

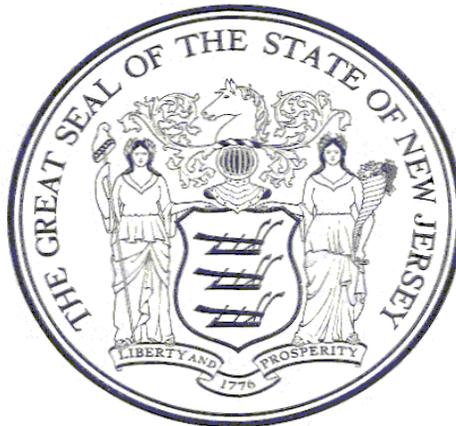
PROFESSIONAL SERVICES CONSULTANT
REQUESTS FOR PROPOSAL
for
HVAC RETRO-COMMISSIONING SERVICES
for
SCHOOL FACILITIES PROJECTS

Package No.: JE-0016-R08

Issue Date: June 3, 2011

Due Date: June 16, 2011

Mandatory Site Visit
Wednesday, June 8, 2011
PS#3&MS4
111&107 Bright Street
Jersey City, NJ 07302



SDA

NJ SCHOOLS DEVELOPMENT AUTHORITY

N. J. SCHOOLS DEVELOPMENT AUTHORITY

1 West State Street, P.O. Box 991, Trenton, N.J. 08625-0991

HVAC RETRO COMMISSIONING SERVICES
REQUEST FOR PROPOSALS

INTRODUCTION

Through this Request for Proposals ("RFP"), the New Jersey Schools Development Authority ("SDA") is seeking the services of a qualified Commissioning Authority ("Consultant" or "CxA") to provide HVAC retro-commissioning (RCx) services. The Owner is committed to retro-commissioning these facilities to ensure all systems are well designed, constructed, complete, and functioning properly and that the Owner's staff has adequate system documentation and training. The RCx Authority will plan, manage, perform and report on the findings of the RCx activities via a deliverable report to the SDA in accordance with the project Commissioning Schedule. The RCx activities shall be performed in a transparent manner with the input of building engineer and the operations staff to the greatest degree possible. This type of approach will assure that the recommendations resulting from the RCx activities will be adopted by the building engineer and the operations staff.

This PROFESSIONAL SERVICES CONSULTANT REQUEST FOR PROPOSALS consists of the following:

1. Request for Proposals
2. Attachment A: Fee Proposal Forms
3. Attachment B: Qualifications Informational Attachment
4. Attachment C: NJSDA Form 202
5. Attachment D: NJSDA SBE Form B (CxA)
6. Attachment E: HVAC Retro-Commissioning Services Agreement
7. Attachment F: As Built Plans and Specifications (a CD-R of which will be conveyed only to each firm eligible to respond to this RFP and in attendance at the mandatory pre-bid meeting)

All of these documents should be read in their entirety as they define the scope of services and responsibilities of the Professional Services Consultant and the NJSDA. A firm wishing to submit a Proposal must review all such documents and be thoroughly familiar with all of the terms and conditions of such documents.

A mandatory pre-bid meeting will be held on **Wednesday, June 8, 2011 at 10:00 AM** at the PS#3/MS4 School site located at 111/107 Bright Street, Jersey City, New Jersey 07302. A site visit of both schools will be conducted immediately following the pre-bid meeting. All firms wishing to submit a proposal must attend the pre-bid meeting. Questions and/or concerns relating to the provisions of the Agreement may only be addressed at the pre-bid meeting. **All pre-bid meeting attendees are to report to the security desk at MS4, 107 Bright Street where they will be directed to the meeting venue. Attendees are advised that they are responsible for their own parking provisions while attending this meeting and should therefore plan accordingly. Attendees should allow sufficient time for traffic conditions and parking.**

Upon award, the NJSDA shall forward the Agreement for HVAC Retro-Commissioning Services (the "Agreement") to the selected firm for immediate execution, without modification.

RFP SUBMITTAL

Responses to this RFP in the form of written proposals must be received by the SDA by **5:00 PM on Thursday, June 16, 2011**.

Any firm responding to this RFP **must be** classified by the Department of Treasury, Division of Property Management and Construction and prequalified by the NJSDA in Building Commissioning (P019) with a rating of \$500,000 or greater as of the RFP submittal due date.

The Proposal is to consist of the following:

- Technical Proposal
- Fee Proposal (on NJSDA Forms included in Attachment A to this RFP)

The firm must submit one (1) unbound original and five (5) copies of the Technical Proposal no later than **5:00 PM on Thursday, June 16, 2011** as follows:

If submitting by hand or overnight delivery, at the:

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
1 West State Street – 1st Floor
Trenton, New Jersey 08625-0991**

**Attention: Jim McElhenny, Procurement
Subject: HVAC Retro-Commissioning Services Proposal
Project: JE-0016-R08**

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

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
P.O. Box 991
Trenton, New Jersey 08625-0991**

**Attention: Jim McElhenny, Procurement
Subject: HVAC Retro-Commissioning Services Proposal
Project: JE-0016-R08**

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

Faxed or e-mailed Proposals shall not be accepted.

1. Technical Proposal

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

- 1.1 Cover Letter
- 1.2 Project Understanding
- 1.3 Project Approach
- 1.4 Retro-Commissioning Experience
- 1.5 Team Qualifications
- 1.6 SBE Compliance
- 1.7 Business Registration

1.1 Cover Letter

Present a brief understanding of the School Facilities Project and the SDA's needs based upon the requirements of this document, past experience, and other information relevant to the firm's qualifications.

1.2 Project Understanding

Provide a comprehensive narrative that illustrates your firm's understanding of the commissioning requirements/deliverables for this project. The narrative shall identify any and all information necessary to complete the project scope of services as detailed in Appendix B of the attached Agreement.

1.3 Project Approach

a. Overall Approach

Provide a thorough description of your firm's approach to executing the project, including how each team member will participate in the process. The Retro-Commissioning approach for each building shall clearly identify the impacts and inter-relationship between occupancy load and testing. Additionally the proposal must provide information outlining foreseeable issues relating to building occupancy. The proposal shall identify the means and methods for maintaining occupant comfort and limiting operational disruptions during the investigation process.

b. Control of Schedule

Describe the firm's ability to meet or reduce the schedule defined in the Agreement, Appendix A. This may take the form of a narrative or a chart, with supporting documentation, if appropriate. Any techniques that may be used to meet or reduce the proposed schedule should be explained in detail. The firm must submit a proposed Commissioning Schedule, in Critical Path Method ("CPM") format, meeting the expected durations of phases set forth in Appendix A, (Special Conditions) of the Agreement.

c. Control of Budget

Describe the firm's approach to accurately estimating the costs and or savings of any recommendation made by the firm. It must explain the approach to cost estimating and any techniques the firm plans to use to reduce the cost of or increase the savings from any recommendation. The firm should describe any cost-tracking tools the firm will use. This may take the form of a narrative or graphics or a combination thereof.

1.4 Retro-Commissioning Experience

Provide project descriptions of three (3) recently commissioned projects including one involving the retro-commissioning of an existing HVAC system (executed within the last five years) for which the respondent was the principal CxA. The detailed project descriptions shall include: type of facility, description of project with square footage, overall construction cost and systems commissioned, and what scope of commissioning was provided. State whether the performance improvement goals were achieved on the project and identify the level of success (ie. met, exceeded, etc.) and why. Also, please provide the name and contact information of the project manager that represented the owner for each of these projects.

1.5 Team Qualifications

The firm/team identified in the proposal must submit documentation that shows that the firm/team meets the

qualifications as stated in this RFP and detailed in the “Mandatory Qualifications” section of Attachment B, and may submit additional documentation that the firm meets the “Additional Qualifications” identified in Attachment B. The proposal must also demonstrate that the key team members have worked together on similar projects in the past 24 months.

a. Organization Chart

The organization chart must include the members of the commissioning team (CxA) for this project who will be integral in the entire project. The Proposal **must** identify the individual CxA Project Manager who, **from project start to completion**, will be the leader of your team and the principal point of contact between your commissioning team and the whole Project Team (Project Team includes: SDA, School District, and the CxA, when selected). This individual’s competence, leadership, and ability to achieve **client** satisfaction will be heavily considered in the selection of the CxA.

b. Resumes of Key Team Members

A resume of each Key Team Member must be included in the Technical Proposal (NJSDA Form 202, Attachment C to this RFP). The selected CxA must use all Key Team Members as indicated in its Technical Proposal. For each Key Team Member, the resumes should include, but not be limited to: relevant experience, and any applicable certifications and/or affiliations.

1.6 SBE Compliance

The selected Consultant shall be required to make good faith efforts to ensure that small business enterprises (SBEs) have the maximum practicable opportunity to participate in the performance of this engagement. A 25% target has been established pursuant to N.J.A.C. 17:13 et seq. Provide a discussion of how your firm will satisfy this requirement and complete NJSDA SBE Form B (CxA), Attachment D to this RFP.

1.7 Business Registration

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

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

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

2. Fee Proposal

Firms responding to the RFP shall complete and return a Fee Proposal that shall consist of the following completed Forms, samples of which are included in Attachment A to this RFP:

- 2.1 Fee Proposal Cover Sheet (Form 231B)
- 2.2 Consultant Task/Labor Fee Sheets (Form 232A)
- 2.3 Key Team Member List with Hourly Rates (Form 233A)

The above items must be addressed in the Fee Proposal in the sequence stated above.

One copy of the above Fee Proposal documents must be submitted to the NJSDA in a separately sealed envelope at the same time and location as the firm's Technical Proposal. FAXED FEE PROPOSALS WILL NOT BE ACCEPTED.

A more detailed description of the items required in the Fee Proposal follows.

2.1 Fee Proposal Cover Sheet (Forms 231B)

The firm must submit a Fee Proposal based on two separate lump sums: (1) the Fee Proposal shall state the lump sum amount proposed for performing all required services for Frank R. Conwell Public School No. 3 (PS#3), and (2) the Fee Proposal shall also state the lump sum amount for all required services for Frank R. Conwell Middle School No. 4 (MS4). These two amounts shall be totaled to arrive at a single lump sum.

The lump sums must include all required site visits and office support.

Form 231B is the cover sheet of the Fee Proposal. Firms must complete Form 231B with proposed dollar figures for lump sum compensation as indicated on the form.

The firm's Fee Proposal as to the lump sums must take into account the hours required to prepare and submit all permits for which the Consultant is responsible under the Agreement. Please note, however, that the Authority shall be responsible for paying regulatory fees for such permits.

2.2 Consultant Task/Labor Fee Sheets (Form 232A)

The Consultant shall be responsible for ensuring that its Sub-consultants participate in all appropriate phases of the project. The firm must anticipate the amount of hours required by its Subconsultants to attend the various job meetings, site visits and close-out activities. The hours of effort devoted to close-out activities must be reserved for the activity and must not be used by the Consultant for tasks related to any other phase.

Hours shall be determined by the firm from the Scope of Services and shall be set forth on the "Consultant Task/Labor Fee Sheet" for each Sub-consultant identified. The firm must indicate the number of hours and dollar amounts proposed for it and any Sub-consultants on the team to complete each task, noting the totals for each task and the grand total.

If the discipline listed in the column will be performed in-house, this should be noted at the heading of the appropriate discipline. If more columns are needed for additional Subconsultants, they should be added between the last listed Sub-consultant and the last column labeled "Reproduction." Additionally, the firm should indicate in the "Reproduction" column the cost for reproduction of all reports, printing, etc., required for the School Facilities Projects.

The NJSDA will use the hours listed by discipline on the “Consultant Task/Labor Fee Sheet” as to be spent on each project phase or task only for purposes of evaluating the Fee Proposal. If the Consultant's actual hours are higher or lower than the hours listed in the Fee Proposal, however, there will be no addition or reduction made to the lump sum amount. Payment will be made based upon the lump sum amount established in the Agreement. In the event that the NJSDA requests additional services beyond those provided for in the lump sum price, such additional services shall be compensated at the rates specified in the Fee Proposal and in accordance with the Agreement.

The performance of the Consultant and its Sub-consultants, including hours spent on the engagement, may be reviewed and audited by the NJSDA and other State agencies.

2.3 Project Key Team Member List with Hourly Rates (Form 233A)

In the event that the NJSDA requests additional services beyond those provided for in the lump sums, such additional services shall be compensated at the rates established as set forth on Form 233A. On Form 233A, the firm must set forth the hourly billable, all-inclusive wage rates for all people listed as Key Team Members. These wage rates shall be used in the event that “Additional Services” are required.

SELECTION PROCEDURES

Each proposal will be reviewed to determine responsiveness. Responsive submissions will be evaluated by the selection committee. The evaluation will be based upon the information provided by a firm in response to this RFP, and any necessary verification thereof. Evaluations will be based on the following: Each Selection Committee Member will evaluate each of the criteria on a scale of 0 to 10 as follows:

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

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

Criteria	Weighting Factor	Maximum Weighted Points
Project Understanding	1.5	15
Project Approach	2.0	20
Retro-Commissioning Experience	3.0	30
Team Qualifications	3.5	35
TOTAL POSSIBLE POINTS		100

Respondents will receive a final technical score and/or ranking based on their Technical Proposal's evaluation, except that, at its sole option, the Committee may conduct interviews. Following the interviews, if any, the final technical scores and/or rankings shall be determined, based on the evaluation criteria. At this time, respondents are advised that interviews are not being contemplated by the Committee and that proposals

should be prepared accordingly.

Following the final technical ranking, the Fee Proposals will be opened and reviewed by the NJSDA. Using the Fee Proposals as a guideline, the NJSDA shall negotiate a contract with the highest-ranked firm at compensation that the NJSDA determines to be fair and reasonable. Should the NJSDA be unable to negotiate a satisfactory contract with the highest-ranked firm, the NJSDA shall terminate negotiations with the highest-ranked firm and shall then undertake negotiations with the second highest-ranked firm. Failing accord with the second highest-ranked firm, the NJSDA shall terminate negotiations with the second highest-ranked firm and shall then negotiate with the third highest-ranked firm. In the event that the NJSDA is unable to reach a satisfactory contract with any of the three highest-ranked firms, the NJSDA may select additional firms in order of their ranking and continue negotiations until an agreement is reached or, at its option, the NJSDA may reject all Proposals.

The Committee's Selection Coordinator shall recommend to the appropriate person(s) the most technically qualified CxA at compensation determined to be fair and reasonable. If the recommendation is approved by the appropriate person(s), the Committee's Selection Coordinator will notify the successful CxA of the award and prepare and distribute the necessary documents for execution. Unsuccessful firms will be notified by letter after award.

After the award, if you wish to review any of the Proposals submitted, the Selection Committee's evaluations and/or debriefing documents, you must complete an Open Public Records Act (OPRA) request form. The form can be downloaded from the NJSDA website at <http://www.njsda.gov/opra/index.html>. Please submit completed OPRA forms to: Custodian of Public Records, New Jersey Schools Development Authority, One West State Street, P.O. Box 991, Trenton, New Jersey 08625-0991.

Notwithstanding anything to the contrary, the NJSDA has no obligation to make an award and reserves the right to waive any non-material defects, reject all Proposals for any reason, and terminate the selection process at any time.

Any bidder attempting to contact government officials (elected or appointed), including NJSDA Board members, NJSDA Staff, and Selection Committee members in an effort to influence the selection process may be immediately disqualified.

AWARD REQUIREMENTS

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

a. Public Works Contractor Registration Act. If applicable, the Consultant must be properly registered pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq.

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

Additionally, Executive Order No. 117, which is designed to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 ("Chapter 51"), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become,

State government vendors.

c. Outsourced Services Special Provisions. Under P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the NJSDA shall not award a contract to a bidder that submits a bid proposal to perform services, or to subcontract with a firm to perform services, outside the United States, unless certain conditions are met. If, during the term of the contract, the Consultant or subcontracted firm, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside of the United States, the Consultant shall be deemed in breach of the Agreement, unless the Senior Director of the NJSDA Division of Procurement and Contract Services shall have first determined in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

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

- (1) appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program;
- (2) a certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4; or
- (3) an initial employee information report (Form AA302)* provided by the Affirmative Action Office and completed by the contractor in accordance with N.J.A.C. 17:27-4.

***The original of this document shall be provided to the New Jersey Department of Treasury.**

Please see following link for details.

http://www.state.nj.us/treasury/contract_compliance/pdf/aa302ins.pdf

e. Firm's Proposal for SBE Set-Aside Targets (NJSDA SBE Form B (CxA)). The NJSDA may only recognize firms duly registered with the Department of Treasury, Division of Revenue as SBEs. There are presently six categories of SBE comparative sizes based upon average annual revenue for purposes of professional service contracts;

The successful firm must submit a completed NJSDA SBE Form B (CxA), identifying all SBE firms proposed for use on the engagement to meet (or exceed) the set-aside targets. Please note that any firm identified as an SBE must be registered as such with Department of Treasury, Division of Revenue when the firm submits its proposal, in the revenue category specified. In the event that a proposing firm names a subconsultant for SBE purposes, and the subconsultant is not registered as an SBE with N J Department of Treasury, Division of Revenue at the time of proposal, the proposing firm must disclose that fact and explain how and when the lack of registration shall be cured.

If a firm fails to show that it will meet SBE subcontracting targets, it must document its good faith efforts to meet the targets, in accordance with the provisions of N.J.A.C. 17:14 et seq.

A firm shall not be permitted to remove or substitute any firms listed on NJSDA SBE Form B (CxA) without prior written approval from the Authority.

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

The SDA may request additional information as required under the Agreement, policies, procedures or law.

ATTACHMENT A

FEE PROPOSAL FORMS

HVAC RETRO-COMMISSIONING SERVICES

- Fee Proposal Cover Sheet (Form 231B)
- Consultant Task/Labor Fee Sheets (Form 232A)
- Key Team Member List with Hourly Rates (Form 233A)

FEE PROPOSAL COVER SHEET

THIS FEE PROPOSAL MUST BE RETURNED IN A SEPARATELY SEALED ENVELOPE TO:
New Jersey Schools Development Authority
One West State Street
PO Box 991
Trenton, NJ 08625-0991

ATTENTION: Jim McElhenny

FIRM NAME: _____

SCHOOL DISTRICT: Jersey City

PACKAGE NO.: JE-0016-R08

THE UNDERSIGNED PROPOSES TO PROVIDE ALL PROFESSIONAL SERVICES AS REQUESTED IN THE RFP DATED June 3, 2011.

	<u>PS#3</u>	<u>MS4</u>
1. TOTAL PLANNING PHASE COMPENSATION	\$ _____	\$ _____
2. TOTAL INVESTIGATION PHASE COMPENSATION	\$ _____	\$ _____
3. TOTAL REPORTING PHASE COMPENSATION	\$ _____	\$ _____
TOTAL PER SCHOOL COMPENSATION (1.+2.+3.)	\$ _____	\$ _____

TOTAL PROPOSED FEE

\$ _____

THE HOURLY WAGE RATES INCLUDED ON THE PROJECT KEY PERSONNEL LIST WILL BE USED FOR ANY ADDITIONAL SERVICES REQUIRED.

PROPOSAL TO HOLD GOOD THROUGH 90 DAYS AFTER THE DUE DATE.

(Print Name)

(Signature) (Date)

(Title)

(Phone Number)

NJSDA FORM 231B (RCx)

Revised 05/03/2011

**New Jersey Schools Development Authority
CONSULTANT TASK / LABOR SHEET**

Package: JE-0016-R08

School District: Jersey City

School Name: PS #3

Firm Name:

Name:

Title:

PROJECT PHASE	Discipline:*	HVAC	Electrical	Plumbing	Bldg Mgmt System	Other**	TOTAL LUMP SUM
	Firm:						
PLANNING PHASE	Hours						
	\$ Amt						
INVESTIGATION PHASE	Hours						
	\$ Amt						
REPORTING PHASE	Hours						
	\$ Amt						
	Hours						
	\$ Amt						
PHASE TOTALS	Hours						
	\$ Amt						

* If the Prime is self-performing any discipline, the fee associated with that discipline must be identified in the appropriate space.

** Provide description of Other costs.

**New Jersey Schools Development Authority
CONSULTANT TASK / LABOR SHEET**

Package: JE-0016-R08

School District: Jersey City

School Name: MS 4

Firm Name:

Name:

Title:

PROJECT PHASE	Discipline:*	HVAC	Electrical	Plumbing	Bldg Mgmt System	Other**	TOTAL LUMP SUM
	Firm:						
PLANNING PHASE	Hours						
	\$ Amt						
INVESTIGATION PHASE	Hours						
	\$ Amt						
REPORTING PHASE	Hours						
	\$ Amt						
	Hours						
	\$ Amt						
PHASE TOTALS	Hours						
	\$ Amt						

* If the Prime is self-performing any discipline, the fee associated with that discipline must be identified in the appropriate space.

** Provide description of Other costs.

ATTACHMENT B

Qualifications

Please review the information below in preparing your proposal for HVAC Retro-Commissioning (RCx) Services.

Integrated commissioning services and associated documentation shall be performed as per the procedures, methods, requirements and documentation described by the following:

1. ASHRAE Guideline 0-2005,
2. ASHRAE Guideline 1.1-2007,
3. ASHRAE Guideline 4 – 2008.

The RCx services provided by the firm will be executed and/or coordinated by a single point of contact termed the Commissioning Authority (CxA). As used in this document, the term CxA may also indicate the general staff of the CxA firm. The CxA will be expected to work closely with the Project Team to accomplish all work described herein.

CxA Qualifications

Firms responding to this RFP shall include in their proposals information identifying the practical as well as theoretical skill sets of their key team members. Proposals shall also demonstrate that key team members are knowledgeable in the most modern techniques in building design, construction and operation. Firms will be viewed most favorably for including in the key team members a combination of professional architects and engineers, certified test and balance technicians and digital controls technicians.

Mandatory Qualifications

Responsive firms **shall** be evaluated on satisfaction of the following mandatory criteria:

- a. The identification of a team in which each key team member shall have a minimum of 5 years experience in one or more of the following disciplines or technical competencies. All of the following disciplines/competencies must be represented by a team member with the requisite experience:
 - i. Design, operation and troubleshooting of Mechanical, Electrical, and Plumbing (MEP) systems.
 - ii. Performance and efficiency testing of MEP systems.
 - iii. Direct digital control (DDC) systems and building management systems design, operation, and troubleshooting.
 - iv. Testing, adjusting, and balancing (TAB) of HVAC systems.
 - v. HVAC Retro-Commissioning.
- b. The identification of a CxA Project Manager who has experience acting as the principal CxA for at least three (3) projects over 100,000 square feet, with preference given to educational projects.

- c. The identification of a team whose members have knowledge and experience in building operations and maintenance, computer maintenance management systems, and have provided O&M training and developed O&M manuals.
- d. The identification of a team whose members have experience in energy-efficient equipment designs and control strategy optimization. The CxA team shall have accomplished the following:
 - i. Point by point verification of addresses on Building Management Systems (BMS)
 - ii. Confirmed calibration of BMS sensors with in-house NIST calibrated instruments
 - iii. Confirmed calibration of control valves (span and range)
 - iv. Water and air side economizer sequence verification
 - v. Staging sequences for cooling towers, boilers, chillers, etc.
 - vi. Optimal VAV control sequences
 - vii. Building optimal start / stop sequences
 - viii. Renewable Energy Systems
 - ix. Life Cycle Analysis
- e. Team members shall each have experience conducting meetings in an atmosphere of team formation and have exceptional written and verbal communication skills,
- f. Field support staff shall have technical training, past field experience, and skill in commissioning, especially in the areas of TAB, MEP operations, DDC systems, and electrical system operations. The required expertise for this project must be part of the skill and experience set of the team allocated for this project.

Additional Qualifications

Responsive firms will also be evaluated on their ability to satisfy the following additional, non-mandatory criteria:

- a. Inclusion in the CxA team of a professional engineer (PE) and/or registered architect (RA) licensed in the State of New Jersey, to perform commissioning reviews of all project data including but not limited to all existing documentation and project deliverables.
- b. The identification of a Project Manager who is a LEED Accredited Professional, and who has secured a Commissioning Certification from The Building Commissioning Association (BCA) or an Accredited Commissioning Process Provider as designated by The University of Wisconsin – Department of Engineering Professional Development.
- c. Inclusion in the CxA team of a member with a National Environmental Balancing Bureau (NEBB) Supervisor certification for testing and balancing.

ATTACHMENT C

NJSDA FORM 202

Example Format

KEY TEAM MEMBER RESUME

{This form should be photocopied as necessary}

KEY TEAM MEMBER NAME: _____

Proposed Project Role:

Years of Experience:

Years with Firm:

Technical Specialties:

Professional History:

Education:

Professional Registrations & Affiliations:

Representative Project Experience & Qualifications:

ATTACHMENT D

NJSDA SBE Form B (CxA)

AGREEMENT
BETWEEN
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
AND

FOR
HVAC RETRO-COMMISSIONING SERVICES

THIS AGREEMENT is made and entered into this ___ day of _____, 2011 (the “Effective Date”) between the New Jersey Schools Development Authority (the “Authority”), having an office located at 1 West State Street, Trenton, New Jersey 08625-0991, and _____ (“Commissioning Agent” or “CxA”), with its principal place of business at _____.

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

Contract Number: _____

Project Name: _____

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

Provided that CxA performs all of the Services specified and all other obligations set forth in this Agreement, and subject only to such increases or decreases permitted by this Agreement, the Authority will pay CxA the sum of _____ (\$_____) (the “Contract Price”).

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

[SIGNATURES ON THE FOLLOWING PAGE]

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

COMMISSIONING AGENT

**NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY**

By:
Title:

By:
Title:

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

By: _____
Name of Affiant

Notary Public of

My commission expires: _____, 20__.

Reviewed and Approved

By: _____
Name:

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

1.0 DEFINITIONS

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

- 1.1 "Additional Services" means services to be performed by CxA at the Authority's request which are in addition to the Basic Services that CxA is required to perform pursuant to this Agreement. Such Additional Services are set forth in Section 5.0.
- 1.2 "Agreement" means this agreement, including all appendices and all documents specifically incorporated herein, between the Authority and CxA, as such agreement may be modified by Amendment.
- 1.3 "Amendment" means a written modification to this Agreement executed by the Authority and CxA.
- 1.4 "ASHRAE" means the American Society of Heating, Refrigerating & Air-Conditioning Engineers, Inc.
- 1.5 "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 CxA pursuant to this Agreement.
- 1.6 "Authority's Expedition Database" means the Primavera Expedition Database created and maintained by the Authority.
- 1.7 "Authority Having Jurisdiction" means any applicable local, State, national or Federal entities having jurisdiction over the Project or CxA.
- 1.8 "Authority's Program" means the initial description of the Authority's objectives for the Project, including, but not limited to, Project budget, time criteria, schedule, space requirements and relationships, special equipment and systems, and site requirements.
- 1.9 "Authority's Project Manager" means the Authority's representative for the Project who administers the contract and manages the Project on behalf of the Authority. The Authority's Project Manager shall have that authority specified in the Levels of Operating Authority Policy which document can be found on the Authority's website:

www.njsda.gov/RP/PoliciesAndRegulations/Operating_Authority.html.
- 1.10 "Basic Services" means the services to be performed by CxA pursuant to this Agreement as set forth in Section 4.0.

- 1.11 “Building Commissioning” means Existing Building HVAC Commissioning for the Project in accordance with Appendix B of this Agreement (“Scope of Services”), and current versions of the following ASHRAE Guideline: 4-2008. Building Commissioning shall include, but is not limited to: (a) ensuring that all commissioned systems are well designed, constructed, complete, and functioning properly; (b) providing adequate system documentation to the staff of the School Facilities in order to operate and maintain the School Facilities HVAC systems.
- 1.12 “Commencement Date” or “NTP Date” means the date set forth in CxA Notice to Proceed on which CxA is authorized to commence performing its Services pursuant to this Agreement.
- 1.13 “Commissioning Agent” or “CxA” means the person, persons or firm engaged by the Authority to provide HVAC Retro-Commissioning for the Project.
- 1.14 “Commissioning Plan” or “Cx Plan” means the document described in ASHRAE Guideline 0-2005, The Commissioning Process. The Cx Plan is described as “a document that outlines the organization, schedule, allocation of resources, and documentation requirements of the Commissioning Process.”
- 1.15 “Commissioning Schedule” means a Critical Path Method (“CPM”) schedule prepared and updated by the CxA pursuant to the Contract, wherein the CxA identifies all critical activities, and the projected and actual time periods for completing such activities.
- 1.16 “Compensation” means payment(s) due to CxA for Services rendered under this Agreement.
- 1.17 “Construction Manager” or “CM” means the person, persons or firm 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 this Project. The Authority will identify the CM in Appendix A by the Effective Date of this Agreement or by other means if such is engaged during the Term. The Authority has determined that a separate Construction Management firm will not be retained for this Project. Accordingly, throughout the General Conditions, all references to the Construction Manager shall be interpreted as referring to the Authority or the Design Consultant as its designee.
- 1.18 “Contract Completion” means that point in time on the Project when the Project is 100% complete and (i) all requirements of the Contract have been completed, (ii) all items on the Punchlist have been performed.
- 1.19 "Contract Documents" means the drawings, specifications and other documents provided by the Authority to the CxA, which set forth the necessary requirements relating to the performance of Services for the Project.

- 1.20 "Current Facility Requirements" or "CFR" means the building's current operational needs and requirements. This shall include but not be limited to identifying temperature set points, operating hours, filtration, vibration, sound and/or specialty needs. Integration requirements such as controls, fire and life safety, warranty review and service contract review shall be noted as it relates to the HVAC.
- 1.21 "CxA Claim" means a demand by CxA for (1) a time extension which is disputed by the Authority or (2) the payment of money or damages, arising from Services performed by or on behalf of CxA in connection with this Agreement, which is disputed by the Authority.
- 1.22 "CxA Notice to Proceed" means a written notice from the Authority setting the Commencement Date on which CxA is authorized to commence performing Services pursuant to this Agreement.
- 1.23 "Day" means calendar day, unless otherwise specifically defined.
- 1.24 "DCA" means the New Jersey Department of Community Affairs.
- 1.25 "Deliverables" means any services to be performed or work product to be generated by CxA in accordance with this Agreement.
- 1.26 "Design Manual" means the latest edition of the NJSDA's 21st Century Schools Design Manual available at the time this Agreement is executed by the Parties.
- 1.27 "DOE" means the New Jersey Department of Education.
- 1.28 "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.
- 1.29 "Effective Date" means the date upon which this Agreement has been fully executed by all Parties, as indicated above.
- 1.30 "ELEC" means the New Jersey Election Law Enforcement Commission, the State entity established pursuant to N.J.S.A. 19:44A-5.
- 1.31 "Extended Services" means additional Basic Services that CxA is required to perform as a result of a delay in Project construction other than those delays caused by CxA's actions or inactions.
- 1.32 "Invoice" means a request for payment submitted by CxA to the Authority.
- 1.33 "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 CxA's performance of Services under this Agreement, including, but not limited to, the current versions of ASHRAE, NIBS, the

Building Design Services Act, the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools under Construction or Being Planned for Construction, the Occupational Safety and Health Act of 1970, the Soil, Erosion and Sediment Control Act, as well as any requirements of local or national Authorities having Jurisdiction over the Project, as applicable.

- 1.34 "NIBS" means the National Institute for Building Sciences.
- 1.35 "Notice of Award" means a notice from the Authority to CxA that CxA's proposal has been accepted and that the Authority intends to enter into a contract with CxA for the Services set forth in the Request for Proposals.
- 1.36 "Operating and Maintenance Documentation for Building Systems" or "O&M Manuals" means the documents described in ASHRAE Guideline 4-2008 "Preparation of Operating and Maintenance Documentation for Building Systems" and further described in ASHRAE Guideline 0-2005 "The Commissioning Process", Section 6.2.6 Systems Manual. This guideline guides those responsible for the design, construction, and commissioning of building HVAC&R systems in the preparation and delivery of operating and maintenance (O&M) documentation. It covers the format, content, delivery, and updating of building HVAC&R systems O&M documentation.
- 1.37 "Parties" means the Authority and CxA.
- 1.38 "Performance Evaluation Policy and Procedure" means the policies and procedures developed or to be developed by the Authority for evaluating the performance of Professional Services Consultants, contractors, etc.
- 1.39 "Professional Services Consultants" means consultants, including CxA, providing professional services associated with research, development, design, construction, construction administration, alteration, or improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These consultants may provide services including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, submittal review, testing, commissioning, preparation of operating and maintenance manuals, and other related services.
- 1.40 "Professional Services Consultant Agreements" means the agreements between the Authority and Professional Services Consultants in connection with the Project and, unless otherwise noted, shall include this Agreement.
- 1.41 "Project" means the design, demolition, construction, improvement, repair, alteration, modernization, renovation or reconstruction of all or any part of the School Facility identified herein and in Appendix A or the manufacture or supply of any personal

property necessary for or ancillary to the School Facility identified in Appendix A and required by this Agreement.

- 1.42 "Project School District" means the school district in which the Project is located. The District is identified in Appendix A of this Agreement.
- 1.43 "Project Team" means the team(s) identified by the Authority for a Project. Such team(s) may consist of, but not be limited to, representatives of the Project School District, the Authority, the Design Consultant, CM, CxA, the Contractor, other agency representatives, such as DOE or DCA, and any other Professional Services Consultants engaged by the Authority in connection with the Project.
- 1.44 "Punchlist" means the list of incomplete or defective Work to be performed or remedied by the Contractor to fully complete the Project. The Punchlist shall only include items that are incidental to the Work and not required to be completed in order for the Authority to use the Project for its intended purpose. The Punchlist shall also include Work that is not compliant with any Code or applicable Legal Requirements.
- 1.45 "Request for Proposals" or "RFP" means a request issued by the Authority for proposals from Professional Services Consultants, including CxA, for services described therein.
- 1.46 "Retro-Commissioning" or "RCx" is a systematic process for investigating, analyzing, and optimizing the performance of building systems through the identification and implementation of low/no cost and capital intensive Facility Improvement Measures and ensuring their continued performance. The RCx process assists in making the building systems perform interactively to meet the current facility requirements and provides the tools to support the continuous improvement of system performance over time.
- 1.47 "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.
- 1.48 "Services" means all services performed by or required to be performed by CxA pursuant to this Agreement for the Project and includes services performed by CxA and its Subconsultants.
- 1.49 "Site" means the site(s) proposed or selected for the Project.
- 1.50 "Specification" means a written description prepared by the Design Consultant as part 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 Project, or a requirement of the Work to be performed under this Agreement. A Specification 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.

- 1.51 "State" means the State of New Jersey.
- 1.52 "Subconsultant" means a Professional Services Consultant with whom another Professional Services Consultant subcontracts for the performance of all or part of the services for which the latter is responsible.
- 1.53 "Subcontractor" means the party to whom a Contractor or another Subcontractor subcontracts part or all of the work for which such Contractor or other Subcontractor is responsible. As used in this Agreement, the term "Subcontractor" shall include sub-subcontractors of any tier.
- 1.54 "Submittal" means documents or other tangible items prepared by the Contractor, including, but not limited to, shop drawings, product data and samples. Submittals are subject to review by the CM, Design Consultant and the Authority. Examples of Submittals include, but are not limited to, shop drawings, product data and samples. CxA shall be required to review Submittals in accordance with this Agreement.
- 1.55 "Systems Manual" shall mean the document described in ASHRAE Guideline 0-2005, "The Commissioning Process" Section 6.2.6. This document provides users that did not participate in the design and construction process, the information necessary to understand, operate, and maintain the systems and assemblies incorporated into the work and future updates and corrections as they occur during occupancy. The development of this document shall begin at the earliest phase of the Design Process as an outline and continue to be developed at each subsequent phase by CxA with the participation of the Project Team.
- 1.56 "Term" means the term of this Agreement as set forth in Appendix A of this Agreement.
- 1.57 "Uniform Construction Code" means the New Jersey Uniform Construction Code, as set forth in N.J.A.C. 5:23-1 et seq., and all applicable Subcodes, as such Codes are amended from time to time.
- 1.58 "Work" means all work performed by the Contractor and its Subcontractors and suppliers, including providing all material, equipment, tools and labor, necessary to complete the performance of Services for the Project, as described in and reasonably inferable from the Contract Documents.

2.0 RELATIONSHIP OF THE PARTIES AND OTHER ENTITIES

2.1 Intent of the Agreement

This Agreement is intended to permit the Parties to complete the Services and all obligations required by this Agreement within Contract Term and Contract Price. The provisions of this Agreement 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 and design industry standards. Any services or work that may be reasonably inferred from this Agreement as being required to produce the intended result shall be supplied whether or not specifically called for. In the event of any inconsistency, conflict, or ambiguity between or among the terms of this Agreement or any document relating to this Agreement, the documents shall take precedence in the order in which they are listed in Section 18.3 of this Agreement.

2.2 **The Authority and CxA**

2.2.1 **Relationship.** CxA agrees to proceed with the Project on the basis of trust, good faith and fair dealing and shall cooperate in furthering the Authority's interests.

2.2.2 **Standard of Care.** CxA shall perform all Services in a good, skillful, and prompt manner, consistent with the level of skill and care ordinarily exercised by members of the Building Commissioning, engineering or architectural professions performing similar services and practicing under similar conditions at the same time and locality of the Project. Specifically, CxA shall perform its Services in an efficient, logical, sequential and timely manner using consistent protocols and forms and shall perform its Services consistent with the interests of the Authority. CxA agrees that the Authority is and shall be entitled to rely upon CxA so performing the Services required by this Agreement and upon CxA's experience in the construction industry in general and as a Building Commissioning agent in particular.

3.0 **THE RETRO-COMMISSIONING AGENT'S GENERAL RESPONSIBILITIES**

3.1 **Systems to Be Commissioned.** CxA is responsible for retro-commissioning the Existing School Facilities to ensure that HVAC building systems, including all components and controls identified in Appendix B, Part B, "Systems/Assemblies To Be Commissioned", are complete and functioning properly. CxA shall also be responsible for verifying that School Facility staff has received adequate system/assembly documentation.

3.2 **Documentation.** CxA must systematically document that all specified assemblies, components, and systems have been installed and started up properly, functionally checked, and performance tested to verify and document proper operation and capacity through all modes and conditions. All such documentation shall be submitted to the Authority as required in Section 3.4 of this Agreement.

3.3 **Building Assembly Sampling and Equipment Testing.**

- 3.3.1 **Sampling.** CxA shall inspect and test all building HVAC and systems subject to commissioning review per Appendix B, Scope of Services, by performing inspection and testing each type of equipment, system or building condition. Components, assemblies and/or systems which prove deficient upon testing and inspection shall be documented.
- 3.3.2 **Equipment Testing.** All equipment subject to commissioning review per Appendix B, Scope of Services is to be fully and individually inspected and tested; there is to be no sample testing of equipment.
- 3.4 **CxA Deliverables.** CxA is responsible for the quality, technical accuracy, and timely completion and delivery of all Deliverables. CxA shall submit Deliverables and other commissioning documentation to the Authority at intervals appropriate to the process for purposes of evaluation and approval by the Authority. The approval of interim Deliverables shall not in any way relieve CxA of fulfilling all of its obligations under this Agreement. Revisions to any draft Deliverable shall not be considered an additional service if the revisions to the work product are necessary to meet regulatory requirements or to correct any deficiency identified by the Authority or any regulatory authority having jurisdiction. Acceptance of, or payment for, any Deliverables shall not be construed as a waiver by the Authority of any of its rights under this Agreement or of any cause of action arising out of CxA's performance or non-performance under this Agreement.
- 3.5 **Errors, Omissions and Deficiencies.** CxA agrees to perform the Services in a manner that will accomplish the intended purpose of this Agreement. CxA shall, without additional cost to the Authority, timely cure any errors, omissions, or other deficiencies in the Services caused by or in any way due to the actions or inactions of CxA. Any costs incurred by the Authority to correct any errors, omissions or deficiencies in CxA's Services caused by, or in any way due to, the actions or inactions of CxA may be deducted, at the Authority's sole discretion, from the payments then or thereafter due CxA. If the payments then or thereafter due CxA are not sufficient to cover such amount, CxA shall pay the difference to the Authority upon demand.
- 3.6 **Liability for Errors, Omissions and Deficiencies.** CxA shall be liable to the Authority for all damages to the Authority caused by CxA's errors, omissions and deficiencies in providing Services. CxA shall indemnify and hold harmless the Authority for any and all costs incurred by the Authority as a result of such errors, omissions and deficiencies, including, but not limited to, interest, attorney's fees and other expenses.
- 3.7 **Design Manual.** CxA shall review and be familiar with the requirements of the Design Manual. CxA shall perform all tasks required by the Design Manual related to Commissioning or required of CxA, including, but not limited to, satisfying the

requirements of the Design Manual's Design Criteria #9 and its related requirements as described in each Phase of Construction in Section Three of the Design Manual.

- 3.8 **Review of Authority's Program.** CxA acknowledges that it has reviewed the Authority's Program to confirm its understanding of the requirements of the Project as such requirements impact the Services to be provided under this Agreement and has verified such understanding with the Authority.
- 3.9 **Staffing.** CxA shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Authority.
- 3.10 **CxA's Project Manager.** Prior to the execution of this Agreement, CxA shall designate an employee of its firm, satisfactory to the Authority, as CxA's Project Manager and that person shall be identified in Appendix A. CxA's Project Manager shall, so long as his/her performance is acceptable to the Authority, be responsible for CxA's Services through Contract Completion and close-out of the Project, and shall represent CxA and be available for general consultation throughout the Project. CxA's Project Manager shall have authority to receive and transmit instructions and information and render decisions related to the Project on behalf of CxA, and shall have the non-exclusive authority to bind CxA in all decisions, changes or other matters relating to the Project. All directions given to CxA's Project Manager shall be binding as if given to CxA.
- 3.11 **Key Team Members.**
- 3.11.1 Key Team Members Identified in RFP Response. CxA shall utilize the Key Team Members identified in its response to the Authority's RFP for this Project, unless the Authority rejects any Key Team Member identified in CxA's response.
- 3.11.2 Replacement of Key Team Members. CxA shall provide notice to the Authority in the event that CxA proposes to replace, add or remove any Key Team Member. No changes in Key Team Members shall be permitted without the prior, written approval of the Authority. Any proposed replacement or new Key Team Member must have equal or superior qualifications to the Key Team Member that CxA proposes to replace. CxA shall submit to the Authority, for approval, the name and qualifications of proposed Key Team Member substitutions.
- 3.11.3 Changes to Key Team Members Requested By the Authority. The Authority may, at its sole option, review from time to time CxA's Key Team Members. If, in the Authority's sole opinion, changes to Key Team Members are necessary, the Authority shall notify CxA in writing. Upon receipt of said notice, CxA shall submit to the Authority, for approval, the name and qualifications of proposed Key Team Member substitutions. No changes to Key Team Members shall be permitted without the prior, written approval of the Authority.

3.12 **Subconsultants.** In the event CxA hires, employs or otherwise engages Subconsultants, CxA shall be considered the sole point of contact with regard to matters relating to this Agreement. CxA assumes sole and full responsibility for the complete performance contemplated by this Agreement, including the performance of all of its Subconsultants.

3.12.1 Approval by the Authority. CxA must obtain the consent of the Authority prior to the engagement of any Subconsultants, subject to the terms and conditions below:

- (1) CxA will not be permitted to subcontract to firms or individuals suspended or debarred by the State of New Jersey, or to firms or individuals that are otherwise ineligible to perform as Subconsultants on the Project pursuant to regulation, Authority procedures or the requirements of this Agreement.
- (2) CxA shall list in its bid proposal all Subconsultants required by the RFP to be included therein.
- (3) As soon as a potential additional Subconsultant has been identified by CxA, but in no event less than twenty (20) Days prior to the scheduled commencement of Services by such Subconsultant, CxA shall notify the Authority in writing, using the Forms and Procedures approved by SDA, of the name and address of the Subconsultant and shall request that the Authority approve the Subconsultant. Within ten (10) Days after receipt of such request, the Authority will notify CxA whether the Subconsultant has been approved, or will advise CxA of the reasons for the Authority's disapproval of the Subconsultant, or need for further investigation into the Subconsultant's application representations. If a proposed Subconsultant is disapproved, CxA shall submit other candidates for approval.
- (4) The Authority shall not be liable for any costs, damages or delays incurred by CxA resulting from the Authority's disapproval of a Subconsultant, nor shall CxA be entitled to any reimbursement or time extensions in connection with such disapproval.

3.12.2 Responsibility for Subconsultants. It is expressly understood by CxA that the consent of the Authority to the subcontracting of any Services shall not relieve CxA from performing its obligations under this Agreement. CxA shall at all times give due attention to the fulfillment of its obligations under this Agreement and shall keep all Services under its control. Consent by the Authority to any subcontracting of any part of the Services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as consent to the engagement by CxA of Subconsultants. CxA shall coordinate the activities of all Subconsultants. CxA shall be responsible for all Services performed by its Subconsultants.

- 3.12.3 Performance of Services by Subconsultants. CxA shall be responsible for all Services performed by its Subconsultants and any acts and omissions in connection with such performance. Nothing in this Agreement is intended or deemed to create any legal or contractual relationship between the Authority and any Subconsultant, including but not limited to any third-party beneficiary rights
- 3.12.4 Substitution of Subconsultants. The CxA shall make no substitution of any subconsultant previously approved by the Authority without written notification to the Authority and the receipt of the Authority's written approval for such substitution. The CxA shall submit substitutions for any subconsultant no less than fourteen (14) days prior to the initiation of work or Services by the Subconsultant.
- 3.13 **Professional Advice and Support.** CxA shall advise and make recommendations to the Authority regarding, and facilitate resolution of, any issue that will have an impact on the Building Commissioning, MEP systems, Building Automation and Energy Management Systems, and all other customary CxA tasks.
- 3.14 **Records.** For all Services rendered, CxA shall, in accordance with generally accepted accounting principles and practices, maintain weekly certified payroll, workers' compensation payroll, overhead, cost and accounting records, as well as all other records that CxA may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority, any other State oversight or inspecting agency. Before Final Payment will be made to CxA, CxA must provide all such records to the Authority.
- 3.15 **Reproduction Costs.** CxA shall reproduce all CxA Deliverables, including, but not limited to, reports, logs, charts and similar items required to be produced by CxA pursuant to this Agreement at CxA's own expense. The exact number of copies required will be determined by the Authority, not to exceed ten (10).
- 3.16 **Hazardous Materials.** If CxA suspects, learns of, or discovers the existence of previously undetected or suspected asbestos, contaminated soils, radon, lead, PCB's, or other hazardous or contaminated material at the Project, CxA shall report its findings in writing immediately to the Authority.
- 3.17 **Cooperation with other Subconsultants and Contractors.** The Authority may, in its discretion, engage one or more construction consultant(s), contractors or other Professional Services Consultants during the construction process. The services, duties, and responsibilities of any construction consultant, contractor, or other Professional Services Consultant shall be described in an agreement between the Authority and the construction consultant, contractor, or other Professional Services Consultant that will be furnished to CxA upon request. CxA shall coordinate its Services with those of the construction consultant, contractor or other Professional Services Consultants.

- 3.18 **Political Contributions Disclosure Form.** Pursuant to law, CxA shall, on a continuing basis, disclose and report to the Authority, on the “Disclosure of Political Contribution” form provided by the Authority, any “contribution” (as that term is defined in P.L. 2005, c. 51) made during the Term of this Agreement by CxA or any “Business Entity” (as that term is defined in P.L. 2005, c. 51) associated with CxA, at the time such contribution is made.
- 3.19 **Political Contributions ELEC Filing.** CxA shall comply with its responsibility to file an annual disclosure statement on political contributions with ELEC pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3), in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is CxA’s responsibility to determine if filing is necessary.
- 3.20 **Services to be Performed within the United States.** CxA shall have a continuing duty to comply with Executive Order No. 129 (2004) (“EO 129”), and with P.L. 2005, c. 92, as applicable, which require that Services and Work under state government contracts be performed within the boundaries of the United States. By executing this Agreement, CxA agrees that all Services rendered pursuant to this Agreement shall be performed within the United States. If, during the Term, CxA or a subcontracted firm proceeds to shift the performance of any part of the Services outside of the United States, CxA shall be deemed in breach of the Agreement and shall be subject to termination for cause, unless the Authority shall determine in writing that extraordinary circumstances require a shift of Services or that a failure to shift the Services would result in economic hardship to the Authority or the State.

4.0 BASIC SERVICES

CxA’s obligation to provide Basic Services under this Agreement will begin on the Commencement Date as identified in CxA Notice to Proceed issued by the Authority.

- 4.1 **Scope of Services.** The CxA’s Scope of Services for Basic Services will include those items listed in Appendix B, attached.
- 4.2 **Mediation and Litigation.** CxA agrees that it shall assist and cooperate with the Authority in, and, at the request of the Authority, shall attend any public or private hearing, mediation, or legal proceeding that is related to or arises out of or in connection with the Project and in which action or proceeding the Authority and CxA are not adverse parties. CxA’s assistance and cooperation with the Authority in and attendance at any public or private hearing, mediation or legal proceeding will constitute an Additional Service under this Agreement unless CxA is notified by the Authority that CxA is a potentially liable party or is a liable party. CxA consents to be a party to any mediation or legal proceeding if so requested by the Authority.
- 4.3 **Document Control and Information Management.** CxA shall be required to input all generated reports and data into the Authority’s Expedition Database in a timely

manner and shall provide the Authority with the data in an electronic format, upon request. Such data shall include, but not be limited to, reports, meeting minutes, logs, and other required documentation.

5.0 ADDITIONAL SERVICES

- 5.1 CxA shall provide the Additional Services upon the request and in the sole discretion of the Authority. Additional Services shall only be provided if authorized in writing by the Authority.

6.0 EXTENDED SERVICES

- 6.1 In the event the Term of this Agreement is extended due to a delay or other reason beyond the control of CxA, the Authority may request that CxA provide Extended Services. CxA shall be compensated only for the actual hours worked during the delay period.
- 6.2 No compensation shall be provided for Extended Services unless the Authority authorizes CxA to provide Extended Services in writing and CxA submits with its monthly Invoice: 1) the actual hours worked and costs incurred by CxA during the delay period, including the hours worked and costs incurred by Sub-consultants attributable to the delay, 2) the dates of the delay period; 3) total amount of compensation being requested; and 4) the alleged cause of such delay. In the event CxA believes that a delay has occurred which will cause CxA to provide Extended Services, CxA shall notify the Authority within ten (10) Days of such a delay.
- 6.3 Irrespective of whether CxA makes any request for compensation under this Section, CxA shall promptly notify the Authority of any event of which it is aware that may cause any delay in the completion of the Project or may extend the Term of this Agreement.
- 6.4 Other than as provided in this Section, the Authority shall not be liable to CxA for any damages or additional compensation as a result of delay, whether caused by the Authority or any other person or entity.

7.0 AMENDMENTS TO THIS AGREEMENT

- 7.1 **Amendments to this Agreement.** Any change to this Agreement shall be made by written Amendment executed by CxA and the Authority. Any Services performed by CxA that differ from, or are in addition to, the Services set forth in this Agreement shall be performed at CxA's own financial risk, unless such an Amendment has been executed by CxA and the Authority.
- 7.2 **Changes in CxA's Basic Services and Compensation.** The Authority, without invalidating this Agreement, may direct changes in CxA's Basic Services. In the event that the Authority directs such a change, CxA shall promptly notify the

Authority as to whether the proposed change increases or decreases CxA's compensation or the Term of this Agreement, or both. If so, CxA shall provide 1) a detailed cost breakdown of, and justification for, how the change increased or decreased CxA's compensation; and 2) a detailed explanation of how each change impacts the Term of this Agreement.

7.3 **Compensation.** If the scope of CxA's Basic Services or the Term of this Agreement is changed, CxA shall provide to the Authority a written proposal indicating any proposed change in compensation as a result of the change in the scope of the Basic Services or the change in the Term of this Agreement, within ten (10) Days of the occurrence of the event giving rise to such request. The amount of the change in compensation to be paid shall be determined on the basis of CxA's actual costs in performing such a change in the Services.

7.1.2 **Authorization.** Changes in CxA's Basic Services and any related additional compensation resulting from such a change to the Basic Services or a change in Term of this Agreement may only be authorized by a written Amendment to this Agreement appropriately executed by the Authority (consistent with the requirements of the Operating Authority) and CxA. The Amendment shall be executed by the Authority and CxA prior to CxA performing the additional or changed services required by the Amendment. CxA shall proceed to perform the services required by the Amendment only after receiving written notice from the Authority directing CxA to proceed. Any work or services performed or undertaken by the CxA that differ from, or are in addition to, the Basic Services defined in the Contract, shall be performed at the CxA's own financial risk, unless such additional or different work constituting a Change in the Services is specified in an appropriately executed and approved Amendment.

8.0 COMPENSATION

8.1 Amount of Compensation and General Provisions

8.1.1 CxA shall be compensated for its services as provided in Appendix C.

8.1.2 The cost of direct expenses incurred shall be included in the lump sum amount as identified in Appendix C.

8.1.3 In the event that the Authority requests the performance by CxA of Additional Services, CxA shall include the cost of Additional Services in its monthly Invoice. Each Invoice shall separately identify the amount requested for Additional Services. CxA will be compensated for Additional Services as provided in Appendix C. Compensation for Additional Services will be capped at 1.9 times actual salary (exclusive of customary payroll burdens and benefits) for CxA staff and cost-plus 5% for CxA subcontracted Additional Services.

- 8.1.4 In the event that the Authority requests that CxA provide Extended Services, CxA shall include the cost of the Extended Services in its final Invoice. The final Invoice shall separately identify the amount requested for Extended Services. CxA will be compensated for Extended Services as provided for in Appendix C. Compensation for Extended Services will be capped at 1.6 times actual salary (exclusive of customary payroll burdens and benefits) for CxA staff. Payment for Extended Services will be made in the final payment to CxA.
- 8.1.5 Acceptance or approval of, or payment for, any of the Services performed by CxA under this Agreement shall not constitute a release or waiver of any claim the Authority has or may have against CxA, including but not limited to, claims for errors, omissions, breach, or negligence.
- 8.1.6 All payments for Services under this Agreement will be made only to CxA. CxA is solely responsible for payments due any of its Subconsultants.
- 8.1.7 Unless otherwise set forth in writing by the Authority, any prices quoted by CxA for Basic Services shall be firm and not subject to increase during the Project.
- 8.1.8 The Authority assumes no responsibility and no liability for costs incurred by CxA prior to execution of this Agreement and thereafter unless explicitly set forth in this Agreement.

8.2 **Invoices**

- 8.2.1 Each month CxA shall submit to the Authority an Invoice, in a form acceptable to the Authority and signed by CxA, requesting payment for those CxA Services performed during the previous month. Such Invoice shall properly differentiate all Basic Services, Additional Services and/or Extended Services, if any, for which CxA seeks payment. Each Invoice shall include all data supporting the amounts requested and any other detailed documentation as may be requested by the Authority.
- 8.2.2 Invoices submitted to the Authority must identify the Authority's contract number and the Project Name.
- 8.2.3 Invoices submitted to the Authority shall be processed and paid only after the Authority reviews and determines that the Services for which payment is sought have been completed at the time and in the manner specified in this Agreement. Invoices will not be paid by the Authority if the Authority determines that the Services for which payment is sought are incomplete or unsatisfactory.
- 8.2.4 Within thirty (30) Days after receipt of CxA's properly supported Invoice, the Authority, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32 and 2A:30A-2, will make payment of the approved amount of such Invoice, unless, within twenty (20) Days of receipt, the Authority issues a notice in accordance with

the Prompt Payment Act indicating that funds will be withheld, and identifying the amount of the funds to be withheld and the reason for such withholding. The thirty (30) Day period for providing payment to CxA shall be extended in circumstances in which authority for an action is required from the Authority's Board of Directors as indicated by the Operating Authority of the Authority. The Authority reserves the right to refuse payment in the amount specified in the Invoice to the extent that CxA fails to provide complete and sufficient documentation in support of the amounts claimed.

- 8.2.5 If CxA submits any false or fraudulent Invoice to the Authority for payment, CxA shall be held liable and subject to all penalties and damages under the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq.
- 8.2.6 Each Invoice signed by CxA and submitted to the Authority for payment shall be a representation by CxA that all payments due its Subconsultants have been made and that all relevant laws and regulations have been complied with.
- 8.2.7 In the case of a dispute between the Authority and CxA as to whether an amount is owed for certain CxA Services, or as to whether an amount has been reasonably withheld by the Authority, the Authority shall pay all amounts that are not in dispute but shall not be required to pay the amount that is in dispute until the Parties settle or otherwise resolve such dispute. CxA shall continue to perform all of its obligations under this Agreement notwithstanding such dispute.
- 8.2.8 In the event CxA fails to pay its Subconsultants in a timely manner and the Authority is in full compliance with its obligations regarding timely payment of sums due CxA, the Authority may, but is not obligated to, make payments directly to each Subconsultant or by two-party checks. Neither the Authority's discretion provided for in the preceding sentence nor the Authority's making of such payments to CxA's Subconsultants will give rise to any liability of the Authority for making such payments and will not create any contractual relationship between the Authority and any Subconsultant. Payments by the Authority to Subconsultants will not constitute acceptance of the adequacy of any services performed by CxA or its Subconsultants.
- 8.2.9 CxA 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 CxA's responsibility. CxA may obtain the documents required to use either electronic payment method from the Authority's website. CxA shall provide to CM the documents necessary to use the electronic payment method selected before any payment will be made to CxA by the Authority.

8.3 Withholding of Payment

- 8.3.1 The Authority may deny CxA's Invoice, in whole or in part, if: (a) the Services have not progressed to the point represented by CxA in its Invoice; (b) the quality of the Services do not conform to the quality set forth in this Agreement; (c) deficient Services have not been timely corrected; (d) CxA has caused damage to the Authority, the Authority's property, to the Contractor or its Subcontractors or to another Professional Services Consultant; (e) reasonable evidence exists that the Services will not be completed within the Term of this Agreement; (f) CxA has failed or refused to properly schedule and coordinate the Services; or (g) CxA has failed or otherwise refused to comply with any term in this Agreement.
- 8.3.2 If the Authority determines that a sufficient basis exists to withhold payment from CxA pursuant to this Section 8.3, the Authority will either: (i) retain for payment the relevant Invoice (or portion thereof) until such time as CxA has made the necessary corrections/deliveries, or (ii) return the relevant Invoice to CxA, who shall resubmit the Invoice once all of the Services have been satisfactorily completed or corrected.
- 8.3.3 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 CxA's obligation to perform the Services required under this Agreement. In the event that CxA fails to perform any Services required by this Agreement, the Authority shall have, in addition to the sums withheld in accordance with this Section, all rights and remedies provided by law, equity and this Agreement.
- 8.3.4 In addition to any other right to withhold payments under this Agreement, the Authority shall have the right to withhold from payments due CxA 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 CxA, any Subconsultant, or any of their employees, representatives or agents which gives, or may give, rise to a claim by the Authority or by some other person or entity against the Authority; (b) CxA's breach of any of its material obligations under this Agreement; (c) reasonable evidence that CxA will not complete the Services required by this Agreement within the Contract Term, and that the unpaid balance will not cover the actual damages suffered for the delay; and (d) CxA's inability or failure to complete any of the Services required by this Agreement.

9.0 COMMENCEMENT DATE AND TERM

- 9.1 **Commencement Date.** Commencement date for CxA's Basic Services shall be the date set forth in CxA Notice to Proceed issued by the Authority.
- 9.2 **Term.** The Term of this Agreement is set forth in Appendix A.

10.0 INSURANCE

10.1 Prior to undertaking any Services under this Agreement, CxA, at no expense to the Authority, shall obtain and provide to the Authority evidence of a policy or policies of insurance as enumerated below.

10.2 CxA shall maintain, at its own cost and expense, the following insurance coverages/policies insuring CxA, its employees, subconsultants and agents. CxA shall obtain this insurance from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and that are “A-VII” (or better) rated, as determined by A. M. Best Company. In each policy and certificate, CxA shall have incorporated a provision requiring written notice to the Authority at least thirty (30) Days prior to the reduction, cancellation or non-renewal of any insurance coverage required under this Section. CxA warrants that it will notify the Authority in writing of any reduction, cancellation or non-renewal of any insurance coverage required under this Section. Any and all deductibles shall be paid by CxA. CxA warrants that its insurance carriers are accurately informed regarding the business activities of CxA and intend to cover those business exposures. CxA shall comply with all laws, ordinances, rules and regulations of Federal, State, county and municipal authorities in the performance of said work. CxA shall require that its Subconsultants maintain the same types and minimum amounts of insurance as required of CxA. The types and minimum amounts of insurance required of CxA are as follows:

- 1) Professional Liability Insurance (Errors & Omissions). CxA shall maintain Professional Liability Insurance with all coverage retroactive to the Effective Date, sufficient to protect CxA 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. CxA 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 hereunder or if coverage is not commercially available for such period of time, then for such shorter period of time as such insurance is commercially available. CxA 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 this Agreement.
- 2) Commercial General Liability Insurance. CxA shall maintain Commercial General Liability Insurance (CGL) and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$5,000,000 for each occurrence, \$5,000,000 aggregate limit for products/completed operations and \$5,000,000 general aggregate limit. CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include liability arising out of, occasioned by or resulting from premises, operations, independent

contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with Services performed under this Agreement (including the tort liability of another assumed in a business contract). The CM, if one has been retained, the Design Consultant, the EDA, the Authority, the State of New Jersey, the Project School District, the DOE and their respective directors, officers, members, employees and agents shall be included as additional insureds under the CGL, using ISO additional insured endorsement ISO 20 10 10 93 or ISO 20 10 03 97. The ISO 20 10 10 01 may be substituted only if endorsed with ISO 20 37 10 01 (or a substitute form providing equivalent coverage) and under the Commercial Umbrella, if any. In addition, CxA may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

- 3) Worker's Compensation Insurance. CxA shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of CxA while engaged in the performance of the Services under this Agreement. Workers' compensation coverage shall be statutory and the Employers' liability limits (including Umbrella coverage) shall not be less than \$500,000 per accident for bodily injury by accident and \$500,000 for each employee for bodily injury by disease and \$500,000 policy limit for bodily injury by disease.
- 4) Business Automobile Liability Insurance. CxA shall, at its sole cost and expense, maintain Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any automobile, including coverage for all owned, non-owned, leased and hired vehicles. The Business Automobile Liability coverage shall be written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage). If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. The CM, if one has been retained, the Design Consultant, the EDA, the Authority, the State of New Jersey, the DOE and the Project School District and their respective directors, officers, members, employees and agents shall be included as additional insureds under the Business Automobile Liability insurance, using ISO designated insured endorsement CA 20 48 02 99 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as designated insureds prior to the initiation of such work. In the event CxA does not own vehicles, but utilizes non-owned and hired vehicles, evidence of such insurance is acceptable with a

signed statement from CxA stating that only non-owned and hired vehicles are used in connection with this Agreement.

- 5) Pollution Liability. In the event CxA's efforts involve a Pollution Liability exposure, CxA shall carry Pollution Liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 aggregate for all operations conducted. Where CxA is solely a consultant, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy. If the CxA performs and also utilizes the efforts of subcontractors, insurance coverage must provide a Pollution Liability policy with a Contractor's endorsement, which extends coverage to its subcontractors.

10.3 Certificates of Insurance. Attached to this Agreement as Appendix D shall be valid insurance certificates, executed by a duly authorized representative of each insurer, in form and substance satisfactory to the Authority. The certificates shall evidence that CxA has obtained the acceptable insurance policies with the minimum limits required herein and shall be accompanied by copies of any and all amendatory riders. Each certificate shall include a provision requiring written notice to the Authority at least thirty (30) Days prior to the reduction, cancellation or non-renewal of any insurance coverage required under this Section. An insurance certificate must be submitted to evidence each insurance renewal required by this Section. If CxA submits the ACORD Insurance Certificate, the additional insured status endorsement must be set forth on the ISO 20 10 10 93 or ISO 20 10 03 97. The ISO 20 10 10 01 may be substituted only if endorsed with ISO 20 37 10 01 (or a substitute form providing equivalent coverage). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS NOT SUFFICIENT TO MEET THIS REQUIREMENT. Failure of the Authority to demand such certificates or other evidence of full compliance with the insurance requirements set forth herein or failure of the Authority to identify a deficiency in the insurance provided shall not be construed as a waiver of CxA's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this Agreement at the Authority's sole option. CxA shall provide certified copies of all insurance policies within ten (10) Days of the Authority's written request for such policies.

10.4 Liability in Excess of Coverage. By executing this Agreement, CxA expressly agrees that any insurance protection required herein shall in no way limit CxA's obligations under this Agreement and shall not be construed to relieve CxA 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. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect CxA, and such coverage and limits shall not be deemed as a limitation on CxA's liability under this Agreement.

- 10.5 **Right to Remedy.** If CxA fails to obtain and/or maintain the insurance as required in this Section, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at CxA's sole expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between CxA and the Authority; (iv) suspend performance by CxA under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section may be used, at the Authority's discretion, to renew or purchase CxA's insurance for the periods and amounts as set forth in this Agreement. In the event the Authority purchases said insurance the Authority may, at its discretion, reduce CxA's Compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees.
- 10.6 **Additional Insurance.** CxA shall also provide such additional types of insurance in such amounts as the Authority shall reasonably require. In the event that any such additional insurance is required, CxA shall deliver two (2) certified copies of each policy to the Authority within ten (10) Days of the Authority's written request for such insurance.
- 10.7 **Waiver of Subrogation.** CxA waives all rights of subrogation and recovery against the Authority, the Contractor, CM, Design Consultant and any Professional Services Consultants, agents or employees of the Authority and Subconsultants of all tiers to the extent these damages are covered by the CGL, Business Automobile Liability or Commercial Umbrella Liability Insurance obtained by CxA. If the policies of insurance purchased by CxA as required above do not expressly allow the insured to waive rights of subrogation prior to loss, CxA shall cause them to be endorsed with a waiver of subrogation as required herein.
- 10.8 **Deductible Self 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). CxA shall not be permitted to have a SIR larger than \$100,000 unless it obtains the express, written consent of the Authority to the larger SIR. FAILURE TO COMPLY WITH SECTION 10.8 IS A MATERIAL BREACH OF CONTRACT.
- 10.9 **Claims Made Insurance.** If any of the aforementioned insurance is written on a "claims made basis," CxA 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 CxA 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, CxA shall insert a note "claims made retroactive date / / " (with the date inserted).

11.0 GENERAL COVENANTS

11.1 Ownership of Documents

- 11.1.1 In consideration of the Authority's execution of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CxA hereby irrevocably grants, assigns and transfers to the Authority all of CxA's right, title and interest of any kind in and including but not limited to the following: all plans, ideas, methods, drawings, specifications, flow charts, data, diagrams, samples, tests, surveys, models, material, computer discs, evidence, documentation, and all copyrightable materials gathered, originated or prepared by CxA and its Subconsultants during the performance of the Services (the "Work Product"), in all copyrights resulting from the Work Product, and in all renewals and extensions of the copyrights that may be secured now or be hereafter in force and effect.
- 11.1.2 Ownership of all Work Product by the Authority shall commence immediately upon the Effective Date regardless of payment by the Authority of any compensation to CxA and regardless of the delivery of any of the Work Product to the Authority. Upon request, all Work Product shall be delivered to the Authority in a timely manner, clearly marked, identified and in good order.
- 11.1.3 The Authority has the right to reproduce, publish or otherwise use, and authorize others under contract with the Authority to use, any of the Work Product for any purpose without the approval of, and without any additional compensation to CxA. The Authority shall have such right even in the event this Agreement is terminated for any reason.
- 11.1.4 CxA shall be permitted to retain a copy of all Work Product for its own files. Absent the prior, written consent of the Authority, CxA shall not use any of the Work Product for any other project or for CxA's promotional and professional (or other) materials.
- 11.1.5 CxA shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Authority or its Design Consultant. The Drawings, Specifications and other documents prepared by the Authority's Design Consultant, and copies thereof furnished to CxA, are for use solely with respect to this Project. They are not to be used by CxA on other projects without the specific written consent of the Authority.
- 11.1.6 CxA shall incur no liability as a result of the Authority's use of the Work Product other than in connection with the Project. CxA shall have no legal responsibility to the Authority arising out of the Authority's use of the Work Product for any project other than this Project, unless CxA has been employed as CxA on such other project and relies on the Work Product for such project, in which case this Section shall not apply.

11.2 Copyrights and Patents

- 11.2.1 If CxA 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. CxA shall incur all costs, including attorney's fees, arising from its use of patented or copyrighted designs, materials, equipment, devices, or processes for this Project.
- 11.2.2 CxA shall defend, indemnify and hold harmless the Authority and the State from any and all claims for infringement by reason of the use of any patented design, device, material, equipment or process, or any trademark, copyright, trade secret or any other material protected in any manner from use or disclosure, and shall indemnify the Authority and the State for any costs, expenses and damages, including attorney's fees, that it may incur by reason of an infringement at any time during the performance, or after the acceptance, of the Services.

11.3 Confidentiality

- 11.3.1 All data contained in Documents supplied by the Design Consultant, the Authority, the Project School District or any other party involved in the Project, and any data gathered by CxA in fulfillment of this Agreement and any analyses thereof (whether in fulfillment of this Agreement or not), are to be considered confidential and shall be solely for use in connection with the Project. Notwithstanding, the Authority will comply with all applicable laws with regard to releasing such information which has been properly requested pursuant to such laws.
- 11.3.2 CxA shall not disclose to any third party the contents of the information, reports, findings, analyses, surveys, data or any other materials generated or produced in performance of this Agreement, or provide copies of same, without the prior, written consent of the Authority, except where disclosure of such materials is legally required by order of court or administrative agency, whether State or Federal, in which case CxA shall provide immediate notice to the Authority of such order.
- 11.3.3 CxA is required to use reasonable care to protect the confidentiality of the Project data by, among other things, requiring incorporation of this Section 11.3 into its contract(s) with Subconsultants. Any use, sale or offering of this data in any form by CxA, its employees, Subconsultants or assignees will be considered a material breach of this Agreement. CxA shall be liable for any and all damages arising from its breach of this confidentiality provision, including damages, costs and/or attorneys fees. The Authority shall also have the right to terminate this Agreement for cause pursuant to Section 14.2 of this Agreement in the event of a breach of this confidentiality provision without the Authority being liable for damages, costs and/or attorney's fees.

- 11.3.4 Any publicity and/or public announcements pertaining to the Project shall not be made until and unless CxA obtains the prior, written approval of the Authority.
- 11.3.5 CxA's promotional and professional (or other) materials shall not include the Authority's confidential or proprietary information.

11.4 Contractual Relationship

- 11.4.1 Nothing in this Agreement shall be construed as creating a contractual relationship between the Authority and any of CxA's Subconsultants.
- 11.4.2 CxA's status shall be that of an independent contractor, not an employee of the Authority. CxA agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof. CxA will not, by reason hereof, make any claim, demand or application to any Authority officer or employee for any right or privilege afforded to an Authority officer or employee, including, but not limited to, worker's compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.
- 11.4.3 CxA shall include in all of its Subconsultant contracts a requirement that each Subconsultant is bound by the terms and conditions of this Agreement.
- 11.4.4 Nothing contained in this Agreement shall create a contractual relationship with a third party or create a cause of action in favor of a third party against CxA or the Authority. It is further intended that no individual, firm, corporation, or any combination thereof, which provides materials, labor, services or equipment to CxA for this Project thereby becomes a third party beneficiary of this Agreement.
- 11.4.5 The Authority and CxA hereby bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement.

11.5 Assignment

- 11.5.1 CxA shall not assign or transfer its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority. Any assignment or transfer of CxA's rights under this Agreement without the prior, written consent of the Authority shall not relieve CxA of any duty, obligation or liability assumed by it under this Agreement.
- 11.5.2 In the event the Authority approves an assignment, CxA shall submit to the Authority: (i) corporate resolutions prepared by CxA and the new entity ratifying this Agreement; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer

Identification Number(s); (v) acknowledgment and acceptance of all rights, duties and obligations of this Agreement without limitation by the new entity; and (vi) any other information which the Authority may require.

11.5.3 Notwithstanding anything to the contrary, under no circumstance shall CxA assign its right to receive money under this Agreement for any purpose or to any person whatsoever without the prior, written approval of the Authority.

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

11.6 Mergers, Acquisitions, and Dissolutions

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

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

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

11.6.4 In the event CxA seeks the Authority's approval of a dissolution, CxA shall submit to the Authority: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the principal parties of a joint venture to dissolve the corporation, partnership or joint venture, respectively; (ii) any new or changed Federal Employer Identification Number(s); (iii) acknowledgment of the assumption of all

rights, obligations and duties of this Agreement without limitation by the new parties; and (iv) any other information which the Authority may require.

11.7 Mandatory Compliance with Law

- 11.7.1 CxA shall be knowledgeable of the Legal Requirements applicable in the jurisdiction in which the Project is located, and CxA agrees to comply with such Legal Requirements. To the extent variances from such Legal Requirements are required, CxA and the Authority shall cooperate to pursue such variances in the interests of the Project.
- 11.7.2 Each and every provision required by law to be inserted into this Agreement shall be deemed to have been inserted herein. If any such provision has been omitted or has not been correctly inserted, this Agreement shall be amended, upon application of either Party, to provide for such insertion or correction.
- 11.7.3 If the Authority determines that CxA has violated or failed to comply with any applicable Legal Requirements with respect to its performance under this Agreement, the Authority may withhold payments for such performance and take such action that it deems appropriate until CxA has complied with such Legal Requirements or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 11.7.4 CxA's compliance with applicable Legal Requirements is mandatory and cannot be waived by the Authority.
- 11.7.5 CxA shall ensure that its payments Subconsultants are made in compliance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1 and -2, and the provisions of N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41, and all other applicable laws concerning prompt payment to Subconsultants.

11.8 Anti-Trust

- 11.8.1 CxA, by executing this Agreement, does hereby warrant and represent that this Agreement has not been solicited, secured or prepared, directly or indirectly, in a manner contrary to the laws of the State, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Services by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity, or consideration of any kind, direct or indirect, to any employee, officer, or board member of the Authority.
- 11.8.2 The penalty for breach or violation of this Section may, at the sole option of the Authority, result in: (i) the termination of this Agreement without the Authority being liable for damages, costs and/or attorney fees, and/or (ii) a deduction from the payments to be made by the Authority pursuant to this Agreement of the full amount of such commission, percentage, brokerage or contingent fee.

11.9 Anti-Collusion

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

11.10 Conflict of Interest

- 11.10.1 CxA shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to: (i) an Authority officer or employee with which CxA transacts, or offers or proposes to transact, business; or (ii) any member of the immediate family (defined by N.J.S.A. 52:13D-13i) of any such Authority officer or employee; or (iii) any partnership, firm or corporation with which such Authority officer or employee is employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- 11.10.2 The solicitation from CxA of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee shall be reported in writing forthwith by CxA to the State Attorney General and the Executive Commission on Ethical Standards.
- 11.10.3 CxA shall not directly or indirectly undertake any private business, commercial or entrepreneurial relationship (whether or not pursuant to employment, contract or other agreement, express or implied) with, or sell any interest in CxA to, any Authority officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the Authority; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such Authority officer or employee is employed or associated, or in which such Authority officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or

employee and upon a finding that the present or proposed relationship presents neither an actual conflict of interest, nor the potential for, or appearance of, such a conflict of interest.

- 11.10.4 CxA shall not influence, attempt to influence, or cause to be influenced any Authority officer or employee in such officer's or employee's official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.
- 11.10.5 CxA shall not cause or influence, or attempt to cause or influence, any Authority officer or employees to use or attempt to use such officer's or employee's official position to secure unwarranted privileges or advantages for CxA or any other person.
- 11.10.6 Under N.J.S.A. 52:34-19, it is a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the Authority. It is the policy of the Authority to treat the offer of any gift or gratuity by CxA, its officers or employees, to any person employed by the Authority as grounds for debarment or suspension from submitting proposals and providing Services, Work or materials to the Authority.
- 11.10.7 The provisions cited in this Section shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with CxA under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines that the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.
- 11.10.8 For the purposes of this Section, an "Authority officer or employee" shall include special Authority officers or employees as defined by N.J.S.A. 52:13D-13b and 13e.

11.11 **Indemnification**

- 11.11.1 To the fullest extent permitted by law, CxA shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority, CM, 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:
 - 11.11.1.1 the negligent acts or omissions of CxA, its agents, servants, officers, employees, Subconsultants or any other person acting at CxA's request, subject to its direction, or on its behalf;

- 11.11.1.2 the loss of life or property, or injury or damage to the person, body or property of any person or persons whatsoever, that arises or results directly or indirectly from the negligent acts or omissions by CxA, its agents, servants, officers, employees, Subconsultants or any other person acting at CxA's request, subject to its direction, or on its behalf;
 - 11.11.1.3 any gross negligence, default, or breach, of CxA, its agents, servants, officers, employees, Subconsultants or any other person acting at CxA's request, subject to its direction, or on its behalf; and
 - 11.11.1.4 violation of or non-compliance with Federal, State, local and municipal laws and regulations, ordinances, building codes (including without limitation the Americans with Disabilities Act) arising from the performance or non-performance of, or arising out of conditions created or caused to be created by CxA, its agents, servants, officers, employees, Subconsultants or any other person acting at CxA's request, subject to its direction, or on its behalf.
- 11.11.2 CxA's indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Agreement.
- 11.11.3 CxA agrees that any acceptance by the Authority of the Services performed, and/or reports, plans or Specifications provided by CxA shall not operate to limit the obligations of CxA under this Agreement and that the Authority assumes no obligations to indemnify or hold harmless CxA, its agents, servants, employees or Subconsultants against any claims that may arise out of its performance or nonperformance under this Agreement. CxA also agrees that the provisions of this indemnification clause shall in no way limit CxA's obligations under this Agreement, nor shall they be construed to relieve CxA from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of this Agreement or otherwise at law or equity.
- 11.11.4 The provisions of this Section 11.11 shall survive the expiration or termination of this Agreement.

12.0 AFFIRMATIVE ACTION AND NON-DISCRIMINATION

- 12.1 CxA and its Subconsultants 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, and any rules associated therewith, as may be amended from time to time, including, but not limited to, N.J.A.C. 19:39-1.1 to -4.1.
- 12.2 CxA 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 CxA 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. CxA shall not enter into a subcontract with a Subconsultant unless the Subconsultant has submitted to CxA one of the three documents required in this Paragraph above, unless such Subconsultant has four (4) or fewer employees.

12.3 CxA shall abide by, and shall include language in all subcontracts with Subconsultants requiring that all Subconsultants abide by the requirements of this Section 12.0.

12.4 CxA shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq. and all rules and regulations issued thereunder. During the performance of this Agreement, CxA and its Subconsultants agree as follows:

12.4.1 CxA and its Subconsultants will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, CxA and its Subconsultants will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CxA and its Subconsultants agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

12.4.2 CxA and its Subconsultants will in all solicitations or advertisements for employees placed by or on behalf of CxA or its Subconsultants, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.

12.4.3 CxA and its Subconsultants will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of CxA's (and its Subconsultant's) commitments under this Agreement and referenced statutes and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 12.4.4 CxA and its Subconsultants shall comply with the regulations promulgated by the State Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and with the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., with respect to its employment practices.
- 12.4.5 CxA and its Subconsultants agree to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Division of Contract Compliance & Equal Employment Opportunity in Public Contracts (hereinafter “Division”) pursuant to N.J.A.C. 17:27-5.2, as amended and supplemented from time to time.
- 12.4.6 CxA and its Subconsultants agree to inform, in writing, appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- 12.4.7 CxA and its Subconsultants agree to revise any of its testing procedures, if necessary, to ensure that all personnel testing conforms to the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- 12.4.8 In conforming with the applicable employment goals, CxA and its Subconsultants agree to review all of their procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- 12.4.9 CxA and its Subconsultants shall furnish to the Division such reports or other documents as may be requested from time to time in order to carry out the purposes of the Division’s regulations, and shall furnish to the Authority such reports and other documents, in the manner and form requested, as may be required to carry out the purposes of the Authority’s regulations.

- 12.4.10 CxA and its Subconsultants agree to make good faith efforts when hiring or scheduling workers in each construction trade, to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a Subconsultant from compliance with the good faith procedures prescribed by Sections 12.4.11 and 12.4.12 below, as long as the Division is satisfied that the Subconsultant is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3. CxA and its Subconsultants agree that a good faith effort shall include compliance with procedures set forth in Section 12.4.11.
- 12.4.11 If CxA or its Subconsultant has a referral agreement or arrangement with a union for a construction trade, CxA or its Subconsultant shall, within three business days of the contract award, seek assurances from the union that the union will cooperate with CxA or its Subconsultant as it fulfills its affirmative action obligations under this Agreement 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. If CxA or its Subconsultant are unable to obtain said assurances from the construction trade union at least five (5) business days prior to the commencement of construction Work, CxA or its Subconsultant shall agree to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If CxA's or Subconsultants' 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 the applicable employment goal, CxA or its Subconsultant agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under Section 12.4.12 below; and CxA or its Subconsultant further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.
- 12.4.12 If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of Section 12.4.11 above, or if CxA or a Subconsultant does not have a referral agreement or arrangement with a union for a construction trade, CxA or the Subconsultant agrees to take the following actions consistent with the applicable county employment goals:

- (1) To notify the public agency compliance officer, the Division, 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 CxA or its Subconsultant 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 CxA or Subconsultant 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 until such time as the workforce is consistent with the employment goal;
- (5) If it is necessary to lay off any of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et seq.;
- (6) To adhere to the following procedure when minority and women workers apply or are referred:

1. 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, CxA or its Subconsultant shall determine the qualifications of such individuals and if CxA's or Subconsultant's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, CxA or the Subconsultant shall determine that the individual at least possesses the requisite skills, and experience as recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, CxA or Subconsultant shall hire or schedule minority and women workers who qualify as

trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of Section 12.4.13 below.

2. If CxA's or Subconsultants' workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

3. If, for any reason, CxA or Subconsultant determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, CxA or Subconsultant 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 Authority's compliance officer and to the Division;

- (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by this Agreement, on forms made available by the Division and submitted promptly to the Division upon request.

12.4.13 CxA or Subconsultant agrees that nothing contained in Section 12.4.12 above shall preclude CxA or Subconsultant 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 county employment goal, CxA or Subconsultant shall consider for employment persons referred pursuant to Section 12.4.12 above without regard to such agreement or arrangement; provided further, however, that CxA or Subconsultant 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 workers 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, CxA or Subconsultant agrees that, in implementing the procedures of Section 12.4.12 above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

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

12.5.1 At the time of each school facilities project advertisement, the Authority shall announce the SBE requirements for this Agreement, and CxA shall be required to make a good faith effort to comply fully with the SBE subcontracting goals.

12.5.2 The good faith efforts of CxA to meet the SBE goal on the Projects shall include, but not be limited to, the following measures:

- (1) Sending solicitation letters to SBE firms registered with the Department of Treasury, Division of Revenue and to pre-qualified SBE firms on a list that is available from the Authority's website at www.njsda.gov;
- (2) Making follow-up telephone calls to firms solicited in (a) above, and keeping a log of such calls and responses;
- (3) Breaking the work into smaller subcontracts, to make it easier for SBE firms to compete;
- (4) Contacting community groups, including, but not limited to, groups listed by the Authority for this purpose, for assistance in identifying SBE firms;
- (5) Placing advertisements in local newspapers, construction trade letters, magazines, or special publications aimed at SBEs;
- (6) Negotiating in good faith with interested SBE subcontractors, so as not to disqualify a prospective subcontractor without good cause; and
- (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.

12.5.3 If the Authority determines that a CxA 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 12.6 below, and/or N.J.A.C. 19:39-3.2.

12.6 Sanctions. If the Authority determines that CxA 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:

- (1) Reduce CxA's performance evaluation;
- (2) Reduce CxA's Project rating on subsequent bid proposals;
- (3) Reduce CxA's Compensation by a maximum of one and one-half percent of the Contract Price if CxA is found not to have in good faith satisfied the hiring requirements set forth in this Agreement, because the Authority 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 may be effectuated either by the withholding of all or part of future payments to CxA or by a reduction in the amount of Retainage otherwise due for release to CxA under this Agreement;
- (4) Pursue any of the sanctions available under N.J.A.C. 19:38A-4, including revocation of CxA's pre-qualification and/or suspension or debarment from the Authority contracting; and/or
- (5) Terminate this Agreement.

12.7 Subconsultant Replacement on School Facilities Projects.

- 12.7.1 CxA shall not replace an SBE Subconsultant, except where such Subconsultant is in breach of its subcontract and the Authority has provided CxA its prior written consent to the replacement.
- 12.7.2 A request for replacement shall be in writing, on forms specified by the Authority, and must be accompanied by complete justification for the request. CxA must have the written approval of the NJSDA staff, including a Vice President, before such a replacement can be made, regardless of the reason for the replacement.
- 12.7.3 CxA 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 Subconsultant. The replacement Subconsultant must have credentials equivalent or superior to those of the original Subconsultant.

13.0 SUSPENSION OF SERVICES

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

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

- 1) If the Authority determines that the Services have been suspended for a period cumulatively totaling less than forty-five (45) Days, there shall be no additional compensation paid to CxA.
- 2) If the Authority determines that the Services have been suspended for a period cumulatively totaling forty-five (45) Days or more, and if the Authority determines that the suspension has resulted from no fault of CxA, the Parties shall amend this Agreement to provide a compensation adjustment in an amount deemed proper by the Authority and CxA after a review of CxA's submissions relating to the increased costs actually incurred by CxA as a direct result of the suspension. No such Amendment will change any of the other terms of this Agreement.

13.3 When the Authority has determined that a suspension is the fault of CxA, the Authority may, at its sole option, suspend all payments to CxA. Payment may be reinstated by the Authority upon completion of the Services in accordance with the other provisions of this Agreement, provided, however, that there shall be no upward adjustment in direct or indirect costs or in any other costs. Alternatively, the Authority may terminate this Agreement or carry out the Services as provided for in Section 14.0 below.

14.0 DEFAULT AND TERMINATION

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

14.1 Events of Default

CxA 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 14.2:

- 1) CxA disregards or otherwise fails to comply with laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 2) CxA refuses or otherwise fails to properly staff the Project;
- 3) CxA fails to make payments to Subconsultants for services in accordance with the respective agreements between CxA and the Subconsultants;
- 4) CxA fails to maintain or produce any Deliverables or other records required by this Agreement to be so maintained or produced;

- 5) CxA fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of this Agreement;
- 6) CxA fails to obtain and properly maintain the level of insurance coverages outlined in this Agreement;
- 7) CxA assigns or transfers its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority;
- 8) CxA makes any misrepresentation or conceals any material fact;
- 9) CxA 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 CxA to perform its obligations under this Agreement;
- 10) CxA fails to provide any Services required under this Agreement; or
- 11) CxA violates or breaches this Agreement or any provision or material term hereof.

14.2 Termination for Cause

14.2.1 The Authority shall provide CxA with written notice of CxA's default ("Notice of Default"). For all such Events of Default except those contained in subsections 14.1(h) and 14.1(i) (and any such default that by its nature cannot be cured), CxA 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 CxA'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 CxA commences such cure within such seven (7) Day period and thereafter diligently prosecutes such through completion. Failure of CxA 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 14.2.2 of this Agreement.

14.2.2 If any default described in Section 14.1 above is not subject to cure or is not cured within the period specified in 14.2.1, the Authority may terminate this Agreement for cause. Any such Termination for Cause shall be effected by delivery of a "Notice of Termination for Cause" to CxA specifying the extent to which the Services under this Agreement are terminated and the date upon which such termination shall become effective.

- 14.2.3 Upon Termination for Cause by the Authority pursuant to this Section, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Services that were required to be performed by CxA by whatever methods the Authority may deem appropriate.
- 14.2.4 In the event this Agreement is terminated for cause pursuant to this Section 14.2, the Authority reserves the right not to make any further payments to CxA and may require CxA to repay all or a portion of the monies already paid. CxA, at its own expense, shall be obligated to take any steps necessary to enable the Authority to complete the Services itself, or for the Authority to engage another contractor, design professional or other Professional Services Consultant to complete the Services. Such steps may include, but are not limited to, the prompt delivery to the Authority of all Deliverables, Documents and Work Product identified herein and/or related to the Project. If the payments then or thereafter due CxA are not sufficient to cover the Authority's cost to complete the Services itself or engage another contractor, design professional or other Professional Services Consultant to complete the Services, CxA shall pay the difference to the Authority upon demand.
- 14.2.5 No action by the Authority pursuant to this Section shall operate to waive or release any claims that the Authority may have against CxA under this Agreement.

14.3 Authority's Right to Carry Out the Services

- 14.3.1 If CxA fails to perform any obligation imposed under this Agreement, and fails within seven (7) Days after receipt of written notice to commence and continue correction of such failure with diligence and promptness, or if the CxA is terminated, 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 CxA the cost of correcting such failure, including compensation for any additional services of other Professional Services Consultant(s) or contractor(s) engaged as a result of such failure. If the payments then or thereafter due CxA are not sufficient to cover such amount, CxA shall pay the difference to the Authority upon demand.
- 14.3.2 Any action by the Authority under this Section shall be without prejudice to the Authority's rights under this Agreement and shall not operate to release CxA from any of its obligations under this Agreement.

14.4 Termination for Convenience of the Authority

- 14.4.1 Performance by CxA of its obligations under this Agreement 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."

- 14.4.2 Any such Termination for Convenience shall be effected by delivery of a "Notice of Termination for Convenience" specifying the extent to which the Services under this Agreement are terminated and the date upon which such termination becomes effective.
- 14.4.3 Upon such Termination for Convenience, CxA shall be entitled to Compensation for the Services actually and satisfactorily performed by CxA, less payments previously made. CxA shall also be entitled to the reasonable costs and expenses attributable to such Termination for Convenience.
- 14.4.4 Upon a Termination for Convenience, CxA shall furnish to the Authority, free of charge, such closeout reports, documents, and materials as may be reasonably required by the Authority.
- 14.4.5 Within sixty (60) Days of the effective termination date, CxA shall submit to the Authority claims for any costs that were incurred but that are not subject to payment pursuant to this Section 14.4 or any other provision of the Contract Documents. No claim will be allowed for anticipated profits on Services that have not been performed. CxA'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 pursuant to this Section 14.4

15.0 CLAIMS

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

- 15.1 General. All CxA Claims asserted against the Authority shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- 15.2 Notice of Claim. CxA shall file notice of its CxA Claim on a form provided by the Authority, which form shall be completed in its entirety and signed by CxA. Incomplete forms will be rejected and of no effect. Submission of completed notice forms shall constitute compliance with the notice provisions of the New Jersey Contractual Liability Act if such notices are given within the time limits established by N.J.S.A. 59:13-5.
- 15.3 False Claims Liability. CxA shall be held liable and subject to all penalties and damages under the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq., for any false or fraudulent Claim submitted by CxA to the Authority.
- 15.4 Review of Claims. The administrative process for review of Claims is sequential in nature and mandatory. The Authority's Claims procedures is composed of the following steps:

Step One: Review by the Authority

Step Two: Non-binding Mediation

Completion of the two (2) steps of Claim review is a prerequisite to the initiation of litigation by either Party.

- 15.5 Compliance with Claim Review Procedure. Each Claim will begin its review at Step One. A Claim will not proceed to the next step unless CxA submits a written objection to the prior step and requests that its Claim proceeds to the next step. If at any step in the process a Claim is resolved, CxA must sign a full and final release as to any and all matters arising from the Claim.
- 15.6 Step One: The Authority's Review.
- 15.6.1 Submission of Required Claim Documentation. CxA must provide to the Authority the required forms as required by this Section to comply with the New Jersey Contractual Liability Act in order to begin the Authority's administrative process for the review of Claims. CxA shall also submit to the Authority all documentation supporting CxA's Claim. The documentation provided to the Authority will serve as the basis for evaluation of CxA's position regarding the Claim throughout Step One of the administrative process. CxA shall submit additional information upon request by the Authority. No formal action will be taken by the Authority unless and until the Authority receives complete Claim documentation from CxA.
- 15.6.2 Authority Review and Decision. At the option of the Authority, a meeting may be scheduled with CxA and the Authority to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within thirty (30) Days of the receipt of the required forms and all supporting documentation or within thirty (30) Days of any meeting with CxA, 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. CxA, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If CxA 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 CxA for the subject Claim.
- 15.7 Step Two: Non-Binding Mediation. If CxA 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, CxA 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, and that were neither withdrawn nor considered withdrawn from the process be submitted to Step Two, non-binding mediation. Such request shall be sent to the Authority and shall specifically identify which Claim(s) are to be submitted to Step Two. Any Claim not specifically identified shall be deemed withdrawn. No Claim will proceed automatically to Step Two and CxA must make a specific written request that the Claim be elevated to Step Two. Step Two will not be available until after the issuance of a Certificate of Occupancy or Certificate of Acceptance, unless an earlier time for submission of the Claim to Step Two is agreed to by CxA and the Authority. The cost of non-binding mediation shall be shared equally by CxA and the Authority. The mediator shall be selected by the Authority, with the concurrence of CxA. The rules for the mediation shall be agreed to by the Authority, CxA and the mediator prior to the start of the mediation. The mediation will not proceed, however, if the Parties fail to agree on the rules for the mediation, in which case Step Two will be deemed complete.

16.0 REPRESENTATIONS

CxA hereby represents as follows:

- 16.1 CxA is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the Services required and perform its obligations under this Agreement.
- 16.2 CxA is professionally qualified to act as CxA for the Project, and has the capability and experience, including sufficient qualified and competent personnel, to efficiently and timely perform the Services. CxA will continuously furnish sufficient personnel to perform the Services in a timely and proper manner.
- 16.3 CxA is experienced, authorized to do business in the State of New Jersey and is properly licensed by all necessary governmental and public and quasi-public Authorities Having Jurisdiction over CxA and the Services it will be performing.
- 16.4 CxA's execution of this Agreement and its performance hereunder is within its duly authorized powers.
- 16.5 CxA certifies that it has investigated the conditions of the Project and that it fully understands the conditions of the Project and its obligations pursuant thereto. CxA agrees that it will not make any CxA Claim for, or be entitled to, cancellation or relief from this Agreement without penalty because of its misunderstanding or lack of information related to the conditions of the Project and its obligations pursuant thereto.
- 16.6 CxA certifies that all representations made by it in any of the documents constituting this Agreement are true, subject to penalty of law. CxA understands and agrees that its knowing or intentional violation of any statute or regulation related to public

- 16.7 CxA and any Subconsultants have provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to L. 2001, c. 134. CxA shall not enter into any subcontract with a Subconsultant that has not provided it and the Authority with proof of such valid business registration.
- 16.8 CxA assumes full responsibility to the Authority for the acts and omissions of its officers, employees, subconsultants, and others employed or retained by it in connection with the performance of the Services for this Project.
- 16.9 The representations and warranties enumerated in this Section operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required by this Agreement or by law.

17.0 AUTHORITY'S RIGHTS AND RESPONSIBILITIES

17.1 Authority's Rights

- 17.1.1 The Authority shall have the right to perform Services related to the Project and to award contracts in connection with the Project that are not part of CxA's responsibilities under this Agreement.
- 17.1.2 The Authority shall have the right, in its sole discretion, to accept or reject employees and personnel proposed by CxA to provide Services on the Project. CxA shall make a timely and prompt resubmittal to provide other employees or personnel to replace any that are rejected by the Authority, both in the initial proposal or any subsequent rejection or substitution of personnel.
- 17.1.3 The Authority shall have the right to remove any of CxA's employees from the Project at any time during the Term of this Agreement if that employee is deemed by the Authority not to be of the level of competence or ability required under this Agreement, or if said employee is for any reason found to be unsuitable to perform pursuant to this Agreement, as determined by the Authority in its sole discretion. In such case, CxA shall promptly submit the name and qualifications of a replacement.
- 17.1.4 The Authority shall have the right to evaluate CxA's performance pursuant to the Authority's Performance Evaluation Policy and Procedures. The Authority shall

also have the right to consider CxA's evaluation as a factor used in the technical ranking of CxA with respect to any submission by CxA in response to future Requests for Proposals issued by the Authority.

- 17.1.5 The Authority may, during the Term, engage another entity to assume certain of the Authority's day-to-day responsibilities for the Project. In such event, the Authority shall notify CxA that such entity has been engaged and in such notice shall set forth the reporting requirements of CxA with respect to such entity.
- 17.1.6 In addition to any of the other rights and remedies of the Authority specified in this Agreement, the Authority reserves the right to bring an action against CxA for any damages sustained by the Authority from any Services or Work performed by CxA when such damage is occasioned by the negligent act, error, omission or willful misconduct of CxA.
- 17.1.7 The Authority's approval, acceptance, use of or payment for all or any part of CxA's Services hereunder or in connection with the Project shall in no way alter CxA's obligations under this Agreement.
- 17.1.8 The Authority, the EDA or any other State inspecting or oversight agencies reserve the right to audit (or have their agents audit) the records of CxA in connection with all matters related to this Agreement. If, as a result of such audit, CxA is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce CxA's Invoice amount to an amount considered commensurate with the actual services provided.
- 17.1.9 The Authority or any other State inspecting or oversight agencies have the right to request, and CxA agrees to furnish free of charge, all information and copies of all records, documents or books the Authority or any other State inspecting or oversight agencies may request of CxA and its Subconsultants. CxA and its Subconsultants shall allow representatives of the Authority or any other State inspecting or oversight agencies to visit the office(s) of each periodically, upon reasonable notice, in order to review any information, records, documents or books related to this Agreement or to otherwise monitor any Services being performed by CxA and its Subconsultants pursuant to this Agreement.

17.2 **Authority's Responsibilities**

- 17.2.1 The Authority shall designate in writing a representative authorized to act on the Authority's behalf with respect to the Project. This representative shall have the authority to approve changes in the scope of the Project and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.
- 17.2.2 The Authority reserves the right to perform construction and operations related to the Project with the Authority's own forces and to award contracts in connection

with the Project which are not part of CxA's responsibilities under this Agreement. CxA shall notify the Authority if any such independent action will interfere with CxA's ability to perform CxA's responsibilities under this Agreement.

17.2.3 Information or services under the Authority's control shall be furnished by the Authority with reasonable promptness.

18.0 MISCELLANEOUS

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

18.2 Incorporation by Reference. This Agreement incorporates by reference, as if set forth herein, all of the documents constituting this Agreement in their entirety, including but not limited to, this Agreement and its appendices, the RFP and the responses thereto, any Amendments and any addenda.

18.3 Conflict in Terms. In the event of any conflict, discrepancy or inconsistency among the documents constituting this Agreement, interpretation will be based on the following descending order of priority:

1. This Agreement, and any Amendments hereto.
2. Appendix A (Special Conditions, if any, and Project Description)
3. Appendix B (Scope of Services, HVAC Retro-Commissioning Services)
4. Request For Proposals
5. Appendix C (CxA Compensation)
6. Appendix D-1 (Disclosure to Unit of Fiscal Integrity, General Disclosure and Waiver)
7. Appendix D-2 (Integrity Affidavit)
8. Appendix E (Insurance Certificates)
9. Appendix F (other Documentation)

In the event there is any conflict between and among the requirements contained in this Agreement, CxA will provide the higher quality level of Service or meet the higher standard, as determined by the Authority in its sole discretion.

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

18.5 Procedural Requirements. CxA shall comply with all written procedural instructions that may be issued from time to time by the Authority.

- 18.6 Governing Law. This Agreement, and any and all litigation arising therefrom or related thereto, shall be governed by the applicable laws, regulations and rules of the State of New Jersey without reference to conflict-of-laws principles.
- 18.7 Forum and Venue. Any legal action to resolve a dispute or Claim filed under the terms of this Agreement shall be brought only in a state court in the State of New Jersey.
- 18.8 Time is of the Essence. All time limits stated in this Agreement are of the essence.
- 18.9 Entire Agreement. This Agreement represents the entire and integrated agreement between CxA and the Authority and supersedes all prior negotiations, representations or agreements, either written or oral.
- 18.10 Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.
- 18.11 Waiver of Breach. In the event that any provision of this Agreement is breached by either Party and such breach is thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach. Any consent by the Authority to a delay in CxA's performance of any obligation shall apply only to the particular obligation or transaction to which it relates, and it shall not apply to any other obligation or transaction. Any delay in the Authority's enforcement of any remedy in the event of a breach by CxA of any term or condition of this Agreement or any delay in the Authority's exercise of any right under this Agreement shall not be construed as a waiver.
- 18.12 Execution in Counterparts. This Agreement, where applicable, may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 18.13 Office of the State Inspector General. The Office of the State Inspector General, or any other State inspecting or oversight agencies may, at their discretion, investigate, examine and inspect the activities of CxA and all other parties involved with the Project relating to the design, construction and financing of the Project and to the implementation of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The Office of the State Inspector General, or any other State inspecting or oversight agencies may require CxA 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. CxA shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the Office of the State Inspector General, or any other State inspecting or oversight agencies, in their

discretion, to investigate, examine, inspect or audit in any manner and at such times as they may deem necessary.

- 18.14 Security Clearance. CxA and all of its personnel, as well as all Professional Services Consultants, and Subconsultants, and their personnel, shall be subject to such security clearance at the Project as the Authority may require.

APPENDIX A

SPECIAL CONDITIONS & PROJECT DESCRIPTION

A.1 Project School District: Jersey City

A.2 Project Description:

Frank R. Conwell Public School No.3
111 Bright Street
Jersey City, NJ
NJSDA Contract No. JE-0016-R08

Frank R. Conwell Middle School No.4
107 Bright Street
Jersey City, NJ
NJSDA Contract No. JE-0016-R08

A.3 Contract Term: 74 Days

A.4 Construction Management Firm (CM): N/A

A.5 Design Consultant Firm: N/A

A.6 Other Professional Services Consultants: N/A

A.7 Other Special Conditions: N/A

A.8 Notices shall be addressed as follows:

Authority:

NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY
1 West State Street
P.O. Box 991
Trenton, NJ 08625-0991
Attention: Andrew Yosha
Vice President – Program Operations

Commissioning Agent:

Attention: _____

APPENDIX B

SCOPE OF SERVICES

HVAC RETRO-COMMISSIONING SERVICES

A. Commissioning Agent (CxA) Responsibilities

The NJSDA is committed to Retro-Commissioning (RCx) the heating and ventilation systems (HVAC) at the existing Frank R. Conwell Public School No. 3 (PS# 3) and Frank R. Conwell Middle School 4 (MS4) located at 111 Bright Street and 107 Bright Street, respectively, in Jersey City, New Jersey. The goal of the RCx is to investigate, analyze and enhance the performance of existing building systems through the identification of adjustments, alterations, repairs and replacement of system components and ensuring their continued performance. The RCx shall result in recommendations to improve building performance, solve comfort and operational problems, and reduce operating costs. CxA responsibilities specifically include three phases consisting of the Planning Phase, Investigation Phase and Report Phase.

- Planning Phase

The CxA shall develop goals, current facility requirements and a RCx plan. The objective is to develop/confirm the needs and requirements for the facility and document through the development of a RCx plan defining the commissioning process for the facility to be reviewed and approved by the NJSDA. The roles and responsibilities of all RCx participants shall be defined during this phase. Clear documentation of the current facility requirements (CFR) must be prepared prior to concluding this phase of the process. Goals and objectives for the commissioning process shall be developed to focus the team and to provide guidance in the planning effort which culminates with the RCx Plan. All tasks associated with the Planning Phase of RCx (including final approved Retro-Commissioning Plan) shall be completed within 30 calendar days of Commencement Date. The Planning Phase shall include but not be limited to the following:

1. Establish the current operational needs and requirements of the two school buildings;
2. Determine the temperature, humidity, operating hours, sound, vibration and/or specialty needs contemplated by the original designs;
3. A preliminary building benchmark shall be established with the available data to quantitatively measure overall building performance to be utilized for comparison against future performance improvements;
4. Identify and review building documentation necessary to perform the services under the contract. Such documentation may include, but is not limited to, as-built plans and specifications, O&M Manuals, maintenance documentation records, service/work order requests, etc. for the buildings;
5. Conduct a walk-through the buildings to gain an understanding of the types of spaces, conditions, occupancy levels, day lighting, building lighting and controls; and
6. Interview key maintenance and operations personnel, occupants and other relevant parties as needed to define the current needs and issues related to the system. A list of all parties proposed to be interviewed, including key maintenance and operations personnel, shall be compiled by the CxA for review and approval by the NJSDA prior to interviews. The interview process is required to understand and define potential issues and problems, uncover

potential improvement opportunities, confirm the current facility requirements and to develop consensus on the commissioning process goals to be reviewed and approved by the NJSDA.

Upon completion of the above, the CxA shall prepare a draft RCx Plan, draft CFR report, completed interview forms/sheets, a periodic issues database report, draft As-built Plan review report, and a draft O&M Manual review report for review and approval by the NJSDA. After review is completed, CxA shall incorporate comments prior to the issuance of final documents. The RCx Plan shall define (at a minimum) the Commissioning Schedule for the Investigation Phase and Report Phase, and define the approach moving forward. Completion of the Planning Phase shall not be achieved until written acceptance of the RCx Plan.

- Investigation Phase

Investigation Phase shall commence only after written approval to proceed has been provided by the NJSDA. The objective of the Investigation Phase is to conduct the site investigation and compare building conditions and system performance with the facility requirements defined by the as-built plans and specifications. The phase concludes with the completion and review of a master list of findings that identifies facility improvement measures that upon implementation will improve the building and system performance to meet current HVAC facility requirements. All tasks associated with Investigation Phase of RCx (including final approved findings) shall be completed within 30 calendar days of written approval to proceed into Investigation Phase. The phase shall at a minimum consist of the following:

1. The Project Team shall meet weekly to discuss status, system performance, and issues identified. Team participation is critical to solicit additional input and build consensus, as well as to help address any repairs or adjustments that need to be made during the phase;
2. Identify discrepancies between as-built plans and specifications, and the existing building conditions. Document nature of discrepancies as occurring within the original building construction or subsequent modifications.
3. Conduct a thorough site inspection and data collection at each of the buildings to evaluate the issues identified in the planning phase and observed during the drawing and document review.
4. Facility information not found during the documentation review must be recreated during the site inspection and walk-through (i.e. current air/water flow data, sequence of operation if unavailable, perform functional performance testing to establish how the system operates, etc.);
5. Document and update the as-built plans to reflect the existing system. Collect and analyze available energy, non-energy and other performance data to establish a baseline benchmark for facility performance. The data collected may consist of utility billing data, work orders, complaint logs, etc.;
6. Perform system testing to evaluate the building systems performance. Identify any anomalies or issues identified earlier in the process for further evaluation during the testing to determine the root cause and identify solutions. The process shall include verification and calibration of critical sensors essential to the operation of the building systems;
7. Document the list of findings identifying facility improvement measures. The facility improvement measures shall contain the following information essential to making an informed decision:
 - a. Description of findings;

- b. The improvement solution/measure description;
 - c. Identify benefits;
 - d. Note the risks and drawbacks;
 - e. Implementation cost;
 - f. Estimated savings;
 - g. Commissioning team recommendation;
 - h. Photographs of existing system conditions and/or deficiencies.
8. Review the Operation and Maintenance (O&M) manual requirements.
 9. Identify variations from the O&M manual and recommend corrective measures;

Upon completion of Investigation Phase, the CxA shall supply (at a minimum) a draft executive summary and report outline for review and approval by the NJSDA, and completed RCx Installation check lists, RCx Functional check lists, RCx Performance test sheets, updated As-Built Plans and a Warranty Inspection report. Documents shall provide all appropriate information regarding findings, as outlined above, and the proposed reporting format to be utilized for the Report Phase. After review is completed, CxA shall issue final phase documents incorporating all review comments. Completion of the Investigation Phase shall not be achieved until written acceptance of the submitted summary and outline.

- Report Phase

Report Phase shall commence only after written approval to proceed has been provided by the NJSDA. The CxA shall issue a draft RCx report to the NJSDA. The report shall include an executive summary, list of participants and roles, brief building description, overview of commissioning and testing scope and a general description of testing and verification methods. Specifically, the report shall include the following (at a minimum) as it pertains to the commissioned equipment/assemblies:

1. Executive Summary
2. Methodology and Engineer's Narrative
3. Baseline Facility Description
4. Findings and Recommendations
5. Appendices
 - a. Retro-Commissioning Plan
 - b. Completed RCx Installation check lists
 - c. Completed RCx Functional check lists
 - d. Completed RCx Performance test sheets
 - e. Completed Interview forms/sheets
 - f. Updated Building As-built Plans

Upon completion of the above, the CxA shall put together a draft RCx Report (as outlined above). After review is completed, CxA shall incorporate comments prior to the issuance of final report. All tasks associated with Report Phase of RCx (including final approved Report) shall be completed within 14 calendar days of written approval to proceed with the Report Phase.

B. List of Deliverables

Deliverables shall be provided as follows for the above-described phases of the RCx project:

1. Planning Phase

- a. CxA Team Introduction Meeting Minutes
- b. Meeting Minutes For All Meetings Within Phase
- c. Completed Interview Forms/Sheets
- d. Periodic Issues Database Reports
- e. As-Built Plan Review Report
- f. O&M Manual Review Report
- g. Current Facility Requirements (CFR) Report
- h. RCx Plan

2. Investigation Phase

- a. Meeting Minutes For All Meetings Within Phase
- b. Completed RCx Installation Check Lists
- c. Completed RCx Functional Check Lists
- d. Completed RCx Performance Test Sheets
- e. Updated As-Built Plans
- f. Warranty Inspection Report

3. Report Phase

- a. Final RCx Report
- b. All Documentation Provided In The Planning And Investigation Phase

All reports, plans, forms, check lists and test sheets shall be in accordance with ASHRAE and/or the Building Commissioning Association standards. Conflicting or non-existent standards shall be submitted to the NJSDA with a recommendation and sample document for review and written approval.

C. Systems/Assemblies to Be Commissioned

Mechanical, Electrical, and Plumbing (MEP) Systems, Assemblies, and Components to be Commissioned	Required Scope
HEATING, VENTILATING, AIR CONDITIONING, & Refrigeration (HVAC&R)	
Thermometers	•
Vibration isolation	•
Steam condensate systems	•
Hot water heating systems	•
Computer room air conditioning units	•
Chemical water treatment systems	•
Liquid chillers	•
Cooling towers	•
Condenser water system	•
Chilled water system	•
Refrigeration system	•
Air terminal unit system/VAV units	•
Duct silencers	•
Fire and smoke/fire dampers	•
Variable speed drives	•
Air distribution systems	•
Exhaust air systems	•
Laboratory fume hoods	•

APPENDIX C

CxA COMPENSATION

(See attached sheets)

- C. The Consultant further certifies that there have been no changes in circumstance, conditions or status of the Consultant's prequalification with the Authority since the latest prequalification application was filed by the Consultant with the Authority.
- D. The Consultant certifies that, if applicable, any change in the information provided by the Consultant in its prequalification application currently on file with the Authority will be immediately reported to the Authority.
- E. The Consultant certifies that, if applicable, it shall immediately notify the Authority and the Division of Fiscal Oversight (PO Box 063, Trenton, NJ 08625) if any director, partner, officer, employee of the Consultant or any shareholder owning 5% or more of the Consultant's stock:
 - 1. Is the subject of investigation involving any violation of criminal law or other federal, state, or local law or regulation by any governmental agency; or
 - 2. Is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
 - 3. Is convicted of any crime under state or federal law, or of any disorderly persons offense or misdemeanor involving a business-related offense.
- F. The Consultant hereby waives any objection it might otherwise raise permitting the Unit to investigate, examine and inspect all activities related to the Agreement pursuant to Public Law 2000, Chapter 72, Section 70. The Consultant further releases and holds harmless the Unit, the Authority, and the State of New Jersey. All statements contained in the Consultant's Technical Proposal and Fee Proposal and in this waiver and consent are true and correct, and made with full knowledge that the Authority and the State of New Jersey rely upon the truth of the statements contained in this affidavit in awarding the Agreement.

Sworn and subscribed to before me

this _____ day of _____, 20__.

Signature of Principal

Notary Public of

Print Name of Principal

My commission expires: _____, 20__.

I SWEAR AND AFFIRM that the Consultant will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, gender or sexual orientation and has complied and will continue to comply with all State and Federal laws and Executive Orders respecting non-discrimination; AND

(PREVAILING WAGE)

If applicable, I SWEAR AND AFFIRM that the Consultant shall or has complied with the New Jersey Contractor Registration Act, Public Laws 1999, Chapter 238 and the New Jersey Prevailing Wage Act, Laws of 1963, Chapter 150, and all amendments thereto, with respect to the Program and any contracts related to school construction entered into on behalf of the State of New Jersey, except those contracts not within the contemplation of these acts; AND

I SWEAR AND AFFIRM that all statements contained in the Consultant's Technical Proposal and Fee Proposal and this Affidavit are true and correct; and all such statements have been made with full knowledge that the Authority and the State of New Jersey rely upon the truth of the statements contained in this Affidavit in awarding the Agreement.

Sworn and subscribed to before me

this _____ day of _____, 20__.

Signature of Principal

Notary Public of

Print Name of Principal

My commission expires: _____, 20__.

APPENDIX E

INSURANCE CERTIFICATE(S)

(See attached sheets)

APPENDIX F

OTHER DOCUMENTATION

(See attached sheets)

- 1. BUSINESS REGISTRATION**
- 2. PL 2005, CHAPTER 51 APPROVAL**
- 3. SBE APPROVAL**
- 4. EO129 CERTIFICATION**