for delay, disruption, acceleration or any other Claims arising from the timing of the Authority's issuance of the **Initial** Notice to Proceed. The Contractor shall perform no Work on the Project prior to the issuance of the **Initial** Notice to Proceed, **and shall perform no Construction Work on the Project prior to issuance of the Construction Notice to Proceed.**

Section 5.4.5 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor shall submit monthly Project Schedule updates to the ~~Design Consultant and the~~ Authority on the 10th day of each month. Such updates will be used by the Authority ~~and the Design Consultant~~ to verify the Contractor's compliance with the Project Schedule and progress in timely achieving Construction Milestones. In the event that review of the Project Schedule update by the Authority ~~or the Design Consultant~~ reveals that the Contractor will not meet the Construction Milestones within the time set forth in the Project Schedule, the Authority ~~and/or the Design Consultant~~ shall so advise the Contractor, and the Contractor shall be required to prepare and submit a recovery Project Schedule to the Authority ~~and the Design Consultant~~ for review and acceptance by the Authority.

Section 5.4.6 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor is required to provide to the Authority ~~and the Design Consultant~~ at each Project Meeting a two-week "look ahead" schedule defining the Work to take place over the next two weeks, in advance of such work. Safety issues shall be included in this "look ahead" schedule, and target milestones shall be identified in the "look ahead" schedule to assist in tracking results.

Section 5.4.7 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Any such updates or revisions to the Project Schedule shall not relieve the Contractor of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents. Neither the Authority's review ~~and or~~ **acceptance** of the Project Schedule, ~~nor the Design Consultant's review and comment upon the Schedule (including any recommendations from the Design Consultant, if offered)~~ shall be construed as relieving the Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.



Section 6.8.1 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor shall prepare and submit to the Authority and the Design Consultant all Submittals required by the Contract Documents **or the Construction Documents** within five (5) days of the ~~Commencement Date~~ Construction NTP. The **Contractor shall require its** Design Consultant ~~shall to~~ provide to the Authority written comments and recommendations for acceptance or rejection of the Submittal within seven (7) days of receipt of the Submittal. The Authority shall return the reviewed Submittal to the Contractor with comments or reject or accept the Submittal within seven (7) days of receipt of the comments and recommendations from the Design Consultant. Submittal review by the Authority ~~and the Design Consultant~~ shall be solely for the purpose of determining whether the items or equipment specified in Submittals are consistent with the requirements of the Contract Documents, and is not deemed to be undertaken for any other purpose, including: 1) determining the accuracy and completeness of each Submittal; 2) determining that any other details such as dimensions and quantities have been complied with; 3) substantiating instructions for installation and performance of equipment or systems designed by the Contractor; 4) approval of safety precautions; or 5) approval of construction means, manners, methods, techniques, sequences or procedures, all of which shall remain the Contractor's responsibility. The review of specific items also shall not indicate review of an assembly of which the item is a component.

Section 6.8.8 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor is required to maintain all submitted submittals, including shop drawings, on the jobsite at all times. The submitted submittals shall be organized and filed by specification number and review status (i.e. "accepted," "rejected" or "pending" submittals). Copies shall be supplied to the ~~Design Consultant~~ Authority for the record as required or requested.

Section 6.9.2 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Equals proposed by the Contractor will be compared against the criteria provided in the Contract Documents. The Authority will either accept or reject the proposed equal within ten (10) Days of receipt of the Contractor's written request for the use of an approved equal with all of the required information necessary for the Authority to review the request. Authority acceptance of an equal does not release the Contractor of its responsibility under the terms of the Contract Documents to produce Work, materials or equipment in conformity with the requirements of the Contract Documents, and further does not relieve the Contractor of its responsibility to submit

to the ~~Authority and the~~ Design Consultant a Submittal for acceptance of the approved equal.

Section 6.10.5 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Project Closeout. Upon Final Completion of the Project, the Contractor shall also submit to the Authority as “as built” documentation and “record documents”: three (3) sets of all **design drawings prepared by the Design Consultant and all** shop drawings and/or erection drawings prepared by the Contractor. Additionally, Contractor shall provide three sets of all Operating, Instruction and Maintenance manuals for Equipment as required by the Contract Documents. The Contractor shall also provide video training to instruct Project School District personnel to properly operate and maintain systems, equipment and similar items provided as part of the Contractor’s Work.

Section 6.11.3 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Authority may direct, in writing, that testing be performed in addition to the testing required by Code, the Contract Documents or any manufacturer or supplier. The Contractor shall retain the testing firm and coordinate such additional testing and shall invoice the Authority for such additional testing. The Authority shall bear the costs of such additional testing and shall reimburse the Contractor for such additional testing after the testing report is complete, unless the test report for the additional testing requested by the Authority pursuant to this Section 6.11 reveals that the Work does not comply with the requirements of the Contract Documents. If the test report for the additional testing reveals that the Work does not comply with the requirements of the Contract Documents or is defective, the Contractor shall bear any and all costs of such testing. The Contractor shall cooperate fully with, and shall give site access to, any firm or entity retained by the Authority ~~or the Design Consultant~~, to provide testing services on the Project.

Section 6.15.4 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor shall not shut down any service or utility without prior coordination with the relevant municipal utility, written approval of such municipal utility, and notification of the Authority ~~the Design Consultant~~ and the Project School District. The Contractor shall issue written notification of any service or utility shut-down, to the ~~Design Consultant~~ Authority and all utilities, agencies or other state and local authorities having jurisdiction, a minimum of 48 hours in advance. All utilities are to

be connected or disconnected by a qualified and licensed professional (i.e. electrician, plumber, HVAC technician).

Section 6.17.5 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor shall issue security identification badges to all employees, subcontractors, subcontractor employees, and other persons authorized by the Contractor to enter the Site. Such badges shall display the name and logo of the Contractor issuing the badge, as well as a photo of the individual issued the badge, and his or her name, job title and employer, and, if applicable, the name and logo of the Subcontractor or other entity employing the individual. Persons without a security identification badge shall not be permitted at or on the Project Site unless accompanied by an authorized employee of the Authority ~~the Design Consultant~~ or the Contractor.

Section 6.19.1 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Within forty-eight (48) hours of the issuance of the **Construction** Notice to Proceed, the Contractor shall take as many digital photographs, but in no event fewer than twenty-four (24) photographs, of the Project as necessary to record the existing conditions of the Site. The Contractor shall submit these photographs to the Authority within seven (7) Days of the **Construction** Notice to Proceed.

Section 6.19.3 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Within five (5) Days of receiving a Certificate of Substantial Completion, or a Certificate of Acceptance, as applicable, the Contractor shall take a minimum of twenty-four (24) digital photographs, providing the information noted in 6.19.2 for each photograph, and a video recording, with sound that describes what is being shown, in DVD format of the Project. The video and digital photographs required by this Section 6.19.3 shall be submitted to the ~~Design Consultant~~ **Authority** within ten (10) Days of the Contractor's receipt of a Certificate of Substantial Completion.

Section 6.19.4 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

All digital photographs submitted by the Contractor under this Section 6.19 shall be taken from locations approved by the Authority's Project Manager ~~or the Design Consultant~~ and two copies thereof shall be submitted to the Authority's Project Manager ~~and the Design Consultant~~ in digital electronic form (i.e. two CD's shall be submitted) ~~and two sets of prints~~. All digital photographs submitted by the Contractor shall become the property of the Authority, and the Authority shall become the owner of any and all copyright and intellectual property rights created or existing under state or federal law in such photographs. The Authority may thereafter utilize such photographs for any purpose.

Section 6.22.4 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor is responsible for the sidewalks, curbs, streets and other property that may become damaged during its operations. The Contractor shall replace said property to the satisfaction of the ~~Design Consultant~~, ~~the Authority~~, and the adjacent affected property owner (if applicable), at its own expense.

Section 6.24.2.4 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Prior to exportation of fill from the Project Site, the Contractor shall (1) provide the ~~Design Consultant~~ **Authority** (or its authorized environmental consultant) with the name and address of the fill destination; and (2) provide the ~~Design Consultant~~ **Authority** (or its authorized environmental consultant) with documentation affirming that the destination property is permitted to accept the fill; and (3) provide a letter from the receiving facility that they agree to accept the material.

Section 6.24.2.5 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Upon exportation of fill from the Project Site, the General Contractor shall quantify the amount of fill exported from the site, and provide proof of such quantities removed, including copies of properly executed manifests, to the ~~Design Consultant~~ **Authority** (or its authorized engineer) **and** the Construction Manager, ~~and the Authority~~.

Section 9.4 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

9.4 Contractor and Subcontractor/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 the Contractor and its subcontractors/subconsultants. In addition to coverage provided by OCIP, therefore, the Contractor shall be responsible for providing proof that it and its subcontractors/subconsultants have retained, at a minimum, the insurance coverage set forth in Section 9.15 below.

Section 9 shall be amended to add the following new Section 9.17 (shown in bold and underline text):

9.17. Contractor's Obligation to Provide or Secure Professional Liability Coverage in Connection with Engagement of Design Consultant.

Unless otherwise directed by the Authority, the Contractor shall purchase and maintain, or require the Design Consultant to purchase and maintain, at their own expense the Professional Liability insurance coverage set forth below. Prior to permitting the Design Consultant to perform any work or provide any services, the Contractor must furnish the RMU with certificates of insurance together with declaration pages, in forms satisfactory to the Authority, showing that the Contractor and/or Design Consultant has complied with this Section 9.17. Insurance binders are not acceptable as proof of insurance coverage. The insurance shall be purchased and maintained from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and are rated "A-VII" or better A.M. Best Company. All of the policies of insurance required to be purchased and maintained and the certificates, declaration pages, or other evidence thereof shall contain a provision or endorsement that the coverage afforded is not to be canceled, materially changed, or renewal refused until at least thirty (30) days prior to written notice has been given to the Authority by certified mail.

9.17.1 Professional Liability Insurance (Errors & Omissions). The Contractor shall maintain, or shall require its Design Consultant to maintain, Professional Liability Insurance with coverage retroactive to the Effective Date, sufficient to protect the Contractor 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.**

- (a) **The Contractor warrants that it or its Design Consultant (depending on who holds such coverage) will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) Days of the receipt of notice of such reduction by the Contractor or Design Consultant holding such coverage.**
- (b) **The Contractor 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.**

Section 12.1.1 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Requirements for Substantial Completion. The ~~Design Consultant~~ **Authority** shall determine the date that the Contractor achieves Substantial Completion for the Project. In order to achieve Substantial Completion, the Contractor must have achieved the following on the Project: (i) all essential requirements of the Contract Documents have been performed so that the purpose of the Contract Documents have been accomplished, (ii) a Temporary Certificate of Occupancy (or Temporary Certificate of Acceptance, if applicable) has been issued by the Department of Community Affairs, (iii) a Punchlist has been created by the **Authority, or by the** Design Consultant and accepted by the Authority, (iv) the Contractor has delivered to the Authority the key(s) and/or code(s) for operation of the elevators; (v) there are no material omissions or technical defects or deficiencies, identified by the Authority or the Design Consultant, and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.

Section 12.1.2 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Punchlist and Certificate of Substantial Completion. Once the Contractor believes that it has reached Substantial Completion of the Project but for preparation of the Punchlist, the Authority shall inspect the Project in conjunction with Design Consultant. If the Authority and the Design Consultant determine that Substantial Completion has been achieved but for preparation of the Punchlist, the ~~Design Consultant~~ **Authority** with input from the ~~Authority~~ **Design Consultant** and the Project School District, shall prepare a Punchlist, which shall be submitted to the Authority for approval. The Punchlist shall not include items that are necessary to

be completed in order to secure a Temporary Certificate of Occupancy. Once the Punchlist is prepared and approved, the Authority ~~or the Design Consultant~~ shall distribute to the Contractor a Certificate of Substantial Completion with an attached Punchlist. As the Contractor corrects the Work identified on the Punchlist, the ~~Design Consultant~~ **Authority** shall update the Punchlist and verify that the Contractor corrects the incomplete or defective Work necessary as required by the Contract Documents.

Section 12.2.1 in Section 12.2 “Final Completion” shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

- 12.2.1 Completion of Punchlist Work. After Substantial Completion, the Contractor shall perform all remaining Punchlist work. Upon the completion of the Punchlist work, the Contractor shall notify the Authority that the Work is ready for final inspection to determine whether all Punchlist work has been completed. The ~~Design Consultant~~, CM and the Authority shall inspect the Project and the **Authority**, ~~Design Consultant~~, with input from the CM ~~and the Authority~~, shall determine whether the Punchlist work has been completed and whether all nonconforming and/or deficient Work has been corrected or remedied. The determination that Punchlist work has been completed shall be a prerequisite to achievement of Final Completion.
- 12.2.2. The Authority, with input from the Design Consultant and CM, shall issue a Certificate of Final Completion and determine the date of Final Completion of the Project. Final Completion means that point in time on the Project when the Project is 100% complete and: (i) all requirements of the Contract Documents have been completed, (ii) all items on the Punchlist have been performed, (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, 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 ~~Design Consultant’s~~ **Authority’s** determination that the Punchlist Work has been completed, the ~~Design Consultant shall evaluate the work, and notify the Authority when the work is ready for final inspection.~~ The ~~Design Consultant~~ shall, in conjunction with the Design Consultant and the Project School District and the Authority, conduct a final inspection of the Work to verify that all Punchlist Work has been completed and all nonconforming and/or deficient Work has been corrected or remedied. The ~~Design Consultant~~ **Contractor** shall **require its Design Consultant to** assist the Authority in issuing a Certificate of Final Completion.

Section 13.4.4 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Invoices submitted to ~~the Design Consultant~~ and the Authority shall be processed and paid only after **the Authority and, if appropriate,** the Design Consultant, reviews and determines that the Work for which payment is sought has been completed at the times and in the manner specified by the Contract Documents. Invoices will not be processed by the Authority ~~or the Design Consultant~~ if the Contractor has failed to provide an acceptable Project Schedule or Project Schedule update. Invoices will not be paid by the Authority if the Authority or ~~its~~ **the** Design Consultant determines that the Work for which payment is sought is incomplete or unsatisfactory.

Section 13.4.5 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Invoices may request payment for equipment and materials not yet incorporated into the Project, provided that (i) the ~~Design Consultant~~ **Authority** is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, the Authority will receive the equipment free and clear of all liens and encumbrances.

Section 13.11.1 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The acceptance of Final Payment by the Contractor shall constitute a waiver of all claims by the Contractor against the Authority ~~and the Design Consultant~~, except those expressly reserved by the Contractor in writing at the time of Final Payment. Such reservation of rights shall state the specific amounts of the claims being reserved and the bases for such claims. Failure to state the specific amount of a claim shall result in a waiver of that claim. The Contractor shall be deemed to have waived all claims for which the notices required by law and the Contract Documents have not been provided.

Section 15.1 “Maintenance and Retention of Contract Records” shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

For all Work performed, the Contractor shall, in accordance with generally accepted accounting principles and practices, maintain certified weekly payroll, workers’ compensation payroll, overhead, cost and accounting records, as well as all other records that the Contractor may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority, and any State



oversight or inspecting agency, as to all aspects of the Work and materials provided under the Contract Documents, whether the Work is performed by the Contractor, its Subcontractors or any other entity. Before Final Payment will be made to the Contractor, the Contractor must provide copies of all such records to ~~the Design Consultant and/or~~ the Authority. The Contractor is required to retain copies of all such records for a period of at least five years.

Section 16.2.1 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

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

Section 17.5.1 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor must provide to ~~the Design Consultant and~~ 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 Contractor shall also submit to the Authority all documentation supporting the Contractor's Claim. The documentation provided to the Authority will serve as the basis for evaluation of the Contractor's position regarding the Claim throughout Step One of the administrative process. The Contractor shall submit additional information upon request of the Authority. No formal action will be taken by the Authority unless and until the Authority receives complete Claim documentation from the Contractor.

Section 17.5.2 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

Authority Review and Decision. At the option of the Authority, a meeting may be scheduled with the Contractor, ~~the Authority and the Design Consultant~~ to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within sixty (60) Days of the receipt of the complete supporting documentation or within sixty (60) Days of any meeting with the Contractor, the Authority and the CM, whichever is later. This time limit may be extended by mutual agreement of the Parties, or by the Authority, when additional time is required by the Authority to

properly review and respond to the claim. The Contractor, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If the Contractor neither accepts nor rejects in writing the Authority's decision within fifteen (15) Days, the Claim will be considered withdrawn from the administrative process and there will be no further administrative remedy available to the Contractor for the subject Claim.

Section 18.7.2 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

The Contractor, after notification of award, but prior to the Authority's execution of this Agreement, shall submit to the Authority an SBE Form ~~BA~~ and Form(s) C.

Section 18.7.3.3 shall be amended to read as follows (additions in bold and underlined text, deletions in strikethrough text):

3. A subcontractor projection report, Form 201A, within seven (7) business days of the **Construction** Notice to Proceed issued to the Contractor by the Authority, and as updated during the duration of the Contract;

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

New Jersey Schools Development Authority

Attest:

_____	_____	_____
(Signature)	(Signature)	Date
_____	_____	
(Printed Name)	(Printed Name)	
_____	_____	
(Title)	(Title)	

**CONTRACTOR**

(NAME)  
\_\_\_\_\_ Contractor

Witness or attest:

_____	_____	_____
(Signature)	(Signature)	Date
_____	_____	
(Printed Name)	(Printed Name)	
_____	_____	
(Title)	(Title)	

**AFFIX SEAL IF A CORPORATION**

APPENDIX D  
Certificates of Insurance