

Letter of Engagement

May 13, 2024

Successful Bidder:

On behalf of the New Jersey Schools Development Authority, the State of New Jersey, Department of the Treasury hereby issues this Letter of Engagement to Regis & Associates, P.C., pursuant to the Engagement Query issued on March 12, 2024 and Regis & Associates, P.C. 's proposal dated April 18, 2024.

All terms and conditions of the Engagement Query, including but not limited to the Scope of Work, milestones, timelines, standards, deliverables and liquidated damages are incorporated into this Letter of Engagement and made a part hereof by reference.

The total cost of this Engagement shall not exceed \$169,802.12.

The Integrity Monitor is instructed not to proceed until a purchase order is issued.

Thank you for your participation in the Integrity Monitor program.

Sincerely,

Mona Cartwright
IM State Contract Manager

INTEGRITY MONITOR ENGAGEMENT QUERY

Contract G4018 – Integrity Oversight Monitoring Program and Performance Monitoring,
Financial Monitoring and Grant Management and Anti-Fraud Monitoring for COVID-19 Recovery
Funds and Programs

New Jersey Schools Development Authority
[Category 3 services per Section 3.1.1 of the IOM RFQ]

I. GENERAL INFORMATION

On March 9, 2020, Governor Murphy issued Executive Order 103 declaring both a Public Health Emergency and State of Emergency in light of the dangers of the Coronavirus disease 2019 (“COVID-19”). On March 13, 2020, the President of the United States declared a national emergency and determined that the COVID-19 pandemic was of sufficient severity and magnitude to warrant a nationwide emergency declaration under Section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207, (“Stafford Act”) and that declaration was extended to the State of New Jersey on March 25, 2020 pursuant to Section 401 of the Stafford Act. Since then, Congress has enacted legislation to stimulate economic recovery and assist state, local and tribal governments navigate the impact of the COVID-19 outbreak and cover necessary expenditures related to the public health emergency.

On July 17, 2020, Governor Murphy signed Executive Order 166 (“E.O. 166”), which established the COVID-19 Compliance and Oversight Task Force (“Taskforce”) and the Governor’s Disaster Recovery Office (“GDRO”).

Pursuant to E.O. 166, the Taskforce has issued guidelines, which have been updated as of June 2021 and are attached hereto, regarding the appointment and responsibilities of COVID-19 Oversight Integrity Monitors (“Integrity Monitors”). Integrity Monitors are intended to serve as an important part of the State’s accountability infrastructure while working with Using Agencies in developing measures to prevent, detect, and remediate inefficiency and malfeasance in the expenditure of COVID-19 Recovery Funds and provide expertise in Program and Process Management Auditing, Financial Auditing and Grant Management, and Integrity Monitoring/Anti-Fraud services.

The New Jersey Department of the Treasury has established a pool of qualified Integrity Monitors for the oversight of COVID-19 Recovery Funds and COVID-19 Recovery Programs. Qualified Integrity Monitors are identified in G4018 Integrity Oversight Monitoring: Program and Performance Monitoring, Financial Monitoring and Grant Management, and Anti-Fraud Monitoring for COVID-19 Recovery Funds and Programs (“IOM RFQ”), posted in the New Jersey Department of the Treasury eProcurement website, [NJSTART](#). Using Agencies shall engage with a qualified Integrity Monitors to carry out their responsibilities under E.O. 166. The terms and conditions of the Integrity Monitor’s executed State Contract shall apply to the Integrity Monitoring Engagement executed via this Engagement Query.

The capitalized terms in this Engagement Query shall have the same meanings as set forth in the IOM RFQ.

This Engagement Query is issued by the Department of the Treasury on behalf of the New Jersey Schools Development Authority (“SDA” or the “Using Agency”).

The purpose of this Engagement Query is for the **SDA** to procure the services of an Integrity Monitor (“IM”) for **Category 3 services per Section 3.1.1 of the IOM RFQ.**

A. Background

The Covid-19 Recovery Program for the New Jersey Schools Development Authority (SDA) consists of the construction of the Union City Grade 7-9 Community School, a six-story, 130,000 square-foot community school that has commenced construction pursuant to a Design-Build construction contract issued to Dobco, Inc., valued at approximately \$75 million, the costs of which are to be partially funded utilizing an allocation of \$50 million from US Treasury’s Coronavirus Capital Projects Fund (CPF), with the remainder being appropriated from State funding sources. The SDA is a subrecipient of CPF funds granted to the Department of Community Affairs.

The Community School, in addition to its public education function, will serve as a multi-purpose community facility with design features that will support the offering of vital services that enhance student and adult learning, as well as health monitoring services, recreational activities, employment readiness and career development services for the broader Union City community, in accordance with the program goals and eligibility requirements for capital projects funded by the Coronavirus Capital Projects Fund (CPF).

The Schools Development Authority (SDA), is the New Jersey state agency that is statutorily charged pursuant to the Educational Facilities Construction and Financing Act (EFCFA) with undertaking the construction and funding of school facilities projects in 31 judicially-designated “SDA Districts” within the State, which include the Union City Public School District. As part of its statutory mission, SDA is responsible for the advancement of the design-build construction of the community school for the ultimate use by and benefit of the Union City Public School District. Pursuant to its EFCFA responsibilities, SDA is providing the balance of all construction costs for the Community School from state funds, in excess of the \$50 million allocation from the US Treasury’s Coronavirus Capital Projects Fund, with the exception of certain district-requested elements of the school facilities project that are not eligible for state funding, and which will be funded by the Union City School District pursuant to a Local Share agreement. SDA has already received the Local Share funds from the Union City School District.

The construction of the Union City Grade 7-9 Community School has been advanced utilizing the Design-Build project delivery method. Project programming, planning, schematic design and bridging design have been undertaken directly by SDA staff, while final design and construction of the project is the responsibility of the Design-Builder, Dobco, Inc., who is required to submit final plans and specifications to the Department of Education for Final Educational Adequacy review and approval, demonstrating full and complete compliance with the requirements of N.J.A.C. 6A:26 for School Facility Projects. Furthermore, the Design-Builder is responsible for submitting the final design documents to the Department of Community Affairs (DCA) and securing all construction permits and coordinating all DCA inspections in collaboration with SDA.

SDA has also engaged a Construction Manager (CM) to provide construction management services with respect to the Design-Build construction contract, although the CM's contract will not be funded by federal CPF grant funds, but rather through SDA's own state funding for school facilities projects under EFCFA.

Consistent with all Capital Projects of this size and complexity undertaken by the SDA, the construction of the project is subject to a Project Labor Agreement and all contracts are subject to New Jersey Prevailing Wage Requirements. Note that, as indicated in the Guidance for Coronavirus Capital Projects Fund issued by the US Department of Treasury, the Davis-Bacon Act does NOT apply to projects funded by the CPF funds.

Because the Program is limited to the partial funding of the existing Design-Build Contract for the Union City 7-9 Community School, funding will be disbursed by the subrecipient SDA in payment of properly-supported invoices submitted to SDA pursuant to the terms of the Design-Build Contract, or in reimbursement of prior invoiced payments made by SDA on the Design-Build Contract, and thus the SDA's engaged Design-Builder (Dobco, Inc.) will be the only non-SDA payee of Program funds. Further, a typical SDA Design-Build construction contract of similar duration will involve only about 30 payments to the Design-Builder over the duration of the project, representing a relatively limited scope of review. Payment applications, backup documentation and other project data will be made available to the Integrity Monitor electronically.

The Design-Builder, Dobco, Inc., has commenced design and construction work and the project is currently underway and scheduled for completion of construction to allow for a school opening in September of 2025. SDA has paid approximately \$25 million in progress payments to date.

As indicated in the Guidance for Coronavirus Capital Projects Fund issued by the US Department of Treasury, all CPF funds for the Program must be expended by December 31, 2026, which is also the end of the period of performance under the CPF grant.

II. SCOPE OF WORK REQUIREMENTS

A. Project Description

The scope of the Integrity Monitor's engagement will consist of construction project monitoring of the SDA's in-progress Design-Build construction project for the Union City Grade 7-9 Community School.

The engagement will include a review of:

- The validity and sufficiency of Design-Builder's payment applications and supporting documentation for progress payments,
- the proper authorization of SDA's payment of payment applications;
- the validity and proper documentation of any change orders;
- the Design Builder's compliance with applicable subcontracting goals for Small Business Enterprises, Minority- and Women-owned Business Enterprises and Disabled Veteran Owned Business enterprises;
- the Design Builder's and relevant subcontractors' compliance with applicable state and federal laws as enumerated in the Design-Build Agreement and in federal guidance applicable to CPF funding, including the New Jersey Prevailing Wage Act, the New Jersey Prompt Payment Act, "Buy American" laws, and the Diane B. Allen Equal Pay Act.

The Integrity Monitor's scope will encompass review of all payment applications, whether prior, present or future, as well as all payments previously made or to be made in the future, on the Design-Build contract for the Union City Grade 7-9 Community School project, from commencement of the Design-Build contract until Substantial Completion for the project (as such term is defined in the Design-Build Agreement). Note that SDA has paid approximately \$25 million in progress payments to date, for which SDA seeks reimbursement from the CPF funds.

Substantial Completion for the project is currently scheduled to be achieved on June 27, 2025. All services and deliverables of the Integrity Monitor, including any Final Report, shall be completed by September 30, 2025 (note that Final Completion for the project is currently scheduled to be achieved on September 29, 2025).

Further, the scope shall include the following:

- Within 5 business days of the purchase order issued as a result of the Letter of Engagement, the IM and SDA shall participate in a kick-off meeting to review the deliverables and due dates in Section C below and establish key personnel for communications during the course of the Engagement.
- The IM shall conduct a Risk Assessment of the SDA's existing controls in place to prevent fraud, waste, or abuse in connection with the COVID-19 Recovery Program that includes, at minimum, a review or assessment of:
 - SDA's policies and procedures applicable to the Program
 - SDA's organizational structure and capacity
 - SDA's internal controls

- Level of risk associated with the Program
 - SDA's prior audits
- Based on the Risk Assessment, the IM shall develop and submit a Work Plan for monitoring the COVID-19 Recovery Program for fraud, waste, or abuse that includes a review of relevant risk factors specific to the Program being monitored.
- The Work Plan shall include a sampling methodology to achieve a monitoring objective related to both compliance and internal controls. Any sampling used shall follow a nationally recognized audit standard such as the AICPA or GAO Government Auditing Standards, 2018 Revision. Sampling methodologies may include: (1) simple random; (2) statistical; (3) judgmental; (4) or other methodology appropriate to the Program characteristics. The IM shall document the rationale for the sampling methodology selected.
- Depending on findings as a result of monitoring under the Work Plan, the IM should evaluate whether onsite monitoring is appropriate based upon any conclusions reached when conducting the risk assessment or as a result of ongoing monitoring. The IM shall document in writing its evaluation and conclusion, including an assessment of the following factors:
 - Significant findings reported in quarterly reports or interim reports;
 - Unresponsiveness to requests for information;
 - Non-compliance with state or federal reporting requirements; and
 - Allegations of misuse of funds.
- The IM shall implement the Work Plan to provide oversight of the Program until the expiration of this Engagement.

B. Reporting Requirements

1. Quarterly Integrity Monitor Reports
 - a. Pursuant to E.O. 166, the Integrity Monitor shall submit a draft quarterly report to SDA on the last day of every calendar quarter detailing the specific services rendered during the quarter and any findings of fraud, waste, or abuse using the Quarterly Report template attached hereto. If the Integrity Monitor report contains findings of fraud, waste, or abuse, SDA has an opportunity to respond within 10 business days after receipt.
 - b. Fifteen business days after each quarter end, the Integrity Monitor shall deliver its final quarterly report, including any comments from SDA, to the State Treasurer, who shall share the reports with the GDRO, the Senate President, the Speaker of the General Assembly, the Attorney General, and the State

Comptroller. The Integrity Monitor quarterly reports will be posted on the COVID-19 transparency website pursuant to E.O. 166.

2. Additional Reports

- a. E.O. 166 directs the Office of the State Comptroller (OSC) to oversee the work of Integrity Monitors. Therefore, in accordance with E.O. 166 and the IM Guidelines, OSC may request that the Integrity Monitor issue additional reports or prepare memoranda that will assist OSC in evaluating whether there is fraud, waste, or abuse in COVID-19 Recovery Programs administered by the Using Agencies. OSC may also request that the Integrity Monitor share any corrective action plan(s) prepared by the Using Agencies to evaluate whether those corrective plan(s) have been successfully implemented.

3. Project Completion Report

- a. At the completion of the Engagement, the IM shall submit a Project Completion Report, including, at a minimum, a summary of the scope of Engagement and the IM's sampling and review methodology, documentation of work performed, a summary of findings, and any recommendations to mitigate the risk of fraud, waste, and abuse in the Program or future SDA construction projects.

4. Reports of Fraud, Waste, Abuse, or Potential Criminal Conduct

- a. The Integrity Monitor shall report issues of fraud, waste, abuse, and misuse of COVID-19 Recovery Funds immediately to the GDRO, OSC, the State Treasurer, the State Contract Manager, and the Accountability Officer. The Integrity Monitor shall report issues of potential criminal conduct immediately to the Office of the Attorney General.

C. Specific Performance Milestones/Timelines/Standards/Deliverables

All deliverables must be completed by the dates indicated below.

Deliverables	Date due
Kick-off meeting with SDA staff and successful IM	Within 5 days of commencement
Risk Assessment	2 weeks after Kick-off meeting
Work Plan	2 weeks after Risk Assessment
Interim Reports/Periodic Meetings	N/A
Draft Quarterly Report(s)	Last day of each quarter
Final Quarterly Report(s)	15 business days after the end of each quarter
Monthly Report	N/A
Project Completion Report	September 30, 2025

III. Proposal Content

A. At minimum, the Integrity Monitor's proposal shall include the following:

- A description of how the Integrity Monitor intends to accomplish each component of the scope of work in Section II above, including a timeline for submission of the deliverables required by this Engagement Query.
- A detailed budget identifying staff classifications and hourly rates shall be submitted with the response to this Engagement Query using the price sheet attached. The hourly rates shall not exceed the rates identified in the Integrity Monitor's Blanket P.O./Contract as posted in NJSTART. If an Integrity Monitor submits pricing over the Blanket P.O./Contract hourly rates posted in NJSTART, the response shall be rejected as the Integrity Monitor shall not be eligible for an award of this Engagement Query only.
- Identification of any potential conflicts of interest regarding the delivery of services for the scope of work under this Engagement Query.

B. The Integrity Monitor's proposal should also include the following:

- A list of existing Engagements under G4018 with other State agencies, along with the commencement and expiration dates of the Engagement. Please provide the information on Attachment 4: G4018 Integrity Monitoring Engagements Form. If the Form is not included with the proposal, the SDA, in its sole discretion, may request the Form from the Integrity Monitor.

IV. Submission of Proposals

Detailed proposals in response to this Engagement Query shall be submitted electronically by 3:00 p.m. on **April 18, 2024**. Proposals must be submitted via email as set forth below:

TO: State Contract Manager
Mona Cartwright, Fiscal Manager, Department of the Treasury
TreasuryIM@treas.nj.gov

With a copy to the Agency Contract Manager:

David Kutch,
Procurement Specialist, NJSDA


V. Duration of the Engagement

The Engagement will commence upon the issuance of a Letter of Engagement and expire on **September 30, 2025**.

At the option of the SDA, this Letter of Engagement may be extended. Any extension to this Letter of Engagement, however, may not to exceed the Contract Term, and any extensions thereto as set forth the IOM RFQ.

VI. Contract Termination

The IOM's failure to comply with the requirements of the Engagement, including but not limited to E.O. 166, the IOM RFQ, the IM Guidelines, and this Engagement Query may constitute a breach of contract and may result in termination of the contract by SDA or imposition of such other remedy as SDA deems appropriate in accordance with Section 9.0 of the IOM RFQ.

VII. Liquidated Damages

At SDA's discretion, liquidated damages may be assessed each time any of the below events occur, due to an act or omission of the IM. SDA and the IM agree that it would be extremely difficult to determine actual damages that the SDA will sustain as the result of the IM's failure to meet its contractual requirements. Any breach by the IM could prevent SDA from complying with E.O. 166, the IOM Guidelines, and laws applicable to the use and expenditure of COVID-19 Recovery Funds and other public funds will adversely impact SDA's ability to ensure identification and mitigation of risks and may lead to damages suffered by SDA and the State as a whole. If the IM fails to meet its contractual obligations, SDA may assess liquidated damages against the IM as follows:

Liquidated Damages for Delay in Production of Final Quarterly Reports:

\$100 per day for each day of delay after due date for Final Quarterly Reports.

Liquidated Damages for Delay in Production of Project Completion Reports:

\$200 per day for each day of delay after due date for Project Completion Report.

VIII. Questions regarding this Engagement Query

Any questions related to the Engagement Query, such as questions related to the Program or accessibility and format of data, must be submitted electronically by 3:00 p.m. on **March 27, 2024**. Questions must be submitted via email to NJSDA Procurement Specialist David Kutch, at [REDACTED] with a copy to the State Contract Manager, Mona Cartwright at Treasurym@treas.nj.gov.

IX. Selection Process

The SDA Contract Manager will review the proposal(s) received and select the Integrity Monitor whose proposal is most advantageous, price and other factors considered including:

- The qualifications and experience of the personnel assigned to this Engagement;
- The experience of the IM in engagements of a similar size and scope; and
- The ability of the IM to complete the scope of work based on the proposed personnel/staff classifications and hours allocated to tasks in its proposal.

The State Contract Manager will then issue a Letter of Engagement with a “not to exceed” clause to the selected proposer.

SDA may request a Best and Final Offer from Integrity Monitors that responded to the Engagement Query.

Prior to issuing a Letter of Engagement, the Agency Contract Manager in consultation with the Accountability Officer, will independently determine whether the proposed Integrity Monitor has any potential conflicts with the Engagement.

ATTACHMENTS

- Attachment 1: Integrity Oversight Monitor Guidelines, updated as of June, 2021
- Attachment 2: Quarterly Report Template – Category 3
- Attachment 3: EQ Price Sheet
- Attachment 4: G4018 Integrity Monitoring Engagements Form
- Attachment 5: Guidance for the Coronavirus Capital Projects Fund for States, Territories & Freely Associated States
- Attachment 6: Design-Build Agreement between NJSDA and Dobco, Inc. for Union City Grade 7-9 Community School, including Contract Change Directive #1 incorporating additional provisions required for Federal Funding

Notice of Executive Order 166 Requirement for Posting of Winning Proposal and Contract Documents

Pursuant to Executive Order No. 166, signed by Governor Murphy on July 17, 2020, the Office of the State Comptroller ("OSC") is required to make all approved state contracts for the allocation and expenditure of COVID-19 Recovery Funds available to the public by posting such contracts on an appropriate state website. Such contracts will be posted on the New Jersey transparency website developed by the Governor's Disaster Recovery Office ("GDRO Transparency Website"). The Letter of Engagement resulting from this Engagement Query is subject to the requirements of Executive Order No. 166. Accordingly, OSC will post a copy of the Letter of Engagement, including the Engagement Query, the winning proposer's proposal, and other related contract documents for the above contract on the GDRO Transparency website.

In submitting its proposal, a proposer may designate specific information as not subject to disclosure. However, such proposer must have a good faith legal or factual basis to assert that such designated portions of its proposal: (i) are proprietary and confidential financial or commercial information or trade secrets; or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter and a redacted copy of the proposal should be provided. A Proposer's failure to designate such information as confidential in submitting a proposal shall result in waiver of such claim.

The State reserves the right to make the determination regarding what is proprietary or confidential and will advise the winning proposer accordingly. The State will not honor any attempt by a winning proposer to designate its entire proposal as proprietary or confidential and will not honor a claim of copyright protection for an entire proposal. In the event of any challenge to the winning proposer's assertion of confidentiality with which the State does not concur, the Proposer shall be solely responsible for defending its designation.



Integrity Oversight Monitor Guidelines

2021 Update

**STATE OF NEW JERSEY
COVID-19 COMPLIANCE AND
OVERSIGHT TASKFORCE**

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INTRODUCTION

On July 17, 2020, Governor Murphy signed Executive Order 166 (“EO 166”), which, among other things, established the COVID-19 Compliance and Oversight Task Force (the “Taskforce”). The purpose of the Taskforce is to advise State departments, agencies, and independent authorities that receive or administer COVID-19 recovery funds (“Recovery Program Participants”) regarding compliance with federal and State law and how to mitigate the risks of waste, fraud, and abuse. As defined in EO 166, “COVID-19 Recovery Funds” are funds awarded to state and local governments, and non-government sources to support New Jersey’s residents, businesses, non-profit organizations, government agencies, and other entities responding to or recovering from the COVID-19 pandemic.

Pursuant to EO 166, the Taskforce is responsible for issuing guidelines regarding the appointment and responsibilities of COVID-19 Oversight Integrity Monitors (“Integrity Monitors”). Recovery Program Participants may retain and appoint Integrity Monitors to oversee the disbursement of COVID-19 Recovery Funds and the administration of a COVID-19 Recovery Program. They are intended to serve as an important part of the state’s accountability infrastructure while working with Recovery Program Participants in developing measures to prevent, detect, and remediate inefficiency and malfeasance in the expenditure of COVID-19 Recovery Funds. Integrity Monitors may also be used, either proactively or in response to findings by an Integrity Monitor, as subject matter experts or consultants to assist Recovery Program Participants with program administration, grants management, reporting, and compliance, as approved by the Governor’s Disaster Recovery Office (GDRO).

EO 166 requires Recovery Program Participants to identify a central point of contact (an “Accountabil-

ity Officer”) for tracking COVID-19 funds within each agency or authority. The Accountability Officer is responsible for working with and serving as a direct point of contact for the GDRO and the Taskforce. Accountability Officers should also ensure appropriate reviews are performed to assess risks and evaluate whether an Integrity Monitor can assist in reducing or eliminating risk to ensure the public that state and federal funds were used efficiently, fairly, and prudently.

Recovery Program Participants and Integrity Monitors should be focused on the common goal of maximizing the value of COVID-19 Recovery Funding by ensuring that every dollar is spent efficiently and properly. Integrity Monitors can add value to a program by assisting in implementing the fiscal controls necessary to maintain proper documentation, flagging potential issues in real time, maximizing reimbursements, sharing information with and responding to inquiries from the GDRO and Office of State Comptroller (OSC), and reporting to those offices, the Treasurer, the Attorney General, and legislative leadership.

Recovery Program Participants, Accountability Officers, and Integrity Monitors should work together to fulfill the goals of EO 166 and these guidelines. The retention of Integrity Monitors will support monitoring and oversight that will ensure that Recovery Program Participants administer COVID-19 recovery funds in compliance with program, financial, and administrative requirements set forth in the federal-state grant agreement, the State Recovery Program Participant sub-grant agreement, and applicable federal and state laws, regulations, and guidelines. Additionally, these guidelines will assist the State in fulfilling its monitoring responsibilities as set forth in 2 CFR 200 Subpart D. This may involve routine desk reviews and, when appropriate, on-site reviews by an Integrity Monitor. Recovery Program Participants that do not retain an Integrity Monitor will comply with these requirements, in coordination with the GDRO, as addressed in the Compliance Plan adopted by the Taskforce.

ESTABLISHING THE POOL OF INTEGRITY MONITORS

As of the issuance of this version of the Integrity Oversight Monitor Guidelines, a pool of monitors has already been established. The following provisions in this section should be used in the event it is necessary to establish additional pools of Integrity Monitors.¹

In the event it is necessary to establish another pool of Integrity Monitors, the New Jersey Department of the Treasury, Division of Administration (Treasury) will be responsible for designating a department employee to act as the State Contract Manager for purposes of administering the overarching state contract for Integrity Monitoring Services. The State Contract Manager will establish one pool of qualified integrity monitors for engagement by eligible Recovery Program Participants. Treasury will issue a bid solicitation for technical and price quotations from interested qualified firms that can provide the following services:

- Category 1: Program and Process Management Auditing;
- Category 2: Financial Auditing and Grant Management; and
- Category 3: Integrity Monitoring/Anti-Fraud.

The specific services Integrity Monitors provide vary and will depend on the nature of the programs administered by the Recovery Program Participant and the amount of COVID-19 Recovery Funding received. The pool of Integrity Monitors should include professionals available to perform services in one or more of the following categories:

Category 1: Program and Process Management Auditing	Category 2: Financial Auditing and Grant Management	Category 3: Integrity Monitoring / Anti-Fraud
Development of processes, controls and technologies to support the execution of programs funded with COVID-19 Recovery Funds.	Plan, implement, administer, coordinate, monitor and evaluate the specific activities of all assigned financial and administrative functions. Develop and modify policies/procedures/systems in accordance with organizational needs and objectives, as well as applicable government regulations.	Forensic accounting and other specialty accounting services.

1. Agencies and authorities that are not permitted to follow all state procurement requirements due to U.S. Department of Transportation procurement policies may procure an Integrity Monitor separately in coordination with GDRO.

Review and improvement of procedures addressing financial management.	Provide technical knowledge and expertise to review and make recommendations to streamline grant management and fiscal management processes to ensure accountability of funds and compliance with program regulations.	Continuing risk assessments and loss prevention strategies.
Workload analysis; skills gap analysis, organizational effectiveness and workforce recruiting strategies.	Monitoring all grant management, accounting, budget management, and other business office functions regularly.	Performance and program monitoring and promotion of best practices.
Consulting services to support account reconciliations.	Provide and/or identify training for staff in the area of detection and prevention of waste, fraud, and abuse.	Prevention, detection and investigation of fraud and misconduct.
Quality assurance reviews and assessments associated with the payments process to ensure compliance with federal and state regulations.	Ensuring compliance with all applicable federal and state accounting and financial reporting requirements.	Implement and manage appropriate compliance systems and controls, as required by federal and state guidelines, regulations and law.
Risk analysis and identification of options for risk management for the federal and state grant payment process.	Provide tools to be used by the Recovery Program Participant for the assessment of the performance of the financial transaction process.	Provide data management systems/programs for the purpose of collecting, conducting and reporting required compliance and anti-fraud analytics.
Consulting services to reduce the reconciliation backlog for the Request for Reimbursements process.		Ability to provide integrity monitoring services for professional specialties such as engineering and structural integrity services, etc. either directly or through a subcontractor relationship.
Consulting services providing Subject Matter Expert (SME) knowledge of required standards for related monitoring and financial standards for federal funding.		

CONDITIONS FOR INTEGRITY MONITORS

A Recovery Program Participant should evaluate whether it should retain an Integrity Monitor using the following standards.

Category 1 & 2 Integrity Monitors:

Category 1 and 2 Integrity Monitors are available to assist Recovery Program Participants, if, in consultation with GDRO, it has been determined that an agency or authority needs assistance in the establishment, administration, or monitoring of a program or when a Category 3 Integrity Monitor has issued findings that require the agency or authority to take corrective actions. In making the determination whether to obtain a Category 1 or 2 Integrity Monitor, a Recovery Program Participant's Accountability Officer, in consultation with GDRO, should evaluate whether an Integrity Monitor from Category 1 or 2 is necessary based on operational needs or to reduce or eliminate risk in view of the agency's or authority's existing resources, staffing, expertise or capacity. Agencies and authorities should evaluate whether the retention of a Category 1 or 2 Integrity Monitor would assist in addressing findings made by Category 3 Integrity Monitors. The availability of federal funds should be considered in evaluating whether to retain an Integrity Monitor from Category 1 or 2. In an appropriate circumstance, a Recovery Program Participant may request or may be directed by the GDRO to retain a Category 1 or 2 Integrity Monitor using non-federal funds.

Category 3 Integrity Monitors:

For Recovery Program Participants that have received or will administer a total of \$20 million or more in COVID-19 Recovery Funds: A Recovery Program Participant that has received this amount of funding should retain at least one Integrity

Monitor from Category 3: Integrity Monitoring/Anti-Fraud, subject to federal funding being available. The retention of Category 1 and 2 Integrity Monitors does not eliminate the obligation to retain a Category 3 Integrity Monitor. In some circumstances, multiple Category 3 Integrity Monitors may be necessary if one monitor is not adequate to oversee multiple programs being implemented by Recovery Program Participant as determined in consultation with the GDRO. In an appropriate circumstance, a Recovery Program Participant may request or may be directed by the GDRO to retain an Integrity Monitor using non-federal funds.

For Recovery Program Participants that have received or will administer a total of up to \$20 million in COVID-19 Recovery Funds: A Recovery Program Participant that has received this amount of funding should evaluate in consultation with GDRO whether a Category 3 Integrity Monitor is needed based on the risks presented. The Recovery Program Participant's Accountability Officer should conduct a risk assessment taking into account both the likelihood and severity of risk in the participant's program(s) and consult with the GDRO regarding whether an Integrity Monitor from Category 3 is necessary to reduce or eliminate risk in view of the agency's or authority's existing resources, staffing, expertise or capacity. The availability of federal funds should be considered in evaluating whether to retain an Integrity Monitor. In an appropriate circumstance, a Recovery Program Participant may request or may be directed by the GDRO to retain an Integrity Monitor from Category 3 using non-federal funds.

RISK ASSESSMENT

As noted above, in certain circumstances, Recovery Program Participants seeking to retain an Integrity Monitor will be advised to conduct a risk assessment to determine the need for such services. A Recovery Program Participant's Accountability Officer, in consultation with the GDRO, should assess the risk to public funds, the availability of federal funds to pay for the Integrity Monitor, the entity's current operations, and whether internal controls alone are adequate to mitigate or eliminate risk.

An Accountability Officer, or an Integrity Monitor retained by a Recovery Program Participant, should conduct an initial review of the Recovery Program Participant's programs, procedures and processes, and assess the organizational risk and the entity's risk tolerance. The risk assessment should include a review of the agency's ability to comply with federal statutory and regulatory requirements as well as applicable state laws and regulations, including with regard to reporting, monitoring, and oversight, and a review of the agency's susceptibility to waste, fraud, and abuse.

An Accountability Officer conducting a risk assessment should complete and memorialize the assessment using the [matrix template you can download from OSC's website](#). The risk assessment should be shared with the GDRO and OSC. Some of the specific factors an Accountability Officer should consider when assessing risk include:

- Organizational leadership, capacity, expertise, and experience managing and accounting for federal grant funds in general, and disaster recovery funds in particular;
- Input from the individuals/units that will be disbursing funds or administering the program;

- Review of existing internal controls and any identified weaknesses;
- Prior audits and audit findings from state or federal oversight entities;
- Lessons learned from prior disasters;
- Sub-recipient internal control weaknesses, if applicable;
- Adequacy of financial, acquisition, and grants management policies and procedures, including technological capacity and potentially outdated financial management systems;
- Ability to complete timely, accurate and complete reporting;
- Experience with state and federal procurement processes, value of anticipated procurements, and reliance on contractors to meet program goals and objectives;
- Potential conflicts of interests and ethics compliance;
- Amount of funds being disbursed to a particular category of sub-recipient and the complexity of its project(s); and
- Whether federal or state guidelines provide guidance regarding the uses of funds (*i.e.*, discretionary vs. restrictive).

The Accountability Officer should determine the organization's risk tolerance as to all recovery programs jointly and as to individual programs, recognizing that Integrity Monitors may be appropriate for some programs and not others within an agency or authority. If the risk exceeds an acceptable level of risk tolerance, the Accountability Officer should engage an Integrity Monitor.

An important element in the risk assessments is documentation of the process and results. This is critical to ensuring the extent of monitoring and oversight. The overall level of risk should dictate the frequency and depth of monitoring practices, including how to mitigate identified risks by, for example, providing training and technical assistance or increasing the frequency of on-site reviews. In some cases, monitoring efforts may lead an Accountability Officer or the GDRO to impose additional special conditions on the Recovery Program Participant. Depending on the kind of work the sub-recipient performs, it may be appropriate to reevaluate frequently, including quarterly, to account for changes in the organization or the nature of its activities. See 2 CFR Section 200.207 in the uniform guidance for examples; [GAO Report: A Framework for Managing Fraud Risk in Federal Programs \(2015\)](#).

PROCEDURES FOR REQUESTING AND PROCURING AN INTEGRITY MONITOR

To retain an Integrity Monitor, a Recovery Program Participant should proceed as follows:

- A Recovery Program Participant shall designate an agency employee to act as the contract manager for an Integrity Monitor engagement (Agency Contract Manager), which may be the Accountability Officer. The Agency Contract Manager should notify the State Contract Manager, on a form prescribed by Treasury, along with any required supporting documentation, of its request for an Integrity Monitor. The Agency Contract Manager should indicate which Integrity Monitoring services are required.
- The Agency Contract Manager will develop an Engagement Query.
- The Engagement Query will include a detailed scope of work; it should include specific performance milestones, timelines, and standards and deliverables.
- The Agency Contract Manager, in consultation with the Office of the Attorney General, Division of Law, will structure a liquidated damages provision for the failure to meet any required milestones, timelines, or standards or deliverables, as appropriate.
- The Agency Contract Manager will submit its Engagement Query to the State Contract Manager. Upon approval by the State Contract Manager, but prior to the solicitation of any services, the Engagement Query shall be sent to OSC for approval pursuant to EO 166. After receiving approval from OSC, the State Contract Manager will send the Engagement Query to all eligible Integrity Monitors within the pool in order to provide a level playing field.
- Interested, eligible Integrity Monitors will respond to the Engagement Query within the timeframe designated by the State Contract Manager, with a detailed proposal that includes a detailed budget, timelines, and plan to perform the scope of work and other requirements of the Engagement Query. Integrity Monitors shall also identify any potential conflicts of interest.
- The State Contract Manager will forward to the Agency Contract Manager all proposals received in response to the Engagement Query. The Agency Contract Manager will review the proposals and select the Integrity Monitor whose proposal represents the best value, price and other factors considered. The Agency Contract Manager will memorialize in writing the justification for selecting an Integrity Monitor(s).
- Prior to finalizing any engagement under this contract, the Agency Contract Manager, in consultation with the Accountability Officer, will independently determine whether the intended Integrity Monitor has any potential conflicts with the engagement.
- The State Contract Manager, on behalf of the Recovery Program Participant, will then issue a Letter of Engagement with a “Not to Exceed” clause to the engaged Integrity Monitor and work with the Agency Contract Manager to begin the issuance of Task Orders.

INTEGRITY MONITOR REQUIREMENTS

A. Independence

The process by which Integrity Monitors are retained and the manner in which they perform their tasks in accordance with these guidelines are intended to provide independence as they monitor and report on the disbursement of COVID-19 Recovery Funds and the administration of a COVID-19 Recovery Program by a Recovery Program Participant. Although the Integrity Monitor and the Recovery Program Participant should share common goals, the Integrity Monitor should function as an independent party and should conduct its review as an outside auditor/reviewer would.

An Integrity Monitor for a particular Recovery Program Participant should have no individual or company affiliation with the agency or authority that would prevent it from performing its oversight as an independent third party. Integrity Monitors and Recovery Program Participants must be mindful of applicable conflicts of interest laws, including but not limited to, N.J.S.A. 52:13D-12 to -28, Executive Order 189 (Kean, 1988) and requirements set forth in the Uniform Grant Guidance, among others. To promote independence, an Integrity Monitor hired from Categories 1 or 2 may not also be engaged as a Category 3 Integrity Monitor to review the same programs for the same Recovery Program Participant. Likewise, a Category 3 Integrity may not be hired as a Category 1 or 2 Monitor to remediate any issues it identified as a Category 3 Integrity Monitor.

B. Communication

Integrity Monitors should maintain open and frequent communication with the Recovery Program Participant that has retained its services. The purpose of communicating in this manner is to make the Recovery Program Participant aware of issues that can be addressed during the administration of a program and prior to future disbursement of funds by the Parti-

ci- pant. Therefore, Integrity Monitors should not wait until reports are issued to notify an Accountability Officer of deficiencies. This will enable the Recovery Program Participant to take action to correct any deficiencies before additional funds are expended. Substantial deficiencies should also be reported in real time to the GDRO, the State Comptroller, and the State Treasurer.

Prior to the posting of an Integrity Monitor report that contains findings of waste, fraud, or abuse, the Recovery Program Participant should be permitted to respond to the findings and have that response included in the publicly posted report. This will allow the Recovery Program Participant to highlight any course corrections as a result of the finding or to contest any finding that it feels is inappropriate. A Recovery Program Participant's response is due within 15 business days after receipt of an Integrity Monitor report.

Integrity Monitors must respond promptly to any inquiries posed by the GDRO, State Comptroller, State Treasurer, and Agency Contract Manager pursuant to EO 166.

C. General Tasks of Integrity Monitors

The tasks of an Integrity Monitor may vary based on the agency/program the Monitor is overseeing and the category of Integrity Monitor engaged. Generally, the role of a Category 1 Integrity Monitor is focused on program and process management auditing. These Integrity Monitors may assist a Recovery Program Participant in developing processes or controls to support the execution of programs, conduct risk analyses, or provide consulting or subject matter expertise to Recovery Program Participants. In general, a Category 2 Integrity Monitor's role is to provide financial auditing or grants management functions for a Recovery Program Participant. A Category 3 Integrity Monitor's primary roles are to monitor for fraud or misuse of funding, and ensure that Recovery Program Participants are performing according to the sub-award agreement and applicable federal and State regulations and guidelines. Tasks to be performed by Integrity

Monitors may include the following:

- Perform initial and ongoing risk assessments;
- Evaluate project performance;
- Evaluate internal controls associated with the Recovery Program Participant's financial management, cash management, acquisition management, property management, and records management capabilities;
- Validate compliance with sub-grant award and general term and special conditions;
- Review written documents, such as quarterly financial and performance reports, recent audit results, documented communications with the State, prior monitoring reports, pertinent performance data, and other documents or reports, as appropriate;
- Conduct interviews of Recovery Program Participant staff, as well as the constituents they serve, to determine whether program objectives are being met in an efficient, effective, and economical manner;
- Sample eligibility determinations and denials of applications for funding;
- Review specific files to become familiar with the progression of the disbursement of funds in a particular program, i.e., are actual expenditures consistent with planned expenditure and is the full scope of services listed in the project work plan being accomplished at the same rate of actual and planned expenditures;
- Ensure that the agency is retaining appropriate documentation, based on federal and state regulations and guidance, to support fund disbursement;
- Follow up with questions regarding specific funding decisions, and review decisions related to emergency situations;
- Facilitate the exchange of ideas and promote operational efficiency;
- Identify present and future needs; and
- Promote cooperation and communication among Integrity Monitors engaged by other Recovery Program Participants (e.g., to guard against duplication of benefits).

Integrity Monitors should generally perform desk reviews to evaluate the need for on-site visits or monitoring. Depending on the results of the desk review, coupled with the conclusions reached during any risk assessments that may have been conducted of the sub-recipient's capabilities, the Monitor should evaluate whether an on-site monitoring visit is appropriate. If the Monitor is satisfied that essential project goals, objectives, timelines, budgets, and other related program and financial criteria are being met, then the Monitor should document the steps taken to reach this conclusion and dispense with an on-site monitoring visit. However, the Integrity Monitor may choose to perform on-site monitoring visits as a result of any of the following:

- Non-compliance with reporting requirements;
- Problems identified in quarterly progress or financial reports;
- History of unsatisfactory performance;
- Unresponsiveness to requests for information;
- High-risk designation;
- Follow-up on prior audits or monitoring find-

ings; and

- Allegations of misuse of funds or receipt of complaints.

D. Reporting Requirements

1. Reports

Pursuant to EO 166, Integrity Monitors shall submit draft quarterly reports to the Recovery Program Participant on the last day of the quarter detailing the specific services rendered during that quarter and any findings of waste, fraud, or abuse **in accordance with the report templates [found on OSC's website](#)**.

Prior to the posting of a quarterly report that contains findings of waste, fraud, or abuse, the Recovery Program Participant should be permitted to respond to the findings and have that response included in the publicly posted report. This will allow the Recovery Program Participant to highlight any course corrections as a result of the finding or to contest any finding that it contends is inappropriate. A Recovery Program Participant's response is due within 15 business days after receipt of a quarterly report.

Fifteen business days after quarter-end, Integrity Monitors will deliver their final quarterly reports, inclusive of any comments from the Recovery Program Participant, to the State Treasurer, who shall share the reports with the GDRO, the Senate President, the Speaker of the General Assembly, the Attorney General, and the State Comptroller. The Integrity Monitor quarterly reports will be posted on the GDRO transparency website pursuant to the Executive Order.

The specific areas covered by a quarterly report will vary based on the type of Integrity Monitor engaged, the program being reviewed, the manner

and use of the funds, procurement of goods and services, type of disbursements to be issued, and specific COVID-19 Recovery Fund requirements. The topics covered by the quarterly report should include the information included in [templates which you can download from OSC's website](#).

2. Additional Reports

EO 166 directs OSC to oversee the work of Integrity Monitors and to submit inquiries to them to which Integrity Monitors must reply promptly. OSC may request Integrity Monitors to issue reports or prepare memoranda that will assist OSC in evaluating whether there is waste, fraud, or abuse in recovery programs administered by Recovery Plan Participants.

The State Comptroller may also request that Integrity Monitors or Recovery Program Participants share corrective action plans prepared by Recovery Plan Participants to address reported deficiencies and to evaluate whether those corrective plans have been successfully implemented.

GDRO and the State Treasurer may also request reports from Integrity Monitors to which Integrity Monitors must reply promptly.

3. Reports of Waste, Fraud, Abuse or Potential Criminal Conduct

Integrity Monitors must immediately report substantial issues of waste, fraud, abuse, and misuse of COVID-19 Recovery Funds simultaneously to the GDRO, OSC, State Treasurer, and the Agency Contract Manager and Accountability Officer of a Recovery Program Participant.

Integrity Monitors must immediately report potential criminal conduct to the Office of the Attorney General.

INTEGRITY MONITOR MANAGEMENT AND OVERSIGHT

Agency Contract Managers have a duty to ensure that Integrity Monitors perform the necessary work, and do so while remaining on task, and on budget. Agency Contract Managers shall adhere to the requirements of Treasury Circular 14-08-DPP in their management and administration of the contract. The Agency Contract Manager will be responsible for monitoring contract deliverables and performing the contract management tasks identified in the circular, which include but are not limited to:

- Developing a budget and a plan to manage the contract. In developing a budget, the Agency Contract Manager should consider any caps on the amount of federal funding that can be used for oversight and administrative expenses and ensure that the total costs for Integrity Monitoring services are reasonable in relation to the total amount of program funds being administered by the Recovery Program Participant;
- Daily management of the contract, including monitoring and administering the contract for the Recovery Program Participant;
- Communicating with the Integrity Monitor and responding to requests for meetings, information or documents on a timely basis;
- Resolving issues with the Integrity Monitor in accordance with contract terms;
- Ensuring that all tasks, services, products, quality of deliverables and timeliness of services and deliverables are satisfied within contract requirements;

- Reviewing Integrity Monitor billing and ensuring that Integrity Monitors are paid only for services rendered;
- Attempting to recover any and all over-billings from the Integrity Monitor; and
- Coordinating with the State Contract Manager regarding any scope changes, compensation changes, the imposition of liquidated damages, or use of formal dispute processes.

In addition to these oversight and administration functions, the Agency Contract Manager must ensure open communication with the Accountability Officer, the Recovery Program Participant leadership, the GDRO, and OSC. The Agency Contract Manager should respond to inquiries and requests for documents from the GDRO and OSC as requested.



State of New Jersey, COVID-19 Compliance and Oversight Taskforce

**Integrity Monitor Report
Category 3**

Integrity Monitor Firm Name: [Type Here]
Quarter Ending: [MM/DD/YYYY]
Expected Engagement End Date: [MM/DD/YYYY]

A. General Info

1. Recovery Program Participant:

[Type Here]

2. Federal Funding Source (e.g. CARES, HUD, FEMA, ARPA):

[Type Here]

3. State Funding Source (if applicable):

[Type Here]

4. Deadline for Use of State or Federal Funding by Recovery Program Participant:

[Type Here]

5. Accountability Officer:

[Type Here]

6. Program(s) under Review/Subject to Engagement:

[Type Here]

7. Brief Description, Purpose, and Rationale of Integrity Monitor Project/Program:

[Type Here]

8. Amount Allocated to Program(s) under Review:

[Type Here]

9. Amount Expended by Recovery Program Participant to Date on Program(s) under Review:

Integrity Monitor Report
Category 3

[Type Here]

10. Amount Provided to Other State or Local Entities:

[Type Here]

11. Completion Status of Program (e.g. planning phase, application review, post-payment):

[Type Here]

12. Completion Status of Integrity Monitor Engagement:

[Type Here]

B. Monitoring Activities

13. If FEMA funded, brief description of the status of the project worksheet and its support:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

14. Description of the services provided to the Recovery Program Participant during the quarter (i.e. activities conducted, such as meetings, document review, staff training, etc.):

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

Integrity Monitor Report
Category 3

15. Description to confirm appropriate data/information has been provided by the Recovery Program Participant and description of activities taken to review the project/program:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

16. Description of quarterly auditing activities conducted to ensure procurement compliance with terms and conditions of contracts and agreements:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

17. If payment documentation in connection with the contract/program has been reviewed, provide description.

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

18. Description of quarterly activity to prevent and detect waste, fraud, and/or abuse:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

**Integrity Monitor Report
Category 3**

[Type Here]

19. Details of any integrity issues/findings, including findings of waste, fraud, and/or abuse:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

20. Details of any other items of note that have occurred in the past quarter:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

21. Details of any actions taken to remediate waste, fraud, and/or abuse noted in past quarters:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

C. Miscellaneous

22. List of hours (by employee) and expenses incurred to perform quarterly integrity monitoring review:

a) IM Response

**Integrity Monitor Report
Category 3**

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

23. Add any item, issue, or comment not covered in previous sections but deemed pertinent to monitoring program:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

Name of Integrity Monitor:	[Type Here]
Name of Report Preparer:	[Type Here]
Signature:	[Sign Here]
Date:	[MM/DD/YYYY]

Integrity Monitoring - Price Sheet

Cell to be completed by Bidder

	Staffing Category	Hourly Billing Rate (\$)	Hours	Amount (\$)	Total Cost (\$)	Hourly Discounted Billing Rate (\$)	Amount (\$)	Total Cost (discounted) (\$)
Risk Assessment	Partner/Principal/Director			\$0.00	\$0.00		\$0.00	\$0.00
	Program Manager			\$0.00			\$0.00	
	Project Manager			\$0.00			\$0.00	
	Supervisory/Sr. Consultant			\$0.00			\$0.00	
	Consultant			\$0.00			\$0.00	
	Associate/Staff			\$0.00			\$0.00	
	Subject Matter Expert			\$0.00			\$0.00	
	Administrative Support			\$0.00			\$0.00	
			0					
Work Plan Development	Partner/Principal/Director			\$0.00	\$0.00		\$0.00	\$0.00
	Program Manager			\$0.00			\$0.00	
	Project Manager			\$0.00			\$0.00	
	Supervisory/Sr. Consultant			\$0.00			\$0.00	
	Consultant			\$0.00			\$0.00	
	Associate/Staff			\$0.00			\$0.00	
	Subject Matter Expert			\$0.00			\$0.00	
	Administrative Support			\$0.00			\$0.00	
			0					
On-going Monitoring	Partner/Principal/Director			\$0.00	\$0.00		\$0.00	\$0.00
	Program Manager			\$0.00			\$0.00	
	Project Manager			\$0.00			\$0.00	
	Supervisory/Sr. Consultant			\$0.00			\$0.00	
	Consultant			\$0.00			\$0.00	
	Associate/Staff			\$0.00			\$0.00	
	Subject Matter Expert			\$0.00			\$0.00	
	Administrative Support			\$0.00			\$0.00	
			0					
Reports	Partner/Principal/Director			\$0.00	\$0.00		\$0.00	\$0.00
	Program Manager			\$0.00			\$0.00	
	Project Manager			\$0.00			\$0.00	
	Supervisory/Sr. Consultant			\$0.00			\$0.00	
	Consultant			\$0.00			\$0.00	
	Associate/Staff			\$0.00			\$0.00	
	Subject Matter Expert			\$0.00			\$0.00	
	Administrative Support			\$0.00			\$0.00	
			0					
	Allowance for Travel Expenses and Reimbursement if on-site monitoring required				\$10,000.00			
	Total Cost (non-discounted)				\$10,000.00			
	Total Cost (if discounted)				\$10,000.00			

G4018 Integrity Monitoring Engagements

Vendor Name:

[illegible]

**GUIDANCE FOR THE CORONAVIRUS
CAPITAL PROJECTS FUND**
*FOR STATES, TERRITORIES & FREELY
ASSOCIATED STATES*

U.S. Department of the Treasury





GUIDANCE FOR THE CORONAVIRUS CAPITAL PROJECTS FUND FOR STATES, TERRITORIES & FREELY ASSOCIATED STATES

U.S. Department of the Treasury | September 2021

INTRODUCTION

The U.S. Department of the Treasury (Treasury) is issuing this guidance regarding the Coronavirus Capital Projects Fund (Capital Projects Fund), established by Section 604 of the Social Security Act (the Statute), as added by Section 9901 of the American Rescue Plan Act of 2021 (American Rescue Plan). This guidance provides a summary of project eligibility and terms and conditions, as well as information about the process for applying for a grant under the Capital Projects Fund program. This guidance may be updated, revised, or modified, and Treasury may waive these standards to the extent permitted by law.

The American Rescue Plan appropriated \$10 billion to Treasury to provide payments to States, territories, freely associated states, and Tribal Governments “to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19).” Treasury has separately published the allocations available to each eligible entity in accordance with Section 604(b), which is available at: treasury.gov/CPF.

Although this is not a competitive grant program, States, territories, and freely associated states must submit an Application and a Grant Plan; for Tribal Governments, the Application also serves as their Grant Plan.

The Capital Projects Fund allows for investment in high-quality broadband infrastructure as well as other connectivity infrastructure, devices, and equipment. Treasury encourages consultation with the statewide entity or office that oversees broadband planning and implementation, where such an entity or office exists, when planning for the use of Capital Projects Fund grant funding. In addition to supporting broadband, it also provides flexibility for each State, territory, freely associated state, and Tribal Government to make investments in other Capital Projects designed to directly enable work, education, and health monitoring and that meet Treasury’s other criteria. The Capital Projects Fund also provides flexibility for each Recipient to identify communities to be served by Capital Projects, so long as the Recipient can demonstrate that said communities have critical needs related to work, education, and health monitoring that the Capital Project intends to address.

Treasury expects many Recipients will choose to use Capital Projects Fund grant funding for Broadband Infrastructure Projects. The COVID-19 public health emergency highlighted that access to high-quality internet can enable work, education, and health access, and that individuals and communities that lack affordable access to such high-quality internet are at a marked disadvantage. Investing in broadband for communities sensitive to or that have historically experienced these inequities will be critical for improving digital equity and opportunity, especially in the case of communities that currently lack access to the affordable, reliable, high-quality broadband internet that is necessary for full participation in school, healthcare, employment, social services, government programs, and civic life.



I. AWARD TERMS AND CONDITIONS

This Section describes the overall structure and terms of the assistance, including key information on Eligible Applicants, allocations, Capital Projects eligible for funding, eligible and ineligible costs, labor practices, and the period of performance. This guidance is not intended to provide a comprehensive listing of the award terms and conditions. Such terms and conditions will be contained in the Grant Agreement.

A. ELIGIBLE APPLICANTS

Section 604 identifies States, certain territories and freely associated states, and Tribal Governments, as the entities eligible to apply for a Capital Projects Fund grant (“Eligible Applicants”).

- Eligible states (“States”) are each of the 50 states, the District of Columbia, and Puerto Rico.¹
- The seven eligible territories and freely associated states are the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.²
- An eligible Tribal government³ is the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).⁴ The State of Hawaii, for exclusive use of the Department of Hawaiian Home Lands and the Native Hawaiian Education Programs to assist Native Hawaiians, is also eligible to apply for funding under this funding category.

Capital Projects Fund Recipients may award funds to Subrecipients, such as other levels or units of government (e.g., municipalities or counties), non-profits, or private entities. For example, for Broadband Infrastructure Projects, Subrecipients may include co-operatives, electric utilities, and other entities that build or operate broadband networks, including networks that are owned, operated by, or affiliated with local governments.⁵

¹ Section 604(d)(2).

² Section 604(b)(1)(B).

³ Section 604(d)(3) of the Capital Projects Fund Statute provides that the term “Tribal government” has the same meaning given to the term in Section 602(g).

⁴ Available at <https://www.federalregister.gov/documents/2021/01/29/2021-01606/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>.

⁵ Subrecipients receive a subaward from a Recipient to carry out a Capital Project on behalf of the Recipient with the Recipient’s federal award funding. Recipients are responsible for monitoring and overseeing Subrecipients’ use of funds and other activities related to the award to ensure that the Subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients remain responsible for reporting to Treasury on their Subrecipients’ use of funds.



B. ALLOCATIONS

Section 604 provides for a total of \$10 billion for Treasury to make grants to Eligible Applicants to carry out critical Capital Projects and directs the Secretary of the Treasury to make grants to the Eligible Applicants in accordance with the allocation formula set forth in the Statute.

Treasury separately published on its website the allocations for each Eligible Applicant, along with the methodology used for implementing the statutory allocation formula. These documents can be accessed at: treasury.gov/CPF.

C. PROJECT ELIGIBILITY

Section 604 authorizes Capital Projects Fund Recipients to use Capital Projects Fund grant funds for critical Capital Projects that directly enable work, education, and health monitoring in response to the COVID-19 public health emergency. Such Projects include remote options.

For a Capital Project to be an eligible use of Capital Projects Fund grant funds, it must meet all of the following criteria:

1. The Capital Project invests in capital assets designed to directly enable work, education, and health monitoring.
2. The Capital Project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency.
3. The Capital Project is designed to address a critical need of the community to be served by it.

a) Presumptively Eligible Projects

- **Broadband Infrastructure Projects.** The construction and deployment of broadband infrastructure projects ("Broadband Infrastructure Projects") are eligible for funding under the Capital Projects Fund program if the infrastructure is designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical download and upload speeds of 100 Mbps. If it would be impracticable, because of geography, topography, or excessive cost, for a Broadband Infrastructure Project to be designed to deliver services at such a speed, the Project must be designed so that it reliably meets or exceeds 100 Mbps download speeds and between 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds. Treasury encourages Recipients to focus on projects that will achieve last-mile connections. Recipients considering funding middle-mile projects are encouraged to have commitments in place to support new and/or improved last-mile service.

Recipients are encouraged to prioritize investments in fiber-optic infrastructure where feasible, as such advanced technology better supports future needs. Treasury also encourages Recipients to prioritize Projects that involve broadband networks owned, operated by or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to generate profits and with a commitment to serving entire communities.

Treasury strongly encourages that the chief executive of the Eligible Applicant and/or the authorized representative consult with the statewide entity or office that oversees



broadband planning and implementation, where such an entity or office exists, when planning for the use of Capital Projects Fund grant funds.

Recipients are encouraged to address affordability as a barrier to full use of the internet when developing their Program Plans for Broadband Infrastructure Projects. Affordability of broadband is necessary to directly enable its use by all Americans. Therefore, when selecting Broadband Infrastructure Projects for Capital Projects Fund grant funding, Recipients are required to consider whether the broadband service options offered by recipients of Capital Projects Fund grant funding will be affordable to their target markets in the proposed service area. Recipients are also encouraged to consult with the community as part of the process they undertake to consider affordability and are required to publish the description of their process for considering affordability in their project selection process. Additionally, Recipients are encouraged to require that services provided by a Capital Projects Fund-funded Broadband Infrastructure Project include at least one low-cost option offered at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients will be required to report pricing data as part of program performance and monitoring.

Recipients are also required to ensure that the service provider for a completed Capital Projects Fund-funded Broadband Infrastructure Project participate in federal programs that provide low-income consumers with subsidies on broadband internet access services. Initially, Recipients will be required to ensure that completed service offerings funded by the Capital Projects Fund allow subscribers in the service area to utilize the Federal Communications Commission's (FCC) Emergency Broadband Benefit (EBB) program. Once the FCC's EBB program has terminated, Treasury will identify any other program(s) that service providers must participate in to meet this requirement. Treasury will not identify programs that would require the service provider to be designated as an eligible telecommunications carrier.

Investments in Capital Projects must be carried out in ways that comply with applicable federal laws, including the 2019 National Defense Authorization Act (NDAA). Among other requirements contained in 2 C.F.R. Part 200, 2 C.F.R. 200.216 implements certain provisions of the NDAA and contains prohibitions on the use of grant funds to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China. In addition, 2 C.F.R. 200.471 provides that certain telecommunications and video surveillance costs associated with 2 C.F.R. 200.216 are unallowable.

Recipients must explain why the communities they have identified to be served by Broadband Infrastructure Projects have a critical need for those projects as is related to access, affordability, reliability, and/or consistency. Additional discussion and explanation of critical needs can be found in Section I.C.c.3. Recipients are encouraged to prioritize projects that are designed to provide service to households and businesses not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed. To the extent Recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable wireline service at speeds of at least 100 Mbps of download speed and 20 Mbps of upload speed, the Recipient should ensure that the Capital Projects Fund grant funding will not be used for costs that will be reimbursed by the other federal or



state funding stream(s). That is, Capital Projects Fund grant funds must be used only for complementary purposes. Recipients must ensure there is additional public benefit and a justification for using additional public funding to deploy to those locations. Treasury encourages Recipients to use all available federal and state datasets when making these determinations.

When determining the communities to be served by Broadband Infrastructure Projects, Recipients may choose to consider any available data including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members and business owners, reports from community organizations, and any other information they deem relevant.

In evaluating such data, Recipients may take into account a variety of factors, including whether users actually receive internet service at or above speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make their user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier), and other factors related to the services to be provided by Broadband Infrastructure Projects. Recipients may consider the actual experience of current broadband customers when making their determinations; and whether there is a provider serving the area that advertises or otherwise claims to offer broadband at a given speed is not dispositive.

- **Digital Connectivity Technology Projects.** The purchase and/or installation of devices and equipment to facilitate broadband internet access are eligible for funding under the Capital Projects Fund program where affordability has been identified by the Recipient as a barrier to broadband adoption and use. Permitted devices and equipment include laptops, tablets, and desktop personal computers⁶ for distribution to members of the public through a short- or long-term loan program or to be made available for use in public facilities. Permitted equipment includes equipment installed as part of public wi-fi infrastructure (e.g., access points, repeaters, routers).

Ownership of the equipment must be maintained by the Recipient or a Subrecipient.

Recipients must explain why the communities they have identified to be served by Digital Connectivity Technology Projects have a critical need for those projects. Additional discussion and explanation of critical needs can be found in Section I.C.c.3.

When determining the communities to be served by Digital Connectivity Technology Projects, Recipients may choose to consider any available data including but not limited to documentation of existing broadband internet service performance and pricing; federal and/or state collected broadband data; user speed test results; federal and/or state collected data, such as the American Community Survey, the U.S. Department of

⁶ Devices, such as phones and televisions, that do not permit users to fully participate in work (e.g., by providing access to fully functional remote video conferences, and necessary work applications), school (e.g., by allowing full participation in remote video classrooms and group projects, as well as the ability to draft and edit complex writing assignments), and health monitoring activities would not qualify as eligible Digital Connectivity Technology Projects under the Capital Projects Fund program.



Commerce – National Telecommunications and Information Administration’s Indicators of Broadband Need Map, or the U.S. Department of Housing and Urban Development’s Qualified Census Tracts, related to internet use, device ownership, income, and poverty; interviews with community members and business owners; reports from community organizations; and any other information they deem relevant.

- **Multi-Purpose Community Facility Projects.** Projects to construct or improve buildings that are designed to jointly and directly enable work, education, and health monitoring are eligible for funding under the Capital Projects Fund program. Examples of Multi-Purpose Community Facility Projects are:
 - Projects to construct or improve full-service community schools that provide a comprehensive academic program to their students and adult education in the community at large; health monitoring to their students and the community; and workforce training or career counseling services that provide community members with the knowledge needed to engage in work, including digital literacy training programs.
 - Projects to construct or improve libraries that provide public access to the internet for purposes including work, education, and health monitoring such as offering digital skills programs and support for community members engaging in virtual learning.
 - Projects to construct or improve community health centers that, in addition to engaging in health monitoring, provide a broader range of services to the communities they serve, including activities such as access to job counseling employment services, as well as health education classes or internship programs for medical professionals.

Projects must be designed to jointly and directly enable work, education, and health monitoring, but these activities need not be the exclusive function or purpose of the Project. For example, a building, such as a library or community center providing the public with access to computers with high-speed internet service, can meet this criterion even if the completed Project is also used for other functions, such as community recreational activities.

Recipients must explain why the communities they have identified to be served by Multi-Purpose Community Facility Projects have a critical need for such projects.

When determining the communities to be served by Multi-Purpose Community Facility Projects, Recipients may choose to consider any available data, including, but not limited to federal and/or state collected data, such as the American Community Survey or the U.S. Department of Housing and Urban Development’s Qualified Census Tracts, related to internet use, device ownership, income, poverty, health, education, and employment; interviews with community members and business owners; reports from community organizations; documentation of existing facilities providing similar or identical services to those the Capital Project is intended to provide; and any other information they deem relevant.

Treasury will require Recipients to commit that the Capital Projects will provide services or activities that directly enable work, education, and health monitoring for at least five years from the completion of the Project.



b) Ineligible Projects and Projects Not Presumed to be Eligible

General infrastructure projects, such as highways, bridges, transit systems, and ports, are ineligible under the Capital Projects Fund program. General construction and improvement of hospitals and traditional schools are not presumed to be eligible, although, there may be opportunities for such projects to receive funding under the Capital Projects Fund program if they meet the project eligibility criteria. Such projects will be reviewed on a case-by-case basis.

c) Case-by-Case Review

In addition to the presumptively eligible Capital Projects described above, a Recipient may propose a different use of funds. Such a use must meet each of the statutory criteria. The Recipient must demonstrate that its Project satisfies the criteria below.

1. The Project invests in capital assets designed to directly enable work, education, and health monitoring.

Investments in Capital Assets

Capital Project or Project means the construction, purchase, and installation of, and/or improvements to capital assets⁷ where the costs of such assets are capitalized or depreciated, including ancillary costs necessary to put the capital asset to use.

Examples of capital assets include buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks. Examples of ancillary costs include project costs related to project planning and feasibility, broadband installation, and community engagement, broadband adoption, digital literacy, and training associated with a planned or completed Project funded by the Capital Projects Fund program.

Projects that are Designed to Directly Enable Work, Education, and Health Monitoring

A Capital Project is designed to directly enable all three activities (work, education, and health monitoring) if the Project is designed to, upon completion, be used by community members while engaged in work, education, and health monitoring or activities to obtain the knowledge or skills to engage in such activities.

Projects must directly enable all three activities of work, education, and health monitoring.

- **Work:** Activities to help community members engage in employment, search for employment, and/or develop the requisite skills and knowledge to become employed (e.g., participate in career counseling programs, workforce training programs, as well as gain access to internet websites to search for and apply to jobs).

A Project is not considered to directly enable work simply because individuals are

⁷ Treasury does not intend for the definition of capital assets, as defined under Uniform Guidance, to limit eligible investments under Capital Projects.



employed at the location of the completed Capital Project; rather, the asset itself must enable new and further employment opportunities beyond employment at the location of the completed Project. In addition, job creation related to project construction and operations (e.g., employment of construction workers) would not satisfy this requirement.

- **Education:** Activities to acquire knowledge and/or skills, undertaken as part of a person's participation in school, an academic program, extracurricular program, social-emotional development program for students or youths, internship, or professional development program, or in another educational environment.
- **Health Monitoring:** Services to monitor an individual's health, including with respect to either physical or behavioral health.

Health monitoring activities are often conducted as part of telemedicine appointments with a healthcare provider, but these activities can be conducted in a variety of other ways, such as during in-person appointments with health care providers or as part of community health screening programs.

Recipients must show that the Project is designed to jointly and directly enable work, education, and health monitoring; however, these activities need not be the exclusive function or purpose of the Project. For example, construction of a building, such as a community center or library providing the public with access to computers with high-speed internet service, can meet this criterion even if the completed Project is also used for other functions, such as community recreational activities.

To directly enable all three activities, the result of the Capital Project should be assets that offer affordable services or are otherwise publicly accessible (e.g., public wi-fi).

Directly Enabling Work, Education, and Health Monitoring after Completion of the Project

Project eligibility is defined by the services that the completed Projects are designed to provide. The exact services or activities may change over time, so long as the Capital Project directly enables all three activities of work, education, and health monitoring for at least five years from the completion of the Project.

2. The Project will be designed to address a critical need that results from or was made apparent or exacerbated by the COVID-19 public health emergency.

Projects must be designed to address impediments to community members' ability to directly engage in work, education, and health monitoring that resulted from or were made apparent or exacerbated by the COVID-19 public health emergency.

Recipients are expected to first identify one or more impediments to participation in work, education, and health monitoring that resulted from or were made apparent or exacerbated by the COVID-19 public health emergency and then identify how any such impediments would be remediated with the Project.

Recipients have broad latitude to identify the specific conditions and circumstances that have



impeded their community members' ability to access work, education, and health monitoring activities and services during the COVID-19 public health emergency and must be prepared to provide a description of such conditions and circumstances in their Grant Plan. Recipients are encouraged to solicit input from and engage with community members when identifying these circumstances and conditions.

Treasury recognizes that there are some common impediments that were experienced by communities across the country. As an example, potential exposures to the virus and public health mitigation measures have made safely accessing work, school, and health monitoring resources more difficult for many communities during the COVID-19 public health emergency. The pandemic laid bare the limitations on access to high-quality, affordable, and reliable internet experienced by many Americans, including individuals living in rural America, Tribal communities, and low- and moderate-income communities, and increased reliance on high-quality internet for access to services is expected to remain a feature of American life even after the pandemic subsidies. As such, Projects that enable remote access to services (e.g., Broadband Infrastructure Projects, public computer facilities) meet the requirement to remediate a need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency.

3. The Project is designed to address a critical need in the community to be served by it.

The Project must be designed to address a critical need for the Project in the community to be served by it. Communities with a critical need for the Project include those that do not have access to the resources or services that are provided by the Project, whether because of the physical absence or insufficiency within the community of the type of resources provided by the Project, or because access to those resources is unaffordable, resulting in impediment(s) to participation in work, education, and health monitoring that were caused or exacerbated by the COVID-19 public health emergency.⁸

Recipients have broad latitude to identify communities with a critical need for a Capital Project. In assessing whether a community has such a need, Recipients may consider the existing capacity, service quality, and ability to meet any relevant health, safety, or performance standards for the relevant service to be provided.

Recipients are strongly encouraged to consider individuals and communities in greatest need in identifying communities to be served by a Capital Project.⁹ Historically disadvantaged communities have experienced disproportionately poor work, education, and health outcomes, in part due to lack of access to equitable resources and opportunities in these areas.

When determining the individuals and communities with a critical need that will be served by a proposed Capital Project, Recipients may choose to consider any available data including federal and/or state collected data; interviews with community members and business owners; reports from community organizations; documentation of existing facilities providing similar or identical services to those the Capital Project is intended to provide; and any other information they deem

⁸ Tribal Governments may identify communities with a critical need that are or are not located on Tribal lands.

⁹ Targeting relief is in line with Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," which laid out an Administration-wide priority to support "equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."



relevant.

D. ELIGIBLE AND INELIGIBLE COSTS

Allowable costs are determined in accordance with the cost principles identified in 2 C.F.R. Part 200, Subpart E.¹⁰ Federal funds committed to an award may only be used to cover allowable costs incurred during the period of performance and for allowable closeout costs incurred during the grant closeout process. Cost sharing is not a requirement for the use of these funds.

a) Program Administrative Costs

Absent Treasury's express consent, Program Administrative Costs over the period of performance may not exceed the greater of five (5) percent of the total amounts of the grant received under the Capital Projects Fund, or \$25,000. The five percent limitation on administrative expenses includes the combined total of indirect costs and direct administrative costs charged to an award. The term "Program Administrative Costs" is defined as the costs of administering the Capital Projects Fund grant funding by a Recipient, providing technical assistance to potential Subrecipients, and complying with grant administration and audit requirements. Recipients may request a higher limit on Program Administrative Costs by providing a rationale for the use of additional funds for administrative purposes.

Consistent with 2 C.F.R. 200.414(f), Recipients that do not have a current negotiated indirect cost rate may elect to charge indirect costs to an award pursuant to a de minimis rate of up to ten percent of modified total direct costs (MTDC) for program administration, in which case a negotiated indirect cost rate agreement is not required.

Recipients may use their negotiated cost rate agreement so long as the total of all administrative costs incurred by the Recipient and any subrecipient, whether direct or indirect costs, do not exceed any applicable limit on Program Administrative Costs.

As described in 2 C.F.R. 200.403, costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both.

b) Project Costs

A Recipient may use funds to cover costs incurred during the period beginning March 15, 2021, for one or more eligible Projects. For pre-award costs incurred after March 15, 2021, but prior to execution of the Grant Agreement, Recipients are required to provide reasonable assurance that the costs were incurred pursuant to the negotiation of and in anticipation of the Capital Projects Fund award and are necessary for the efficient and timely performance of the Project. Such costs are allowable only to the extent they would have been allowable if incurred after the date of the Capital Projects Fund award and only with the written approval of Treasury.

Project costs are not limited to new construction. For example, Project costs can involve

¹⁰ The government has established a set of principles for determining eligible or allowable costs. Allowable costs are determined in accordance with the cost principles applicable to the entity incurring the costs. For example, the allowability of costs incurred by State, local or Tribal Governments is determined in accordance with the provisions of 2 C.F.R. Part 200, Subpart E.



improvements and repairs to buildings to permit the buildings to be used for eligible purposes.

Eligible Project Costs. Below is a non-exhaustive list of eligible costs:

- Costs associated with completing the grant or Application and Grant Plan;
- Pre-project development costs and uses, including data-gathering, feasibility studies, community engagement and public feedback processes, equity assessments and planning, and needs assessments; permitting, planning, architectural design, engineering design, and work related to environmental, historical, and cultural reviews;
- Costs of repair, rehabilitation, construction, improvement, and acquisition of real property, equipment (e.g., devices and office equipment), and facilities (e.g., telecommunications equipment, including infrastructure for backhaul, middle, and last mile networks);
- Cost of long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements and capital leases;
- Personnel costs including salaries and fringe benefits for staff and consultants required for carrying out a Capital Project (such as project managers, program directors, subject matter experts, equity consultants, grant administrators, financial analysts, accountants, and attorneys);
- Ancillary costs necessary to operationalize and put the capital assets to full use, including costs to increase broadband adoption and improve digital literacy;
- Costs associated with monitoring of and reporting on Projects in compliance with Treasury requirements, including award closeout costs;
- Costs associated with collecting and measuring performance data and conducting activities needed to establish and maintain a performance management and evaluation regime related to Projects funded by the Capital Projects Fund program.

Ineligible Project Costs. Unless otherwise permitted by Treasury, Capital Projects Fund grant funds may not be used for the following purposes:

- Acquisition of spectrum licenses;
- Operating expenses, other than grant administration costs;
- Short-term operating leases;
- Payment of interest or principal on outstanding debt instruments, or other debt service costs incurred prior to March 15, 2021;
- Fees or issuance costs associated with the issuance of new debt;
- Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or
- To support or oppose collective bargaining. This does not affect the ability to use funds to comply with 41 C.F.R. 60-1.4.

E. STRONG LABOR PRACTICES IN CONSTRUCTION

It is important that investments in Capital Projects be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Projects funded by the Capital Projects Fund must comply with all applicable federal laws and regulations, and with all requirements for state, local, and Tribal laws and ordinances to the extent that such requirements



do not conflict with federal laws.

While the federal Davis-Bacon Act prevailing wage rate requirements do not apply to Projects funded solely by the Capital Projects Fund program, except for Capital Projects Fund-funded construction Projects undertaken by the District of Columbia,¹¹ Treasury encourages Recipients to ensure that Capital Projects incorporate strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries. Treasury further encourages Recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws as a further measure that may minimize project disruptions and delays.

Among other requirements contained in 2 C.F.R. 200, Appendix II, all contracts made by a Recipient or Subrecipient in excess of \$100,000 that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). And as noted below in Section III.C, Treasury will seek information from Recipients on their workforce plans and practices related to Capital Projects Fund Projects, as well as information about subcontracted entities.

Further, Treasury encourages Recipients to prioritize in their procurement decisions employers who can demonstrate:

- Their workforce meets high safety and training standards, including professional certification, licensure and/or robust in-house training;
- Prioritization in hiring of local workers and/or workers from historically disadvantaged communities;
- Direct employment of their workforce, or policies and practices in place to ensure contractors and subcontractors meet high labor standards; and
- No recent violations of federal and state labor and employment laws.

F. PERIOD OF PERFORMANCE

All funds must be expended by December 31, 2026, which is the end of the period of performance. Recipients must return to Treasury any grant funds that are not used by the end of the period of performance on December 31, 2026. Treasury may, in its sole discretion, grant extensions to the period of performance upon request from Recipients.

¹¹ Neither the Davis-Bacon Act nor Davis-Bacon Act related provisions requirements apply to projects funded solely with award funds from the Capital Projects Fund, except for Capital Projects Fund-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (Capital Projects Fund or otherwise) to enter into contracts over \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be subject to the requirements of the Davis-Bacon Act, when Capital Projects Fund grant funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as “baby Davis-Bacon Acts”) may apply to projects.



II. GRANT PROCESS FOR STATES, TERRITORIES & FREELY ASSOCIATED STATES

This section provides a summary of the steps for states, territories, and freely associated states to access Capital Projects Fund grant funds. The process for requesting Capital Projects Fund grant funding involves three main steps, described in detail below.

1. Submission of an Application to Treasury establishing Applicant eligibility.
2. Execution of a Grant Agreement with Treasury.
3. Submission of Grant Plans to Treasury, which will be used by Treasury to assess proposed use of funds for alignment with Capital Projects Fund objectives and requirements.

A. REQUIREMENTS

For an Application and Grant Plan to be approved, each Applicant must:

- Demonstrate that it is an Eligible Applicant;
- Demonstrate that funds will be used for eligible Capital Projects, including how the funds will address critical needs of the communities to be served;
- Provide a Grant Plan for use of the funds;
- Demonstrate that program performance will be measured in a robust manner, measuring outputs and outcomes for Projects and Programs, through a program evaluation plan;
- Comprehensively respond to all Application and Grant Plan requirements; and
- Provide additional information as required by Treasury.

B. APPLICATION CONTENTS

a) Requested Grant Amount

Eligible Applicants must specify the amount of Capital Projects Fund grant funding that they wish to receive, not to exceed their allocated amount (see Section I.B above). Eligible Applicants may request this amount or a smaller amount and may reduce their requested amount at a later date. However, Eligible Applicants may not increase their total requested amount after 365 days following the date that Treasury begins accepting Applications via the Capital Projects Fund Portal (“Capital Projects Fund Portal Launch”).

b) Requested Amount for Program Administrative Costs

Eligible Applicants must specify the amount of Capital Projects Fund grant funding for Program Administrative Costs that they wish to have access to following execution of the Grant Agreement. This amount may not generally exceed five percent of the total requested grant amount, or \$25,000, whichever is greater. Recipients may request a higher limit on Program Administrative Costs by providing a rationale for the use of additional funds for administrative purposes. If Eligible Applicants request less than five percent of the total grant amount at the time of their Application, they may request the remaining amount at a later date.

c) Designation Letter

If applicable, the Application must include a designation letter signed by the chief executive of the Eligible Applicant (e.g., State Governor) that identifies and delegates authority, as appropriate, to an authorized representative. The authorized representative is the individual who will sign the



necessary certifications, submit the Application, and sign the Grant Agreement on behalf of the Eligible Applicant.

d) Points of Contact

The authorized representative may designate one or more points of contact to communicate with Treasury regarding the Capital Projects Fund Application and Grant Plans.

e) Eligibility and Payment Information

The Eligible Applicant must provide their IRS Employer Identification Number (EIN), and their Dun & Bradstreet D-U-N-S Number, a unique nine-digit identification number linked to the Eligible Applicant's physical location. Eligible Applicants will also be required to provide bank account information necessary to make Capital Projects Fund grant payments, and may be asked to provide additional information to allow Treasury to establish eligibility.

C. SUBMITTING APPLICATIONS

Accessing the Capital Projects Fund Portal. To gain access to the Capital Projects Fund Portal and submit an Application, the authorized representative and/or points of contact (see Section II.B.c and Section II.B.d), as appropriate, must have a registered username and password through the ID.me identity verification service. ID.me is an approved Treasury service provider. ID.me registration requires a one-time identity verification process that involves validation of multiple forms of identification (e.g., passports) using a mobile phone camera. All personally identifiable information provided to ID.me is encrypted and disclosed only with the express consent of the user. Users who are not able to validate their identity using ID.me should contact the Capital Projects Fund (see Section V).

Application Form. Applications will only be accepted through the Capital Projects Fund Portal, accessible at: <https://portal.treasury.gov/>. A .pdf sample of the Application content will be available on the Treasury website at: treasury.gov/CPF.

Application Deadline. Eligible Applicants must complete the Application by December 27, 2021 to receive funding under the Capital Projects Fund. Treasury will post the specific dates on its website during which it will accept Capital Projects Fund Applications. Failure to submit a timely Application may result in the forfeiture of grant funds. Eligible Applicants have additional time, as outlined in Section II.F, to submit subsequent detailed Grant Plans.

Eligibility. Only eligible entities may apply, and only one Application shall be accepted from each eligible entity. Eligible Applicants should coordinate internally to ensure that only one Application is submitted.

D. EXECUTION OF AGREEMENTS

Treasury Determinations. Treasury will review Applications for completeness and Applicant eligibility. Treasury will also review additional required or requested material as well as any other reasonable supplementary information submitted by Eligible Applicants. Treasury may consult with other U.S. Government agencies in reaching its Application determinations, but final determinations will be at Treasury's sole discretion.



Grant Agreements. Once Treasury has validated Application completeness and Applicant eligibility, the Eligible Applicant's authorized representative (see Section II.B.c) will execute a Grant Agreement. The Grant Agreement will, among other things, contain terms and conditions related to the following:

- Roles and responsibilities;
- Grant payments;
- Eligible uses of funds (see Section I.C.);
- Period of performance, which ends on December 31, 2026;
- Accounting and reporting requirements;
- Compliance requirements and remedies for noncompliance, including but not limited to return of funds where appropriate;
- Audits, recordkeeping, and internal controls; and
- Other terms required or permitted by federal law.

E. PAYMENT OF FUNDS FOR PROGRAM ADMINISTRATIVE COSTS

After executing a Grant Agreement, Recipients will have access to the amount of funds requested in the Application for Administrative Costs, in an amount up to five percent of the total amount of the grant, or \$25,000, whichever is greater (unless Treasury has specifically authorized a higher amount). If an Eligible Applicant requested less than five percent of the total grant amount at the time of its Application, it may request the remaining amount at a later date.

F. GRANT PLAN CONTENTS

Recipients must submit a plan for deploying Capital Projects Fund grant funding (the Capital Projects Fund Grant Plan or Grant Plan) within 365 days of the Capital Projects Fund Portal Launch, providing information on the Recipient's intended uses of Capital Projects Fund funds. Recipients will be able to submit Grant Plans requesting funding up to the amount that was stated in their Application (see Section II.B.a). Treasury may publicly share information from the Grant Plan.

A Grant Plan will consist of an executive summary, an Allocation Table showing the broad categories of Capital Projects the Recipient seeks to undertake using Capital Projects Fund grant funds (e.g., Broadband Infrastructure Projects, Digital Connectivity Technology Projects, Multi-Purpose Community Facility Projects) and how much the Recipient intends to spend on each such category, and one or more Program Plans. Each Program Plan is intended to provide more detailed information on a particular type of Capital Project(s) the Recipient intends to undertake, and constitutes an Eligible Applicant's request for funding for those Capital Projects. For example, a State might file a Grant Plan that indicates that it intends to spend funding on broadband deployment throughout the State, and a Program Plan that provides detailed information on its deployment plan for only some of the counties in the State. Later, it could file Program Plans detailing its deployment plans for other counties in the State.

After submitting a Grant Plan, that includes at least one Program Plan, Recipients may submit additional Program Plans on a rolling basis throughout the 365-day submission window so that Recipients can seek funding for a particular Capital Project (or Projects) when the Recipient is ready. Treasury will assess and approve each Program Plan separately and will separately provide access to funds for each Program Plan when approved. For example, a Recipient with



two Program Plans may submit, receive Treasury approval, and have access to funds for one Program Plan in December 2021, and then submit, receive Treasury approval, and have access to funds for the second Program Plan in March 2022.

Recipients should reference the Capital Projects Fund Portal for specific instructions and required information.

G. SUBMITTING CAPITAL PROJECTS FUND GRANT PLANS

Grant Plan Submission. Recipients will submit Grant Plans by logging into the Capital Projects Fund Portal (see Section II.C for full access instructions).

Grant Plan Deadline. After Capital Projects Fund Portal Launch, the Capital Projects Fund Portal will be open for 365 days for Recipients to submit Grant Plans. To be considered, complete Grant Plans must be submitted through the Capital Projects Fund Portal by this deadline, after which the Capital Projects Fund Portal will be closed to new Grant Plans. The deadline will be posted on the Capital Projects Fund website at the address provided below at Section V. Treasury will not consider Grant Plans submitted after the deadline, including any draft Grant Plans in the Capital Projects Fund Portal that were not completed and submitted by the deadline. Funding for Programs (as described the Recipient's Allocation Table) for which no complete Program Plan is received by the deadline will be considered forfeited by the Recipient, unless Treasury, in its sole discretion, grants a deadline waiver.

Updating Grant Plans. Recipients may submit updates to Grant Plans, or portions thereof (i.e., Allocation Table and Program Plans) through the Capital Projects Fund Portal. Updates to Grant Plans will be subject to review and approval by Treasury.

H. REVIEWING GRANT PLANS

Treasury Determinations. Treasury will review Grant Plans for completeness and consistency with Capital Projects Fund requirements (Recipient eligibility will be assessed during review of the Application (see Section II.D)). Treasury will review Grant Plans, including additional required or requested material, and any other reasonable supplementary information submitted by Recipients to assess whether the Recipient will fulfill the requirements and objectives of the Capital Projects Fund. Treasury may consult with other U.S. Government components in reaching its determinations, but final Grant Plan determinations will be at Treasury's sole discretion.

Each Program Plan will be evaluated for alignment with Capital Projects Fund requirements and will be assessed independently from the Recipient's other Program Plans. Treasury may review and approve Grant Plans in whole or in part.

Grant Plan Reviews and Approvals. If Treasury approves a Grant Plan only in part, the Recipient will be provided an opportunity to provide further information or address deficiencies identified by Treasury. Treasury may also return a Grant Plan to the Recipient with recommendations for improvement and resubmission to Treasury for reconsideration. Treasury may, in its discretion, allow Grant Plan deadline extensions for those plans undergoing remediation related to consistency with project eligibility criteria. It is the Recipient's responsibility to be responsive to Treasury communications and submit complete and accurate information by the stated deadlines to receive timely consideration and a definitive response. Failure to comply with Treasury's deadlines and information requests could jeopardize access to full Capital Projects Fund grant



funding.

Timing of Reviews. Following Capital Projects Fund Portal Launch, Treasury will review Grant Plans upon receipt. Recipients are encouraged to submit Grant Plans as soon as possible after the Capital Projects Fund Portal Launch to expedite Treasury review and subsequent access to funds.

I. PROGRAM PAYMENTS

After Treasury approves a Grant Plan in whole or in part, Treasury will inform the Recipient of the schedule for payments to the Recipient for purposes of the approved portions of the plan. The amounts, timing, and conditions of such payments will be determined by Treasury in its sole discretion.

J. APPLICATION AND GRANT PLAN ASSISTANCE

Treasury is available to answer questions about the grant process and the Capital Projects Fund in general; e-mail correspondence is preferred. The Capital Projects Fund program contact information is provided below at Section V. Treasury may also host webinars and post FAQs on its website.



III. OTHER REQUIREMENTS

This Section provides a summary of other requirements that Recipients must meet, including construction, reporting, and compliance requirements. Treasury will release detailed reporting and compliance requirements soon after the Capital Projects Fund Portal Launch.

A. PUBLIC REPORTING

Treasury is required by transparency laws to disclose the names of Capital Projects Fund Recipients and the amounts of Capital Projects Fund grants, and Treasury may disclose other information provided by Recipients in their Applications or Grant Plans to the public. Treasury will post this information on its website and report this information on the usaspending.gov website, which allows the public to see how the federal government has distributed COVID-19 relief funding.

B. COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

Projects funded by the Capital Projects Fund must comply with all applicable federal environmental laws. Generally, the National Environmental Policy Act does not apply to Projects funded by the Capital Projects Fund.¹² Prior to funding a Capital Project, Recipients may complete an environmental checklist, to be made available on the Capital Projects Fund website, to determine whether certain environmental laws apply. Generally, Capital Projects that do not involve construction activities will not be subject to federal environmental review requirements.

Projects must reach substantial completion before December 31, 2026. Substantial completion is defined as the date for which the Project can fulfill the primary operations that it was designed to perform, delivering services to end-users. At substantial completion, service operations and management systems infrastructure must be operational. Recipients may request extensions beyond this timeframe to the extent that factors outside of the Recipient's control have impacted Project delivery timelines. Treasury will approve extension requests on a case-by-case basis.

C. REPORTING

In general, Recipients will be responsible for satisfying the following reporting requirements:

- *Project and Expenditure Reports* submitted quarterly to Treasury that include data regarding Projects, expenditures, Project status, subawards, civil rights compliance, equity indicators, community engagement efforts, programmatic data such as geospatial data for Broadband Infrastructure Projects, and other measures as determined by Treasury. To provide public transparency on whether Projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from Recipients on their workforce plans and practices related to Capital Projects Fund Projects, as well as information about subcontracted entities.
- *Performance Reports* submitted on an annual basis and demonstrating the outcomes of the Capital Projects Fund-financed grant programs. Reports must include data related to Project and Program outputs and outcomes against the stated objectives of the Recipient's Grant Plan. Costs associated with collecting and measuring performance data and

¹² Projects supported with payments from the Capital Projects Fund may still be subject to NEPA review if they are also funded by or otherwise involve actions from other federal programs or agencies.



conducting activities needed to establish and maintain a performance management and evaluation regime, including program evaluations¹³ conducted in support of Performance Report requirements, are eligible under the Capital Projects Fund.

Treasury will release detailed reporting guidance soon after the Capital Projects Fund Portal Launch.

D. OVERSIGHT

Recipients and Subrecipients will be subject to audit or review by the Treasury Inspector General and Government Accountability Office.

E. APPLICATION OF UNIFORM GUIDANCE

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 apply to the Capital Projects Fund grant, except for any provisions Treasury may determine are inapplicable to an award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

F. SANCTIONS

In the event of a Recipient's noncompliance with applicable law or Capital Projects Fund program requirements or guidance, Treasury may impose additional conditions on the receipt of additional Capital Projects Fund funds by the Recipient, terminate further payments from the Capital Projects Fund, seek the repayment of previous Capital Projects Fund payments, or take other available remedies pursuant to 2 C.F.R. 200.339.

G. CONFIDENTIALITY OF ELIGIBLE APPLICANT INFORMATION

Treasury may publicly share information from the Application. Eligible Applicants are encouraged not to include any confidential or proprietary information in their Applications. If any such information is included, Eligible Applicants must identify and label it.

H. CIVIL RIGHTS COMPLIANCE

Recipients of federal financial assistance from Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of federal funds. Those requirements include ensuring that entities receiving federal financial assistance from Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23.

¹³ For additional information on example program evaluation standards and practices, please see OMB M-20-12, available at: <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-12.pdf>.



In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from Recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 C.F.R. part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 C.F.R. part 42, provide for the collection of data and information from Recipients (see 28 C.F.R. 42.406). Treasury may request that Recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.

I. COMPLIANCE WITH APPLICABLE LAWS

Recipients are responsible for complying with all applicable federal, Tribal, and state laws.



IV. DEFINITIONS

Treasury will apply the following definitions for purposes of this guidance. These definitions supplement and interpret certain terms in Section 604(b) of the Statute. Terms not defined herein shall have the definitions contained in Uniform Guidance

- (a) “Allocation Table” means a summary of all contemplated funding sources and uses for Program funded with Capital Projects Fund grant funding.
- (b) “Application” means the form hosted on the Capital Projects Fund Portal where Applicants will demonstrate eligibility, provide information, and respond to requirements necessary for receiving a Capital Projects Fund Grant.
- (c) “Broadband Infrastructure Project” has the meaning set forth in Section I.C.a.
- (d) “Capital Project” or “Project” has the meaning set forth in Section I.C.c.
- (e) “Capital Projects Fund Grant Plan” or “Grant Plan” means a plan for deploying Capital Projects Fund grant funding that is submitted by a Recipient as part of the request for funding.
- (f) “Capital Projects Fund Portal” means the electronic submissions portal where Eligible Applicants can submit their Application, Capital Projects Fund Grant Plan, and other information necessary to receive a Capital Projects Fund award. The Capital Projects Fund Portal may be reached at: <https://portal.treasury.gov/>.
- (g) “Capital Projects Fund Portal Launch” means the date at which Treasury begins accepting Applications via the Capital Projects Fund Portal to receive Capital Projects Fund grant funding.
- (h) “Digital Connectivity Technology Project” has the meaning set forth in Section I.C.a.
- (i) “Eligible Applicant” has the meaning set forth in Section I.A.
- (j) “Grant Agreement” means the standardized agreement executed between the Eligible Applicant’s authorized representative and Treasury that outlines the terms and conditions of the funds, reporting and recordkeeping, and other requirements.
- (k) “Multi-Purpose Community Facility Project” has the meaning set forth in Section I.C.a.
- (l) “Program” means one or more Capital Projects with common characteristics (e.g., a group of Multi-Purpose Community Facility Projects that directly enable work, education, and health monitoring) for which an Eligible Applicant is seeking funding under the Capital Projects Fund.
- (m) “Program Administrative Cost” means the costs incurred by a Recipient related to the administration of Capital Projects Fund awards, the provision of technical assistants to potential Sub-recipients, and compliance with grant administration and audit requirements.
- (n) “Program Plan” means a plan submitted by a Recipient containing a description of a



Program for which the Recipient is seeking funding under the Capital Projects Fund.

- (o) “State” has the meaning set forth in Section I.A.
- (p) “Statute” means Section 604 of the Social Security Act.
- (q) “Treasury” means the U.S. Department of the Treasury.
- (r) “Tribal Government” means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131) and the State of Hawaii (for exclusive use of the Department of Hawaiian Home Lands and the Native Hawaiian Education Programs to assist Native Hawaiians).
- (s) “Uniform Guidance” means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located in Title 2 of the Code of Federal Regulations (2 C.F.R. 200).



V. CONTACT INFORMATION

E-mail correspondence is preferred. Correspondence by mail may be subject to significant delays.

CapitalProjectsFund@treasury.gov

U.S. Department of the Treasury Attn: **Capital Projects Fund**
1500 Pennsylvania Ave NW
Washington, DC 20220

<https://www.treasury.gov/CPF>



AGREEMENT
BETWEEN
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
AND
DOBCO, INC.
FOR
DESIGN-BUILD SERVICES

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THIS AGREEMENT is made and entered into this 26th day of July 2022 (the "Effective Date") between the New Jersey Schools Development Authority (the "Authority"), having an office located at 32 E. Front Street, Trenton, New Jersey 08625-0991, and Dobco, Inc. (the "Design-Builder"), a New Jersey corporation with its principal place of business at One Geoffrey Way, Wayne, NJ 07470.

The Design-Builder, 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 and Work necessary to accomplish the Project identified as:

Agreement Number: HU-0029-B01

Project Name: Union City - New Grade 7 through 9 School

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

Provided that the Design-Builder performs all of the Work and 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 the Design-Builder an amount not to exceed the Guaranteed Maximum Price as set forth in Section 9.1 of this Agreement.

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

[SIGNATURES ON THE FOLLOWING PAGE]

NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY

Witness Sean Murphy Digitally signed by Sean Murphy
Date: 2022.07.26 15:26:15 -04'00'

Witness [Signature]

By: Donald Guarriello Digitally signed by Donald Guarriello
Date: 2022.07.26 15:16:23 -04'00'

Title: Vice President & CFO

DOBCO, INC.

By: Daniel Mladenovic

Title: President

Sworn to and subscribed
before me this 30 day
of June, 2022.
Teresa A. Romeo
Teresa A. Romeo
(Print Name), # 2413516
State of New Jersey

My Commission expires
on October 14, 2026



1.0 DEFINITIONS

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

- 1.1 “Agreement” or “Contract” means this agreement, including all appendices and all documents specifically incorporated herein, between the Authority and the Design-Builder, as such agreement may be modified by Amendment.
- 1.2 “Amendment” means a written modification to this Agreement executed by the Authority and the Design-Builder.
- 1.3 “Authority” or “New Jersey Schools Development Authority” means the public body corporate and politic established in, but not of, the Department of Treasury pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:7G-1 et seq.
- 1.4 “Authority Having Jurisdiction” means any applicable local, State, national or Federal organization, office or entity responsible for enforcing a code or standard, or for approving equipment, materials, an installation or a procedure.
- 1.5 “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:

<https://www.njsda.gov/NJSDA/Governance/OperatingAuthority>
- 1.6 “Certificate of Occupancy” means the document permitting legal occupancy of a building, issued to the Design-Builder by the Department of Community Affairs.
- 1.7 “Certified Clean Fill” means fill that is used for remedial purposes which is: 1) supported by analytical testing data and analysis demonstrating that the fill material does not contain constituents of concern in excess of NJDEP Soil Remediation Standards; or 2) supported by documentation in accordance with NJDEP Technical Requirements for Site Remediation (N.J.A.C. 7:26E and the NJDEP Fill Material Guidance for SRP Sites, April 2015, Version 3.0. This documentation shall be in the form of a written certification provided by the supplier of the fill stating: (a) that the fill is clean, virgin material from a commercial or non-commercial source, or is decontaminated recycled soil; (b) the name of the affiant and relationship to the source of the fill; the location where the fill was obtained, including the street, town, lot and block, county, and state, and a brief history of the site which is the source of the fill; and (c) a statement that to the best of the affiant's knowledge and belief the fill being provided is not contaminated pursuant to any applicable remediation standards and a description of the steps taken to confirm such.

- 1.8 “Change Order” means a written order, directing or authorizing a change in the scope of the Work or Services executed by the Authority and the Design-Builder which shall include adjustments, if any, to the GMP and extensions, if any, to the Contract Time.
- 1.9 “Change in the Services and/or Work” means a change in the Services, Work or the Design-Build Contract Documents, including, but not limited to, an increase or decrease in the scope of the Services or Work, or an acceleration of time for the performance of the Services or Work, or a change in the sequence in which the Services or Work is to be performed.
- 1.10 “Claim” means a demand by the Design-Builder for (1) a time extension which is disputed by the Authority or (2) the payment of money or damages, arising from Services or Work performed by or on behalf of the Design-Builder in connection with the Design-Build Contract Documents, which is disputed by the Authority.
- 1.11 “Commencement Date” or “Initial NTP Date” means the date set forth in the Notice to Proceed on which the Design-Builder is authorized to commence performing its Design Services pursuant to this Agreement and the Design-Build Contract Documents.
- 1.12 “Commissioning Agent” means the person, persons or firm engaged by the Design Builder to provide commissioning services for the Project.
- 1.13 “Construction Documents” means the plans, Specifications and other documents prepared by the Design-Builder as Final Design Documents and accepted by the Authority, which documents set forth in detail the design for, and other necessary requirements relating to, the construction of the Project, based on the requirements set forth in the Design-Build Contract Documents. The Construction Documents shall be consistent with the Design-Build Contract Documents.
- 1.14 “Construction Manager” or “CM” means the person, persons or firm, if any, 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 (Special Conditions), by the Effective Date of this Agreement or by other means if such is engaged during the Term. In the event that the Authority elects to not engage a Construction Manager for the Project, the term “Construction Manager” shall be understood to refer to the Authority’s identified Project representative.
- 1.15 “Construction Work” or “Work” means the portion of the obligations of the Design Builder in which the Design-Builder constructs the Project in accordance with the terms of the Design-Build Contract Documents.
- 1.16 “Contract Change Directive” or “CCD” means a written order by the Authority directing or authorizing some change to the Design-Build Contract Documents, Services or Work for which change compensation and/or Contract Time extension, if

appropriate, has not yet been determined. Upon agreement on Compensation and/or Contract Time extension, for a CCD, if any, a Change Order shall be issued resolving the CCD.

- 1.17 “Contract Change Request” or “CCR” means a written request by the Design-Builder for an adjustment to the GMP, a modification to the Design-Build Contract Documents or an extension of Contract Time.
- 1.18 “Contract Price” means the lump sum compensation amount stated in Section 9.1, as it may be adjusted in accordance with this Agreement, representing the total amount payable by the Authority to the Design-Builder for performance of the Design-Builder’s Services and Work under the Agreement.
- 1.19 “Contract Time” means the number of calendar days specified in the Design-Build Contract Documents within which the Design-Builder is required to complete the Services and Work pursuant to this Agreement.
- 1.20 “Contract Milestones” mean the dates identified in the Project Schedule by which the Design-Builder must complete certain critical activities in advancement of the Project.
- 1.21 “Day” means calendar day, unless otherwise specifically defined.
- 1.22 “DCA” means the New Jersey Department of Community Affairs.
- 1.23 “DCA Building Permit” means the building permit issued by DCA pursuant to the New Jersey Uniform Construction Code.
- 1.24 “Deliverables” means any documents required to be produced by, or work product generated by, the Design-Builder pursuant to the Design-Build Contract Documents.
- 1.25 “Design-Build Contract Documents” means this Agreement executed between the Authority and the Design-Builder governing the design and construction of the Project, together with the Design-Build Information Package, Special Conditions (if any), Request for Qualifications and Request for Proposals, and Addenda, the Authority’s Design Manual and Safety Manual, the Statement of Joint Venture if the Design-Builder is a Joint Venture, any Change Orders, or other Amendments to this Agreement, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials, setting forth the obligations of the Design-Builder with respect to the design and construction of the Project.
- 1.26 “Design-Build Information Package” means all documents setting forth the requirements and criteria for the design and construction of the Project and include, but are not limited to, the Procedural Specifications, Prescriptive Specifications, Performance Specifications, and drawings prepared by the Authority for the Project, the Educational Specifications, the Authority’s Materials and Systems Standards, environmental and site conditions information, and any other technical information

included within the Request for Qualifications, Request for Proposals and any Addenda thereto.

- 1.27 “Design-Build Information Package Clarification” or “DBIP Clarification” means a document issued by the Authority, either in response to an RFI or issued independently from the RFI process, which is intended to make some requirement of the Design-Build Information Package clearly understood, through the use of drawings, sketches, diagrams or a narrative.
- 1.28 “Design-Builder” means the firm or firms, jointly and severally in the event that this contract is awarded to a Joint Venture subject to the Statement of Joint Venture (if applicable, attached as Appendix F to this Agreement), engaged by the Authority to design and construct the Project in accordance with the requirements of the Design-Build Contract Documents. Any and all references to the term “Contractor” in the Design-Build Contract Documents shall mean the Design-Builder as such term is defined in this Agreement.
- 1.29 “Design-Builder’s Design Consultant” or “Design Consultant” means the architect engaged by or affiliated with the Design-Builder to provide design services in connection with the design and construction of the Project, as more specifically described in the Design-Build Contract Documents.
- 1.30 “Design-Builder’s Project Manager” means that person designated by the Design-Builder to serve as its representative for the Project and who shall have the non-exclusive authority to bind the Design-Builder in all matters relating to this Agreement.
- 1.31 “Design Manual” means the latest edition of the NJSDA’s Design Manual for Design-Build Projects available at the time this Agreement is executed by the Parties.
- 1.32 “Directive” means an order by the Authority directing the Design-Builder to perform Services or Work under the Design-Build Contract Documents. A Directive by the Authority requires the Design-Builder to perform the directed Work or Services, even if there remains a dispute as to whether the Directive constitutes a Change in the Services and/or Work or warrants additional Compensation.
- 1.33 “Division” means the New Jersey Department of Treasury, Division of Purchase and Property Contract Compliance Audit Unit EEO Monitoring Program, or any successor entity.
- 1.34 “Document” means any written or graphic matter, however produced or reproduced, of any kind or description, including originals, marked copies and drafts, and including but not limited to, correspondence, letters, memoranda, notes, notations, transcripts, notes, books, pamphlets, or articles, requisitions, resolutions, certificates, opinions, reports, studies, analyses, evaluations, contracts, licenses, agreements, financial statements, ledgers, checks, books or records of accounts, statistical records, lists, tabulations, summaries, charts, graphs, maps, surveys, plans, drawings, specifications,

schedules, sound recordings, photographs, computer disks, faxes and electronic mail, and papers and things similar to any of the foregoing.

- 1.35 “DOE” means the New Jersey Department of Education.
- 1.36 “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.
- 1.37 “Educational Specifications” or “Ed. Specs.” means a document meeting the requirements of N.J.A.C. 6A:26-5.2, describing in detail the educational program activities and requirements for each space proposed in a Project.
- 1.38 “Effective Date” means the date on which this Agreement has been fully executed by the Parties, as indicated above.
- 1.39 “ELEC” means the New Jersey Election Law Enforcement Commission, the State entity established pursuant to N.J.S.A. 19:44A-5.
- 1.40 “E-Rate Program” means the Schools and Libraries Program administered by the Universal Service Administrative Company under the direction of the Federal Communications Commission to assist schools in obtaining affordable telecommunications and Internet access.
- 1.41 “Final Completion” means that point in time on the Project when the Project is 100% complete and (i) all requirements of the Construction Documents and the Design-Build Contract Documents have been completed, (ii) all items on the Punchlist have been performed, (iii) all required inspections and items of work required by Authorities Having Jurisdiction have been completed, including, without limitation, inspections by soil erosion agencies, DEP, etc.; and (iv) a Certificate of Occupancy has been issued by DCA.
- 1.42 “Force Majeure Event” means an unforeseeable event beyond the control of the Design-Builder and the Authority that is not due to an act or omission of the Design-Builder (or any Subcontractor, Subconsultant or other person or entity for which the Design-Builder may be contractually or legally responsible) that materially and adversely affects the Design-Builder’s obligations under this Agreement to the extent that such event (or the effects thereof) could not have been avoided or mitigated by due diligence and use of reasonable efforts by the Design-Builder. Force Majeure Events may include wars, floods, hurricanes, tornadoes, acts of terrorism, earthquakes, and other acts of God.
- 1.43 “Guaranteed Maximum Price” or “GMP” means that amount set forth in Section 9.1 of this Agreement which the Design-Builder guarantees not to exceed for the design and construction of the Project. The GMP shall include the Design-Builder’s lump sum Contract Price and the GMP Reserve.

- 1.44 “GMP Reserve” means an amount added to the Contract Price in the Design-Builder’s price proposal and carried as an Allowance Amount within the GMP, which shall function as an allowance to: cover unanticipated or unforeseen costs which are necessary to complete the Services and Work; compensate for activities or portions of Work that have been anticipated in the Design-Build Contract Documents, but which have not been fully quantified or specified in the Design-Build Contract Documents; or to achieve Authority-directed upgrades in the Services and Work, authorized at the discretion of the Authority.
- 1.45 “Hourly Rates” means the Design Consultant’s compensable hourly rates as identified in Appendix E, which shall include all direct and indirect expenses including overhead and profit.
- 1.46 “Impacted Materials” means fill or other materials that contain compound concentrations in excess of NJDEP Residential Direct Contact Soil Remediation Standards.
- 1.47 “Imported Fill” means fill transported onto a Project Site from an off-site location for use in the performance of Work associated with a Project, including but not limited to, the backfilling of utility trenches and basements, construction of play areas and play fields, construction of engineered soil caps, changing the topographic elevation of a Project Site, or backfilling of excavations.
- 1.48 “Invoice” means a request for payment submitted by the Design-Builder to the Authority.
- 1.49 “Joint Venture” means a combination of appropriately prequalified entities who have executed a Statement of Joint Venture and who have agreed to jointly and severally perform the obligations of the Design-Build Agreement if awarded that contract. The individual entities comprising the Joint Venture may be referred to as “joint venturers” or “members of the Joint Venture.”
- 1.50 “Key Team Member” means those individuals who are employed by the Design Builder or its subcontractors, or by the Design Builder’s Design Consultant or its Subconsultants who are required to be named in the Design Builder’s Technical Proposal and who have a responsible role in the successful completion of the Project and the performance under this Agreement.
- 1.51 “Legal Requirements” means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the Design-Builder’s performance of the Services and Work under the Design-Build Contract Documents, including, but not limited to, current versions of the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools Under Construction or Being Planned for Construction (“Best Practice Standards”), the Occupational Safety and Health Act of

1970, the Soil, Erosion and Sediment Control Act, as well as any requirements of any local or national Authorities Having Jurisdiction over the Project, as applicable.

- 1.52 “LEED™” means the program and rating system known as Leadership in Energy and Environmental Design “Green Building Rating System” developed by the US Green Building Council (USGBC). LEED v4 for Building Design and Construction: Schools shall be the referenced standard for purposes of the required LEED certification under this Agreement.
- 1.53 “Licensed Site Remediation Professional” or “LSRP” means the site remediation professional licensed by the New Jersey Department of Environmental Protection (DEP) and retained by the Authority in conjunction with this Project. The Authority will identify the LSRP in Appendix A (Special Conditions) of this Agreement.
- 1.54 “Materials and Systems Standards” means the NJSDA’s “Materials and Systems Standards Manual” Design Requirements, as available on the Authority’s website at the time of execution of this Agreement.

(See <https://www.njsda.gov/NJSDA/Design/DesignStandards>)

- 1.55 “Notice of Award” means a notice from the Authority to the Design-Builder that the Design-Builder’s bid has been accepted and that the Authority intends to enter into a contract with the Design-Builder for the Services and Work set forth in the Request for Proposals, upon submission and acceptance of additional materials specified in the Notice of Award.
- 1.56 “Notice to Proceed” or “NTP” means a written notice from the Authority to the Design Builder authorizing the Design Builder to proceed with performance of the Services or Work or a specific portion thereof, and setting the Commencement Date on which the Design-Builder is authorized to commence performing such Services and/or Work pursuant to this Agreement.
- 1.57 “Notice to Proceed for Construction”, “Construction Notice To Proceed” or “Construction NTP” means the written notice, issued by the Authority after the Authority receives notice that the Design Builder has secured DCA release of the Construction Documents (or Partial Plan Release for a portion of the Construction Documents), which authorizes the Design Builder to proceed with performance of all or a portion of the Construction Work in accordance with the Construction Documents, and which sets the date on which the Design-Builder is authorized to commence performing such Work pursuant to this Agreement.
- 1.58 “OCIP Manual” means the NJSDA’s OCIP IV Insurance Procedures and Enrollment Manual included in the Project Manual.
- 1.59 “Parties” means the Authority and the Design-Builder. In the event that the Design-Builder is a Joint Venture identified within the Statement of Joint Venture

(incorporated herein and attached as Appendix F to this Agreement), the Joint Venture and its members are included as “parties” and are subject, jointly and severally, to the terms of this Agreement.

- 1.60 “Performance Evaluation Policy and Procedure” means the policies and procedures developed or to be developed by the Authority for evaluating the performance of contractors, Professional Services Consultants, and the like.
- 1.61 “Performance Specification” means a written document issued by the Authority providing parameters for the Design Builder’s selection, installation and/or incorporation in the Project of a particular type or kind of product, material, system or equipment, based on the desired qualities, technical or functional characteristics or performance capabilities required to be possessed by the particular product, material, system or equipment selected by the Design Builder. Such document may include a statement of any of the Authority’s requirements and may require inspection, testing or the preparation of a sample of a construction item before inclusion of the item in the design documents or procurement of the item by the Design Builder.
- 1.62 “Preliminary Design Documents” means the deliverables required to be produced by the Design Builder and its Design Consultant during the Preliminary Design Phase, as described in this Agreement and the Design Manual.
- 1.63 “Prescriptive Specification” means a written document issued by the Authority to the Design Builder, providing detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or Work to be incorporated by the Design Builder into the Project, or a requirement of the Work to be performed under this Agreement. Such document may include a statement of any of the Authority’s requirements and may require inspection, testing or the preparation of a sample of a construction item before inclusion of the item in the design documents or procurement of the item by the Design Builder.
- 1.64 “Procedural Specification” means a written document issued by the Authority to the Design Builder, providing a detailed description of procedures or processes required to be implemented by the Design Builder in the performance of Services or Work under this Agreement. Specification Section 01200 (Preconstruction Conference) is an example of a Procedural Specification.
- 1.65 “Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate a material, product or system proposed for use in some portion of the Work.
- 1.66 “Professional Services Consultants” means consultants providing professional services including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, Submittal

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

- 1.67 “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 (Special Conditions) or the manufacture or supply of any personal property necessary for or ancillary to the School Facility identified in the Design Build Contract Documents.
- 1.68 “Project Labor Agreement” or “PLA” means the agreement negotiated and executed by and between the Authority and the New Jersey Building Trades Council. All Authority projects with estimated construction costs in excess of \$5 million will be subject to the Project Labor Agreement (“PLA”).
- 1.69 “Project Meeting” means one of a series of periodic meetings regarding the design or the construction of the Project, attended by (at minimum) the Design-Builder, the CM and the Authority Project Manager, with attendance by the Design-Builder’s Design Consultant or the Design-Builder’s Subcontractors and Subconsultants, and others as required by the subject matter of the meeting.
- 1.70 “Project School District” means the school district in which the Project is located. The Project School District is identified in Appendix A (Special Conditions).
- 1.71 “Project Site” means the geographical location of the property on which the Project is to be constructed.
- 1.72 “Proposal” means a written description of certain proposed Work or Services, setting forth the price and time adjustments, if any, necessary to perform the proposed Work or Services, prepared by the Design-Builder in response to a “Proposal Request” issued by the Authority recognizing a contemplated change to the Design-Build Contract.
- 1.73 “Proposal Request” means a written request issued by the Authority recognizing a contemplated change to the Design-Build Contract and seeking the Design-Builder’s Proposal for the performance of Work or Services to accomplish the contemplated Change in the Work or Services.
- 1.74 “Punchlist” or “Punchlist Work” means the list of incomplete or defective Work, including Work that does not comply with the applicable Code or Legal Requirements, to be performed or remedied by the Design-Builder after Substantial Completion and before Final Completion. The Punchlist shall be prepared by the CM with input from the Authority and the Project School District prior to the issuance of the Certificate of Substantial Completion. The Punchlist shall not include items that are necessary to be completed in order to secure a Temporary Certificate of Occupancy.
- 1.75 “Remedial Action” means those actions taken at a site as may be required by statute, or by regulations of the New Jersey Department of Environmental Protection,

- including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use or otherwise, designed to ensure that any discharged contaminant is remediated in compliance with the applicable remediation standards pursuant to N.J.A.C. 7:26E-6.
- 1.76 “Remedial Action Work Plan” or “RAWP” means the written documentation prepared and certified by licensed qualified environmental and/or engineering firms to satisfy New Jersey Technical Requirements for Site Remediation (N.J.A.C. 7:26E-6.2.). The RAWP will include, among other things, a summary of findings and recommendations generated by any Remedial Investigation Report, an identification of areas of concern, and a detailed description of the remedial action to be conducted and the remedial technology to be employed on the Site.
- 1.77 “Request for Information” or “RFI” means a written request from the Design-Builder to the Authority seeking an interpretation or a clarification of some aspect or requirement of the Design-Build Information Package. The following do not constitute RFIs and shall not be submitted through the RFI process: Design Submissions, Schedule updates, Submittals, Shop Drawings or other Deliverables; routine project communications such as letters, memos, Meeting Minutes, Daily Field Reports or Monthly Field Reports; Requests for Substitutions and “Or Equal” Submittals. The process for submission of and response to an RFI is detailed elsewhere in this Agreement.
- 1.78 “Request for Qualifications” or “RFQ” means a document that may be issued by the Authority that requests responses from bidders indicating the qualifications, experience and organizational structure of the bidder’s proposed Design Build team, which information may be used to select a shortlist of qualified bidders. If issued by the Authority, the RFQ is part of the Design-Build Contract Documents.
- 1.79 “Request for Proposals” or “RFP” means the Authority’s request for proposals from bidders for the design and construction of the Project. The RFP is part of the Design-Build Contract Documents.
- 1.80 “Risk Management Unit” or “RMU” means the Authority’s Risk Management Unit, which, together with the Authority’s OCIP Broker and OCIP Administration Services Provider is also responsible for management of OCIP enrollment and other OCIP-related issues.
- 1.81 “Safety Manual” means the latest edition of the NJSDA’s Safety Manual available at the time this Agreement is executed by the Parties
- 1.82 “Sample” means physical examples prepared by the Design Builder to illustrate materials, equipment or workmanship, and, if accepted by the Authority, to establish standards by which the Work will be judged.

- 1.83 “Schedule” or “Project Schedule” means the most current Critical Path Method (“CPM”) schedule prepared and submitted by the Design-Builder to the Authority in accordance with Section 3.5 herein and Section 01310 of the Authority’s Procedural Specifications, wherein the Design-Builder identifies all critical, and certain non-critical, activities, Contract Milestones and the projected and actual time periods for completing such activities and Contract Milestones.
- 1.84 “Schedule Fragnet” means an acronym for ‘fragmentary network’, which is a portion of the CPM network illustrated to depict the manner in which the incorporation of added, deleted or revised work may affect the critical path of the CPM network, which permits the evaluation of whether a time extension is warranted.
- 1.85 “Schedule of Values” means an itemized table prepared by the Design-Builder that allocates the entire Guaranteed Maximum Price among the various portions of the Services and Work, except that the GMP Reserve shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such substantiating data as the Authority may require. If accepted by the Authority, the Schedule of Values shall be used as a basis for the Design-Builder's Invoices and only for this purpose.
- 1.86 “School Facility” means and includes any site, structure, building or facility used wholly or in part for academic purposes, and any property, structure, or area ancillary or appurtenant thereto.
- 1.87 “Services” means all activities performed by or required to be performed by the Design-Builder pursuant to this Agreement for the design of the Project and includes design services performed by the Design-Builder and/or its Subconsultants, as well as management services needed to construct the Project.
- 1.88 “Shop drawings” means drawings, diagrams, schedules and other data prepared specifically for the Work by the Design-Builder or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 1.89 “Project Site” means the geographical location of the property on which the Project is to be constructed.
- 1.90 “Special Conditions” means those supplemental or additional terms that are attached to this Agreement as Appendix A.
- 1.91 “Specification” means a written description prepared by the Design-Builder as part of the Final Design Documents (or “Construction Documents”) setting forth the detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or Work to be incorporated into the Project, or a requirement of the Work to be performed under this Agreement. Specifications shall augment and complement the drawings and plans prepared by the Design-Builder. The term “Specification” shall not include, and shall be distinguished from the Authority’s

“prescriptive specifications,” “performance specifications” and “procedural specifications” as described herein and included as part of the Design-Build information package.

- 1.92 “State” means the State of New Jersey.
- 1.93 “Statement of Joint Venture” means the document submitted by appropriately prequalified entities indicating their intent to participate in a procurement as a Joint Venture to pursue a Design-Build contract for a Project, and their agreement to be jointly and severally liable to perform the obligations of a Design-Builder if awarded the Design-Build contract for such Project.
- 1.94 “Subconsultant” means a Professional Services Consultant engaged by another Professional Services Consultant for the performance of all or part of the services for which the latter is responsible. As used in this Agreement, the term “Subconsultant” shall include subconsultants of any tier.
- 1.95 “Subcontractor” means the party to whom the Design-Builder or another subcontractor subcontracts part or all of the Work for which the Design-Builder or other subcontractor is ultimately responsible. As used in this Agreement, the term “Subcontractor” shall include subcontractors of any tier.
- 1.96 “Submittal” means Deliverables including documents or other tangible items, prepared by the Design-Builder or its subcontractors for review and approval by the Design-Builder’s Design Consultant including, but not limited to, shop drawings, product data and samples. The term “Submittals” shall not refer to Design Builder’s Preliminary Design or Final Design submissions to the Authority. Submittals may be subject to review by the CM for constructability and consistency with the Construction Documents, and by the Authority for consistency with the Design-Build Contract Documents, as well as for functional and aesthetic sensibility.
- 1.97 “Substantial Completion” means that point in time on the Project when all of the following have occurred: (i) all essential requirements of the Design-Build Contract Documents and the Construction Documents have been performed so that the purpose of the Design-Build Contract Documents and the Construction Documents is accomplished; (ii) a Certificate of Occupancy or Temporary Certificate of Occupancy has been issued by the Department of Community Affairs; (iii) the Punchlist has been created; (iv) the Design-Builder has delivered to the Authority the key(s) and/or code(s) for operation of the elevators; (v) there are no material omissions or technical defects or deficiencies, as identified by the Authority; and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.
- 1.98 “Substantial Completion Date” means the date by which the Design-Builder is required to achieve Substantial Completion as identified in Appendix A (Special Conditions), or in the Authority’s Procedural Specification 01010 Summary of Work.

- 1.99 “Temporary Certificate of Occupancy” means the document issued to the Design-Builder by the Department of Community Affairs, permitting temporary legal occupancy of a building.
- 1.100 “Term” means the duration of this Agreement as identified in Section 11.0 of this Agreement.
- 1.101 “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.
- 1.102 “Warranty Work” means work necessary to correct any deficiencies, latent defects or other incomplete or defective Construction Work discovered in the eleven-month warranty inspection described in Section 12.3 herein, or otherwise discovered before the expiration of the Design-Builder’s one year warranty period.
- 1.103 “Work” means all construction work to be performed by the Design-Builder and its Subcontractors and suppliers, including providing all material, equipment, tools, labor, services , transportation and supplies as described in and reasonably inferable from the Construction Documents and the Design-Build Contract Documents, including all efforts necessary or appropriate to achieve Substantial Completion and Final Completion of the Project.

2.0 INTERPRETATION AND INTENT

- 2.1 Declaration of Design-Build Agreement Pursuant to N.J.A.C. 13:27-7A.2. The following notice is required pursuant to N.J.A.C. 13:27-7A.2: This is a design-build contract. Pursuant to N.J.A.C. 13:27-7A.1, a design-build contract is a written contract entered into between a contractor and an owner or developer which provides both for the construction or alteration of a building and for the performance of architectural services by an architect engaged by the contractor pursuant to a separate written contract. The architect or architectural firm that will be providing architectural services to the contractor in connection with this design-build contract will be: NK Architects, P.A. The architect's address and telephone number are 95 Washington Street, Morristown, NJ 07960 and (973) 539-5353. The architect is contractually obligated to provide services to the contractor. The owner or developer and the architect may, at any time, discuss issues pertinent to the design of the building which is the subject of the design-build contract.
- 2.2 Additional Provisions of Board of Architects Regulations for Design-Build. Pursuant to the requirements of N.J.A.C. 13:27-7A.3, and the terms of this Agreement, the Design Builder’s separate contract with the architect providing design services for the Project as Design-Builder’s Design Consultant shall expressly provide that:

- (a) The architect shall, at all times, provide architectural services as an independent contractor pursuant to N.J.S.A. 45:3-17 and 45:3-18 and not as an employee of the contractor;
- (b) In providing architectural services, the architect shall, at all times, exercise independent, professional judgment consistent with established standards of architectural practice, the rules of professional conduct set forth at N.J.A.C. 13:27-5, and such other statutory and regulatory requirements as may be applicable;
- (c) The architect may, at any time, discuss with the Authority issues pertinent to the design of the building which is the subject of the design build contract;
- (d) The contractor and the architect shall provide written notice to the Authority at least 30 days before the contract between the architect and the contractor is terminated, or before the performance of services by the architect is in any other way suspended or discontinued.

2.3 Intent of Agreement. This Agreement is intended to permit the Parties to complete the Services, Work and all obligations required by the Design-Build Contract Documents within the Contract Time and Guaranteed Maximum Price. This Agreement and all other Design-Build Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict. Any services or work that may be reasonably inferred from the Design-Build Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. In the event of any inconsistency, conflict, or ambiguity between or among the terms of the Design-Build Contract Documents, the documents shall take precedence in the order in which they are listed in Section 25.3 of this Agreement.

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

- 2.4 Review of Documents. The Design-Builder acknowledges that, prior to submitting its Technical and Price Proposals on the Project, it reviewed all Documents relevant to the Project that have been prepared and furnished by the Authority, including but not limited to, the Design-Build Contract Documents, any geotechnical reports or surveys of the Site, and, if applicable, the Remedial Action Work Plan for the Site. If at any time during the Term of this Agreement, the Design-Builder requires information or documentation that has not been provided by the Authority, but is only available to the Authority, the Design-Builder must request such information from the Authority. Failure to request and review such information waives any Claim by the Design-Builder that such information was necessary to fulfill its obligations pursuant to the Design-Build Contract Documents and/or this Agreement. The Design-Builder shall promptly notify the Authority of all errors, omissions, inconsistencies, conflicts or other deficiency (including inaccuracies) which it may or reasonably should discover in the Design-Build Contract Documents either as a result of its investigation and verification obligations of Section 3.11 herein, or otherwise. The Design Builder may be requested to provide written recommendations regarding changes or corrections to resolve any such error, omission, inconsistency, conflict or other deficiency. The Design Builder must obtain the Authority's approval before proceeding with the Services and/or Work thereby affected by any such error, omission, inconsistency, conflict or other deficiency. The Design-Builder shall not make a claim premised upon any apparent error, omission, inconsistency, conflict or other deficiency in the Design-Build Contract Documents unless the Design-Builder has first provided appropriate and timely notice to the Authority of the apparent error, omission, inconsistency, conflict or other deficiency.
- 2.5 Review of Project Site and Conditions. The Design-Builder acknowledges that prior to submitting its Price Proposal and in accordance with prudent and generally accepted engineering and construction practices, it inspected and examined the Project Site and surrounding locations and undertook other sufficient and appropriate activities to familiarize itself with the Site. The Design-Builder further acknowledges that it has examined regional climate conditions and other conditions relevant to the Project. As a result, the Design-Builder is deemed to be familiar with and accepts the physical requirements of the Work and conditions of the Project.
- 2.6 Approvals and Acceptances. In all cases where approvals, acceptances, consents or determinations are required to be provided hereunder, such approvals, acceptances or consents shall not be withheld unreasonably and such determinations shall be made reasonably, except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, acceptance, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.
- 2.7 Design Build Information Package Materials As Conceptual Only. To the extent that the Design Build Information Package contains drawings, specifications and other electronic documents provided by or on behalf of the Authority, these drawings,

specifications and electronic documents are provided as a “basis of design” and are intended to assist the competing Design Build Teams in preparing their price and technical proposals for completion of the project utilizing the provided plans as a “basis of design” for advancement of the project, and to assist the Design Builder in developing a complete and effective design for the Project. Any drawings, specifications, electronic documents or renderings provided by or on behalf of the Authority are offered as a “basis of design” and may not represent a complete design. The Authority has included the drawings, specifications and other electronic documents in the Design-Build Information Package as the “basis of design,” but provides such documents without warranty as to their completeness, accuracy, fitness for use, or absence of errors, omissions and/or deficiencies in such. Further, the responsibilities of the Design-Builder and/or its team as the Design-Builder/architect of record are in no way diminished by having access to and use of these documents during not only the bid phase but throughout the duration of the project.

- 2.8 Joint Venture as Design-Builder. In the event that the Design-Builder is a Joint Venture identified within the Statement of Joint Venture (incorporated herein and attached as Appendix F to this Agreement) the Joint Venture and its members are jointly and severally bound by the terms and responsibilities of this Agreement.

3.0 GENERAL RESPONSIBILITIES OF DESIGN-BUILDER

- 3.1 Scope of Work and Services. The Design-Builder shall perform all design Services and Construction Work, and provide all material, equipment, tools and labor, necessary to complete the obligations described in and reasonably inferable from the Design-Build Contract Documents within the time provided by the accepted Project Schedule.

3.2 Meetings

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

3.2.2 Project Meetings.

- (a) Design Phase Meetings. The Design-Builder and its Design Consultant are required to attend twice-monthly design meetings during the Design Phase. The anticipated agenda for the twice-monthly design phase meetings is the progress of the design and the design’s conformance to the Design Build Information Package and the Design-Build Contract Documents. The Design-Builder’s Design Consultant shall take minutes of such Progress

Meetings and shall circulate those minutes to all participants within five (5) days of each such meeting. The Design-Builder's Design Consultant's transmittal shall notify all participants that attendees of a meeting must advise the Design-Builder's Design Consultant, in writing and within three (3) Days of receipt, of any perceived error or omission in the minutes being transmitted by the Design-Builder's Design Consultant.

- (b) Construction Phase Meetings, The Design Builder is required to attend weekly, on-site construction meetings throughout the Construction Phase of the Project. The anticipated agenda for the weekly construction meetings shall include, but not be limited to, a review of the Design-Builder's progress and daily manpower, field observations and problems, review of Submittals, Project Schedules and delivery Schedules, proposed Changes and Change Orders, and other issues relating to the Work. The Design-Builder's Project Manager, Project Superintendent and Design Consultant are required to attend the construction Project Meetings. The Design-Builder is required to provide to the Authority or CM at each construction Project Meeting a two-week "look ahead" schedule defining the Work to take place over the next two weeks, in advance of such work. Safety issues shall be included in this "look ahead" schedule, and target milestones shall be identified in the "look ahead" schedule to assist in tracking results. The Authority or CM shall be responsible for scheduling and administering the project meetings and providing advance notice of the meetings. The Design-Builder shall be responsible for preparing and distributing meeting minutes for such Project Meetings.

- 3.3 Pre-Construction Conference. The Design-Builder shall also be required to attend a Pre-construction Conference after the Construction NTP is issued. CM shall schedule and conduct the Pre-Construction Conference. The agenda for the Pre-Construction Conference shall include, but not be limited to, a review of the Construction Documents, Subcontractors, key personnel, scheduling, Project staffing, contract administration procedures, Project requirements, procedures for processing field decisions, Submittals, substitutions, invoices and Change Orders and other pertinent issues consistent with the Authority's Specification Section 01200 "Preconstruction Conference," as amended or superseded by the Design-Build Contract. The CM shall schedule and conduct the Pre-Construction Conference within ten (10) Days of the Construction NTP, or such different date as approved by the Authority. The Design Builder shall submit its Safety Plan at, or in advance of, the Preconstruction Conference.
- 3.4 CPM Scheduler. The CPM Scheduler shall be the person designated by the Design-Builder as the preparer and maintainer of all Critical Path Method ("CPM") schedules for the Project, including the Initial Milestone Schedule, the Design Phase Schedule and the Construction Schedule for the Project (the "Project Schedule"). The CPM Scheduler shall, so long as his/her performance is acceptable to the Authority, be

responsible for Schedule preparation and maintenance through Final Completion of the Project. The Authority reserves the right to require the immediate replacement of said Scheduler for any reason and at the sole discretion of the Authority.

- 3.4.1 The CPM Scheduler shall be responsible to prepare the initial schedule submittals in consultation with the Design-Builder, and will be responsible for preparing all subsequent updates, schedule revisions, schedule proposals, fragnets or other schedule-based submittals on behalf of, and in consultation with, the Design-Builder. The CPM Scheduler shall be responsible for meeting and consulting with the Design-Builder and the Authority and its CM in the event of any questions, comments or suggestions raised by the Authority or its CM regarding scheduling, or in the event of any disputes regarding any proposed or approved schedule for the Project, including the Initial Milestone Schedule, the Design Schedule and the Project Schedule.
- 3.4.2 The CPM Scheduler shall have at least six years of experience in preparation, maintenance and updating of CPM Schedules on projects of similar size, scope and complexity. The CPM Scheduler shall also be experienced and familiar with the Primavera P6 Professional Project Management Scheduling software, version 6.2, or subsequent version, utilized by the Authority for the Project.
- 3.4.3 The CPM Scheduler must be employed by an entity that is DPMC and NJSDA prequalified in the discipline of CPM Scheduling (P030). If the Design-Builder is itself DPMC and NJSDA prequalified in the CPM Scheduling discipline (P030), then the CPM Scheduler may be an employee of the Design-Builder who has the requisite qualifications to fulfill the position of CPM Scheduler. If the Design-Builder is not DPMC or NJSDA prequalified in the CPM Scheduling (P030) discipline, the Design-Builder must engage an entity that has the requisite prequalification and can supply an employee meeting the requisite qualifications to fulfill the position of CPM Scheduler for the Project

3.5 Project Schedules.

- 3.5.1 General. Scheduling of the Services and Work is and shall be the Design-Builder's responsibility. The Design-Builder shall determine the most feasible order for the Services and Work commensurate with the requirements of the Design-Build Contract Documents.
 - (0) Any updates or revisions to the Design Schedule or Project Schedule shall not relieve the Design-Builder of its obligations to complete the Services and Work within the Contract Time as such dates may be adjusted in accordance with this Agreement. Neither the Authority's review and acceptance of any Schedule, nor CM's review and comment upon the Schedule (including any recommendations from CM, if offered) shall be construed as relieving the Design-Builder of its complete and exclusive

control over the means, methods, sequences and techniques for executing the Services and Work.

- (1) The Design-Builder agrees that it will commence performance of the Services and the Work and direct an orderly progression of the Services and the Work to achieve Substantial Completion, including furnishing such employees, materials, facilities and equipment and working such hours, including extra shifts and overtime hours, as may be necessary to achieve such goal, all at the Design-Builder's own expense.
- (2) Float time shown on the Design Schedule or Project Schedule is not for the exclusive use of either the Design-Builder or the Authority. Float time is available for use by both Parties to facilitate the effective use of available resources and to minimize the impact of problems that may arise during construction. No time extension will be granted as a result of any problem, Change Order or delay that only results in the loss of available positive float on the Design Schedule or Project Schedule. Float time shown on the Design Schedule or Project Schedule shall not be used by the Design Builder in a manner that, in the reasonable opinion of the Authority, is detrimental to the interests of the Authority.
- (3) The Contractor shall not suppress or sequester float through strategies including extending activity duration estimates to consume available float, using preferential logic, using extensive or insufficient crew/resource loading, using float suppression techniques, special lead/lag logic restraints, or imposed dates.

3.5.2 Initial Milestone Schedule. Within four (4) Days after the Commencement Date, the Design-Builder shall prepare and submit to the Authority and CM for review and acceptance by the Authority, a milestone schedule for the execution of the Services and Work, showing major milestones in the design and construction phases of the Project, including the commencement of design phases and the submission of the Design Schedule and Project Schedule as described in Sections 3.5.3 and 3.5.4 below. The Authority shall accept or reject the Initial Milestone schedule within three (3) days of receipt of the Initial Milestone Schedule. If the proposed Initial Milestone schedule is rejected, or deficiencies in the proposed Initial Milestone schedule are identified, the Design-Builder shall revise and resubmit the milestone schedule within five (5) days of the rejection.

3.5.3 Design Schedule. Within fourteen (14) days after the Initial Meeting described in Section 3.2.1 above, the Design-Builder shall submit to the Authority and CM a proposed Design Schedule, in CPM format, using Primavera P6 Professional Project Management Scheduling software, version 6.2, or subsequent version, showing the order and time frames in which it proposes to carry out the Services, for review and acceptance by the Authority. The Design Schedule shall indicate, at a minimum: (1) dates for the start and completion of the various stages of the

design Services consistent with the Initial Milestone Schedule; (2) Contract Milestones; (3) critical and certain non-critical activities; (4) dates for the Design-BUILDER's completion of verification of existing conditions as specified in Section 3.11 herein; (5) dates for the Design-BUILDER's submission of design submissions to the Authority for review; and (6) dates for the Authority's and CM's response to such submissions, factoring in sufficient time for review of such submissions while enabling the Design-BUILDER to achieve completion of the Services and Work within the Contract Time. The proposed Design Schedule must include all details related to design services, design submissions, cost estimates, review periods, and other major activities of each phase, and must meet the applicable format and content requirements of the Authority's Procedural Specification Section 1310 ("Schedules and Reports") and the requirements of the Design Manual. The Design-BUILDER shall include in the Schedule ample time for review by DOE and DCA of specific Deliverables, including time periods for receipt of comments from DOE or DCA, time for any modification of documents by the Design-BUILDER to accommodate such comments, and time for subsequent review by DOE or DCA of any modifications to the documents. The Design Schedule shall, among other things, provide that Substantial Completion and Final Completion shall be achieved by the dates required by the Design Build Contract Documents.

- (a) The Authority shall review the proposed Design Schedule submitted by the Design-BUILDER and the Authority shall accept or reject the Schedule within twenty-one (21) Days of receipt of the proposed Schedule. Once accepted by the Authority, the proposed Design Schedule shall be used by the Authority to monitor the Design-BUILDER's Design Phase progress.
- (b) If the proposed Design Schedule is rejected or deficiencies in the proposed Design Schedule are identified, the Design-BUILDER shall revise and resubmit the Design Schedule within seven (7) Days of the rejection.
- (c) Failure to provide a Design Schedule acceptable to the Authority within the time specified by Section 3.5.3 and/or failure to provide monthly updated Schedules in a timely fashion will result in: withholding of payment pursuant to Section 9.8; an event of default pursuant to Section 20.1; and/or other negative consequences as provided by this Agreement.
- (d) During the Design Phase, the Design-BUILDER shall submit to the Authority monthly Design Schedule updates, on or before the tenth day of each month. Such updates will be used by the Authority to verify the Design-BUILDER's compliance with the Design Schedule and progress in timely achieving Contract Milestones. In the event that the Design Schedule update indicates that the Design-BUILDER will not meet the Contract Milestones within the time set forth in the Design Schedule, the Design-BUILDER shall be required to prepare and submit a recovery Design Schedule to the Authority for review and acceptance.

- (e) The Design Builder is required to provide to the Authority and the CM at each Design Meeting a two-week “look ahead” schedule defining the design Services to take place over the next two weeks, in advance of such work. Target milestones shall be identified in the “look ahead” schedule to assist in tracking results.

3.5.4 Project Schedule. Consistent with the dates established by the milestone schedule described above, and in any event before the issuance of any Construction NTP, the Design-Builder shall submit to the Authority and CM a proposed Project Schedule, in CPM format, using Primavera P6 Professional Project Management Scheduling software, version 6.2, or subsequent version, for review and acceptance by the Authority. The Schedule shall indicate: (1) dates for the start and completion of the various stages of the Services and construction Work; (2) Contract Milestones; (3) critical and certain non-critical activities; (4) dates for the Design-Builder’s completion of verification of existing conditions as specified in Section 3.11 herein; (5) dates for the Design-Builder’s submission of Submittals to CM for review and distribution to the Authority and dates for the completion of review of such Submittals by the CM and the Authority in accordance with the review periods established in this Agreement; (6) dates for performance and completion of work by E-Rate suppliers and vendors and (7) dates for the Authority’s and CM’s response to such Submittals, factoring in sufficient time for review of such Submittals while enabling the Design-Builder to achieve completion of the Services and Work within the Contract Time. The Design-Builder shall include in the Schedule ample time for review of specific Deliverables by DOE and DCA, including time for receipt of comments from DOE or DCA, time for any modification of documents by the Design-Builder to accommodate such comments, and time for subsequent review by DOE or DCA of any modifications to the documents. The Project Schedule shall, among other things, provide that Substantial Completion and Final Completion shall be achieved by the dates required by the Design Build Contract Documents.

3.5.5 The Schedule shall be cost-loaded and resource-loaded to show dollar values and manpower values allocated to each activity in the Schedule. The proposed Schedule shall meet the format and content requirements of Specification Section 01310 (“Schedules and Reports”).

- (a) Along with the proposed CPM format Schedule, the Design-Builder shall furnish the Authority a breakdown of its total Contract Price with dollar values assigned to each individual Work activity in the Schedule, coded with reference to the applicable performing contractor or subcontractor. The breakdown shall cumulatively equal the total Contract Price. Upon acceptance by the Authority, the values shown on the breakdown will be used as a basis for determining progress payments. Progress payments to the Design-Builder shall be dependent upon final acceptance by NJSDA of the cost-loaded CPM schedule.

- (b) The Design-Builder shall also furnish the Authority with a computer-generated cost requisition listing, which will provide a separate tabulation of each activity shown on the CPM schedule in order of bid item or trade responsibility code, in a level of detail as directed by NJSDA. This listing will identify, for each activity, the performing contractor and subcontractor, the estimated dollar value of the Work in place for totally or partially completed activities, including subtotals by bid items and grand totals for the entire Project. The cost requisition listing will also contain monthly activities reflecting the cost of Project overhead and administrative expenses, and activities reflecting the monthly cost of administering Project General Conditions.
- 3.5.6 The CM and the Authority shall review the proposed Schedule submitted by the Design-Builder, as well as the cost breakdown and cost requisition listing, and the Authority shall accept or reject the Schedule within twenty-one (21) Days of receipt of the proposed Schedule. Once accepted by the Authority, the proposed Schedule shall become the Project Schedule, and shall be used by the Authority to monitor the Design-Builder's progress
- 3.5.7 If a proposed Schedule is rejected or deficiencies in the proposed Schedule are identified, the Design-Builder shall revise and resubmit the Schedule within seven (7) Days of the rejection.
- 3.5.8 Failure to provide a Schedule acceptable to the Authority within the time specified by Section 3.5 and/or failure to provide monthly updated Schedules in a timely fashion will result in: withholding of payment pursuant to Section 9.8; an event of default pursuant to Section 20.1; and/or other negative consequences as provided by this Agreement.
- 3.5.9 The Design-Builder shall submit to CM monthly Project Schedule updates, and updates of the cost breakdown document and cost requisition listing, on or before the tenth day of each month. Such updates will be used by the Authority and CM to verify the Design-Builder's compliance with the Project Schedule and progress in timely achieving Contract Milestones. In the event that the Project Schedule update indicates that the Design-Builder will not meet the Contract Milestones within the time set forth in the Project Schedule, the Design-Builder shall be required to prepare and submit a recovery Project Schedule to the Authority and CM for review and acceptance by the Authority.
- 3.5.10 The Design Builder is required to provide to the Authority and the CM at each Project Meeting a two-week "look ahead" schedule defining the Work to take place over the next two weeks, in advance of such work. Safety issues shall be included in this "look ahead" schedule, and target milestones shall be identified in the "look ahead" schedule to assist in tracking results.

3.5.11 Early Completion Schedule. If the Contractor submits a progress schedule showing completion of the Project occurring prior to the contractual completion dates included in the Design-Build Agreement (i.e. a progress schedule showing Substantial Completion occurring prior to the Substantial Completion Date specified in the Design-Build Contract Documents, and/or showing Final Completion occurring prior to the Final Completion Date specified in the Design-Build Contract Documents) (hereinafter an “early completion schedule”):

- (a) the Contractor shall identify any activities on the proposed early completion schedule that have been accelerated and/or scheduled in parallel to support the early completion of the Project;
- (b) the Contractor shall provide information regarding each and every schedule activity shown on the proposed early completion schedule to assist the Authority in evaluating the Contractor’s ability to actually complete the project prior the contractual completion dates specified in the Design-Build Contract Documents; and
- (c) if the Contractor’s early completion schedule is accepted or approved by the Authority, the Authority reserves the right to change the Contract Time of performance and the contractual Substantial Completion Date and Final Completion Date to match the early completion dates in the accepted or approved early completion schedule. This change to the completion dates for the Project shall be for all purposes including the imposition of liquidated damages.

3.6 Government Approvals and Permits.

3.6.1 The Authority will pay for all fees payable to DCA for plan review, permits and inspections, and the Construction Manager shall be responsible to pay the fees for special inspectors for the project. The Design-Builder shall obtain and pay for all other necessary permits, approvals, licenses, government charges and inspection fees required for the Project by any Authority having Jurisdiction over the Project, including but not limited to soils erosion permits, construction trailer permits, water permits, utility permits and street opening permits.

3.6.2 To the extent that necessary permits, approvals, licenses and the like require the payment of fees or submission of documents or drawings; provision of insurance certificates or other proofs of insurance; the addition of additional insureds under new or existing insurance policies; the indemnification of adjacent landowners, whether private or governmental, for encroachments or work upon their property; the revision of design documents; the performance of additional design, construction, or preparation work; or any other monetary or non-monetary conditions or requirements, the Design-Builder shall be responsible for fulfilling all such requirements, without additional cost to the Authority.

3.7 Licensed Site Remediation Professional

3.7.1 The Licensed Site Remediation Professional (LSRP) engaged by the Authority is responsible for confirming and documenting that all stages of environmental due diligence and remedial actions completed at the site are consistent with current environmental regulations and guidance. The Design-Builder is responsible for interfacing with, providing documents to, and abiding by decisions made by the LSRP concerning all elements related to remedial actions at the site. A Remedial Action Work Plan (RAWP), prepared by the LSRP is included in this contract and shall govern the remediation-related work.

3.7.2 The LSRP will review and approve remediation-related plans and specifications developed by the Design-Builder within the context of the RAWP and NJDEP regulations and guidance documents. During construction, the LSRP or the LSRP's agent will audit and document the performance of site remediation activities by the Design-Builder. The LSRP is responsible for confirming that the work being implemented by the Design-Builder is consistent with the plans and specifications which the LSRP approved, and other related Submittals. Should the Work not be consistent with the project requirements, the LSRP will notify the Design-Builder, the CM, and the Authority immediately, so that any issues or deficiencies in the Work can be resolved to the LSRP's satisfaction.

3.7.3 The Design-Builder shall provide the LSRP with the remedial action documentation on a monthly or more frequent basis throughout the period of construction. The LSRP will utilize this documentation to prepare the Remedial Action Report at the completion of construction, as well as to finalize the Deed Notice for the site and to prepare a Response Action Outcome. Based upon documentation and information provided by the Design-Builder, the LSRP will also obtain any necessary Remedial Action Permit(s) for soils, related to the installation of institutional and engineering controls at the site.

3.8 Performance as Directed. At all times during the Contract Term, including during the course of, and notwithstanding the existence of, any dispute, the Design-Builder shall perform as directed by the Authority, in a diligent manner and without delay, shall abide by the Authority's decision, order, or formal Directive, and shall comply with all applicable provisions of the Design-Build Contract Documents. The Authority may issue a formal Directive to the Design-Builder to enforce the Design-Builder's obligation to perform Services and/or Work required by the Design-Build Contract Documents. Such Directives from the Authority do not constitute a change to the scope of the Work or Services and will not result in an increase in the GMP, additional compensation or an adjustment to the Contract Time. The Design-Builder shall perform the Services or Work described in the Directive, even if the Design-Builder disputes that such Services or Work are required by the Design-Build Contract Documents.

- 3.9 Standard of Care. The Design-Builder shall perform all design Services in a good, skillful, and prompt manner, consistent with the degree of judgment, knowledge, skill and care ordinarily possessed and exercised by average members of the design profession, currently practicing under similar conditions at the same time and locality of the Project. The Design Builder shall perform all Design Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Design-Builder shall perform all construction Work efficiently, in a good and workmanlike manner and with the requisite expertise, skill and competence to satisfy the requirements of the Design-Build Contract Documents. The Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 3.10 Quality of Performance. All of the Design-Builder's Services and Work shall be performed in accordance with the Standard of Care and quality described in Section 3.9. Should the Design-Builder, its Subcontractors or Subconsultants fail to exercise the applicable Standard of Care, the Design-Builder shall promptly provide, at no cost to the Authority, any additional design Services or construction Work necessary to correct any failure to comply with such Standard of Care, provided that the provision of such Services or Work by the Design-Builder shall in no way limit or restrict the Authority's remedies, including the Authority's right to withhold payment for such performance and take such action that it deems appropriate until the Design-Builder has complied with such Standard of Care or has remedied such non-compliance to the satisfaction of the Authority, and provided further that nothing in the foregoing shall be deemed to restrict or expand the Design-Builder's Standard of Care.
- 3.11 Assumption of Responsibility for Verification of Existing Conditions
- 3.11.1 Prior to completion of the Preliminary Design Phase, the Design-Builder shall undertake activities as necessary to verify and confirm existing site conditions as represented in the Design-Build Information Package, such existing conditions to include existing site topography, site soil quality (including environmental, geotechnical and groundwater characteristics), and the location and capacity of existing utilities serving the site. Any activities undertaken to verify existing site environmental conditions must be reviewed and approved in advance by the NJSDA and the LSRP. In the event that any such existing conditions are found, determined or believed to vary materially from those represented in the Design-Build Information Package, the Design-Builder shall immediately advise the Authority for appropriate action, if any.
- 3.11.2 Following the Authority's acceptance of the Preliminary Design Documents, the Design-Builder shall be deemed to have accepted the existing site conditions and the Design Builder shall be barred from seeking any and all subsequent change orders or increases in compensation for additional Services or Work relating to site or utility conditions which could or should have reasonably been verified by the Design-Builder prior to completion of the Preliminary Design Phase. The Authority

will not accept or approve any subsequent change order requests related to existing site or utility conditions which could or should have reasonably been verified by the Design-Builder prior to the completion of the Preliminary Design Phase.

- 3.12 Errors, Omissions and Deficiencies. Design-Builder agrees to perform the Services and Work in a manner that will accomplish the intended purpose of the Design-Build Contract Documents. The Design-Builder shall, without additional cost to the Authority, timely cure any errors, omissions, or other deficiencies in the Services and/or Work caused by or in any way due to the actions or inactions of the Design-Builder. Any costs incurred by the Authority to correct any errors, omissions or deficiencies in the Design-Builder's Services and/or Work caused by, or in any way due to, the actions or inactions of the Design-Builder may be deducted, at the Authority's sole discretion, from the payments then or thereafter due the Design-Builder. If the payments then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to the Authority upon demand.
- 3.13 Liability for Errors, Omissions and Deficiencies in the Design. The Design-Builder shall be liable to the Authority for all damages to the Authority caused by the Design-Builder's negligent errors, omissions and deficiencies in providing design Services, including errors, omissions and deficiencies in Services provided by Subconsultants to the Design-Builder. The Design-Builder shall indemnify and hold harmless the Authority for any and all costs incurred by the Authority as a result of such negligent errors, omissions and deficiencies, including, all direct and consequential damages, including, but not limited to, interest, reasonable attorney's fees and other expenses.
- 3.14 Liability for Defective Work and Materials. The Design-Builder shall be liable to the Authority for all damages caused by defects in the Work performed or materials provided by the Design-Builder. The Design-Builder shall indemnify and hold harmless the Authority for any and all costs incurred by the Authority as a result of such defective Work and materials, including, but not limited to, interest, attorney's fees and other expenses.
- 3.15 The Design-Builder's Project Manager. Prior to the execution of this Agreement, the Design-Builder shall designate an employee of its firm satisfactory to the Authority as the Design-Builder's Project Manager and that person shall be identified in an Appendix to this Agreement. The Design-Builder's Project Manager shall, so long as his/her performance is acceptable to the Authority, be responsible for the Design-Builder's Services and Work through Final Completion of the Project, and shall represent the Design-Builder and be available for general consultation throughout the Project. The Design-Builder's Project Manager shall have authority to receive and transmit instructions and information and render decisions related to the Project on behalf of the Design-Builder, and shall have the non-exclusive authority to bind the Design-Builder in all decisions, changes or other matters relating to the Project. All

directions given to the Design-Builder's Project Manager shall be binding as if given to the Design-Builder.

- 3.16 Construction Manager. The Authority may engage a Construction Manager to assume certain of the Authority's day-to-day responsibilities for the Project and to act as the Authority's representative for the Project. A CM, if already retained, shall be identified in Appendix A (Special Conditions). If the CM is engaged after the execution of this Agreement, the Authority shall notify the Design-Builder of the identity of the CM at the time of CM's engagement. If the Authority chooses not to engage a CM for this Project, all references to the CM in the Design-Build Contract Documents shall be interpreted to mean the Authority and/or its agents.
- 3.17 Radon Mitigation. The Design-Builder shall comply with radon mitigation construction techniques consistent with the Radon Hazard Subcode of the New Jersey Uniform Construction Code, N.J.A.C. 5:23-10 et seq. This requirement shall apply to all Projects, regardless of whether the project is located in a Tier 1 municipality, as defined in N.J.A.C. 5:23-10 (Appendix 10-A).
- 3.18 LEED™ Certification. The Design-Builder shall be responsible for designing and constructing the Project to achieve LEED™ Certification under the LEED v4 for Building Design and Construction: Schools ("LEEDv4 for BD+C: Schools"), and for applying for and securing such LEED™ Certification. LEED™ is a registered trademark of the USGBC. The Contractor shall be required to apply for and achieve LEED Certification at the level (Gold, Silver, Bronze (Basic Certification) represented in the Contractor's Technical Proposal submitted in response to the RFP for the Project.
- 3.19 E-Rate Program. The Design-Builder shall design the Project to maximize the Project's telecommunications connectivity through, but not limited to, the Schools and Libraries Universal Service Fund, more commonly known as the E-Rate Program, instituted in accordance with the provisions of the federal Telecommunications Act of 1996, Pub. L. 104-104, set forth at 47 U.S.C.A. § 253, and administered by the Universal Service Administrative Company ("USAC") under the direction of the Federal Communications Commission ("FCC").
- 3.19.1 As part of its obligation to design the information technology features of the Project (the "IT Package"), the Design-Builder shall coordinate with the Authority to design and construct the Project to meet DOE's information technology requirements and the District's Educational Specification, and to maximize the discounts and reimbursements available for the Project under the E-Rate Program (the "E-Rate Reimbursements").
- 3.19.2 In preparation of the IT Package, the Design-Builder shall identify the technology infrastructure, equipment and electronics within the IT package that are eligible for reimbursement under the E-Rate Program ("E-Rate Eligible Components"), and shall determine when such E-Rate Eligible Components will be incorporated into the construction of the Project.

3.19.3 The Design-Builder shall apply on behalf of the Authority for E-Rate Rebates applicable to the Project, utilizing the FCC's E-Rate Program Application Form 470, and shall ensure that any resulting E-Rate Reimbursements relating to infrastructure and/or equipment are forwarded to the Authority.

3.19.4 In connection with its E-Rate Program application, The Design-Builder may if necessary, prepare a separate scope of work for the purchase and installation of the E-Rate Eligible Components, and if such separate scope is prepared, the Design-Builder shall procure and retain, in accordance with the FCC's mandatory bidding process, further described at <https://www.usac.org/e-rate/>, and the Authority's procurement procedures as applicable, one or more separate technology services Subcontractor(s) or Subconsultant(s) to specify, provide and/or install the E-Rate Eligible Components. If the Authority becomes aware that the Design-Builder has failed to timely submit the FCC Form 470, or any other necessary E-Rate Program forms or application materials, in accordance with the procedures of the E-Rate Program; or that the Design-Builder has not forwarded to the Authority any resulting E-Rate Rebates relating to the Project's infrastructure, equipment or electronics, the Authority in its sole discretion may determine such action an Event of Default under this agreement. Such Event of Default may trigger Default remedies as stated in Section 20.1.1 hereunder. In addition, in the event of such failure to properly file for E-Rate Reimbursement or failure to properly remit Reimbursement to the Authority, the Authority shall have the right to withhold from future payments or recover from the Design-Builder the amount of the estimated or actual E-Rate Reimbursement.

3.20 Utility Rebate Programs. In addition to the obligations under the LEED requirements set forth in 3.18 above, the Design-Builder shall design and construct the Project to maximize all discounts, rebates and/or reimbursements for the Project available under any applicable State, local or Federal utility rebate and/or reimbursement program, including but not limited to, the Smart Start Program. Such rebates and reimbursements shall be payable to, and retained by, the Authority. In connection with such Utility Rebate Programs, the Design-Builder shall be responsible to:

3.20.1 Identify all project equipment that is eligible for rebate under the Smart Start program;

3.20.2 Complete and submit rebate applications to the appropriate program administrator(s) and forward copies to the Authority;

3.20.3 Maintain a tracking log of rebate applications;

3.20.4 Correspond with the rebate program administrator(s) to follow up on the status of all applications; and

3.20.5 Direct the program administrator(s) to send all rebate checks to the Authority.

- 3.21 Political Contributions Disclosure Form. Pursuant to law, the Design-Builder and the individual members if the Design-Builder is a Joint Venture, 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 the Design-Builder or any “Business Entity” (as that term is defined in P.L. 2005, c. 51) associated with the Design-Builder, at the time such contribution is made.
- 3.22 Political Contributions ELEC Filing. The Design-Builder and the individual members if the Design-Builder is a Joint Venture, 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 the Design-Builder’s responsibility to determine if filing is necessary.
- 3.23 Services to be Performed within the United States. The Design-Builder shall have a continuing duty to comply with N.J.S.A. 52:34-13.2, as applicable, which requires that Services and Work under state government contracts be performed within the boundaries of the United States. By executing this Agreement, the Design-Builder agrees that all Services rendered and Work performed by the Design-Builder pursuant to this Agreement shall be performed within the United States. If, during the Term, the Design-Builder or a subcontracted firm proceeds to shift the performance of any part of the Work or Services outside of the United States, the Design-Builder 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.
- 3.24 Design to Facilitate “Buy American” Compliance. The Design Builder shall design and construct the Project to comply with N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1 et seq., which prohibit the use by the Contractor or any Subcontractor of materials or farm products produced and manufactured outside of the United States on any public work. The Design Builder’s design shall not specify, recommend or require the use of any materials or equipment produced or manufactured outside of the United States, unless domestic materials or equipment of comparable kind or class are not commercially available, reasonably priced, or of sufficient quality. The Authority interprets this requirement consistent with analogous federal guidance, which provides that goods may be considered “produced or manufactured in the United States,” without regard to the origin of components or subcomponents used in such manufactured goods, as long as the manufacturing (which includes assembly) occurs in the United States. Any use of non-domestic materials or request for deviation from the requirement to specify domestic products must be submitted to the Authority for review, and the Authority may reject any deviation from the requirement to specify domestic products.

3.25 Use of NJSDA Network, Systems and Databases

- 3.25.1 The Design-Builder is required to utilize the Authority's designated computer Systems for uploading, recording, submitting and transmitting all Deliverables, Correspondence, Design Submissions and Submittals, in the manner indicated by the Authority.
- 3.25.2 The Design-Builder is required to receive training on the Authority's Systems and programs, and shall designate appropriate staff to participate in NJSDA training programs on the use of these Systems and program.
- 3.25.3 The Design-Builder shall be required to comply with the Authority's policies regarding network security and protection. Such policies will include requirements regarding:
- (a) the use of complex passwords to control access to the Authority's Systems and programs;
 - (b) the safeguarding of such passwords for the Authority's Systems and programs;
 - (c) the Design-Builder's installation and maintenance of antivirus and anti-malware programs to protect the Authority's Systems as well as its own networks, systems, databases and communication systems such as email and cloud access;
 - (d) the immediate notification of the Authority in the event the Design-Builder experiences a security breach in its networks, systems, databases, communication systems or other information technology systems;
 - (e) the permitted and impermissible uses of the Authority's Systems for internet access;
 - (f) a prohibition on the use of text messaging to communicate with the Authority's staff; and
 - (g) the Design-Builder's review, acceptance and acknowledgement of NJSDA's policies regarding use and access of the Authority's Network and Systems.
- 3.25.4 Failure to comply with these requirements may result in loss of access to NJSDA Systems, and in some circumstances, may constitute a material breach and an event of default under this Agreement.

3.26 Construction Camera Requirement. The Design-Builder shall, from the time of commencement of Construction and continuing until Final Completion of the Project,

provide continuous photographic documentation of the Project, in accordance with the requirements of Specification Section 013233, "Photographic Documentation."

4.0 DESIGN-BUILDER'S DESIGN PHASE SERVICES

4.1 General

- 4.1.1 Consistency with Design-Build Contract Documents. The Design-Builder's design of the Project shall comply with the requirements described in the Design-Build Contract Documents, including the standards set forth in the latest version of the Authority's Design Manual and Materials and Systems Standards.
- 4.1.2 Quality of Design Services. The Design-Builder shall, consistent with applicable State licensing laws, provide through qualified, licensed design professionals employed by the Design-Builder, or procured from qualified, independent, and licensed Professional Services consultants, the necessary design Services, including architectural, engineering and other design professional services, for the review and validation and acceptance of the existing design as represented in the "basis of design" documents for the Project, and/or preparation of the required drawings, Specifications and other design Submittals to permit the Design-Builder to perform the Services and Work consistent with the requirements of the Design-Build Contract Documents.
- 4.1.3 Schedule for Submission of Design Documents. At the Initial Meeting described in Section 3.2, the Design-Builder and the Authority shall, consistent with any applicable provisions of the Design-Build Contract Documents, agree upon a schedule for the Design-Builder to provide Design Documents to the Authority. The dates for the Design-Builder's submission of Design Documents shall be included on the Project Schedule.

4.2 Schedule of Values (Design Phase Activities)

- 4.2.1 Within ten (10) days of the Initial Meeting, the Design-Builder shall submit to the Authority a Schedule of Values applicable to the Design Phase. The Design Schedule of Values shall allocate the entire Contract Price between the Services and Work, and shall show the GMP Reserve as a single separate item. The Design Schedule of Values shall further allocate the portion of the Contract Price designated as design fees among all design and construction administration services for the Project. The Design Schedule of Values shall be prepared in such form as the Authority may require and supported by such data to substantiate its accuracy. If accepted by the Authority, this Schedule of Values shall be used as a basis for the Design-Builder's Design-Phase Invoices and only for this purpose. Adjustments to the Design Schedule of Values must be approved in writing by the Authority.

4.2.2 THE DESIGN-BUILDER SHALL NOT FRONT-END LOAD ITS SCHEDULE OF VALUES BY IMBALANCING IT OR BY INCREASING ANY ELEMENT THEREOF IN EXCESS OF THE ACTUAL COST, AND ANY SUCH ACTS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT.

4.3 Delivery of Design Phase Services. In accordance with the procedures and requirements set forth herein and in the Design Manual, the Design-Builder shall perform its Design Services in the following phases:

4.3.1 Preliminary Design Phase

- (a) DOE Approval of Schematic Drawings. Prior to the engagement of the Design-Builder, the Authority shall submit to DOE schematic drawings for the Project, as well as Educational Specifications and other application materials, in order to secure DOE preliminary approval of the Project and calculation of the Project's preliminary eligible costs pursuant to N.J.S.A. 18A:7G-5. DOE preliminary approval for the Project, including the DOE calculation of preliminary eligible costs, shall be provided to the Design-Builder as part of the Design-Build RFP package.
- (b) Development of Preliminary Design Documents. The Design-Builder shall proceed with the design of the Project based upon the DOE-approved schematic drawings and other associated documents (the "DOE-approved Documents"), and shall further develop the DOE-approved Documents into Preliminary Design Documents in accordance with the deliverable requirements of the Design Manual. The Design-Builder shall be responsible for any deviation from the DOE-approved Documents, unless such deviation is authorized or accepted by the Authority. The Preliminary Design Documents may include drawings, diagrams and Specifications setting forth the Project design, as agreed to by the Parties. The Preliminary Design Documents shall be consistent with the DOE-approved schematic drawings and shall be submitted in accordance with the requirements set forth in the Design Manual.
- (c) Schedule for Submission of Preliminary Design Documents. At the Initial Meeting described in Section 3.2, the Design-Builder and the Authority shall, consistent with any applicable provisions of the Design-Build Contract Documents, agree upon a schedule for the Design-Builder to provide Preliminary Design Documents to CM for distribution to the Authority. The dates for the Design-Builder's submission of Preliminary Design Documents shall be included on the Project Schedule and all Preliminary Design Documents shall be submitted in accordance with the requirements set forth in the Design Manual.
- (d) Preliminary Design Review Meetings. In accordance with the dates set in the Project Schedule, the Design-Builder and the Authority, shall meet, not

less than once every two (2) weeks, at the time(s) and place(s) specified by the Authority, to review and discuss the Preliminary Design Documents, in order to determine whether the Preliminary Design Documents are consistent with the DOE-approved Documents and with the Design-Build Contract Documents and are otherwise acceptable to the Authority. The Design-Builder shall identify during such meeting(s), among other things, the evolution of the design or, if applicable, any deviations from the DOE-accepted schematic drawings. The parties shall determine whether any revisions are necessary in order to secure the Authority's acceptance, and the Design-Builder shall incorporate any such revisions into the Preliminary Design Documents. Minutes of the meeting(s) shall be prepared and maintained by the Design-Builder and provided to all attendees for review within five (5) days of each meeting.

- (e) Revisions to Preliminary Design Documents. Within fourteen (14) Days after the Design Builder's Completion of the Preliminary Design Documents, the Authority shall review the submitted Preliminary Design Documents for consistency with the DOE-approved Documents and Design-Build Contract Documents, and shall determine whether the Preliminary Design Documents are consistent with the DOE-approved Documents and the Design-Build Contract Documents. In the event that any Preliminary Design Documents are rejected by the Authority for failure to conform to the requirements of the Design-Build Contract Documents or for other reasons, the Design-Builder shall revise and resubmit any such Preliminary Design Documents until they are deemed by the Authority to be acceptable and consistent with the Design-Build Contract Documents.

4.3.2 Final Design Documents Phase.

- (a) Development of Final Design Documents. After acceptance of the Preliminary Design Documents by the Authority, the Design-Builder shall develop Final Design Documents setting forth in detail drawings and specifications for the Construction Work. The Final Design Documents shall be consistent with the Preliminary Design Documents accepted by the Authority, and shall be submitted in accordance with the requirements set forth in the Design Manual. The sequencing and phasing of design and construction of the Project are within the sole discretion and control of the Design-Builder and the Design Builder may proceed to prepare and submit portions of the Final Design Documents as partial plan release packages for particular phases or areas of work. Before any phase of Construction Work may commence or proceed, the Design-Builder must receive the Authority's acceptance of the Final Design Documents for that phase of work, and must apply for and secure all necessary permits, licenses and approvals, including the requisite DCA building permit(s) and DOE's determination of Final Educational Adequacy.

- (b) Final Design Documents Review Meetings. The Design-Builder the Authority, and the CM shall meet, not less than once every two (2) weeks, at the time(s) and place(s) specified by the Authority, to discuss the Final Design Documents, to determine whether the Final Design Documents are consistent with the accepted Preliminary Design Documents and the Design-Build Contract Documents, and are otherwise acceptable to the Authority, and to agree upon any revisions, if necessary. The Design-Builder shall incorporate any such agreed-upon revisions into the Final Design Documents. Minutes of the meeting(s) shall be prepared and maintained by the Design-Builder and provided to all attendees for review within five (5) days of each meeting.
- (c) Revisions to Final Design Documents. Within fourteen (14) Days after the Design Builder's Completion of the Final Design Documents (or after the Design-Builder's completion of Final Design Documents for a partial plan release submission package for a particular phase or area of the Work), the Authority shall review the Final Design Documents submission for consistency with accepted Preliminary Design Documents and with the Design-Build Contract Documents, and determine whether the Final Design Documents are consistent with the accepted Preliminary Design Documents and with the Design-Build Contract Documents. In the event that any Final Design Documents are rejected by the Authority for failure to conform to the requirements of the Design-Build Contract Documents or for other reasons, the Design-Builder shall redesign and resubmit any such Final Design Documents until they are deemed by the Authority to be acceptable and consistent with the Design-Build Contract Documents, and shall thereafter be used for construction of the Project, as "Construction Documents".
- (d) DOE Final Approval. Prior to acceptance of the Final Design Documents by the Authority, (either as a whole, or in separate partial plan release submission packages) the Design-Builder shall be responsible for submitting detailed plans and specifications to DOE, in accordance with the requirements of N.J.A.C. 6A:26-5.4, for final approval of the educational adequacy of the project. The Design-Builder shall incorporate into the Final Design Documents any and all changes and revisions required by DOE in order to secure DOE final approval of the educational adequacy of the Project.
- (e) Other Agency Approvals. Before commencing any phase of Construction Work, the Design-Builder must receive the Authority's acceptance of the Final Design Documents, and must secure all necessary approvals from DCA, DEP, and any other entity, agency or Authority having jurisdiction over the Project.

- (f) DCA Plan Release and Construction NTP. Once the Design Builder has secured DCA's release of the Construction Documents (or upon any Partial Plan Release for any portion of Work), the Design-Builder shall notify the Authority of the nature and extent of the DCA plan release, and shall submit three (3) sets of DCA-approved Construction Documents to the Authority prior to commencement of the Construction Work.
 - (g) Notice to Proceed for Construction Work. Upon notification to the Authority that the Design Builder has received DCA's release of the Construction Documents (or any Partial Plan Release for any Portion of the Work), and the Authority's receipt of three (3) sets of DCA-approved Construction Documents, the Authority will issue a Notice to Proceed for Construction Work, and the Design-Builder shall thereafter proceed with Construction Work in accordance with the Construction NTP and the DCA-approved and released Construction Documents.
 - (h) The Design Builder shall maintain at least one set of the DCA-approved Plans and Specifications on the jobsite at all times.
- 4.4 Partial Submissions of Final Design Documents. The Design-Builder may prepare and submit Final Design Documents for a portion of the Work prior to completion of the Final Design Documents for the entire Work. However, no Final Design Documents for any portion of the Work may be submitted unless the Authority has first reviewed and accepted Preliminary Design Documents for such Work.
- 4.5 Effect of CM's and the Authority's Review. The review undertaken by the Authority and CM pursuant to this Article 4 shall not be deemed to be undertaken for the purpose of determining the accuracy and completeness of each drawing or Specification, determining that any other details such as dimensions and quantities have been complied with, or of substantiating instructions for installation and performance of equipment or systems designed by the Design-Builder, all of which shall remain the Design-Builder's responsibility. Neither the CM's review and comment on, nor the Authority's review and/or acceptance of, any Preliminary Design Documents or Final Design Documents shall be deemed to transfer any liability from the Design-Builder to the CM or the Authority.

5.0 DESIGN-BUILDER'S CONSTRUCTION WORK

- 5.1 Requirements. The Design-Builder shall provide through itself or its Subcontractors the necessary supervision, labor, inspection, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit the Design-Builder to complete construction of the Project consistent with the Construction Documents and the Design-Build Contract Documents.

- 5.2 Submittals. The Design-Builder shall prepare and submit Submittals to the Authority and CM for review and comment, after such Submittals have been reviewed and approved by the Design-Builder's Design Consultant. The Submittals shall include shop drawings, product data, samples and other Submittals consistent with and in compliance with the Design-Build Contract Documents.
- 5.2.1 Representation by Design-Builder. By providing the Authority and CM with Submittals, the Design-Builder represents that the Design-Builder and/or its Design Consultant has determined and verified all materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Design-Build Contract Documents.
- 5.2.2 Submittal Schedule. Within thirty (30) Days of the Commencement Date, or such other date as specified by the Authority consistent with the Initial Milestone Schedule or Project Schedule, the Design-Builder shall prepare and submit to the CM and/or the Authority a detailed schedule setting forth the dates and sequence for submission of Submittals, including sufficient time for review of such Submittals by the Authority and the CM (the "Submittal Schedule"). The Submittal Schedule shall also include the preparation and submittal of Coordination Drawings in accordance with Section 01100 of the Specifications, the completion of which shall occur within 60 days of the Construction Notice to Proceed. The CM shall review the Design-Builder's proposed Submittal Schedule and provide to the Authority written comments and recommendations for acceptance or rejection of the Submittal Schedule within seven (7) Days of receipt of the proposed Submittal Schedule. The Authority shall accept, provide comments to, or reject the Submittal Schedule within seven (7) Days of receipt of the CM comments to the Design-Builder's proposed Submittal Schedule. If the proposed Submittal Schedule is rejected or modifications are needed in response to comments from the Authority, the Design-Builder shall revise and resubmit within four (4) days. The Design-Builder's responsibility to prepare and maintain the Submittal Schedule is in addition to its obligation to prepare and maintain the Project Schedule as set forth in Section 3.5.
- 5.2.3 Submittals Tracking Log. Once the Submittal Schedule is accepted by the Authority, the Submittal Schedule shall be integrated into the Project Schedule as set forth in Section 3.5.4 above. The Design-Builder shall prepare and maintain a Submittals Tracking Log, based upon the accepted Submittal Schedule. The Submittals Tracking Log shall include the scheduled and actual dates for review and approval of all required Submittals along with current status of each Submittal and other information as appropriate. The Submittals Tracking Log shall be updated and issued by the Design-Builder no less than once weekly and shall be used by the Authority and the CM to monitor the Design-Builder's progress in providing Submittals in a timely manner to avoid delays to the Work.

- 5.2.4 CM's Review of Submittals. The review of Submittals by the CM pursuant to this Section shall be solely for the purpose of determining whether the items or equipment specified in Submittals are consistent with the requirements of the Design-Build Contract Documents, and is not to be deemed to be undertaken for any other purpose, including: (1) determining the accuracy and completeness of each Submittal; (2) determining that any other details such as dimensions and quantities have been complied with; (3) substantiating instructions for installation and performance of equipment or systems designed by the Design-Builder; (4) approving safety precautions; or (5) approving construction means, manners, methods, techniques, sequences or procedures, all of which shall remain the Design-Builder's responsibility. The CM's review of specific items shall not indicate review, acceptance or approval of an assembly of which the item is a component. The CM shall complete its review of the Design-Builder's Submittal within ten (10) Days of receipt of same, unless a longer duration is indicated in the accepted Submittal Schedule.
- 5.2.5 Authority Review of Submittals. The Design Builder shall provide Submittals to the Authority at least fourteen (14) business days prior to any procurement of materials or equipment, or performance of any construction activities, dependent on such Submittals. If the Authority chooses to actively review a Submittal, the Authority may accept or reject the Submittal within fourteen (14) business days of receipt thereof. Otherwise, the Authority may assume that the Design-Builder's Design Consultant has reviewed the Submittal for conformance with the Design Build Contract Documents. The Authority's review pursuant to this Section shall not be deemed to be undertaken for the purpose of: (1) determining the accuracy and completeness of each Submittal; (2) determining that any other details such as dimensions and quantities have been complied with; (3) substantiating instructions for installation and performance of equipment or systems designed by the Design-Builder; (4) approving safety precautions; or 5) approving construction means, manners, methods, techniques, sequences or procedures, all of which shall remain the Design-Builder's responsibility. The Authority's review of specific items also shall not indicate review, acceptance or approval of an assembly of which the item is a component.
- 5.2.6 Deviation from Requirements. The Design-Builder shall not be relieved of responsibility for any deviation from the requirements of the Design-Build Contract Documents and/or the Construction Documents by the Authority's acceptance of any Submittal, unless the Design-Builder has specifically informed the Authority in writing of such deviation at the time of submission and the Authority has issued written approval to the specific deviation.
- 5.2.7 Resubmission of Submittals. In the event that the Authority rejects a Submittal or the Submittal requires revision, the Design-Builder shall revise and resubmit the Submittal within five (5) Days of the rejection.

- 5.2.8 Identification of Revisions. In the event that the Design-Builder is required to revise and resubmit any Submittal, the Design-Builder shall identify, in writing, all revisions made by the Design-Builder.
- 5.2.9 Reasonable Revision of Submittals. The Design-Builder acknowledges that the Authority may require the Design-Builder to make a reasonable number of changes to the Submittals in response to Authority comments prior to the Authority's acceptance of such Submittals. However, if a Submittal has been initially rejected by the Authority with comments provided by the Authority or the CM, and the Submittal is subsequently resubmitted by the Design-Builder without addressing the comments previously provided, the Authority shall reject the resubmitted Submittal, and, at the sole discretion of the Authority, the Design-Builder shall be responsible for the costs relating to the third review, and any subsequent review, of such resubmitted submittal by the Construction Manager and/or the Authority.
- 5.2.10 Submittals Maintained on Jobsite. The Design-Builder is required to maintain all submitted Submittals, including shop drawings, on the jobsite at all times. The submitted Submittals shall be organized and filed by specification number and review status (i.e. "accepted," "rejected" "not reviewed" or "pending" Submittals). Copies shall be supplied to the CM for the record as required or requested.
- 5.3 Testing. The Design-Builder shall bear the cost of material and equipment testing specifically required by Code, the Design-Build Contract Documents, any manufacturer or supplier, and all other testing performed, except for testing in support of N.J. Uniform Construction Code Special Inspections, and such additional testing as may be requested by the Authority pursuant to Section 5.3.2 below. Prior to the initiation of any testing required by applicable Legal Requirements, the Design-Build Contract Documents or any manufacturer or supplier, the Authority will provide the Design-Builder with the names of approved testing laboratories, firms or services for use on the Project. The Design-Builder shall utilize only testing laboratories, firms or services approved or otherwise provided by the Authority. Failure to use such approved entities shall be grounds for rejection of the inspection or test as nonconforming.
- 5.3.1 The Design-Builder shall notify the CM in writing of all scheduled testing of materials or equipment. The notice shall be provided no later than seven (7) Days prior to the scheduled test.
- 5.3.2 The Authority may direct, in writing, that testing be performed in addition to the testing required by Code, the Design-Build Contract Documents or any manufacturer or supplier. The Design-Builder shall retain the testing firm and coordinate such additional testing and shall invoice the Authority for such additional testing. The Authority shall bear the costs of such additional testing and shall reimburse the Design-Builder for such additional testing after the testing report is complete, unless the test report for the additional testing requested by the Authority pursuant to this Section reveals that the Work does not comply with the

requirements of the Design-Build Contract Documents. If the test report for the additional testing reveals that the Work does not comply with the requirements of the Design-Build Contract Documents or is defective, the Design-Builder shall bear any and all costs of such testing. The Design-Builder shall cooperate fully with, and shall give Project Site access to, any firm or entity retained by the Authority or the CM to provide testing services on the Project.

- 5.3.3 All test reports shall be submitted to the CM and shall be accompanied by a certification signed by the Design-Builder attesting to the Design-Builder's knowledge of the contents of the Submittal, acceptance by the Design-Builder of the test and/or inspection findings, acknowledgment that the materials and/or equipment tests meet the required standards, and a certification that the test and/or inspection report is accurate. Failure to provide the written certification shall be grounds for rejection of the Submittal

- 5.4 Equipment and Materials. The Design-Builder warrants to the Authority that all materials and equipment furnished pursuant to the Design-Build Contract Documents shall be new, unless otherwise specified, and that all Work will be of good quality, free from faults, defects, and in conformance with the Design-Build Contract Documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected by the Authority. If required by the Authority, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to, and not in lieu of, any other warranty or guarantee provided for in this Agreement and/or by a manufacturer.

- 5.4.1 The Design-Builder shall furnish and deliver the necessary equipment and materials in ample quantities and as frequently as required to avoid delay in the progress of the Work and shall store them so as not to cause interference with the orderly progress of a Project. The Design-Builder shall have a representative at the Project Site to accept delivered equipment and materials, as such equipment and materials will not be accepted for delivery by the Authority.

- 5.4.2 The Design-Builder shall provide the necessary protection to stored materials and work in place to prevent damage, injury or loss of work in progress and to preclude the formation of extraneous substances like mold on work in place and stored materials. Storage of materials is the responsibility of the Design-Builder. Materials shall be stored immediately on delivery in accordance with manufacturer's instructions to ensure the preservation of their quality and fitness. Stored materials, even if accepted before storage, may again be inspected by the CM and/or the Authority prior to their incorporation into the Project. Stored materials shall be located so as to facilitate their prompt inspection and maintenance.

- 5.4.3 Any materials or equipment susceptible to damage from the elements shall be stored in weather-tight enclosures. The Design-Builder shall maintain the

temperature and humidity in the enclosed areas within the ranges stated in the manufacturer's instructions for the particular materials or equipment. The Design-Builder shall also store unpacked and loose products on shelves, in bins, or in neat groups of like items within the enclosed areas.

- 5.4.4 For exterior storage of materials or equipment, the Design-Builder shall provide substantial platforms, blocking or skids, to support materials and equipment above ground. The Design-Builder shall protect materials and equipment from soiling and staining and, for materials and equipment that are subject to discoloration or deterioration from exposure to the elements, the Design-Builder shall cover such equipment and materials with impervious sheet metal and provide ventilation to prevent condensation. The Design-Builder shall store granular materials on clean, solid surfaces such as pavement, or on rigid sheet materials to prevent mixing with foreign matter. The Design-Builder shall provide surface drainage to prevent erosion and ponding of water in areas where materials and equipment are stored.
- 5.4.5 With the approval of the Authority, portions of a Project Site may be used for storage purposes and for the placing of the Design-Builder's plant and equipment, but additional space, if needed, must be provided by the Design-Builder at its own expense. Private property shall not be used for storage purposes without written permission of the owner or lessee of such property. Copies of such written permission shall be furnished to the Authority prior to storage. Storage sites shall be restored to their original condition at no cost to the Authority.
- 5.4.6 Any materials or equipment intended for use on the Project stored off-Site by the Design-Builder shall be stored in a bonded and insured warehouse.
- 5.4.7 No materials, equipment, or supplies for use on the Project shall be subject to any lien or encumbrance or other agreement by which an interest is retained by the seller or any other person or entity. The Design-Builder warrants, by signing its Invoice, that it has free and sufficient title to all material, equipment and supplies used by it in the Work, free from all liens, claims or encumbrances.

5.5 Substitutions.

- 5.5.1 Whenever materials or equipment are specified or described in the Design-Build Contract Documents by using the brand name of an item or the name of a particular manufacturer, the use of the brand name or manufacturer name is intended to establish the type, function, and quality required for the materials or equipment. Unless the name is followed by words indicating that "no substitution is permitted," material and equipment of other manufacturers may be accepted, but only if the Design-Builder receives Authority approval after the Design-Builder submits a written request to use an approved substitute, including the following information regarding the proposed substitute for the Authority's review and approval:

- (a) Manufacturer or supplier data sheets providing detailed Specifications and product Data;
 - (b) A written statement from the Design-Builder or its Subcontractor stating the reasons that the proposed item or supplier is necessary or preferred for use on the Project;
 - (c) A cost analysis identifying the cost savings to the Authority if the proposed substitute is used, and a commitment to execute a credit change order to credit back such savings to the Authority; and
 - (d) Any other relevant information to be considered by the Authority in evaluating the Design-Builder's proposed substitute.
- 5.5.2 Proposed substitutes will be compared against the criteria provided in the Design-Build Contract Documents, and evaluated for cost savings to the Authority. The Authority will either accept or reject the proposed substitution within twenty-one (21) business days of receipt of the Design-Builder's written notice of the proposed substitution. Authority acceptance of a substitute item does not release the Design-Builder from its responsibility under the terms of this Agreement to perform Work in conformity with the requirements of the Design-Build Contract Documents.
- 5.5.3 The Authority will not permit any increase to the GMP or extend the Contract Time as a result of the use of authorized equals or substitutes.
- 5.5.4 The Authority may require the Design-Builder to furnish, at no cost to the Authority, a special performance guarantee or other security with respect to any substitute.
- 5.5.5 When the Design-Build Contract Documents permit the use of one or more types of a particular material, equipment, or product, only a single accepted type is to be used on the Project by the Design-Builder in the prosecution of the Work.

5.6 Acceptance and Rejection of Materials, Equipment and Furnishings.

- 5.6.1 When specified by the Design-Build Contract Documents, materials, equipment, assemblies, and furnishings will be accepted only if the Design-Builder provides the Authority with such materials, equipment, furnishings or assemblies that are fully compliant with all requirements. The Design-Builder's incorporation of any and all materials, equipment, furnishings or assemblies into the Work shall constitute the Design-Builder's acknowledgement that such materials, equipment, furnishings or assemblies are compliant with all applicable requirements.
- 5.6.2 All materials, equipment, assemblies and furnishings, whether in place or not, which do not comply with the requirements of the Design-Build Contract Documents shall be considered unacceptable, and shall be rejected and removed

immediately from the Project Site. Rejected materials, equipment, assemblies or furnishings, the defects of which have been corrected, shall not be used unless and until accepted by the Authority.

5.7 Use of Explosives

- 5.7.1 The use of explosives in the performance of the Work of the Project is discouraged and must be approved in writing by the Authority. If the use of explosives is necessary for the prosecution of the Work, and the Authority has approved the use of explosives, the Design-Builder shall exercise the utmost care not to endanger life or property, including the Work. The Design-Builder shall be responsible for all damage resulting from the use of explosives.
- 5.7.2 The Design-Builder shall schedule a pre-blast meeting with the New Jersey Department of Labor and Workforce Development Safety Compliance Unit. No blasting will be permitted prior to the pre-blast meeting.
- 5.7.3 Prior to the commencement of any blasting or use of explosives, the Design-Builder shall carefully document the existing condition of all adjacent properties by taking a minimum of twelve (12) photographs of each adjacent property, including the structures thereon, and by documenting the condition of same in a video recording of sufficient length and detail as to capture all existing conditions. Design-Builder shall submit copies of such photographs in digital and hard-copy (8x10 glossy) format, and shall submit copies of the video in DVD format.
- 5.7.4 If approved by the Authority for use on the Project, explosives on the Project Site shall be stored safely under lock and key. The storage places shall be expressly marked DANGEROUS EXPLOSIVES. The storing and handling of explosives and highly inflammable materials shall conform to the regulations of DCA, the New Jersey Department of Labor and Workforce and any local Authority having Jurisdiction over the Project. Proper means shall be used to avoid blasting damage to public and private property. All persons within the danger area shall be warned and given time to withdraw.

- 5.8 Utilities. Prior to commencing any excavation activity, the Design-Builder shall contact the proper utility companies and/or the State, County or City to identify the location of any existing utility lines, pipes or other equipment, whether in use or not. The Design-Builder shall be solely responsible for locating existing utilities, and shall be solely responsible and liable for any damages, fees, fines, claims or other costs associated with any damage or interruption to such utilities.

- 5.8.1 The Design-Builder shall protect all utilities encountered while performing the Work, regardless of whether such utilities are indicated in the Design-Build Contract drawings or the Construction Documents. The Design-Builder shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same or better condition as existed prior to starting the Work, at no

cost to the Authority. The Design-Builder shall maintain any existing utilities and other services in service until new facilities are installed, tested and approved for use, even if the existing facilities are shown to be abandoned in the Design-Build Information Package or the Construction Documents.

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

5.9 Field Office and Temporary Facilities.

- 5.9.1 The Design-Builder shall provide an on-Site, suitable, separate, weather-tight, heated, insulated field office, and shall secure the necessary permits for such field office, for use by the CM, and the Authority's employees, Professional Services Consultants and agents.
- 5.9.2 The Design-Builder shall also provide storage areas, staging areas, excavation borrow/spoils designated areas, commercial canteen areas, telephones, toilet facilities, and other temporary facilities which are necessary to perform the Services and Work, as well as employee vehicular parking areas, as are necessary to perform the Services and Work, or as are required under the Design-Build Contract Documents. The Design-Builder shall locate such areas to suit Project requirements, subject to approval of the Authority.
- 5.9.3 The Design-Builder shall provide temporary electricity, water, or other utilities, and shall secure the necessary permits for such utilities to perform the Services and Work. The Design-Builder shall also supply temporary enclosures and heat as necessary to perform the Services and Work and to meet the Contract Milestone dates in the Project Schedule. If the Project Schedule as initially accepted or as later modified, requires the performance of Work at a time of year when supplied heat or ventilation is required to perform certain Work, then the Design Builder shall provide the required heat/ventilation at its own cost with no expectation of additional compensation from the NJSDA. The Design-Builder shall be responsible for securing and maintaining the necessary permits for such facilities.

- 5.9.4 Project Signage. The Design-Builder shall provide Project signage which shall be installed and maintained per the direction of the CM and/or the Authority. A 4'-0" x 8'-0" Project Sign, as specified by NJSDA, is to be furnished, installed, re-located (if necessary) and maintained by Design-Builder. Upon direction from the CM, the Design-Builder shall remove and dispose of signage.

5.10 Access, Roads and Walks

- 5.10.1 The Design-Builder shall not obstruct any road or traffic area in connection with the Project. On the Project Site, the Design-Builder shall provide, place, grade and compact all necessary materials to maintain road and traffic areas in good condition and shall remove snow and debris as necessary to provide and maintain in serviceable condition the access roadbed, as well as pedestrian ways. The Design-Builder shall keep adjacent streets free of any dirt and debris coming from the Site. The Design-Builder shall provide all sediment control protection as required by any applicable agency or authority having jurisdiction over the Project. The entire Project Site shall be fenced in with wind screens for dust control.

- 5.10.2 If the Design-Builder seeks to use for construction purposes any existing driveways, parking areas, or other property outside of the boundaries of the Project Site, the Design-Builder shall obtain all necessary permits, easements, access agreements or permissions in writing from the appropriate property owners (whether private persons or public entities) of such driveways, parking areas, or other property before using. If permission is obtained, the Design-Builder shall maintain such driveways and areas in good condition during the construction period, and at Final Completion, shall restore them to the same condition as they were at the start of the Work.

- 5.10.3 The Design-Builder, its employees, Subcontractors, Subconsultants, suppliers and/or vendors shall not park trucks or other vehicles on any streets adjacent to the Project Site.

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

- 5.11 Building and Project Site Cleanup. In addition to the requirements set forth in this Section 5.11, the Design-Builder shall keep the Building, Project Site and any surrounding streets and sidewalks reasonably free from debris, trash and construction waste to allow the Design-Builder to perform the Work efficiently, safely and without interfering with the use of adjacent land. The Design-Builder shall also be responsible for providing snow removal, grass maintenance and litter removal.

- 5.11.1 The Building and Site must be cleaned daily. All work areas and adjoining roads and walkways used by the public, must be broom swept and all debris must be

removed at the end of every shift or at appropriate intervals during the workday, to the satisfaction of the CM and Authority, to ensure safety and proper housekeeping to minimize risk of injury, fire, or other impacts to worker or public safety.

5.11.2 If the Design-Builder fails to properly and completely clean up after each shift, the next scheduled shift may be utilized by CM (or Authority) to complete cleaning prior to the Design-Builder being allowed to proceed with any contract scopes of work. The Design-Builder is to provide full time dedicated labor forces to provide ongoing cleaning services. Failure to so provide will result in lost time at no additional cost to the Authority. In the event the Authority is required to retain outside cleaning services to perform the obligations of the Design-Builder under this Section, the Design-Builder shall be backcharged for the full cost of such services plus the cost of supervision by CM or Authority, if applicable.

5.11.3 Throughout the duration of the Project, the Design-Builder shall sort and separate construction debris for recycling as required by USGBC LEEDTM criteria.

5.11.4 Upon Substantial Completion of the Work, or a portion of the Work, the Design-Builder shall remove all debris, trash, construction waste, materials, equipment, machinery and tools to permit the Authority to occupy the Project, or a portion of the Project, for its intended use.

5.12 Importation and Exportation of Fill Materials

5.12.1 Importation of Fill Materials

- (a) All Imported Fill brought onto the Project Site shall be suitable for the Project from both an engineering and environmental quality perspective. The environmental quality of the Imported Fill utilized on the Project shall not negatively affect the environmental classification of the Project Site.
- (b) Only “Certified Clean Fill” shall be imported to the Project Site for use in any remedial action. In the absence of the appropriate certification in accordance with NJDEP Technical Requirements for Site Remediation (N.J.A.C.7:26E and the Fill Material Guidance for SRP Sites, April 2015, Version 3.0, Imported Fill to be used in a remedial action must be supported by analytical test results from a New Jersey-certified laboratory documenting that the fill has been tested and does not contain compound concentrations in excess of NJDEP Residential Direct Contact Soil Remediation Standards. The Design Builder shall provide to the CM, LSRP, and the Authority the analytical test results for all Imported Fill before such Imported Fill is brought onto the Project Site. The Design Builder shall be responsible for the costs of any testing to satisfy the requirements of this Section 5.12.1.2.

- (c) Unless an alternative sampling program is approved by the Authority and deemed acceptable to the LSRP, all Imported Fill to be used for remedial actions shall be analyzed for Extractable Petroleum Hydrocarbons (“EPH”) Diesel Range Organics (“DRO”), Target Contaminant List (“TCL”) volatile organic compounds (“VOCs”), TCL semivolatile organic compounds (“SVOCs”), TCL pesticides and herbicides, polychlorinated biphenyls (“PCBs”), Target analyte List (“TAL”) metals, hexavalent chromium, and cyanide. A library search for tentatively identified compounds (“TICs”) shall be included with the VOC and SVOC analysis (e.g. VOC+15, SVOC+25). The Design-Builder shall submit laboratory test data for the proposed imported fill and/or topsoil at a frequency that complies with the Table 2: Sampling Frequency Guide for Clean fill, as found in the NJDEP Fill Material Guidance for SRP Sites, April 2015, Version 3.0.
- (d) Sampling of soil or fill shall be in conformance with the latest versions of the Technical Requirements for Site Remediation and the NJDEP’s Field Sampling Procedures Manual.
- (e) Sampling and testing of any fill materials to be imported to the Project Site shall be provided at the Design-Builder’s expense.

5.12.2 Exportation of Fill Materials

- (a) Excess fill to be removed or exported from the Project Site shall be exported in a manner and disposed at a receiving site such that the environmental quality of the excess fill shall not cause the environmental classification of the destination property, if an unrestricted use, to change to a restricted use.
- (b) The Design-Builder shall provide for testing of all fill materials before they leave the Project Site, for the purpose of identifying any contaminants and to allow for proper disposal, at its own expense.
- (c) No Impacted Materials identified on the property (including “historic fill”) shall be exported for reuse, unless the reuse destination is permitted by law to accept these materials.
- (d) Prior to exportation of fill from the Project Site, the Design-Builder shall (1) provide the CM, LSRP, and the Authority with the name and address of the fill destination; and (2) provide the CM, LSRP, and the Authority with documentation affirming that the destination property is permitted to accept the fill; and (3) provide a letter from the receiving facility that they agree to accept the material.
- (e) Upon exportation of fill from the Project Site, the Design-Builder shall quantify the amount of fill exported from the Project Site, and provide proof

of such quantities removed, including copies of properly executed manifests to the CM, LSRP, and the Authority.

- (f) Reuse of concrete and masonry as fill shall be in accordance with NJDEP guidance.
- (g) All fill importation and exportation shall be managed in accordance with local, state, and federal laws and regulations.

5.13 Winter Protection. The Design-Builder shall provide winter protection to the Project, including, but not limited to, providing temporary heat to maintain the Project buildings at a temperature of at least forty (40) degrees Fahrenheit or greater, as may be required for the then-current stage or type of construction activity and/or the protection of materials. In the event of a dispute as to the required temperature for winter protection under this Section, the CM shall determine and advise the Design-Builder of the temperature requirements for the type of construction activity and protection of materials at issue.

5.14 Photographs.

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

5.14.2 Upon commencement of Construction Work, the Design-Builder shall submit with its monthly Invoice: 1) a minimum of twelve (12) digital photographs documenting in detail the progress of the Work during the prior month for which the Invoice is submitted.

5.14.3 Within five (5) Days of receiving a Certificate of Substantial Completion, the Design-Builder shall take a minimum of twenty-four (24) digital photographs, providing the information noted in Section 5.14.4 for each photograph, and a video recording in DVD format documenting the progress of the Work in sufficient detail to capture all existing conditions, and providing synchronous voice narration to identify the conditions and work pictured. The video and digital photographs required by this Section 5.14.3 shall be submitted to the CM within ten (10) Days of the Design-Builder's receipt of a Certificate of Substantial Completion.

5.14.4 All digital photographs submitted by the Design-Builder under this Section 5.14 shall:

- (a) Be noted with the date and time the picture was taken, the name of the Project, description of the photograph and information identifying directional information (e.g. “looking north”);
- (b) Be taken from locations approved by the CM;
- (c) Be submitted to the CM in digital electronic form and two (2) sets of prints; and
- (d) Become the property of the Authority, and the Authority shall become the owner of any and all copyright and intellectual property rights created or existing under state or federal law in such photographs. The Authority may thereafter utilize such photographs for any purpose.

5.15 Submission of Certified Payroll Records. The Design-Builder shall submit to the Authority certified payroll records for each payroll period within ten (10) days of payment of wages, in accordance with N.J.A.C. 12:60-5.1 and N.J.A.C. 19:39-2.1(b)5. In no event shall certified payroll records be submitted later than the seventh business day of the month following payment of wages, if such payroll records are submitted with the monthly workforce report, Form AA-202, required by N.J.A.C. 19-2.1(b)4. The certified payroll records shall be submitted to the NJSDA’s Vendor Services Division, using the New Jersey Department of Labor and Workforce Development’s Payroll Certification for Public Works Projects. The Authority shall have the right to request paper copies of certified payroll records at any time, and the Design-Builder shall produce such records within five (5) days of a request from the Authority.

5.16 Repair of Finished Surfaces, Applied Finishes, Other Materials.

5.16.1 Before Substantial Completion of the Project, the Design-Builder shall replace all broken, scratched or otherwise damaged glass or other materials installed by it or its Subcontractors on the Project regardless of the cause of the breakage or damage. Between Substantial Completion and Final Completion, the Design-Builder shall replace all broken, scratched or otherwise damaged glass or other materials damaged by it or its Subcontractors on the Project.

5.16.2 The Design-Builder shall clean all glass and other materials on the Project upon Final Completion, or when directed, removing all paint spots, stains, plaster, or other foreign material.

5.16.3 Until the Design-Builder achieves Substantial Completion, the Design-Builder shall be solely responsible for any repairs required due to any cracking, delamination, peeling or dislodging of finished surfaces such as concrete, pre-cast concrete, cast stone, natural stone, unit masonry, millwork, plaster and the like, and applied finishes such as paint and special coatings, regardless of the cause of such required repairs. Subsequent to Substantial Completion and prior to achieving Final Completion, the Design-Builder shall be responsible for any repairs required

due to any cracking, delamination, peeling or dislodging of finished surfaces such as concrete, pre-cast concrete, cast stone, natural stone, unit masonry, millwork, plaster and applied finishes such as paint and special coatings, if the damage to the aforementioned finished surfaces results from the actions or inaction of the Design-Builder or its Subcontractors. The requirements of this Section 5.16.3 shall in no way relieve or reduce the Design-Builder's warranty requirements pursuant to the Design-Build Contract Documents.

5.17 As-Built Plans and Drawings.

5.17.1 Requirements. In addition to the requirements for Final Payment included in Section 10.5 of this Agreement, the Design-Builder shall comply with the following requirements and procedures concerning As-Built Plans and Drawings and Project Closeout.

5.17.2 The Design-Builder shall keep on the Project Site at all times, and make available to the Authority, one set of Plans and Specifications to be marked "AS-BUILT" (the "As-Built Documents"). During the course of the Project, the Design-Builder shall regularly mark these drawings with colored pencils to reflect any changes, as well as the dimension and the location of all pipe runs, conduits, traps, footing depths or any other information not already shown on the plans or differing therefrom. The Design-Builder shall ensure that all buried and aboveground utilities outside the building shall be located by a survey and a metes-and-bounds description performed by a licensed surveyor, who shall certify as to the accuracy of the surveys. The Design-Builder shall provide an updated metes-and-bounds description, prepared by a licensed surveyor, in the event the as-built location of any utility deviates from the location as originally proposed or documented, to facilitate the creation of accurate utility easements. The As-Built Documents and survey shall be made available to the Authority upon request at any time during the progress of the Work.

5.17.3 Certification of As-Built Documents. The Design-Builder shall submit the final As-Built Documents to the Authority with a certification as to the accuracy of the information thereon at the time of Final Completion and before Final Payment is made to the Design-Builder. Submission of the As-Built Documents and certification are explicitly required as a condition precedent to Final Payment.

5.17.4 As-Built Survey to DCA. As soon as possible after the installation of the foundation wall, the Design-Builder shall submit to DCA a foundation location survey, prepared by a land surveyor licensed in the State of New Jersey, showing all building corners of the foundation and the elevation of the top of the foundation wall. The preparation and submission of this foundation location survey shall not constitute grounds for the Design-Builder to stop or delay the progress of the remainder of the Work in order to prepare or submit the foundation location survey. The proposed foundation location and elevation as shown on the original plot plan shall also be shown on the foundation location survey. The Design-Builder shall

also submit to DCA prior to issuance of a Certificate of Occupancy an “as-built” survey showing to scale the size and location of all the new construction and all existing structures on the Project Site, distances from lot lines and the established street grades; accessible route(s) for buildings required by N.J.A.C. 5:23-7 to be accessible; and it shall be drawn in accordance with an accurate boundary line survey.

- 5.18 Project Closeout. Upon Final Completion of the Project, the Design-Builder shall submit to the Authority upon request, three (3) sets of all shop and/or erection drawings used for "as-built" documentation, and all Operating, Instruction and Maintenance (“O&M”) manuals for Equipment incorporated into the Project. The Design-Builder shall provide video training to instruct Project School District personnel to properly operate and maintain systems, equipment and similar items provided as part of the Design-Builder’s Work.
- 5.19 Record Drawings. The Design-Builder shall convert the “as-built” drawings referenced in Section 5.17 above into Auto CAD Record Drawings, maintained in their native electronic format. The Record Drawings shall be submitted to the Authority in accordance with the requirements set forth in the Design Manual and shall include, but not be limited to, notation of significant changes in the Work, and/or dimensioned locations of underground improvements, including utility, supply, and drainage piping and apparatus, based on marked-up prints, drawings, and other data created or obtained during the course of the Project.
- 5.20 Flooring Certifications and Testing. For all projects incorporating poured flooring, the Design-Builder shall:
- 5.20.1 Provide written certifications, on the form prescribed by the NJSDA (available on the NJSDA website), or in another format satisfactory to the NJSDA, certifying that the products and materials comprising the poured flooring system, including any topcoats, catalysts and/ or additives utilized in the installation process, do not contain phenyl mercuric acetate (PMA) or other mercury compounds. Such certifications shall be required from:
- (a) the manufacturer(s) of the floor system components;
 - (b) the Design-Builder;
 - (c) the Design-Builder’s Design Consultant;
 - (d) the floor installation subcontractor; and
 - (e) any other subcontractor, consultant or supplier providing labor or materials for the installation of the poured flooring.
- 5.20.2 Assist in testing of any poured flooring system, in accordance with the following:

- (a) Design-Builder shall facilitate collection of liquid material samples as identified by the Authority's Construction Manager and/or its consultant, with testing of samples to be performed by the Construction Manager's engaged testing consultant;
 - (b) assume collection of one sample for each batch or pour of flooring material;
- 5.20.3 If the results of the testing show that any portion of the installed flooring system tests positive for the presence of mercury, the Design-Builder shall be required to remove all of the mercury-containing floor system and any substrate materials that have been contaminated with mercury, and shall be responsible for the replacement of the contaminated flooring with a mercury-free flooring system, all at the Design-Builder's own cost and expense. The Design-Builder shall be responsible for all costs and schedule impacts associated with such flooring removal and replacement, without compensation or time extension from the Authority.

6.0 PROSECUTION AND PROGRESS OF THE SERVICES AND WORK

- 6.1 Performance of Services and Work. Appendix C to this Agreement identifies the names and titles of all key employees, Subcontractors and Subconsultants retained by the Design-Builder to perform Work and/or provide Services for the Project. Throughout the Term of the Project, the Design-Builder shall update the list of employees, Subcontractors and Subconsultants every six (6) months or within five (5) Days after the Design-Builder replaces any employees, Subcontractors or Subconsultants on the Project.
- 6.2 Key Team Members.
 - 6.2.1 Key Team Members means those individuals who are employed by the Design Builder or its subcontractors, or by the Design Builder's Design Consultant or its Subconsultants who are required to be named in the Design Builder's Technical Proposal
 - 6.2.2 The Design-Builder 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 the Design-Builder's response to the Authority's RFP for the Project.
 - 6.2.3 Replacement of Key Team Members. The Design-Builder shall provide notice to the Authority in the event that the Design-Builder 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 the Design-Builder proposes to replace, but the Design-Builder shall not be entitled to any additional compensation in connection

with any replacement or substitution of a Key Team Member. The Design-Builder shall submit to the Authority for approval in advance of any substitution the name and qualifications of proposed candidates for substitution of Key Team Members.

- 6.2.4 Changes to Key Team Members Requested By the Authority. The Authority may, at its sole option, review from time to time the Design-Builder's Key Team Members. If, in the Authority's sole opinion, changes to Key Team Members are necessary, the Authority shall notify the Design-Builder in writing. Upon receipt of said notice, the Design-Builder 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.

6.3 Supervision.

- 6.3.1 The Design-Builder shall supervise and direct the Services and Work, including all portions of the Services or Work performed by any Subcontractor or Subconsultant. The Design-Builder shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Services and Work. The Design-Builder shall give the Services and Work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Authority and its contractors, Professional Services Consultants, agents and employees in every way possible.
- 6.3.2 Prior to the execution of this Agreement, the Design-Builder shall designate in writing an individual satisfactory to the Authority who is thoroughly experienced in the Services and Work being performed, as the Design-Builder's Superintendent. The Design-Builder's Superintendent shall, so long as his/her performance is acceptable to the Authority, be responsible for the Design-Builder's Work through Final Completion of the Project. The Authority reserves the right to require the immediate replacement of said Superintendent for any reason and at the sole discretion of the Authority.
- 6.3.3 The Superintendent shall be capable of identifying existing and predictable hazards on the Project Site and working conditions that are unsanitary, hazardous, or dangerous to employees and shall have the authority to take prompt corrective measures to eliminate such hazards and conditions. The Design-Builder's Superintendent shall have authority to receive and transmit instructions and information and render decisions related to the Project on behalf of the Design-Builder, and shall have the authority to promptly secure or supply such materials, equipment, tools, labor, and incidentals as may be required. The Superintendent shall have the non-exclusive authority to bind the Design-Builder in all decisions, changes or other matters relating to the Project. All directions given to the Design-Builder's Superintendent shall be binding as if given to the Design-Builder. The Superintendent shall only perform construction supervisory activities for the Project and shall not perform Construction Work, nor shall the Superintendent

perform additional roles or functions on the Project (e.g., Safety Coordinator or Inspector, Quality Assurance/Quality Control Coordinator or QA/QC Inspector). The Superintendent shall not perform administrative support functions in addition to his/her construction supervisory duties. Upon the request of the Authority, the Design-Builder shall replace the Superintendent with a candidate acceptable to the Authority if the Authority determines that the Superintendent's performance is no longer satisfactory.

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

6.4 Subcontractors and Subconsultants.

- 6.4.1 Responsibility for Subcontractors and Subconsultants. In the event the Design-Builder hires, employs or otherwise engages Subcontractors or Subconsultants, the Design-Builder shall be responsible for all Work or Services performed by its Subcontractors and/or Subconsultants. The Design-Builder shall coordinate the activities of all Subcontractors and Subconsultants. It is expressly understood by the Design-Builder that the consent of the Authority to the subcontracting of any Work and/or Services under this Agreement shall not relieve the Design-Builder from performing its obligations under the Design-Build Contract Documents. The Design-Builder shall at all times give due attention to the fulfillment of its obligations under the Design-Build Contract Documents and shall keep all Work and Services under its control. Consent by the Authority to any subcontracting of any part of the Work or Services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as consent to the engagement by the Design-Builder of Subcontractors and/or Subconsultants.
- 6.4.2 Performance of Work or Services by Subconsultants, Subcontractors and Suppliers. The Design-Builder assumes sole responsibility to the Authority for proper performance of the Services and Work by Subconsultants, Subcontractors and

entities supplying materials or equipment to the Design-Builder or its Subcontractors and Subconsultants, and any acts and omissions in connection with such performance. Nothing in the Design-Build Contract Documents is intended or deemed to create any legal or contractual relationship between the Authority and any Subcontractor, Subconsultant or supplier of materials or equipment, including but not limited to any third-party beneficiary rights.

- 6.4.3 Communication with Subcontractors, Subconsultants and Suppliers. The Design-Builder shall be considered the sole point of contact with regard to matters relating to this Agreement. All communication between Subcontractors and the Authority and between Subconsultants and the Authority shall pass through the Design-Builder
- 6.4.4 Coordination Among Trades. The Design Builder's Price Proposal shall include all costs for coordinating the work between all trades. Should a question of union jurisdiction arise, The Design Builder shall take immediate steps to settle such disputes and shall use such labor as may be determined by union jurisdiction, at no additional cost to the Authority. Should the Design Builder fail to take expeditious actions, it shall be responsible for any time lost due to delays arising from such disputes.
- 6.4.5 Subcontracts in Writing. All subcontracts must be memorialized in a writing signed by a representative of the Design-Builder and the Subcontractor, and the terms of each such subcontract must be clearly specified therein. Upon request of the Authority, the Design-Builder shall immediately produce the original written Subcontract. The Design-Builder assumes sole and full responsibility for the complete performance contemplated by this Agreement, including the performance of all of its Subcontractors and Subconsultants.
- 6.4.6 Approval by the Authority. The Design-Builder must: (i) when required under Section 6.4.7 below, select only Subcontractors and Subconsultants that have been pre-qualified by the Authority, and (ii) in all cases, obtain the consent of the Authority, as detailed in Section 6.4.6.3 below, prior to the engagement of any Subcontractors. The Design-Builder is not required to obtain the Authority's consent prior to the engagement of vendors or suppliers.
- (a) The Design-Builder shall 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 Subcontractors or Subconsultants on the Project pursuant to regulation, Authority procedures or the requirements of the Design-Build Contract Documents.
 - (b) The Design-Builder shall list in its Technical and Price Proposals all Subcontractors required by statute or Authority regulation to be named, or as otherwise required to be named by the terms of the Authority's RFP for the Project.

- (c) As soon as a potential additional Subcontractor or Subconsultant has been identified by the Design-Builder, but in no event less than twenty (20) Days prior to the scheduled commencement of Services or Work by such Subcontractor or Subconsultant, the Design-Builder shall notify the Authority in writing of the name and address of the Subcontractor or Subconsultant and shall request that the Authority approve the Subcontractor or Subconsultant. Within ten (14) Days after receipt of such request, the Authority will notify the Design-Builder whether the Subcontractor or Subconsultant has been approved, or will advise the Design-Builder of the reasons for the Authority's disapproval of the Subcontractor or Subconsultant, or need for further investigation into the Subcontractor or Subconsultant's application representations. If a proposed Subcontractor or Subconsultant is disapproved, the Design-Builder shall submit other candidates for approval.
- (d) The Authority shall not be liable for any costs, damages or delays incurred by the Design-Builder resulting from the Authority's disapproval of a Subcontractor or Subconsultant, nor shall the Design-Builder be entitled to any reimbursement or time extensions in connection with such disapproval.

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

6.4.8 Substitution of Subcontractors. The Design Builder shall make no substitution of any subcontractor previously approved by the Authority without written notification to the Authority and the receipt of the Authority's written approval for such substitution. The Design Builder shall submit notifications of any proposed subcontractor substitution no less than fourteen (14) days prior to the initiation of work by the substituted Subcontractor.

6.4.9 Payments to Subcontractors. The Design-Builder shall comply with the provisions of N.J.S.A. 2A:30A-2, concerning the prompt payment of Subcontractors.

6.5 Project Labor Agreement. This Project is governed by a Project Labor Agreement ("PLA"). The Design-Builder, as the general contractor on the Project, shall indicate its agreement to abide by the terms of the PLA by executing the form of Contractor Signature Page ("CSP") and submitting the executed original to the CM for its signature, and by submitting two copies of the fully-executed CSP to the Authority's Procurement Division upon notice of award and prior to the start of any Work on the Project. Failure to execute the CSP shall constitute a material breach of this Agreement.

- 6.5.1 PLA Letters of Assent (“LOA”) are an express condition for approval of any Subcontractor on the Project when that Subcontractor’s Scope of Work is regulated by the PLA. The Design-Builder shall include and incorporate the full text of the PLA, including a copy of the Contractor Signature Page as executed by the Design-Builder and the CM, and the form of the Subcontractor’s Letter of Assent (“LOA”), into each and every subcontract for Services and Work on the Project, when the subcontract concerns Services or Work regulated by the PLA.
- 6.5.2 The Design-Builder shall ensure that each and every Subcontractor performing PLA-regulated Services or Work on the Project shall execute an LOA in the form attached to the PLA, shall submit to the CM the original, executed LOA, and shall submit a copy of the executed LOA to the Authority as part of the Subcontractor approval process prior to the start of that Subcontractor’s performance of any Services or Work on the Project.
- 6.5.3 If the Authority rejects (does not approve) a Subcontractor submitted by the Design-Builder, the Authority shall notify the Design-Builder as to the grounds on which such rejection is based. The Design-Builder shall remove the rejected Subcontractor and shall submit the name of a new Subcontractor for approval. In no event shall a Subcontractor commence work on the Project prior to approval by the Authority, and submission of the properly-executed LOA.
- 6.5.4 Subcontractors of any tier whose proposed Services or Work is regulated by the PLA, and who do not submit a properly-executed LOA shall be rejected and denied approval. If a Subcontractor commences the performance of Work or Services and is later found to have failed to submit a properly-executed LOA, or is found to be otherwise non-compliant with the terms of the PLA that Subcontractor may have its approval revoked and/or may be subject to removal from the Project.
- 6.6 Cooperation. The Design-Builder shall cooperate with any other Professional Services Consultants and contractors engaged by the Authority for this Project. The Authority will identify in Appendix A (Special Conditions) such Professional Services Consultants and/or contractors and their roles by the Effective Date of this Agreement or by other means if such Professional Services Consultants and/or contractors are engaged during the Term. At the direction of the Authority, the Design-Builder shall also cooperate with the Project School District and its personnel and any other applicable agencies.
- 6.7 Communication with Authority. All communications with the Authority shall be sent to the Authority’s Project Manager. Where communications are required by the Design-Build Contract Documents to be directed to persons other than the Authority, the Design-Builder shall furnish the Authority with a copy of such communications.
- 6.8 Documents and Records.

- 6.8.1 Maintenance and Retention of Contract Records. For all Work performed and Services rendered, the Design-Builder 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 the Design-Builder 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 can be made to the Design-Builder, the Design-Builder must provide all such records to the Authority. The Design-Builder is required to retain copies of all such records for a period of at least five (5) years.
- 6.8.2 Right to Audit. The Authority, the EDA, the Office of the State Comptroller, the Department of Labor and Workforce Development or any other State inspecting or oversight agencies reserve and are hereby granted the right to audit (or have their agents audit) the records of the Design Builder, and the individual members if the Design-Builder is a Joint Venture, in connection with all matters related to the Design-Build Contract Documents. If, as a result of such audit, the Design Builder is discovered for any reason to owe any money or refund to the Authority, the Authority may deduct such funds from the Design Builder's invoiced amounts, may deduct the amount of funds owed to the Authority from any payments then due or to become due to the Design Builder, or if the remaining contract balance payable to the Design Builder is insufficient to cover the funds owed to the Authority, the Authority may otherwise demand repayment of such funds from the Design-Builder.
- 6.8.3 Audit by Office of State Comptroller. Pursuant to N.J.S.A. 52:15C-14(d), the Design-Builder shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
- 6.8.4 Records Supporting Claims. No claim by the Design-Builder for payment which is premised to any degree upon actual work costs of the Design Builder shall be recognized or payable by the Authority, except to the extent that such actual costs are substantiated by records required to be maintained under this Article.
- 6.9 Quality Assurance/Quality Control ("QA/QC"). The Design-Builder shall have full responsibility for quality assurance and quality control throughout all phases of construction of the Project. The Design-Builder shall prepare and submit to CM a detailed written Quality Assurance/Quality Control (QA/QC) Program. CM shall review the Design-Builder's QA/QC Program and recommend acceptance or rejection of the Program to the Authority within ten (10) Days of receipt of the Design-Builder's QA/QC Program. The Authority will either accept or reject the Design-Builder's QA/QC Program within five (5) Days of CM's recommendation to the Authority. If the Authority rejects the Design-Builder's QA/QC Program, the Design-Builder shall

revise and resubmit the QA/QC Program to the Authority until it is accepted. Once the QA/QC Program is accepted, the Authority shall monitor the Design-Builder's compliance with the Program to ensure that the Services and Work are performed to meet or exceed the requirements of the accepted QA/QC Program. As part of the Design-Builder's QA/QC Program, the Design-Builder shall designate one (1) full-time employee whose sole responsibility shall be to maintain and monitor the Design-Builder's compliance with its QA/QC Program (the "QA/QC Coordinator," who shall have the responsibilities and qualifications listed in section 6.9.1 below). If the Design-Builder's Services and/or Work fail to meet the accepted QA/QC Program, the Authority will implement a course of action to address the Design-Builder's failure to comply with the QA/QC Program. The Authority's actions to verify the Design-Builder's compliance with the QA/QC Program shall not relieve the Design-Builder of its obligation to establish a QA/QC Program, comply with the QA/QC Program or meet the requirements of the Design-Build Contract Documents. The Design-Builder's failure to comply with the requirements of this Section 6.9 shall be deemed an Event of Default under this Agreement. Such Event of Default may trigger Default remedies as stated in Section 20.0

- 6.9.1 The Design-Builder's Quality Assurance/Quality Control Coordinator/Inspector ("QA/QC Coordinator") is the person identified by the Design-Builder who shall be responsible for all construction quality issues, and shall perform coordination between the Design-Builder, subcontractors, and any independent testing labs, and shall have the authority to act for the Design-Builder in all construction quality control matters. The QA/QC Coordinator shall, so long as his/her performance is acceptable to the Authority, be responsible for QA/QC Coordination through Final Completion of the Project. The Authority reserves the right to require the immediate replacement of said Coordinator for any reason and at the sole discretion of the Authority.
- 6.9.2 The QA/QC Coordinator shall be present on the Project Site at all times whenever Work is being performed, to perform construction quality control duties. The QA/QC Coordinator shall only perform construction quality control duties for the Project and shall not perform Construction Work, or clerical/ administrative work unrelated to QA/QC Coordinator duties, or perform additional roles or functions on the Project (e.g., Superintendent, Safety Coordinator and Inspector, etc.) The QA/QC Coordinator shall have the following qualifications:
 - (a) Knowledge of current construction practices; and
 - (b) Five years of experience as a Quality Control professional;
 - (c) Additionally, a bachelor's degree in Construction Management, Construction Engineering or a related field is preferred but not mandatory.
 - (d) Further, the candidate's credentialing as a Certified Manager of Quality/Organizational Excellence by the American Society for Quality, or other

related Quality Management certification (e.g., US Army Corps of Engineers/ Naval Facilities Engineering Command (NAVFAC) CQM-C certification, or similar), is preferred, but not mandatory.

6.10 Protection of Persons and Property

6.10.1 General. The Design-Builder shall have full responsibility for safety at the Project Site at all times prior to Substantial Completion of the Project. The Design Builder shall provide and comply with a Project safety program, meeting all of the requirements contained in this Agreement, and must fully comply with the terms of the NJSDA Safety Manual, and all Federal, State and local job safety requirements. All costs associated with complying with all safety requirements shall be included in the Design-Builder's Price Proposal.

6.10.2 Safety Coordinator and Inspector. The Design-Builder shall employ or engage a qualified individual as Design-Builder's Safety Coordinator and Inspector for the Project. The Safety Coordinator and Inspector is the person identified by the Design-Builder who performs safety management duties required of the Design-Builder, and serves as the Authority's point of contact for all matters relating to project safety. The Safety Coordinator and Inspector shall, so long as his/her performance is acceptable to the Authority, be responsible for Safety Management duties through Final Completion of the Project. The Authority reserves the right to require the immediate replacement of said Safety Coordinator and Inspector for any reason and at the sole discretion of the Authority.

6.10.3 The Design-Builder's Safety Coordinator and Inspector enforces and implements the safety requirements of the Contract, including the Design-Builder's Safety Plan, and inspects the Work to ensure compliance with 1) OSHA regulations and guidelines; 2) the NJSDA Safety Manual; and 3) all applicable laws and regulations. The Safety Coordinator and Inspector shall be present on the Project Site whenever Work is being performed. The Safety Coordinator and Inspector shall only perform safety management duties for the Project and shall not perform Construction Work, or clerical/ administrative work unrelated to Safety Coordinator and Inspector duties, or perform additional roles or functions on the Project (e.g., Superintendent, Quality Assurance/Quality Control Coordinator, etc.) The Safety Coordinator and Inspector shall have the following qualifications:

- (a) Five years of experience working as a safety professional; and
- (b) Completion of 30-Hour OSHA Construction Outreach Training; and
- (c) Completion of 24-Hour HAZWOPER training; and
- (d) Certification as a Construction Health and Safety Technician.

- (e) Additionally, a bachelor's degree in Safety and Health Management or other related field is preferred, but not mandatory.
- 6.10.4 Safety Plan. The Design-Builder shall be responsible for preparing and submitting a Safety Plan for the Project which recognizes the importance of performing the Services and Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Project Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property and individuals at the Project Site or adjacent thereto. Submission of an appropriate Safety Plan is a statutory requirement under N.J.S.A. 18A:7G-37(b)(4).
- 6.10.5 Submission and Acceptance of Safety Plan. The Design-Builder shall prepare and submit the Safety Plan at or before the Preconstruction Conference. CM and/or the Authority's safety division shall review Design-Builder's Safety Plan for consistency with the Authority's requirements and policies, based upon the latest version of the NJDSA Safety Manual and all other applicable Legal Requirements, including, but not limited to, governmental safety codes, rules, regulations and requirements, such as OSHA. Within fifteen (15) Days of receipt of the Design-Builder's Safety Plan, the Authority will either accept or reject the Safety Plan. If the Safety Plan is rejected by the Authority, the Design-Builder shall revise and resubmit the Safety Plan to CM and/or the Authority's safety division, until the Safety Plan is accepted.
- 6.10.6 Compliance With Safety Plan. Once the Design-Builder's Safety Plan is accepted, CM and/or the Authority's safety division shall monitor the Design-Builder's compliance with the Safety Plan throughout the Term of this Agreement to ensure that the Design-Builder meets or exceeds the accepted Safety Plan. If at any time, however, any part of the Project Site is deemed unsafe by CM and/or the Authority's safety division, the Authority may require the Design-Builder to stop performance and take immediate corrective measures. Additionally, as the Authority has implemented a School Facilities Projects OCIP in accordance with N.J.S.A. 18A:7G-44, the Project Site and work areas of the Design-Builder and its Subcontractors shall be subject to inspection by the OCIP insurance carrier's risk control engineer, and the Design-Builder and its Subcontractors are required to cooperate with safety recommendations made by such risk control engineer.
- 6.10.7 Protection of Persons. The Design-Builder acknowledges that the safety of the public, the Project School District's students, employees, and guests is of the utmost importance. The Design-Builder shall take no action which would jeopardize the safety of such students, employees, or guests and, without the Authority's written approval, shall take no action which would interfere with the activities of the Project School District, its students, employees or guests, at the Project Site.
- 6.10.8 Protection of Property. The Design-Builder shall at all times secure and protect the Authority's property and the adjacent property of others from injury and loss. All

passageways, guard fences, lights and other facilities reasonably required for protection must be provided and maintained by the Design Builder.

6.10.9 Notifications of Hazard. Notification by the Authority or any other person or entity to the Design-Builder of a safety hazard or violation shall in no way relieve the Design-Builder of sole and complete responsibility to perform the Work in a safe and workmanlike manner, or of its sole liability for any fees, fines, damages or other costs resulting from such hazard or violation.

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

6.11 Security.

6.11.1 The Design-Builder shall be responsible for preparing and submitting a Security Plan to CM. The Design-Builder shall prepare and submit the Security Plan at or before the Preconstruction Conference. Within ten (10) Days of receipt of the Design-Builder's Security Plan, CM shall review and recommend to the Authority acceptance or rejection of the Design-Builder's Security Plan. The Authority will either accept or reject the Design-Builder's Security Plan within five (5) Days of receipt of CM's recommendation to the Authority. If the Design-Builder's Security Plan is rejected, the Design-Builder shall revise and resubmit its Security Plan to CM until it is accepted. Once the Design-Builder's Security Plan is accepted, CM shall monitor the Design-Builder's compliance with the Security Plan to ensure that the Design-Builder meets or exceeds the accepted Security Plan.

6.11.2 At a minimum, the Design-Builder's Security Plan shall require the Design-Builder to provide all fences, gates, barriers, locks, doors and security necessary to secure the School Facility and Project Site until Final Completion. The Design-Builder's Security Plan shall also provide for one (1) security guard to be present at the Project Site at all times when the Design-Builder is not on-Site. The security guard shall be trained and registered in accordance with all applicable state and federal laws, including the Security Officer Registration Act, N.J.S.A. 45:19A-1 et seq. The security guard need not be armed, but shall be uniformed and equipped with sufficient communication devices or equipment to enable the security guard to inform local law enforcement of an emergency or crime in progress on or about the Project Site. In addition, the Design-Builder shall be responsible for the security of any stored materials and/or temporary structures that it has located on the Project Site or elsewhere. The Design-Builder shall also provide all Project Site fencing, gates, locks, security personnel, security services, and security structures and

equipment required by the Design-Build Contract Documents, or otherwise necessary to properly protect the Site and the Work.

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

6.11.4 Alcohol, drugs and weapons shall not be allowed on the jobsite under any circumstances, and possession or consumption of such items shall be cause for immediate and permanent expulsion from the Project Site. Anyone under the influence of alcohol or drugs must be immediately and permanently expelled and removed from the Project Site by the Design Builder.

6.11.5 Only those persons directly involved with the Project shall be allowed on the jobsite;

6.11.6 In no event shall minors be admitted to the jobsite.

6.11.7 Design Builder shall provide safety sidewalk bridging on all public walks as required or when and where directed by the Authority or CM. Public safety and workers' safety shall be the Design Builder's highest priority.

6.12 Site-Utilization/Logistics/Staging Plan. The Design-Builder shall develop a Site-Utilization/Logistics/Staging Plan ("Site Utilization Plan") for the entire Project Site. The Site Utilization Plan shall identify areas of the Project Site available for the Design-Builder to accommodate all of its means and methods for completion of the Project, to ensure protection of adjacent buildings, to limit and manage impacts to the Project Site, and to maintain the continuity of school operations (if applicable). The Site Utilization Plan shall illustrate impacts and potential impacts to the Project Site. The Design Builder shall provide this Site Utilization Plan, in both visual and narrative form, to the CM and/or the Authority at or prior to the Preconstruction Conference, for review and acceptance. The Design Builder shall modify this Plan, as necessary, to obtain the Authority's written approval. Once accepted by the CM and/or the Authority, the Design Builder shall include the Site Utilization Plan in the Authority's Expedition Database, and shall keep the Site Utilization Plan current.

6.13 Daily Field Reports and Monthly Status Report.

6.13.1 The Design-Builder shall, each day, submit the previous day's Daily Field Report and Daily Sign-In/Sign-Out Sheets to the Authority or CM's office before 10:00

a.m. These documents shall be submitted in a form acceptable to the Authority. Copies of all Daily Field Reports and Sign-In/Sign-Out Sheets for the Design-Builder and all Subcontractors are to be maintained on-site by the Design-Builder for the duration of the Project.

6.13.2 On or before the tenth day of the month, the Design-Builder shall provide the Authority with a monthly status report detailing the progress of its Services and Work, including (i) the actual progress of the Services and Work for the prior month according to the Project Schedule; (ii) discrepancies, conflicts, or ambiguities that exist in the Design-Build Contract Documents that require resolution; (iii) health and safety issues that exist in connection with the Services and Work; (iv) notice of potential Claims; and (v) other items that require resolution in order that the Design-Builder can complete the Services and Work within the Contract Time.

6.14 Requests for Information

6.14.1 General. In the event the Design-Builder determines that some provision or requirement of the drawings, specifications or some other portion of the Design-Build Contract Documents requires clarification or interpretation, the Design-Builder shall immediately submit a Request for Information (RFI) in writing to the Authority.

6.14.2 Submission by Design-Builder. Requests for Information can only be submitted by the Design Builder, and shall be submitted on the Request for Information Form prescribed by the Authority. Requests for Information submitted by subcontractors, suppliers or parties other than the Design-Builder shall be rejected without review by the Authority.

6.14.3 Single-issue format. Each RFI shall be numbered sequentially and identified by subject. Each RFI shall be limited to a single subject; the Design-Builder shall not group multiple unrelated issues in a single RFI. If an RFI is submitted requesting information regarding multiple distinct issues, it shall be rejected without review by the Authority and the Authority will direct the Design-Builder to resubmit the requests for clarification or interpretation as multiple, separate, single-subject RFIs.

6.14.4 Identification of contract language at issue. The RFI shall include a detailed, legible description of the contract requirement, item or language needing clarification or interpretation. The RFI shall set forth the Design-Builder's interpretation or understanding of the contract requirement, item or language, and the reasons why the Design-Builder has reached that understanding.

6.14.5 Submission date and requested response date. Each RFI shall include the submission date, and shall identify the date by which a response is needed.

6.14.6 Optional proposed resolution. The Design-Builder may offer a suggested resolution of the issue, to be described in the RFI. If the Design-Builder's suggested

resolution of the issue will have an impact on the Contract Time or the Contract Price, the Design-Builder shall state such impact(s) in the RFI.

- 6.14.7 Citations to Design-Build Contract Documents. The RFI shall include: citations to the specific section of the Design-Build Contract Documents at issue (including citation to drawing number, detail references or specifications, as appropriate); and a description of any relevant field conditions or dimensions, as appropriate. The RFI shall attach sketches, descriptions, measurements, photos, Product Data, Shop Drawings, coordination drawings, and other information necessary to fully describe the items needing interpretation.
- 6.14.8 Proper characterization. Each RFI submitted will be reviewed by the Authority and/or the CM on a preliminary basis to determine whether it is properly characterized as an RFI within the definition of an RFI contained in this Agreement. If upon Authority or CM review it is determined that the submitted document does not properly constitute an RFI (e.g., the submitted document is not an RFI but is another type of submission (schedule submittal, request for substitution, shop drawing or product data submittal, etc.) or project communication (meeting minutes, project memo, transmittal or other document)), it will be returned to the Design-Builder without further review by the Authority, to permit the Design-Builder to submit the document in the proper format and in the proper manner for such type of submission or communication, in accordance with the terms of the contract.
- 6.14.9 Response timing. Responses to a properly characterized RFI shall be issued by the Authority within ten (10) working days of the Authority's receipt of the RFI, unless the Authority determines that a longer period of time is necessary to provide an adequate response. If the nature of the RFI is such that a longer period of time is necessary for a response, the Authority shall, within ten (10) working days of receipt of the RFI, advise the Design-Builder of the need for additional response time, and shall provide an anticipated response time.
- 6.14.10 Response including DBIP Clarification. The Authority may issue a DBIP Clarification in response to an RFI seeking clarification of plans, sketches, specifications or some other aspect of the DBIP, or the Authority may proactively issue a DBIP clarification independently of any RFI submission when the Authority perceives a need to clarify or explain a requirement of the DBIP. A DBIP Clarification may be issued in the form of sketches, drawings or narrative responses.
- 6.14.11 No change to Design-Build Contract Documents. The Authority's response to an RFI, including the issuance of a DBIP Clarification, will not change any requirement of the Design-Build Contract Documents unless explicitly noted in the Authority's DBIP Clarification or other response to the RFI. In the event that the Design-Builder believes that a response to an RFI constitutes or will require a Change in the Work, the Design-Builder shall provide written notice to the

Authority, in accordance with the provisions of section 8.3.1 of this Agreement, stating that the Design-Builder considers the RFI response to constitute or require a Change in the Work. Failure to provide such written notice, within the time period specified in Section 8.3.1, shall waive the Design-Builder's right to seek additional time or compensation under the "Changes to the Scope of Services and Work" Article of the Agreement.

7.0 INSPECTION OF THE WORK AND CORRECTION OF NON-CONFORMING WORK

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

7.1.5 The Design-Builder shall not cover any work that has not been inspected or approved by DCA.

7.1.6 The Authority may order any Work done without the required inspection to be removed and replaced. The Design-Builder shall be responsible for the costs of uncovering, removing, and/or replacing the uninspected Work.

7.2 Correction of Non-Conforming Work

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

7.2.2 Correction of Nonconforming Work. The Authority shall require timely correction by the Design-Builder of nonconforming Work. If nonconforming Work remains uncorrected for more than thirty (30) Days from the Design-Builder's receipt of notice of the nonconforming Work from the Authority, CM, or DCA, the Design-Builder's next Invoice shall be reduced by an amount equivalent to the entire value of the nonconforming Work, as if the nonconforming Work was 0% complete. CM shall maintain a continuing list of nonconforming Work as determined by CM or the Authority, and shall distribute this list to the Design-Builder periodically. If the Design-Builder fails to correct any nonconforming Work in accordance with this Section, the Authority shall take all steps to remedy the Design-Builder's failure. In such case, an appropriate written notice shall be issued deducting from the payments then or thereafter due the Design-Builder the cost of correcting such failure. If the payments then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to the Authority upon demand.

8.0 CHANGES TO THE SCOPE OF SERVICES AND WORK

8.1 General.

8.1.1 The Authority reserves the right to make such alterations, deviations, additions to, or omissions from the Design Build Contract Documents, Services and/or Work as it deems necessary for the satisfactory completion of the Project. Such increases, decreases, alterations or omissions shall not invalidate the Contract or release the Design-Builder's surety.

- 8.1.2 Changes in the Design Build Contract Documents Services and/or Work may only be accomplished by Change Order or Contract Change Directive consistent with the procedures and requirements set forth in this Section 8. Any submission, response to, or review of a Design Submission, Submittal or RFI does not constitute a Change in the Services or Work. Any Services or Work performed or undertaken by the Design Builder that differ from, or are in addition to, the Services or Work defined in the Contract, shall be performed at the Design Builder's own financial risk, unless such additional or different Services or Work constituting a Change in the Services and/or Work is specified in an executed and approved Change Order or Contract Change Directive.

8.2 Change Orders

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

8.3 Contract Change Requests, Proposal Requests and Contract Change Directives

- 8.3.1 Design-Builder-Initiated Contract Changes. The Design Builder may initiate a Change in the Contract by issuing a Contract Change Request. The Design Builder shall notify the Authority in writing of an event necessitating a Change in the Services or Work by issuing a Contract Change Request within three (3) Days of encountering a condition, event or occurrence that allegedly causes or necessitates a Change in the Services or Work. Contract Change Requests may be issued by the Design-Builder, and, if approved, a Change Order shall be issued accordingly. A Contract Change Request does not authorize the Design-Builder to perform the

change to the Services or Work requested, but may trigger the issuance of either a Change Order or a Contract Change Directive by the Authority.

- 8.3.2 The Contract Change Request shall include a complete explanation of the relevant circumstances, and provide a detailed description of the support for any adjustment to the Contract Price or Contract Time that Design-Builder is claiming for the Change in the Services and/or Work. Requests for adjustments to Contract Time shall conform to the requirements of Sections 8.3.4 and 8.5 of this Agreement.
- 8.3.3 Authority-Initiated Contract Changes and Proposal Requests. The Authority may initiate changes in the Contract by appropriately issuing a Contract Change Directive or by issuing a Proposal Request that identifies a Change in the Services and/or Work, and requests a proposed price, and other information, from the Design-Builder for the Services and/or Work identified in the Proposal Request. Upon receipt of a Proposal Request from the Authority, the Design-Builder shall review the Proposal Request and within ten (10) days of receipt of the Proposal Request, prepare a Proposal identifying in writing any adjustment to the Contract Price or Contract Time that the Design-Builder claims is necessitated by the proposed Change in the Services and/or Work, and providing adequate support for any such adjustments to the Contract Price or Contract Time. The Design-Builder's Requests for adjustments to Contract Time shall conform to the requirements of Sections 8.3.4 and 8.5 of this Agreement. Design-Builder Proposals for adjustment to Contract Price on account of additional design services shall be: 1) based upon the Hourly Rates included in Appendix E of this Agreement (which rates shall include all direct and indirect expenses, including overhead and profit); and 2) shall include an itemization of tasks and hours by staff position.
- 8.3.4 All requests for adjustment to the Contract Time shall be accompanied by copies of both the current accepted Project Schedule (i.e., most current, accepted Schedule update) and a proposed revision to that Schedule (also referred to as a "Schedule Fragnet") incorporating the changed Services and/or Work and the effect the Change in the Services and/or Work is expected to have on the Project Schedule. Failure to provide the foregoing Project Schedule impact data shall be grounds for rejection of the Contract Change Request
- 8.3.5 Following the Design-Builder's submission of a Proposal or Contract Change Request to the Authority, or the Design-Builder's receipt of a Proposal Request from the Authority, the Design-Builder shall diligently continue performance of all other Services and Work in accordance with the Design-Build_Contract Documents, unless otherwise directed by the Authority.
- 8.3.6 Construction Change Directive. The Authority may initiate changes in the Contract by issuing a formal Construction Change Directive (CCD), directing or authorizing some change to the Design-Build_Contract Documents for which Compensation and/or Contract Time extension, if appropriate, has not yet been determined or agreed. The CCD shall be issued in a zero-dollar amount while negotiations

regarding any entitlement to additional compensation or time extension progress, and upon agreement on Compensation and/or Contract Time extension, if warranted for the Change in the Work, a Change Order shall be issued resolving the CCD. The Design-Builder shall proceed to perform the Work described in the CCD without delay and notwithstanding any ongoing negotiations as to entitlement to compensation or time extension, and regardless of the existence of any dispute as to entitlement to additional Compensation or Time Extension with respect to such CCD. Any claims resulting from such Construction Change Directives may be asserted and processed in accordance with the Claims resolution provisions of this Agreement.

8.4 Changes in Scope Warranting an Adjustment to the Contract Price and/or GMP

- 8.4.1 The Contract Price shall not be increased unless there is a change in the Design-Builder's scope of Services and/or Work.
- 8.4.2 In the event that the Authority issues a Change Order including an adjustment to the Contract Price, the Authority shall be the sole arbiter as to whether the Contract Price shall be adjusted on a lump sum, unit price, or time and materials basis.
- 8.4.3 The Authority may request a lump-sum cost proposal for a proposed Change in the Services and/or Work. Within ten (10) Days of such a request by the Authority, the Design Builder shall submit a lump sum cost proposal for the Change in the Services and/or Work. The Design Builder's proposal shall itemize the labor and material costs for the various components of the Change in the Services and/or Work, shall conform to the instructions regarding the pricing of additive and deductive changes set forth in Section 01080 of the Specifications, and shall be accompanied by the signed proposals of all Subcontractors or Subconsultants who will perform any portion of the Change in the Services and/or Work and of all suppliers who will furnish materials or equipment for incorporation therein.
 - (0) The cost of any increase in the Design Builder's bond premium and insurance costs caused by a Change in the Services and/or Work shall be considered a direct cost and is to be added to the Design Builder's proposal after overhead and profit have been calculated. In instances where bond premium and insurance costs are a calculated percentage, the percentage shall be applied to the cost of the Work excluding any overhead or profit. Proof of any increase in insurance or bonding cost shall be provided upon request, and may be evidenced by correspondence from the Design Builder's surety and/or insurance provider or broker confirming the increase.
 - (1) Design Builder may include in its lump sum proposal for any Change in the Services or Work a markup no greater than fifteen percent (15%), of which a maximum of ten percent is allowable for overhead and a maximum of five percent (5%) is allowable for profit, for such Services or Work related to a

Change in the Services and/or Work, when such Services and/or Work is performed by its own workforce.

- (2) Where the Services or Work is performed by a Subconsultant or Subcontractor, the Design Builder may include a five percent (5%) markup for Subconsultant Services or Subcontractor Work performed, except that the Design Builder's markup on materials procured by a subcontractor may not exceed \$5,000 over the amount of the subcontractor's cost to procure the materials.

8.4.4 In the event that the Design Builder fails to submit its lump sum proposal within the designated time, or in response to other circumstances, the Authority may issue a zero-dollar Contract Change Directive and order the Design Builder to proceed with the Change in the Services and/or Work, while the Design-Builder and the Authority negotiate a Change Order for the Change in the Work and/or Services.

8.4.5 In the event that the Design Builder and the Authority are unable to agree as to the reasonable cost and time to perform the Change in the Services and/or Work based upon the Design Builder's lump sum proposal, the Authority may elect to have the Design Builder perform the work on a time and materials basis.

- (0) The Authority may issue a Change Order, authorizing the Design Builder to perform the Change in the Services and/or Work on a time and materials basis, which shall be binding on the Design Builder.
- (1) In the event that the Authority elects to have the Change in the Services and/or Work performed on a time and materials basis, the same shall be performed, whether by the Design Builder's forces or the forces of any of its Subconsultants or Subcontractors, at actual cost to the entity performing the Change in the Services and/or Work, calculated in accordance with the instructions regarding the pricing of additive and deductive changes set forth in Section 01080 of the Specifications. The Design Builder shall submit to the Authority daily time and materials tickets, including the nature, location and description of the Change in the Services and/or Work, the names and classification of consultants or labor employed, the materials used, the equipment rented, not including tools, and such other evidence of cost as the Authority may require.
- (2) When a Change in the Services under the Design-Build Contract Documents requires the Design Builder to engage or direct a sub consultant to perform the change in the Services, the Design-Builder may invoice the Authority for the reasonable costs of the subconsultant's services, and may include a five percent (5%) markup for work performed by such sub consultants. This markup shall compensate the Design-Builder for all profit and indirect costs associated with the performance of the Change in the Services.

- 8.4.6 If a Change in the Services or Work results in both claimed additions and deletions to the Services or Work amounting to a net decrease to the Contract Price, there shall be no overhead or profit adjustment to the Contract Price.
- 8.4.7 The Authority reserves the right to reject the Design Builder's proposal for an adjustment in the Contract Price and to elect to perform the Change in the Services and/or Work using a separate contractor.
- 8.4.8 Failure of the Parties to reach agreement regarding the cost and time of performing the Change in the Services and/or Work and/or any objection by the Design Builder as to the terms of a Change Order shall not relieve the Design Builder of its obligation to perform the Work identified in a Change Order or Contract Change Directive promptly and expeditiously.
- 8.4.9 If the Authority and the Design-Builder disagree upon whether the Design-Builder is entitled to an adjustment to the Contract Price for any Services or Work required by the Authority, or if there are any other disagreements over the scope of Services or Work or proposed changes to the scope of Services or Work, the Authority and the Design-Builder shall resolve the disagreement pursuant to Section 21.0 of this Agreement ("Claims"). If the Parties are unable to agree and the Authority directs the Design-Builder to perform the Services or Work in accordance with the Authority's interpretations, the Design-Builder shall perform the disputed Services or Work upon issuance by the Authority of a zero-dollar Contract Change Directive ("CCD") to the Design-Builder (i) directing the Design-Builder to proceed with the Services and Work in dispute, and (ii) specifying the Authority's interpretation of the Services and/or Work that are to be performed. If a CCD is issued, the Design-Builder shall immediately commence performance of Services or Work directed in the CCD while pricing and negotiating with the Authority the same, unless otherwise directed by the Authority. The Design Builder shall not delay the performance of Services or Work specified in a CCD because of disputes over compensation therefor.

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

- 8.5.1 If the Design-Builder is delayed in the performance of the Work or Services due to a Force Majeure Event as defined in this Agreement, the Contract Time for performance may be reasonably extended upon request by the Design Builder to the Authority.
- (a) The Design Builder shall not be entitled to an extension of the Contract Time for a weather-related delay unless it demonstrates that the weather conditions during the relevant time period were particularly severe as compared to the normal weather conditions at the Project Site during that time of year, and that these unusually severe weather conditions adversely impacted the Project's critical path, as defined in the most current, accepted Project Schedule.

- (b) If unusually severe or abnormal weather conditions are shown to have affected the Project's critical path, a non-compensable extension to the Contract Time may be granted. Under no circumstances will the Design Builder be entitled to a compensable delay due to weather-related delays.
- 8.5.2 No request for extension of the Contract Time will be considered by the Authority unless the Design-Builder makes a written request to the Authority for an extension of time within seven (7) days of the event that causes the delay. The request shall include the nature of the delay, the commencement date of the delay, activities on the Project Schedule affected by the delay depicted in a Schedule Fragnet, and recommended action to minimize the delay. In no event will an extension of time be granted where it is determined that the Design Builder could have avoided the circumstances that caused the request for the extension.
- 8.5.3 The Design Builder shall be fully compensated by an extension of the Contract Time for any Force Majeure delays, and shall make no claim for damages or additional compensation for any delay in, or hindrance to, its performance of the Work occasioned by any reason enumerated in this Article, or any act or omission by the Authority or any of its representatives, unless the delay or hindrance is caused by the negligence, bad faith, active interference or other tortious conduct of the Authority or its employees. If the delay is caused by such negligence, bad faith, active interference or tortious conduct, the Design Builder shall be entitled to compensation on a time and materials basis, as provided in Section 01080 of the Specifications.
- 8.5.4 The burden of proof for substantiating a request for an extension of Contract Time shall be on the Design Builder, and substantiation shall require evidence that the cause was beyond the control of the Design-Builder, as well as any other justification and supporting evidence that the Authority requires to evaluate the Design Builder's request.
- 8.5.5 The Design-Builder's failure to comply with the written notice requirements set forth in Section 8.5.2 waives any right to an extension of time or compensation for delay from the Authority.
- 8.5.6 Irrespective of whether the Design-Builder makes a request for an extension of time or compensation for delay pursuant to this Section, the Design-Builder shall notify the Authority of any event of which it is aware that may cause any delay in the completion of the Project.
- 8.6 No Claims for Indirect Costs. The Design-Builder shall not be entitled to any amount for indirect costs, consequential damages or expenses, including labor inefficiency, wage, material or other escalations beyond the lump sum, unit price or time and materials calculations provided for in this Section 8.0 and in Section 01080 of the Specifications, regardless of any delays, interference, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or

unforeseeable, or avoidable or unavoidable, arising from the performance of any and all Changes in the Services and Work performed pursuant to this Section 8.0. It is understood and agreed that the Design-Builder's sole and exclusive remedy in the event of a Change in the Services and/or Work shall be the recovery of its direct costs and an extension of the Contract Time, as per the requirements of this Section 8.0. In no case shall the Design Builder be entitled to damages or compensation for lost profit or lost opportunity; damages or compensation under theories of "total cost", "loss of productivity" or "cumulative impact"; compensation for extended, unabsorbed or under-absorbed home office overhead or damages calculated under the Eichleay formula or under any other formula used by the Design Builder to calculate damages for lost profit or lost opportunity or extended, unabsorbed or under-absorbed home office overhead; or any other kind of consequential or indirect cost or damage as a result of any claim for delay or Change in the Services or Work under this Section 8.0.

8.7 Differing Site Conditions and Hazardous Materials.

8.7.1 Differing Site Conditions

- (a) Differing Site Conditions shall be defined herein as concealed or latent physical conditions or subsurface conditions at the Project Site that (i) materially differ from the conditions indicated in this Agreement or the Design-Build Contract Documents, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in work of the character and in the location of the Project Site. If the Design-Builder encounters a Differing Site Condition, the Design-Builder may be entitled to an adjustment to the Contract Price and/or the Contract Time to the extent the Design-Builder's costs and/or time of performance are adversely impacted by the Differing Site Condition. Any request for adjustment to the Contract Time or Contract Price as a result of a Differing Site Condition shall comply with the requirements of this Article 8.
- (b) After the completion and acceptance of the Preliminary Design documents, the Design-Builder shall not be entitled to an adjustment to the Contract Price or the Contract Time for costs or delay relating to a Differing Site Condition that was not identified before completion and acceptance of the Preliminary Design Documents, if such Differing Site Condition could have or should have been discovered as a result of the investigation, verification and validation obligations of the Design-Builder pursuant to Section 3.11 herein.
- (c) Upon encountering a Differing Site Condition, the Design-Builder shall provide prompt written notice to the Authority of such condition, which notice shall not be later than seven (7) Days after such condition has been encountered and before the Differing Site Condition has been substantially disturbed or altered. The Design-Builder waives any right to an adjustment

in the Contract Time or the Contract Price for a Differing Site Condition unless the Design-Builder provides timely written notice as required under this Section.

8.7.2 Contaminated or Hazardous Materials. Should the Design-Builder discover previously undetected asbestos, contaminated soils, radon, lead, PCBs or other hazardous or contaminated material, the Design-Builder shall report its findings immediately to the Authority. During any remedial action undertaken by the Authority or any other Party, the Design-Builder may be required to cease Work on the Project, if so directed by the Authority. If the Design-Builder is required to cease performance of Work due to the discovery of hazardous or contaminated materials, such Work stoppage shall be deemed a suspension governed by Section 19.0. The Design-Builder shall resume Work at the direction of the Authority and the terms and conditions of the Design-Build Contract Documents shall remain in full force and effect.

9.0 COMPENSATION

9.1 Contract Price, GMP Reserve and Guaranteed Maximum Price

In consideration for the full, complete and timely performance of all Work and Services under this Agreement, and subject to the limitations contained herein, the Authority shall pay to the Design-Builder the lump-sum Contract Price of Seventy Two Million Eight Hundred Thousand Dollars (\$72,800,000.00) (the “Contract Price”). The Contract Price, together with the GMP Reserve, as defined below, shall constitute the “Guaranteed Maximum Price” or “GMP.” An amount equal to \$1,200,000.00 shall be added to the Contract Price in the Design-Builder’s price proposal and carried as various Allowance Amounts within the GMP, and these Allowance Amounts shall collectively constitute the “GMP Reserve.” The Design-Builder guarantees that the compensation for the Work And Services under this Agreement shall not exceed the “Guaranteed Maximum Price” or “GMP” of \$74,000,000.00, subject only to Authority-approved adjustments to the Contract Price and/or GMP as provided for in this Agreement. Any and all costs exceeding the GMP shall be paid by the Design-Builder without reimbursement from the Authority. The Design-Builder certifies to the Authority that it has thoroughly reviewed the Design-Build Contract Documents which form the basis of the Contract Price and further represents that the Project can be designed and constructed for the Contract Price.

9.2 Utilization of GMP Reserve. An amount equal to \$1,200,000.00 shall be carried as a reserve within the GMP. The reserve will function as an allowance to be used to: compensate for activities or portions of Work that have been anticipated in the Design-Build Contract Documents, but which have not been fully quantified or specified in the Design-Build Contract Documents; or to achieve Authority-directed upgrades in the Services and Work, authorized at the discretion of the Authority. The Authority in its sole discretion shall determine whether to utilize the reserve and the reserve will not be

used by the Design-Builder without the prior written consent of the Authority, as evidenced by an Allowance Authorization Form, validly approved and executed by an Authority employee with the proper and requisite corporate authority. The Authority may, in its sole discretion, increase the GMP Reserve during the Term of the Agreement. Upon Final Completion, should there be any remaining funds in the GMP Reserve, the entirety of the remaining GMP Reserve will be credited to the Authority. There is no sharing of the GMP Reserve or any amounts remaining in the GMP Reserve.

9.3 Items of Cost Comprising Contract Price. The Design-Builder acknowledges and agrees that, subject only to the Design-Builder's ability to seek an adjustment pursuant to Article 8.0 of this Agreement, the Contract Price includes:

- 9.3.1 All equipment; materials; labor; services (including Design Services); insurance and bond premiums; home office, jobsite and all other overhead; and profit relating to the Design-Builder's performance of its obligations under the Design-Build Contract Documents (including all work, equipment, materials, labor and services provided by subcontractors and subconsultants and all intellectual property rights necessary to perform the Services and Work);
- 9.3.2 Performance of each and every portion of the Services and Work;
- 9.3.3 The cost of obtaining all approvals and permits other than those fees paid to DCA by the Authority; and
- 9.3.4 Payment of any duties, permit fees or other fees or royalties imposed with respect to the Services and Work and any equipment, materials, labor or services included therein.

9.4 Escalation and Overtime.

- 9.4.1 The Design-Builder's lump sum Contract Price shall include all escalation costs for the complete execution and duration of this Contract. No subsequent claim of escalation charges will be permitted for work completed.
- 9.4.2 The Design-Builder's lump sum Contract Price shall anticipate potential escalation in cost of materials and equipment, and shall specifically take into account any current or future cost impacts, including impacts on domestic markets and costs and availability of domestically-produced materials and equipment, arising from the market effects of existing, threatened and potential steel and aluminum tariffs or any other tariffs, imposts, taxes or similar charges on imports or exports of materials and equipment, whether imposed by the United States or by any foreign nation, government or authority, or any marketplace forces impacted by same. Notwithstanding the foregoing, the Design-Builder is still subject to the "Buy American" obligations specified in section 3.24 of this Agreement.

- 9.4.3 All after-hours and weekend work necessary to meet the project schedule is to be included as part of the lump sum Price Proposal.
- 9.4.4 The Design-Builder's lump-sum Price Proposal shall also include the cost for all overtime, premium time, and shift costs as necessary to maintain the schedule through project completion.
- 9.5 Adjustment. The lump sum Contract Price shall be increased or decreased only in accordance with the requirements of Section 8.0 of this Agreement.
- 9.6 Schedule of Values (Including Construction Phase Activities)
- 9.6.1 Within ten (10) days of any Construction NTP, the Design-Builder shall submit to the Authority a Schedule of Values applicable to the Construction Phase. The Construction Schedule of Values shall build upon the Design Schedule of Values, and shall allocate the entire Contract Price among the various portion of the Services and Work, and shall show the GMP Reserve as a single separate item. The Schedule of Values shall be prepared in such form as the Authority may require and supported by such data to substantiate its accuracy. If accepted by the Authority, this Schedule of Values shall be used as a basis for the Design-Builder's Construction Phase Invoices and only for this purpose. Adjustments to the Schedule of Values must be approved in writing by the Authority.
- 9.6.2 THE DESIGN-BUILDER SHALL NOT FRONT-END LOAD ITS SCHEDULE OF VALUES BY IMBALANCING IT OR BY INCREASING ANY ELEMENT THEREOF IN EXCESS OF THE ACTUAL COST, AND ANY SUCH ACTS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT.
- 9.6.3 Notwithstanding the foregoing, the Design-Builder may include in its Construction Schedule of Values a line item for the reasonable value of the Design-Builder's mobilization.
- 9.6.4 The Design-Builder shall allocate amounts deemed adequate by the Authority for Project Close-Out activities to ensure prompt and efficient close out of the Project.
- 9.7 Invoices
- 9.7.1 On or about the twenty-fifth day of each month, the Design-Builder shall submit to the Authority a pencil copy of an Invoice, in a form acceptable to the Authority, identifying the percentage of the Design-Builder's Services and Work completed during each prior month, so that the CM and/or the Authority may request any revisions to the pencil copy before the Design-Builder submits the official Invoice on the first day of the following month, as required pursuant to Section 9.7.3, below.
- 9.7.2 Invoices shall show the percentage of completion of each portion of the Services and Work as of the end of the prior month covered by the Invoice. The percentage

of completion shall be the percentage of that portion of the Services or Work which has actually been completed during the prior month.

9.7.3 On the first weekday of each month, the Design Builder shall submit to the CM and/or the Authority its Invoice, requesting payment for the percentage of the Design-Builder's Work and/or Services completed during the prior month. Each of the Design-Builder's Invoices shall include:

- (a) the Authority's contract number and name of the Project;
- (b) all data supporting the amounts requested and any other documentation reasonably requested by the Authority;
- (c) a certification by the Design-Builder that all payments due its Subcontractors and/or Subconsultants have been made from prior paid Invoices and that all Legal Requirements have been complied with;
- (d) a certification by the Design-Builder's Design Consultant that the Work completed is performed in accordance with the Construction Documents;
- (e) if the Design-Builder is withholding payment from any Subcontractor, Subconsultant or supplier, a certification by the Design-Builder that a valid basis exists under the terms of the Subcontractor's, Subconsultant's or supplier's contract to withhold payment;
- (f) a copy of the current Schedule update, reflective of current conditions and showing any schedule recovery requirements due to any delays;
- (g) a completed Subcontractor/Subconsultant Verification Form (SDA Form 803C/804C) documenting subcontractor/subconsultant participation in the Project and demographic information for all subcontractors/subconsultants; and
- (h) for all invoices submitted during the Design Phase of the Project, Design-Builder shall include one half-size, hard-copy set of Deliverable drawings (whether Preliminary Design Drawings or Final Design Drawings) reflective of the Design-Builder's claimed percentage of completion of design as asserted in the monthly invoice.

9.7.4 Design Phase invoices submitted to the Authority shall be processed and paid only after the Authority reviews the invoice and determines that the Services for which payment is sought have been completed at the times and in the manner specified by this Agreement and the Design-Build Contract Documents. Construction Phase invoices submitted to the CM and the Authority shall be processed and paid only after the CM reviews and determines that the Services and Work for which payment is sought has been completed at the times and in the manner specified by this

Agreement and the Design-Build Contract Documents. Invoices will not be processed if the Design-Builder has failed to provide an acceptable Project Schedule or Project Schedule update. Invoices will not be paid by the Authority if the CM or the Authority determines that the Services and Work for which payment is sought are incomplete or unsatisfactory.

- 9.7.5 Invoices may request payment for equipment and materials not yet incorporated into the Project, provided that (i) the Authority is satisfied that the equipment and materials are suitably stored at either the Project Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance (if stored equipment and materials are of a total value in excess of OCIP Builder's Risk coverage per Section 14.11.1 below (currently, \$5 million limit for any one location) and (iii) upon payment, the Authority will receive the equipment free and clear of all liens and encumbrances.
- 9.7.6 During the Construction phase, invoices may request payment for the Design Builder's general conditions costs only to the extent that such costs are properly allocated to the percentage of Work completed by the Design-Builder during the prior month.
- 9.7.7 Within thirty (30) Days after receipt of the Design-Builder's properly supported Invoice, the Authority, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 2A:30A-2, will make payment of the approved amount of such Invoice, unless within twenty (20) Days of receipt the Authority issues a notice in accordance with N.J.S.A. 2A:30A-2 indicating that funds will be withheld, and identifying the amount of the funds to be withheld and the reason for such withholding. The twenty (20) Day period for providing notice to the Design-Builder that the Authority will withhold funds shall be extended if authority for payment by the Authority's Board of Directors is required. The thirty (30) Day payment requirement to the Design-Builder shall be extended if the Design-Builder fails to provide complete and sufficient documentation in support of the amounts claimed, and the Authority reserves the right to refuse payment in such an event.
- 9.7.8 If the Design-Builder submits any false or fraudulent Invoice to the Authority for payment, the Design-Builder 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.
- 9.7.9 In the event the Design-Builder fails to pay its Subcontractors or Subconsultants in a timely manner and the Authority is in full compliance with its obligations regarding timely payment of sums due the Design-Builder, the Authority may, but is not obligated to, make payments directly to each Subcontractor or Subconsultant or by two-party checks. The Authority's decision to make such payments to the Design-Builder's Subcontractors or Subconsultants will not give rise to any liability of the Authority for making such payments, will not in any way require the Authority to exercise its option to make such payments, and will not create any contractual relationship between the Authority and any Subcontractor or

Subconsultant. Payments to Subcontractors and Subconsultants will not constitute acceptance of the adequacy of any Services or Work performed by the Design-Builder or its Subcontractors or Subconsultants. In the event the Authority makes direct payment to a Subcontractor, or pays a Subcontractor through a two-party check, the Authority may, in its sole discretion, deduct from the Contract Price an amount equal to a five percent (5%) markup on the payment made directly to the Subcontractor.

9.7.10 In the event of a dispute between the Authority and the Design-Builder as to whether an amount is owed for certain Services or Work, or as to whether an amount has been reasonably withheld by the Authority, the Authority shall pay all amounts that are not in dispute, but shall not be required to pay the amount that is in dispute until the parties settle or otherwise resolve such dispute. The Design-Builder shall continue to perform all of its obligations under the Design-Build Contract Documents notwithstanding such dispute.

9.7.11 Failure by the Authority to pay any amount in dispute shall not postpone, alleviate, diminish or modify in any respect the Design-Builder's obligation to perform under the Design Build Contract Documents, including the Design-Builder's obligation to achieve Substantial Completion of all Work in accordance with the Design Build Contract Documents, and the Design-Builder shall not cease or slow down its performance under the Design Build Contract Documents on account of any such dispute.

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

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

9.8 Withholding of Payment.

9.8.1 The Authority may deny the Design-Builder's Invoice, in whole or in part, if: (a) the Services or Work have not progressed to the point represented by the Design-Builder in its Invoice; (b) the quality of the Services or Work do not conform to the Design-Build Contract Documents or the Construction Documents; (c) defective or

deficient Services or Work have not been timely corrected; (d) the Design-Builder has caused damage to the Authority, the Authority's property or to another contractor; (e) reasonable evidence exists that the Services and/or Work will not be completed within the Contract Time, or within any Contract Milestones identified in the Project Schedule; (f) the Design-Builder has failed or refused to properly schedule and coordinate the Services and/or Work, or to provide Project Schedules and updates; or (g) the Design-Builder has failed or otherwise refused to comply with any material term in the Design-Build Contract Documents.

9.8.2 If the Authority determines that a sufficient basis exists to withhold payment from the Design-Builder pursuant to Section 9.8.1, the Authority will either: (i) retain for payment the relevant Invoice (or portion thereof) until such time as the Design-Builder has made the necessary corrections/deliveries, or (ii) return the relevant Invoice to the Design-Builder, who shall resubmit the Invoice once all of the Work or Services have been satisfactorily completed or corrected.

9.8.3 The withholding of any sums pursuant to this Section shall not be construed as, or constitute in any manner, a waiver by the Authority of the Design-Builder's obligation to perform the Services or Work required under this Design-Build Contract Documents. In the event that the Design-Builder fails to perform any Services or Work required by Design-Build Contract Documents, the Authority shall have, in addition to the sums withheld in accordance with this Section, all rights and remedies provided by law, equity and this Agreement.

9.8.4 In addition to any other right to withhold payments under this Agreement, the Authority shall have the right to withhold from payments due the Design-Builder such sums as necessary to protect the Authority against any loss or damage which may result by reason of: (a) any willful misconduct or wanton or negligent act, error or omission by the Design-Builder, any Subcontractor or Subconsultant, or any of their employees, representatives or agents which gives, or may give, rise to a claim by the Authority or by some other person or entity against the Authority; (b) the Design-Builder's breach of any of its material obligations under this Agreement; (c) reasonable evidence that the Design-Builder will not complete the Services or Work required by this Agreement within the Contract Time, and that the unpaid balance will not cover the actual damages suffered for the delay; and (d) the Design-Builder's inability or failure to complete any of the Services or Work required by the Design-Build Contract Documents or Construction Documents.

9.9 Retainage.

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

- 9.9.2 At the time of Substantial Completion, the Design-Builder may request that the Authority reduce Retainage. The Authority in its sole discretion may reduce the percentage of Retainage withheld, or may release the total amount of Retainage being held by the Authority if the Authority determines that such action is warranted by the progress and quality of the Work and Services. Any request by the Design-Builder for a reduction in retainage at the time of Substantial Completion must be accompanied by the following documents, available on the SDA website:
- (a) A Certificate of Substantial Completion (Form 701), in cases in which a Certificate of Occupancy or Temporary Certificate of Occupancy has been issued; or a Confirmation of Contract Compliance (Form 702), in cases in which a Certificate of Occupancy will not issue; and
 - (b) Consent to Surety Reduction in or Partial Release of Retainage (Form 814); and
 - (c) Request for Reduction of Retainage (Form 816), signed by the Authority approving the reduction in retainage to the new percentage or amount.
- 9.9.3 At the time of Final Payment, the Authority shall release to the Design-Builder all Retainage other than amounts applied to the payment of Liquidated Damages or amounts which the Authority in its sole discretion deems necessary to retain to cover any existing or threatened claims or liens, or any amounts otherwise due the Authority under the Design-Build Contract Documents.
- 9.9.4 In its sole discretion, and in appropriate circumstances, the Authority may, prior to achievement of Substantial Completion, release Retainage on certain facets of completed Work, upon the request of the Design-Builder and submission of documentation satisfactory to the Authority, showing that the elements of Work for which release of Retainage is sought:
- (a) have been complete and/or in use or operation for at least one year;
 - (b) have been certified by the Design Consultant as complete, exhibiting no obvious or apparent defects or omissions, and having passed all required inspections, and/or received all required approvals of the relevant Authorities Having Jurisdiction; and
 - (c) are identified by line items corresponding to the individual subcontractors responsible for performing the Work in question and the retainage amounts due to such subcontractors. This documentation shall be supported by a certification from the Design-Builder that the identified Retainage amounts will be paid to the corresponding subcontractors upon release of Retainage to the Design-Builder by the Authority.

9.10 Other Deductions.

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

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

9.10.2 The Design-Builder agrees that, to the extent that the Authority may deduct or withhold money from the Design-Builder pursuant to the terms of this Contract, the Authority has available to it any monies due or that may become due the Design-Builder under other contracts between the Design-Builder and the Authority. Such other contracts shall include joint ventures in which the Design-Builder is a participant, but the right to access monies under such other contracts shall be limited to the extent of the Design-Builder's participation in such other joint ventures. The right to recover against the Design-Builder as herein provided is in addition to and does not affect the right of the Authority to seek recovery against the Design-Builder or surety under the Contract, bonds, or as otherwise allowed by law.

9.11 Certificates for Payment.

9.11.1 The CM will, after receipt of the Design-Builder's Invoice, and within the time set forth in the Specifications, either issue a Certificate for Payment for such amount as the Authority deems properly due, including deductions as allowed in Sections 9.9 and 9.10, or notify the Design-Builder in writing of its reasons for withholding a Certificate of Payment, as provided below.

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

9.12 Progress Payments.

- 9.12.1 After a Certificate for Payment has been issued, the Authority shall make payment in the manner and within the time provided in the Design Build Contract Documents.
- 9.12.2 Upon receipt of payment from the Authority, the Design-Builder shall promptly pay each of its Subcontractors and Subconsultants the amount due to each such Subcontractor or Subconsultant. The Design-Builder shall require that each of its Subcontractors and Subconsultants make timely payments to its sub-subcontractors and sub-subconsultants in a similar manner.
- 9.12.3 All payments for Services or Work performed under this Agreement will be made only to the Design-Builder, except as expressly stated in this Agreement. The Design-Builder shall assume sole and full responsibility for payments due to any of its Subcontractors, Subconsultants or suppliers
- 9.12.4 The Authority shall have no obligation to make direct payment to any of the Design-Builder's Subcontractors or Subconsultants.
- 9.12.5 No Certificate for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Authority or Project School District, shall constitute an acceptance of any Work not in accordance with the Design Build Contract Documents.

10.0 SUBSTANTIAL COMPLETION AND FINAL COMPLETION

- 10.1 Substantial Completion Date and Final Completion Date. Substantial Completion of the Services and Work under the Design-Build Contract Documents shall be achieved no later than the Substantial Completion Date identified in Appendix A Special Conditions) or the Authority's Procedural Specification 01010 (Summary of Work)(the "Substantial Completion Date). Final Completion of the Work shall be achieved no later than the Final Completion Date specified in the Authority's Procedural Specification 01010 ("Final Completion Date").

10.2 Substantial Completion.

- 10.2.1 Requirements for Substantial Completion. The Authority in conjunction with CM shall determine the date that the Design-Builder achieves Substantial Completion for the Project. In order to achieve Substantial Completion, the Design-Builder must have secured the certification of the Design-Builder's Design Consultant that the Project has achieved a level of completion consistent with Substantial Completion and must have achieved the following on the Project: (i) all essential requirements of the Design-Build Contract Documents and the Construction Documents have been performed so that the purpose of the Design-Build Contract Documents have been accomplished; (ii) a Certificate of Occupancy or Temporary Certificate of Occupancy has been issued by the Department of Community Affairs,

(iii) a Punchlist has been created by the CM and approved by the Authority; (iv) the Design-Builder has delivered to the Authority the key(s) and/or code(s) for operation of the elevators; (v) there are no material omissions or technical defects or deficiencies, as identified by the CM or the Authority; and (vi) the Project is one-hundred percent (100%) ready for occupancy in accordance with its intended use.

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

10.3 Final Completion

10.3.1 Completion of Punchlist Work. After Substantial Completion, the Design-Builder shall perform all remaining Punchlist work. Upon the completion of the Punchlist work, the Design-Builder shall notify the Authority that the Work is ready for final inspection to determine whether all Punchlist work has been completed. The CM and the Authority shall inspect the Project and determine whether the Punchlist work has been completed and whether all nonconforming and/or deficient Work has been corrected or remedied. The determination that Punchlist work has been completed shall be a prerequisite to achievement of Final Completion.

10.3.2 Certificate of Final Completion. The CM and the Authority shall issue a Certificate of Final Completion and determine the date of Final Completion of the Project. Final Completion means that point in time on the Project when the Project is 100% complete and: (i) all requirements of the Design-Build Contract Documents have been completed in a manner consistent with the Design-Build Contract Documents and the Design-Build Information Package, (ii) all items on the Punchlist have been performed, (iii) all required inspections and items of work required by Authorities Having Jurisdiction have been completed, including, without limitation, inspections by soil erosion agencies, NJDEP, etc.; and (iv) a Final Certificate of Occupancy has been issued by DCA. Following the issuance of a Certificate of Substantial Completion for the Project and the determination by the CM and the Authority that the Punchlist Work has been completed, the Design-Builder's

Design Consultant, in conjunction with CM, shall evaluate the Work and notify the Authority when the Work is ready for final inspection. The Design-Builder's Design Consultant, in conjunction with the Project School District, the Authority, and the CM, shall conduct a final inspection of the Work to ensure that all Punchlist Work has been completed and all nonconforming and/or deficient Work has been corrected or remedied. The CM shall evaluate the Work to ensure that all Work and all Punchlist Work has been completed in a manner consistent with the Design-Build Contract Documents and the Design-Build Information Package. The Design-Builder and its Design Consultant shall assist the Authority in issuing a Certificate of Final Completion.

10.4 Liquidated Damages

- 10.4.1 Inasmuch as delays in the completion of the Work and/or Services may result in an increase in costs to the Authority and/or the Project School District, the precise amount of which may be difficult to ascertain, it is hereby agreed that if Substantial Completion is not achieved on or before the Substantial Completion Date (as extended pursuant to the provisions of this Agreement), the Design-Builder shall pay the Authority the amount identified in this Agreement as Liquidated Damages for each Day beyond the Substantial Completion Date that Substantial Completion is not achieved.
- 10.4.2 The Design-Builder also agrees that if Final Completion is not achieved by or before the Final Completion Date (as extended pursuant to the provisions of this Agreement), the Design-Builder shall pay the Authority the amount identified in this Agreement as Liquidated Damages for each Day beyond the Final Completion Date that Final Completion is not achieved.
- 10.4.3 The Authority and the Design-Builder agree that the actual damages that would be suffered by Authority and/or the Project School District if Substantial Completion and/or Final Completion of the Services and Work is delayed are speculative and not susceptible of precise determination and that the specified liquidated damages amounts (either in this Agreement or in any Change Order) represent a reasonable estimate by the Authority and the Design-Builder of the damages that the Authority would suffer in such event and, therefore, constitute damages and not a penalty.
- 10.4.4 The Authority shall have the right to deduct Liquidated Damages from any amounts, including Retainage, owed by the Authority to the Design-Builder or its surety. If Liquidated Damages are not deducted from such amounts, Liquidated Damages shall be payable by the Design-Builder to the Authority within ten (10) Days after receipt by the Design-Builder of a demand for payment of Liquidated Damages by the Authority.
- 10.4.5 The Substantial Completion Liquidated Damages amount shall be \$7,500.00 per Calendar Day. The Final Completion Liquidated Damages amount shall be \$5,000.00 per Calendar Day.

10.5 Final Payment

10.5.1 After Final Completion and receipt of the documentation required by the Design-Build Contract Documents, including, but not limited to, the requirements of Section 10.5.2 below, the Authority will issue a Certificate of Final Payment. Final Payment shall be made in accordance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-2, provided that the requirements of the Design-Build Contract Documents have been fulfilled. The Final Payment shall include payment for all Work performed under the Design-Build Contract Documents, and shall include the release of all Retainage held by the Authority, less any amount the Authority is entitled to withhold pursuant to the terms of the Design-Build Contract Documents.

10.5.2 Prior to issuance of the Final Payment, the Design-Builder shall submit to the CM and the Authority the following documents and information:

- (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Authority may in any way be responsible, have been paid or otherwise satisfied;
- (b) consent of Surety to final payment in the form of AIA Form G707;
- (c) other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Authority;
- (d) written certification that the Work is complete in all respects, and that the Work complies in all respects with the requirements of the Design-Build Contract Documents;
- (e) written certification that all equipment and systems have been installed in accordance with the Design-Build Contract Documents and have been started and tested in accordance with the Design-Build Contract Documents, the Code, and manufacturers' and/or suppliers' requirements;
- (f) completed Form 710 "Construction Contract Final Completion Checklist," found on the SDA webpage;
- (g) in compliance with the Prevailing Wage Act, written statements from the Design-Builder and all Subcontractors, certifying to the amounts then due and owing from the Design-Builder and Subcontractors to any and all workers for wages due. The statements shall contain the names of the persons whose wages are unpaid and the amount due to each respectively. The statements shall be verified by the oath of the Design-Builder or Subcontractor, as the case may be, that said party has read such statement subscribed by it that said party knows the contents thereof, and that the same is true of its own knowledge. If any Subcontractor refuses to furnish a

release or waiver required by the Authority, the Design-Builder may furnish a bond satisfactory to the Authority to indemnify the Authority, the State and the Project School District against any loss. If any lien or claim remains unsatisfied after all payments are made, the Design-Builder shall refund to the Authority all monies that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees. The Authority may withhold from the final payment any sum that the Authority has reason to believe may be needed to satisfy any lien, claim or threat of lien arising from the Work;

- (h) all required Contractor Evaluation Forms, Form Nos. 521 and 522 to be provided by the CM and the Authority; and
- (i) As-Built Documents and certification of accuracy of such documents as required in Section 5.17.3 herein.

10.5.3 Final Payment shall be made by the Authority to the Design-Builder only when:

- (a) This Agreement has been fully performed by the Design-Builder, including all requirements set forth in the Construction Documents and the Design-Build Contract Documents;
- (b) The final Invoice and final accounting have been submitted by the Design-Builder and have been reviewed and approved by the CM and the Authority;
- (c) Final releases have been obtained from the Design-Builder, its Subcontractors and Subconsultants;
- (d) The Authority has accepted the Services and Work under this Agreement and the Design-Build Contract Documents; and
- (e) The Design-Builder has provided to the Authority all Deliverables including design Work Product in hard copy and electronic format, as well as manuals, warranties, as-built and record drawings for the Project.

10.5.4 If all requirements for Final Payment have been fulfilled by the Design-Builder, the Authority shall make the Final Payment in accordance with the New Jersey Prompt Payment Act.

10.6 No Waiver by Authority.

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

- (a) unsettled liens and claims against the Authority, the State, the School Facility, or the Project School District, or any of their employees, officers, agents, or representatives;
- (b) errors, omissions or deficiencies in the Design-Builder's design Work Product, including the Final Design Documents and Construction Documents;
- (c) faulty, defective or nonconforming Work;
- (d) failure of the Work to comply with the requirements of the Design Build Contract Documents;
- (e) failure of the Design Work Product to comply with the requirements of the Design Build Contract Documents;
- (f) any warranties contained in or required by the Design-Build_Contract Documents;
- (g) damages incurred by the Authority, the State or the Project School District resulting from lawsuits brought against them, their agents, employees, officers or representatives because of failures or actions on the part of the Design-Builder, its Subcontractors, or any of their officers, employees, agents or representatives;
- (h) fraud or bad faith committed by the Design-Builder or any Subcontractor during performance of the Work, discovered by the Authority after Final Payment;
- (i) any and all claims pursuant to the New Jersey False Claims Act, N.J.S.A. 2A:32C et seq.; and
- (j) any other claims cognizable at law or equity.

10.6.2 Acceptance of, or payment for, any of the Services or Work performed by the Design-Builder shall not constitute a release or waiver of any claim the Authority has or may have against the Design-Builder for latent defects, errors, omissions, deficiencies, breaches of contract, or negligence. If the Authority discovers latent defects, errors, omissions or deficiencies in the Services or Work after Final Release, the Design-Builder shall correct any such defects, errors, omissions or deficiencies in the Services or Work at no expense to the Authority

10.7 Final Release by Design Builder

10.7.1 The acceptance of Final Payment by the Design-Builder shall constitute a waiver of all claims by the Design-Builder, and the individual members if the Design-Builder is a Joint Venture, against the Authority except for: (i) those claims

expressly reserved by the Design-Builder at the time of Final Payment; and (ii) those claims arising after Final Payment due to an alleged breach by the Authority of any provision of the Agreement which survives after the Term.

10.7.2 Notwithstanding any other provision of the Contract, for a period of three (3) years after Final Completion of the Project, all estimates and payments made pursuant to the Design-Build Contract Documents, including the Certificates of Final Completion and Final Payment, are subject to correction and adjustment for clerical or other errors in the calculations involved in the determination of the amount of the payments. The Design-Builder and the Authority agree to pay to the other any sum due under the provisions of this Section, provided, however, that if the total sum to be paid is less than \$100, payment will be waived.

11.0 TERM

The Term of this Agreement shall be from the Commencement Date and shall extend until all obligations of the Design-Builder to provide Services and perform Work pursuant to the Design-Build Contract Documents and the Construction Documents have been performed to the satisfaction of the Authority, unless extended or sooner terminated as set forth in this Agreement.

12.0 WARRANTIES

12.1 General. The Design-Builder warrants to the Authority that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Design-Build Contract Documents, of good quality, in conformance with the Design-Build Contract Documents and free of defects in materials and workmanship.

12.2 Commencement of Warranties. The warranties shall commence upon Substantial Completion of the Project and continue for one (1) year, unless otherwise stated in the Design-Build Contract Documents. Should any warranty commence earlier than the Substantial Completion Date, the Design-Builder shall extend the warranty to one (1) year past the Substantial Completion Date. The Design-Builder's warranty obligations exclude defects caused by abuse, alterations, or failure to maintain the Work by persons other than the Design-Builder. Nothing in this Section is intended to limit any manufacturers' warranties which provide the Authority with greater warranty rights than those set forth in this Section or the Design-Build Contract Documents. The Design-Builder shall provide the Authority with all manufacturers' warranties upon Substantial Completion.

12.3 Eleven Month Warranty Inspection. Approximately eleven (11) months after Substantial Completion, the Authority shall conduct, in conjunction with CM, a warranty inspection of the Work. The Design-Builder shall, at no cost to the Authority, participate in the inspection, and perform "warranty work" to correct any deficiencies, latent defects or other incomplete or defective work discovered in the eleven-month

warranty inspection, or otherwise discovered before the expiration of the Design-Builder's one year warranty period.

- 12.4 Subcontractor, Subconsultant and Supplier Warranties. The Design-Builder shall obtain appropriate warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by any and all Subcontractors, Subconsultants and suppliers, and shall cause such warranties, guarantees and obligations to be extended to the Authority without derogating the Design-Builder's own representations and warranties to the Authority for such Work. The foregoing warranties, guarantees and obligations shall be in effect for periods of time co-extensive in duration with the Design-Builder's warranty for such Work. All such warranties, guarantees and obligations shall be in writing and shall run directly to and be jointly and severally enforceable by the Design-Builder and/or the Authority and their respective successors or assigns. The Design-Builder shall be responsible for enforcing such warranties, guarantees and obligations, at its own expense, in the name of and on behalf of the Authority if the Authority so requests.
- 12.5 Systems and Equipment Warranties. For all materials, systems and equipment required by the Design-Build Contract Documents to be covered by a manufacturer's or other warranty, the Design-Builder shall obtain and supply the required warranties in accordance with the specific requirements for each such warranty as set forth in the Design Build Contract Documents plans and specifications, with particular reference to the term, duration and value of each such warranty as specified in the Design Build Contract Documents. The Design-Builder shall ensure that all such warranties shall commence upon Substantial Completion and shall extend from the time of Substantial Completion for the specified terms and durations as indicated for each type of warranty required by the Design Build Contract Documents. The duration of any warranty coverage required by the Design Build Contract Documents for any material, system or equipment provided by the Design-Builder shall not be limited or diminished by any period of time during which the Design-Builder has put such materials, equipment or systems into service or beneficial use, prior to Substantial Completion. If the Design-Builder puts materials, equipment or systems into service or beneficial use prior to Substantial Completion, the Design-Builder shall secure, at its own cost and expense, extensions of the warranty period or additional warranties sufficient to provide the Authority and/or the Project School District with the warranty coverage specified in the Design Build Contract Documents, as measured from the date of Substantial Completion.

13.0 PERFORMANCE AND PAYMENT BONDS

- 13.1 The Design-Builder shall furnish within five (5) Days of receipt of the Notice of Award both a performance bond and a payment bond, each in a form approved by the Authority, in an amount equal to one-hundred percent (100%) of the Contract Price, guaranteeing the due and timely performance of all obligations of the Design-Builder

under this Agreement. No contract shall be executed by the Authority unless and until the required bonds are submitted and approved by the Authority.

- 13.2 The surety issuing the bonds must be currently authorized to do business in the State of New Jersey.
- 13.3 The bonds shall cover all guarantees and warranties required by the Design-Build Contract Documents, and all alterations, extensions of Contract Time, Changes in the Services or Work and other changes authorized by the Design-Build Contract Documents, without the need to secure the consent of the surety or sureties.
- 13.4 Bonds must be legally effective as of the date this Agreement is executed. Each bond must indicate the Design-Builder's name exactly as it appears in this Agreement. Current attorney-in-fact instruments and financial statements of the surety must be included for each bond. An authorized officer or agent of the surety must execute the bonds. All bonds and the sureties that write them must conform in all respects to the requirements of applicable State law. In the event that the Design-Builder is a Joint Venture, the bonds shall be signed by the Joint Venture and the individual members, each as "Principal." This requirement supersedes any language of the Statement of Joint Venture to the contrary.

14.0 INSURANCE

14.1 Introductory Statement

- 14.1.1 This Agreement recognizes that the Authority has implemented a School Facilities Projects Owner Controlled Insurance Program ("OCIP") in accordance with N.J.S.A. 18A:7G-44. This OCIP provides certain types of insurance coverage for the Design-Builder and certain of its Subcontractors that are deemed eligible under the terms of the OCIP. Despite such OCIP coverage, the Design Builder and the eligible Subcontractors are required to obtain certain insurance coverage of the types specified in Section 14.14 below.
- 14.1.2 This Agreement also recognizes that certain Subcontractors, and all consultants and subconsultants providing professional services, are ineligible for OCIP coverage (hereinafter, "Ineligible Subcontractors/Subconsultants"), as set forth in Section 14.15 below. Such Ineligible Subcontractors/Subconsultants are required to obtain insurance coverage of the types specified in Section 14.15.5.
- 14.1.3 The terms and conditions of this Section 14 addressing OCIP and the Design-Builder insurance requirements, shall apply during the Term of this Agreement. In addition, the Design-Builder and its subcontractors and subconsultants shall be required to comply with all provisions of the applicable NJSDA Safety Manual and the OCIP Manual, as such compliance has a direct bearing on the insurance costs of the Authority.

- 14.2 Owner Controlled Insurance Program Coverage OCIP will provide on-site General Liability, on-site Employer's Liability and Workers' Compensation, Builder's Risk and on-site Excess Liability coverage. Through OCIP, the Authority shall provide coverage to the Design-Builder and eligible Subcontractors of every tier providing direct labor on the Project, except as otherwise provided herein. Firms providing temporary labor services and leasing companies are to be treated as Subcontractors for OCIP enrollment purposes. The Authority shall pay all premiums associated with OCIP, including deductibles or self-insured retention, with the exception of Builders' Risk deductibles as indicated in Section 14.11.2, or unless otherwise provided in this Agreement.
- 14.3 Design-Builder and Subcontractor Insurance Requirements. Although OCIP provides broad coverage and high limits, it is not intended to, nor does it, meet all of the insurance needs of the Design-Builder and its Subcontractors. In addition to coverage provided by OCIP, therefore, the Design-Builder shall be responsible for providing proof that it and its Subcontractors have retained, at a minimum, the insurance coverage set forth in Section 14.14.
- 14.4 Risk Management Unit. Management of OCIP enrollment and other OCIP-related issues shall be handled by the Authority's Risk Management Unit and OCIP Broker and OCIP Administration Services Provider (collectively, "RMU"). All OCIP questions are to be directed to the RMU.
- 14.5 Mandatory Enrollment. The Design Builder's enrollment in OCIP is mandatory prior to the first Construction Notice to Proceed. Prior to undertaking any Work, enrollment in OCIP is mandatory for all eligible subcontractors, but is not automatic. The Design-Builder is required to notify RMU of all Subcontractors of every tier providing direct labor on the Project and follow enrollment procedures as provided by the Authority in the NJSDA OCIP Insurance Procedures and Enrollment Manual ("OCIP Manual"). Any failure on the part of the Design-Builder to comply with this notification and enrollment requirement may negate coverage under OCIP, and the Design-Builder shall bear all risk, financial and otherwise, associated with any such lack of coverage.
- 14.6 Coverage Term. The term of OCIP coverage shall extend and terminate as follows:
- 14.6.1 Coverage of the Design-Builder. Builder's Risk coverage shall extend to and terminate upon the occurrence of Substantial Completion of the Project, as such is defined herein. On-site General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage of the Design-Builder shall extend to and terminate upon the completion of all Punchlist Work.
- 14.6.2 Coverage of Subcontractor. On-site General Liability, Employer's Liability, Workers' Compensation and Excess Liability coverage provided to any Subcontractor shall extend to and terminate upon the earlier of: (i) the occurrence of Final Completion of the Project, as such is defined in Article 1 or (ii) the completion of the Subcontractor's work at the Project Site.

14.6.3 Warranty Work Exclusion. The Design-Builder and any Subcontractor of any tier shall be ineligible for participation in the OCIP and thus shall be responsible for purchasing and maintaining its own insurance coverage in accordance with Section 14.15 for the performance, after Final Completion of the Project, as such is defined herein, of any warranty Work on the Project pursuant to Section 12.0, and in no event shall such Work be subject to coverage under the OCIP.

14.7 Authority's Right to Terminate OCIP Insurance Coverage.

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

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

14.8 Waiver of Subrogation. The Design-Builder waives all rights of subrogation and recovery against the Authority, any Professional Services Consultants, agents or employees of the Authority, and Subcontractors of all tiers, to the extent of any loss or damage suffered during construction, including damage to any property or equipment insured under OCIP. The Design-Builder shall require all Subcontractors of any tier

enrolled in OCIP to include in their contracts with the Design-Builder the same waiver of their rights to subrogation and recovery.

14.9 No Release. The provision of OCIP by the Authority shall in no way be interpreted as relieving the Design-Builder of any other responsibility or liability under this Agreement or any applicable law, statute, regulation, or court order, including, but not limited to, the risk of loss and indemnification obligations under Section 15.

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

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

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

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

\$2,000,000	Bodily Injury and Property Damage Liability Combined Single Limit – each occurrence (reinstated annually)
\$4,000,000	General Aggregate Limit – each designated project (reinstated annually)
\$4,000,000	Products/Completed Operations Aggregate (reinstated annually)
\$2,000,000	Personal Injury and Advertising Injury
\$1,000,000	Damage to Premises Rented to You (Fire, Explosion, Lightning, Legal Liability)
\$ 10,000	Medical Expense (any one person)

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

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

14.10.3 Excess Liability Insurance shall be provided under a master excess liability program. Certificates of Insurance will be provided to the Design-Builder and all tiers of enrolled Subcontractors reflecting the first layer of Excess Liability. Upon written request, evidence will be provided for the full Limits of Liability as follows:

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

14.11 Builder’s Risk Coverage.

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

Primary Limit: \$150,000,000

Sublimits:

Transit: \$ 5,000,000 any one conveyance

Offsite Storage: \$ 5,000,000 any one location

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

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

14.12 Insurance Certificates and Policies. The Design-Builder and all tiers of enrolled Subcontractors shall receive Certificates of Insurance evidencing the General Liability

and Excess Liability coverage. The related policies shall be available for review by the Design-Builder upon request to the RMU. The Design-Builder and its Subcontractors shall be bound by the terms of coverage as contained in such insurance certificates and/or policies.

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

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

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

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

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

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

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

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

14.14.1 As provided in this Section 14.14, notwithstanding enrollment in OCIP, the Design-Builder and its Subcontractors of every tier providing direct labor on the Project must, upon enrollment in OCIP, attach to the required enrollment forms, certificates of valid insurance evidencing current coverage for the On-Site and Off-Site exposures enumerated below. These exposures are not covered by OCIP. Insurance binders are not acceptable as proof of insurance coverage.

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

- 14.14.3 In each policy, the Design-Builder shall have incorporated a provision, in accordance with the laws of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Design-Builder warrants that if the insurer, or coverage, is not subject to statutory or other provisions requiring thirty (30) Day prior notification of cancellation or non-renewal, it will, in any event, provide notice to the Authority immediately upon receipt of any notice of cancellation or non-renewal of any insurance coverage required under this Section.
- 14.14.4 The Design-Builder warrants that its insurance carriers are accurately informed regarding business activities of the Design-Builder and intend to insure those business exposures.
- 14.14.5 For purposes of this Section, "Off-Site" shall include, but not necessarily be limited to, the Design-Builder's regularly established workplace, plant, factory, office, shop, warehouse, yard, or other property, even if such operations are for training of apprentices or for fabrication of materials to be used at the Project Site.
- 14.14.6 The following are the exposures, on-Site and off-Site, for which the Design-Builder and its Subcontractors must obtain insurance coverage in addition to OCIP insurance requirements:
- (a) Pollution Liability. In the event that the Design-Builder's and/or its Subcontractors' efforts involve a Pollution Liability exposure (including asbestos work, lead work, or hazardous material abatement, transportation and/or disposal), the Design-Builder and/or its Subcontractors are required to maintain, or cause to be maintained, Pollution Liability insurance, and, if necessary, Commercial Umbrella Insurance, with minimum limits of \$5,000,000 per occurrence and \$5,000,000 aggregate which protects the insureds from any and all claims that may arise out of or as a consequence of any Service or Work performed on this Project. Where the Design-Builder and/or its Subcontractors are solely consultants, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy.
 - (b) Off-Site and On-Site Business Automobile Liability. Business Automobile Liability Insurance covering the operations, maintenance, use, loading and unloading of all owned, hired, and non-owned vehicles used in connection with the Project. The limits of liability shall not be less than \$1,000,000 combined single limit each accident. Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for covered autos endorsement, CA 99 48, shall be provided, and, if required by law, the Motor Carrier Act endorsement (MCS-90) shall be attached.

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

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

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

- (e) Off-Site/On-Site Design-Builders' Equipment. The Design-Builder shall purchase and maintain the Design-Builder's property insurance covering construction machinery (whether or not the capital value of the machinery has been included in the Contract) equipment, and tools used by the Design-Builder in the performance of the Services or Work. Such coverage shall be written on a policy form at least equivalent to that provided by a "Contractor's Equipment Floater," as such is customarily defined within the insurance industry. The Design-Builder shall notify all tiers of its Subcontractors of their obligation to insure any machinery, equipment and tools used by the Subcontractors in the performance of the Services or Work.

14.14.7 Self-Insured Retention. Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be declared to and approved by the Authority and written using ISO endorsement CG 03 00 (or a substitute providing equivalent terms and conditions). The Design-Builder shall not be permitted to have a SIR larger than \$100,000 unless it obtains the express, written consent of

the Authority to the larger SIR. **FAILURE TO COMPLY WITH THIS SECTION 14.14.7 IS A MATERIAL BREACH OF CONTRACT.**

- 14.14.8 Claims-Made Basis. If any of the aforementioned insurance is written on a "claims made basis," the Design-Builder warrants that continuous coverage shall be maintained or an extended discovery period will be exercised for a period of five (5) years after the date of Final Payment by the Authority and the Design-Builder shall provide Certificates of Insurance evidencing continuance of coverage with the original claims made retroactive date. Within the Certificate of Insurance, in the blocks designated "Policy Number," in addition to the policy number, the Design-Builder shall insert a note "claims made retroactive date ____/____/____" (with the date inserted).
- 14.14.9 Certificate of Insurance. Attached as Appendix B to this Agreement shall be a valid Certificate of Insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. A Certificate of Insurance must also be submitted and appended hereto to evidence each insurance renewal required by this Section 14.14. Failure of the Authority to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Design-Builder's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this contract at the Authority's option. The Design-Builder shall provide certified copies of all insurance policies required within ten (10) Days of the Authority's written request for such policies.
- 14.14.10 Right to Remedy. If the Design-Builder fails to obtain and/or maintain the insurance as required by this Section 14.14, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at the Design-Builder's expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between the Design-Builder and the Authority; (iv) suspend performance by the Design-Builder under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section 14.0 may be used, at the Authority's discretion, to renew or purchase the Design-Builder's insurance for the periods and amounts as set forth in this Agreement. In the event that the Authority purchases said insurance, the Authority may, at its discretion, reduce the Design-Builder's compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect the Design-Builder, and such coverage and limits shall not be deemed as a limitation on the Design-Builder's liability under this Agreement. All exclusions added by endorsement to the aforementioned insurance shall be disclosed to the Authority.

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

14.14.12 Disclaimer. The Design-Builder and each of its and Subcontractors is responsible to ensure that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage, at their own expense, that they deem advisable, whether or not specified herein.

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

14.15 Subcontractors/Consultants/Subconsultants Ineligible for OCIP.

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

- (a) Professional Services Consultants;
- (b) Suppliers (that do not perform or subcontract installation);
- (c) Vendors;
- (d) Guard and security services;
- (e) Janitorial services;
- (f) Truckers/Haulers (including trucking to the Project Site where delivery or removal of materials is the only scope of work performed);
- (g) Any contractor or other person or organization that does not have dedicated payroll for employees at the "Project Site" for the "designated project"
- (h) Blasting contractors (unless approved in writing by the RMU);
- (i) Lead, asbestos, and hazardous materials abatement;

- (j) Off-site fabricators or manufacturers; and
- (k) Material Dealers.

- 14.15.2 Insurance Requirements of Ineligible Subcontractors/Subconsultants. Unless otherwise directed by the Authority, the Design-Builder shall require all Ineligible Subcontractors/ Subconsultants to purchase and maintain at their own expense, the insurance coverages set forth below. Prior to permitting an Ineligible Subcontractor or Subconsultant to perform any Services or Work, the Design-Builder must furnish the RMU with certificates of insurance together with declaration pages, in a form satisfactory to the Authority, showing that the Ineligible Subcontractor or Subconsultant has complied with this Section 14.15. Insurance binders are not acceptable as proof of insurance coverage.
- 14.15.3 Such coverage must be purchased and maintained from insurance companies authorized to transact the business of insurance in the State of New Jersey and are rated "A-VIII" or better by A.M. Best Company. In each policy, the Design-Builder shall have incorporated a provision, in accordance with the laws of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Design-Builder warrants that if the insurer, or coverage, is not subject to statutory or other provisions requiring thirty (30) Day prior notification of cancellation or non-renewal, it will, in any event, provide notice to the Authority immediately upon receipt of any notice of cancellation or non-renewal of any insurance coverage required under this Section.
- 14.15.4 The Design-Builder warrants that its insurance carriers are accurately informed regarding business activities of the Design-Builder and intend to insure those business exposures.
- 14.15.5 The coverages enumerated below shall protect the Design-Builder, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Construction Manager and the Project School District, and their respective directors, officers, members, employees and agents, against claims of, or relating to, personal and bodily injury (including death) to persons, or damage to property, which may arise from, or in connection with, the performance of the Services or Work (whether performed On-site or Off-site) by the Ineligible Subcontractor/Subconsultant, its employees, officers, agents, subcontractors or other individuals or entities for whom the Ineligible Subcontractor/Subconsultant may be contractually or legally responsible while performing Services or Work. The required coverages are as follows:
- (a) Professional Liability Insurance (Errors & Omissions). The Design-Builder shall require the Design Builder's Design Consultant and any other Consultants or Subconsultants to maintain Professional Liability Insurance, with coverage retroactive to the date of commencement of Services on the

Project by such Design Builder's Design Consultant or Subconsultant, sufficient to protect the Design Builder's Design Consultant or Subconsultant from any liability arising from the Services and professional obligations performed pursuant to this Agreement, in an amount not less than \$1,000,000 per claim and \$1,000,000 in the aggregate, for all operations conducted.

The Design-Builder warrants that it shall notify, or require its Consultant or Subconsultant to notify, the Authority in writing of any reduction in the aggregate coverage within thirty (30) Days of the policy holder's receipt of notice of such reduction.

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

- (b) Commercial General Liability. Commercial General Liability insurance is to be written as broad as the standard coverage form currently in use in the State of New Jersey, and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include coverage for contractual liability, products, completed operations and any explosion, collapse and underground (X,C,U) operations. Limits of liability shall not be less than \$5,000,000 combined single limit with excess or umbrella coverage with the same terms and conditions as the underlying coverage in an amount such that the primary and excess/umbrella coverage equals \$5,000,000.
- (c) Pollution Liability. In the event that the Ineligible Subcontractor/Subconsultant's efforts involve a Pollution Liability exposure (including asbestos work, lead work, or hazardous material abatement, transportation and/or disposal), the Ineligible Subcontractor/Subconsultant is required to maintain, or cause to be maintained, Pollution Liability insurance and, if necessary, Commercial Umbrella Insurance, with minimum limits of \$5,000,000 per occurrence and \$5,000,000 aggregate which protects the insureds from any and all claims that may arise out of or as a consequence of any Services or Work performed on this Project. Where the Ineligible Subconsultants/Subcontractors are solely consultants, insurance coverage may be as an endorsement to a professional liability policy, or it may be a separate Pollution Liability policy.

- (d) Off-Site/On-Site Contractor's Equipment. The Ineligible Subconsultants/Subcontractors shall purchase and maintain Contractor's property insurance covering construction machinery (whether or not the capital value of which has been included in the Contract) equipment, and tools used by the Ineligible Subconsultants/Subcontractors in the performance of Services or Work. Such coverage shall be written on a policy form at least equivalent to that provided by a "Contractor's Equipment Floater," as such is customarily defined within the insurance industry. The Ineligible Subconsultants/Subcontractors shall notify all tiers of their Subconsultants/Subcontractors of their obligation to insure any machinery, equipment and tools used by the subcontractors in the performance of Work. The Ineligible Subconsultants/Subcontractors shall indemnify, defend, and hold the Authority and its officers, agents, and employees harmless from any such loss, theft, or disappearance.
- (e) Business Automobile Liability. The Ineligible Subconsultants/Subcontractors shall carry Business Automobile Liability Insurance covering the operations, maintenance, use, loading and unloading of all owned, hired, and non-owned vehicles used in connection with the Project. The limits of liability shall not be less than \$1,000,000 combined single limit each accident. Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for covered autos endorsement, CA 99 48, shall be provided, and, if required by law, the Motor Carrier Act endorsement (MCS-90) shall be attached.
- (f) Workers' Compensation, Employer's Liability. Workers' Compensation Insurance in accordance with the laws of the State of New Jersey and any other state or federal jurisdiction as is required to protect the employees of the Ineligible Subconsultants/Subcontractors who will be engaged in the performance of the Services or Work. This policy shall include Employer's Liability protection with a limit of liability of not less than \$500,000, as follows:

(1) Bodily Injury by Accident	\$500,000 per accident
(2) Bodily Injury by Disease	\$500,000 per employee
(3) Bodily Injury by Disease	\$500,000 policy limit

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

- (a) The Design-Builder, the Authority, the NJEDA, the New Jersey Department of Education, the State, the Construction Manager, and the Project School

District, and their respective directors, officers, members, employees and agents shall be covered as additional insureds.

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

14.15.7 Disclaimer. Ineligible Subconsultants/Subcontractors shall be responsible for ensuring that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage that they deem advisable, whether or not specified herein.

14.15.8 No Recourse. There shall be no recourse against the Authority, the State or the Project School District for payment of premiums or other amounts with respect to the insurance required of Ineligible Subconsultants/Subcontractors hereunder.

14.15.9 Right to Remedy. If an Ineligible Subconsultant/Subcontractor fails to provide insurance as required herein, the Authority shall have the right, but not the obligation, to purchase such insurance. In such event, the Design-Builder's Contract Price shall be reduced by the amount paid for such insurance.

15.0 RISK OF LOSS AND INDEMNIFICATION

15.1 Risk of Loss Assumed by the Design-Builder

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

15.2 Indemnification

- 15.2.1 To the fullest extent permitted by law, the Design-Builder shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority, CM, and the Project School District, as well as their respective agents, servants, officers, directors and employees, from and against claim, demand, liability, lawsuit, judgment, action or other proceeding including, but not limited to, all costs, fees and expenses, including, without limitation, attorney's fees and expenses, court costs, expert witness fees and expenses, any resulting settlement, judgement, award or other assessment of liability, interest and other expenses arising out of or resulting from of any of the following:
 - (a) the negligent acts or omissions of the Design-Builder, its agents, servants, officers, employees, Subcontractors, Subconsultants or any other person acting at the Design-Builder's request, subject to its direction, or on its behalf, regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder;
 - (b) the loss of life or property, including the Work itself, or injury or damage to the person, body or property, including the Work itself, of any person or

persons whatsoever, that arises or results directly or indirectly from the negligent acts or omissions by the Design-Builder, its agents, servants, officers, employees, Subcontractors, Subconsultants or any other person acting at the Design-Builder's request, subject to its direction, or on its behalf regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder; and

- (c) 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 the Design-Builder, its agents, servants, officers, employees, Subcontractors, Subconsultants or any other person acting at the Design-Builder's request, subject to its direction, or on its behalf, regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder .

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

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

15.2.4 In any legal action by the Authority against the Design-Builder to enforce indemnity or other rights or to pursue any remedy under this Agreement that arises out of or is related to the design of the Project, any Subconsultant or Subcontractor to the Design-Builder (including any design professional) whose services may be the subject of the action shall be joined or impleaded into the litigation by the Design-Builder through the filing of all appropriate legal pleadings.

15.2.5 The Design-Builder shall include in all subcontracts a provision stating that for any claim or dispute arising under or related to the subcontract that affects the rights or remedies of the Authority under this Agreement, including the

Authority's indemnification rights under this Article 15, the Subconsultants and Subcontractors shall be subject to and shall consent to the jurisdiction of the Forum and Venue provisions of this Agreement.

- 15.2.6 The provisions of this Section 15 shall survive the expiration or termination of this Agreement.

16.0 GENERAL COVENANTS

16.1 Ownership of Documents

- 16.1.1 The Authority and the Design-Builder acknowledge that during the course of, and as a result of, the performance of the Design-Builder's Services, the Design-Builder or its Subconsultants shall create written materials, plans, drawings, specifications, computer files, or other tangible manifestations of the Design-Builder's efforts under this Agreement and the Design-Build Contract Documents, including architectural work, as that term is defined in the Architectural Works Copyright Protection Act of 1990 (hereinafter individually or collectively referred to as "Work Product"). All Work Product furnished or prepared by the Design Builder or its Subconsultants pursuant to this Agreement shall at all times be property of the Authority, and may be used by the Authority to complete the Project in the event that the Authority elects to terminate or cancel this Agreement pursuant to any provision hereof, or for any other purpose as set forth in Section 16.1.4 below. The Authority's ownership of the Work Product shall commence immediately upon the Effective Date of this Agreement, and shall commence regardless of payment by the Authority of any compensation to the Design Builder and regardless of delivery of any such Work Product to the Authority. The Design-Builder shall ensure that its agreements with Subcontractors and Subconsultants reflect the transfer of ownership in the Work Product and transfer of copyright in the Work Product to the Authority as indicated in this Section 16.1
- 16.1.2 The Design Builder hereby assigns to the Authority sole ownership of any copyrights or other intellectual property rights created or existing under state or federal law in any and all Work Product prepared by the Design Builder or its Subconsultants pursuant to this agreement. The Design-Builder shall ensure that its agreements with Subcontractors and Subconsultants reflect the transfer of ownership in the Work Product and transfer of copyright in the Work Product to the Authority as indicated in this Section 16.1
- 16.1.3 All Work Product (including: the original of any item of Work Product; one (1) set of electronic copies in AutoCAD native format, or other format acceptable to the Authority; one (1) set of electronic copies in .pdf or .dwt format; and two (2) sets of hard copies thereof) shall be delivered to the Authority in accordance with the Deliverables requirements of this Agreement, or upon the termination or

expiration of this Agreement, except that the Design Builder may, subject to any confidentiality obligations under this Agreement, retain one or more record sets of the Work Product.

- 16.1.4 All Work Product may be referred to freely by the Authority for the purpose of information and reference in connection with the School District's use and occupancy of the Project, for appending any addition to and integrating the same with the Project, performing any alterations or repairs of any portion of the Project, or designing or constructing other similar school facilities, buildings or projects whenever or wherever the Authority shall desire; provided, however, that the Design Builder shall not be responsible for any use, misuse, alteration or adaptation of the Work Product beyond the scope of the Design Builder's engagement under this Agreement.
- 16.1.5 In the event that the Authority terminates this Agreement for cause, or the Design-Builder fails to perform in accordance with this Agreement, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Design-Builder's performance of this Project by whatever methods the Authority deems appropriate. Upon termination or the Design-Builder's failure to perform, the Authority may retain a substitute design professional to complete the Design-Builder's performance using the Work Product and any other Project-related documents or data to make changes, corrections or additions for the purpose of completing, using and maintaining the Project(s).
- 16.1.6 If the Design-Builder is terminated under this Agreement and the Authority retains a substitute design professional to complete the Work Product, the Design-Builder shall have no liability to the Authority for modifications to the Work Product made by others.
- 16.1.7 The Design-Builder shall be liable to, and hereby agrees to indemnify and hold harmless the Authority, the State of New Jersey, the Project School District, and CM, from and against all claims made against any of them for infringement of any copyright or patent arising out of the Work Product prepared or furnished by the Design-Builder in the performance of this Agreement.

16.2 Copyrights and Patents

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

16.3 Confidentiality

- 16.3.1 All data contained in Documents supplied by the Authority, the Project School District or any other party involved in the Project, and after the execution of this Agreement, any data gathered by the Design-Builder 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.
- 16.3.2 The Design-Builder 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 and the Design-Build Contract Documents, 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 the Design-Builder shall provide immediate notice to the Authority of such order.
- 16.3.3 The Design-Builder is required to use reasonable care to protect the confidentiality of the Project data by, among other things, requiring incorporation of this Section 16.3 into its contract(s) with Subcontractors and Subconsultants. Any use, sale or offering of this data in any form by the Design-Builder, its employees, Subcontractors, Subconsultants or assignees shall be considered a material breach of this Agreement. The Design-Builder shall be liable for any and all damages arising from its breach of this confidentiality provision, including damages, costs and/or attorney's fees. The Authority shall also have the right to terminate this Agreement for cause in the event of a breach of this confidentiality provision without the Authority being liable for damages, costs and/or attorney's fees.
- 16.3.4 Any publicity and/or public announcements pertaining to the Project shall not be made until and unless the Design-Builder obtains the prior, written approval of the Authority.
- 16.3.5 The Design-Builder's promotional and professional (or other) materials shall never include the Authority's confidential or proprietary information.

16.4 Contractual Relationship

- 16.4.1 Nothing in this Agreement shall be construed as creating a contractual relationship between the Authority and any Subcontractors, Subconsultants or suppliers of the Design-Builder.
- 16.4.2 The Design-Builder's status shall be that of an independent contractor, not an employee of the Authority. The Design-Builder agrees that it shall conduct itself consistent with such status, that it shall neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof. The Design-Builder shall 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.
- 16.4.3 The Design-Builder shall include in all of its Subcontractor and Subconsultant contracts a requirement that each Subcontractor or Subconsultant is bound by the terms and conditions of this Agreement and the Design-Build Contract Documents.
- 16.4.4 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 the Design-Builder or the Authority. It is further intended that no individual, firm, corporation, or any combination thereof, which supplies materials, labor, services or equipment to the Design-Builder for this Project thereby becomes a third party beneficiary of this Agreement.
- 16.4.5 The Authority and the Design-Builder hereby bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement.

16.5 Assignment

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

- 16.5.3 Notwithstanding anything to the contrary, under no circumstance shall the Design-Builder 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.
- 16.5.4 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, the Design-Builder agrees to continue to perform all of its obligations as set forth in this Agreement. The Design-Builder 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.

16.6 Mergers, Acquisitions, and Dissolutions

- 16.6.1 If, subsequent to the execution of this Agreement, the Design-Builder or either of the individual members if the Design-Builder is a Joint Venture, proposes to merge with or be acquired by another firm, or in the event of a proposed dissolution by the Design-Builder, the Design-Builder shall immediately notify the Authority and shall submit, in advance, documentation to the Authority describing the proposed merger, acquisition or dissolution.
- 16.6.2 The Authority, in its sole discretion, may approve the proposed merger, acquisition or dissolution or terminate this Agreement for cause. The Authority will notify the Design-Builder of its decision within thirty (30) Days of receipt by the Authority of documentation from the Design-Builder describing the proposed merger, acquisition or dissolution.
- 16.6.3 In order to seek the Authority's approval of a proposed merger or acquisition, the Design-Builder shall submit to the Authority: (i) corporate resolutions prepared by the Design-Builder 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.
- 16.6.4 In order to seek the Authority's approval of a dissolution, the Design-Builder 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.

16.7 Mandatory Compliance With Law

- 16.7.1 The Design-Builder must comply with all applicable Legal Requirements. To the extent variances from such Legal Requirements are required, the Design-Builder and the Authority shall cooperate to pursue such variances in the interests of the Project.
- 16.7.2 The Design-Builder shall be knowledgeable of the Legal Requirements applicable in the jurisdiction in which the Project is located, and the Design-Builder agrees to comply with such Legal Requirements, including without limitation, (i) the Americans with Disabilities Act, (ii) insurance industry standards, surveys and other information provided by the Authority, and (iii) development covenants and conditions and easements applicable to the Project Site on which the Project is located, regardless of whether the Authority has furnished the Design-Builder with the foregoing information.
- 16.7.3 Each and every provision required by law to be inserted into this Agreement and the Design-Build Contract Documents by this Agreement shall be deemed to have been inserted therein. If any such provision has been omitted or has not been correctly inserted, the Design-Build Contract Documents shall be amended, upon application of either Party, to provide for such insertion or correction.
- 16.7.4 If the Authority determines that the Design-Builder has violated or failed to comply with any applicable Legal Requirements with respect to its performance under this Agreement and the Design-Build Contract Documents, the Authority may withhold payments for such performance and take such action that it deems appropriate until the Design-Builder has complied with such Legal Requirements or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 16.7.5 The Design-Builder's compliance with applicable Legal Requirements is mandatory and cannot be waived by the Authority.
- 16.7.6 The Design-Builder shall ensure that its payments to vendors, Subcontractors and Subconsultants are made in compliance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1 and -2, and the provisions of N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41, and all other applicable laws concerning prompt payment to Subcontractors and Subconsultants.

16.8 State Prevailing Wage Requirements.

- 16.8.1 The Design-Builder and each of its Subcontractors shall comply with the New Jersey Prevailing Wage Act Laws of 1963, Chapter 150 (N.J.S.A. 34:11-56.25 et seq.), and all amendments thereto.
- 16.8.2 In accordance with the Prevailing Wage Act, in the event it is found that any worker, employed by the Design-Builder or any subcontractor covered by the contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the public body, may terminate the Design-Builder's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise.

17.0 REPRESENTATIONS

The Design-Builder hereby represents as follows:

- 17.1 The Design-Builder is financially solvent, can pay its debts when due, and possesses sufficient working capital to complete the Services and Work required and perform its obligations under this Agreement and the Design-Build Contract Documents.
- 17.2 The Design-Builder is professionally qualified, or has engaged a professionally qualified subconsultant to act as the Design Consultant and Architect of Record for the Project, and has the capability and experience, including sufficient qualified and competent personnel, to efficiently and timely perform the Services and Work. The Design-Builder shall continuously furnish sufficient personnel to perform the Services and Work in a timely and proper manner.
- 17.3 The Design-Builder is experienced, authorized to do business in the State of New Jersey and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Design-Builder and the Services and Work it will be performing. The Design-Builder shall ensure that all of its employees, vendors, suppliers, Subcontractors and Subconsultants performing Services and Work for this Project have such licenses and certificates.
- 17.4 The Design-Builder's execution of this Agreement and its performance hereunder is within its duly authorized powers.
- 17.5 The Design-Builder 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. The Design-Builder agrees that it shall not make any Claim for, or be entitled to, cancellation or relief from the Design-Build Contract Documents without penalty because of its misunderstanding or lack of information related to the conditions of the Project and its obligations pursuant thereto.

- 17.6 The Design-Builder certifies that all representations made by it in this Agreement or any of the Design-Build Contract Documents are true, subject to penalty of law. The Design-Builder understands and agrees that its knowing or intentional violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact may be cause for termination of this Agreement. The Design-Builder understands and agrees that the Design-Builder's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact shall serve as a legal bar to the Design-Builder's enforcement of its rights under this Agreement and the Design-Build Contract Documents, including any and all Claims at law or equity.
- 17.7 The Design-Builder, and the individual members if the Design-Builder is a Joint Venture, is currently pre-qualified as a General Contractor by the Authority, and properly registered pursuant to The Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. (L. 1999, c. 238).
- 17.8 The Design-Builder and the individual members if the Design-Builder is a Joint Venture, and all of its Subcontractors and 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. The Design-Builder shall not enter into any subcontract with a Subcontractor or Subconsultant that has not provided it and the Authority with proof of such valid business registration.
- 17.9 The Design-Builder assumes full responsibility to the Authority for the acts and omissions of its officers, employees, Subcontractors, Subconsultants, and others employed or retained by it in connection with Work performed and Services provided for the Project.
- 17.10 The representations and warranties enumerated in this Section operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required by this Agreement or by law.

18.0 AFFIRMATIVE ACTION AND NON-DISCRIMINATION

- 18.1 General. The Design-Builder and its Subcontractors and 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, §§6 (codified at N.J.S.A. 52:18A-240), and any rules associated therewith, as may be amended from time to time, including, but not limited to, N.J.A.C. 17:27-1.1 to -12.5 and N.J.A.C. 19:39-1.1 to -4.1.
- 18.2 Documentation. The Design-Builder shall submit to the Authority, after notification of award but prior to execution of this Agreement, one of the following three documents:

- (i) documentation (e.g., a Letter of Approval) sufficient to show that the Design-Builder is operating under an existing Federally-approved or sanctioned affirmative action program; (ii) a Certificate of Employee Information Report approval issued in accordance with N.J.A.C. 17:27-4; or (iii) an Employee Information Report (Form AA-302) in accordance with N.J.A.C. 17:27-4. The Design-Builder shall not enter into a subcontract unless the subcontractor has submitted to said Design-Builder one of the three documents required in this paragraph above, unless such subcontractor has four or fewer employees.
- 18.3 Required Language And Application to Design-Builder, Subcontractors, and Subconsultants. The Design-Builder shall abide by, and shall include language in all subcontracts with Subcontractors and Subconsultants requiring that all Subcontractors and Subconsultants abide by the requirements of this Section 18, as well as the Mandatory Antidiscrimination and Equal Opportunity Provisions contained in Appendix D to this Agreement.
- 18.4 Antidiscrimination Obligations. The Design-Builder shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq. and all rules and regulations issued thereunder, including N.J.A.C. 17:27-1.1 et seq., as well as the Antidiscrimination provisions of N.J.S.A. 10:2-1, which are attached to this Agreement as part of Appendix D.
- 18.5 Monitoring and Enforcement of Workforce Affirmative Action Compliance and Procedures.
- 18.5.1 The Design-Builder's employee liaison designated in accordance with N.J.A.C. 19:39-2.1(a) shall meet, when requested, with the Authority's compliance inspector and/or other Authority representative to ensure compliance with this section and the Design-Builder's affirmative action plan.
- 18.5.2 The Authority shall conduct on-site visits and/or attend Project Meetings and, at reasonable times and in a reasonable manner, may enter the Design-Builder's business facility or the Project Site for the purpose of determining whether the Design-Builder is complying with its affirmative action plan and is otherwise in compliance with the procedures set forth in this chapter.
- 18.5.3 The Authority may investigate to determine if there is a violation of this subchapter or the Design-Builder's affirmative action plan. If the Authority determines there is substantial probability that a violation is occurring, it may issue a written alert notice to the Design-Builder. The written alert notice shall provide details of the alleged violation.
- 18.5.4 If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the Authority within three business days after it is received by the Design-Builder, the Authority shall issue a violation notice to the Design-Builder. Said violation notice shall provide details of the continuing violation.

18.5.5 The notice of violation shall advise the alleged violator that it shall submit, within seven business days, a written statement explaining why it is not in violation of this subchapter or the affirmative action plan or an explanation of how it shall correct any such violation. The Authority shall review the written statement. If the Authority determines that the violator has not adequately explained why it is not in violation or determines that the violation is continuing to occur, then the Authority shall conduct an investigatory conference to determine whether there is a violation and/or if corrective measures must be taken. The conference may also be conducted to discuss and resolve issues before taking any action pursuant to Section 18.8 (Sanctions) below, and/or N.J.A.C. 19:39-3.2. Such investigatory conference shall be conducted within 30 business days of the Design-Builder's submission of its written statement. The Authority may conduct interviews of relevant parties and may request from relevant parties the submission of additional information as is considered necessary to determine whether the alleged violation has occurred.

18.6 Set Asides and Goals for Small Business Entities (SBEs) and Disabled Veteran Owned Businesses (DVOBs) on Authority Projects

18.6.1 At the time of each school facilities project advertisement, the Authority shall announce the SBE and DVOB requirements for the contract, and the Design-Builder shall be required to make a good faith effort to comply fully with the SBE and DVOB subcontracting goals.

18.6.2 The good faith efforts of the Design-Builder to meet the SBE and DVOB goals on the Projects shall include, but not be limited to, the following measures:

- (a) Sending solicitation letters to SBE and DVOB firms registered with the New Jersey Department of Treasury, Division of Revenue and Enterprise Services, Selective Assistance Vendor Information List and to pre-qualified SBE and DVOB firms on a list that is available from the SDA's website at www.njsda.gov;
- (b) Making follow-up telephone calls to firms solicited in (a) above, and keeping a log of such calls and responses;
- (c) Breaking the work into smaller subcontracts, to make it easier for SBE and DVOB firms to compete;
- (d) Contacting community groups, including, but not limited to, groups listed by the SDA for this purpose, for assistance in identifying SBE and DVOB firms;
- (e) Placing advertisements in local newspapers, construction trade letters, magazines, or special publications aimed at SBEs and DVOBs;

- (f) Negotiating in good faith with interested SBE and DVOB subcontractors, so as not to disqualify a prospective subcontractor without good cause; and
- (g) Assisting potential SBE and DVOB subcontractor firms by acting as a reference for the subcontractor, or by referring the subcontractor to the surety agent or bank officer of the Design-Builder or consultant to satisfy bonding, insurance, or credit requirements.

18.6.3 If the Authority determines that a Design-Builder or contractor has failed to comply with its good faith obligations to meet the specified SBE and DVOB subcontracting goal, he or she may pursue any of the sanctions available pursuant to Section 18.9 below, and/or N.J.A.C. 19:39-3.2.

18.7 Affirmative Action, Small Business and Disabled Veteran Owned Business Compliance.

18.7.1 The Design-Builder shall designate an employee who shall serve as a liaison with the Authority and who shall be responsible for coordinating the firm's affirmative action program, maintaining all records required by this chapter and submitting the forms required by this chapter through the Authority's website, or as otherwise directed, to the Authority's designated employee or representative

18.7.2 The Design-Builder, after notification of award, but prior to the Authority's execution of this Agreement, shall submit to the Authority an SBE/DVOB Participation Form and a Confirmation of SBE/DVOB Status Form

18.7.3 The Design-Builder shall complete and submit the following forms available from the Authority, at the times, and in the manner and form (whether hard-copy or electronic) specified by the Authority:

- (a) An SBE/DVOB Participation Form, together with all Confirmation of SBE/DVOB Status Forms, at the time of submission of the Technical and Price Proposals or at any other time specified by the Authority;
- (b) An initial project workforce report, Form AA-201;
- (c) A subcontractor projection report, Form 201A, within seven business days of the Notice to Proceed issued to the Design-Builder by the Authority, and as updated during the duration of the contract;
- (d) A monthly project workforce report, Form AA-202, submitted in electronic form no later than the seventh business day of each month for the duration of the contract; and

- (e) A certified payroll report utilizing the New Jersey Department of Labor and Workforce Development's Payroll Certification for Public Works Projects submitted within 10 days of the end of each pay period.

18.8 Sanctions

18.8.1 If the Authority determines that the Design-Builder 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:

- (a) Reduce the Design-Builder's performance evaluation;
- (b) Reduce the Design-Builder's project rating on subsequent bid proposals;
- (c) Reduce the Design-Builder's compensation by a maximum of one and one-half percent of the Contract Price if the Design-Builder is found not to have in good faith satisfied the hiring requirements set forth in the contract, because the SDA cannot and will not pay for contractual services that are not performed or contractual obligations that are not met. This reduction in the Contract Price may be effectuated either by the withholding of all or part of future payments to the Design-Builder or by a reduction in the amount of retainage otherwise due for release to the Design-Builder under the contract;
- (d) Pursue any of the sanctions available under N.J.A.C. 19:38A-4, including revocation of the Design-Builder's pre-qualification and/or suspension or debarment from SDA contracting; and/or
- (e) Terminate this Agreement.

18.9 Subcontractor or Subconsultant Replacement on School Facilities Projects.

18.9.1 The Design-Builder shall not replace an SBE or DVOB subcontractor or subconsultant, except where such subcontractor is in breach of its subcontract and the SDA has provided the Design-Builder its prior written consent to the replacement.

18.9.2 A request for replacement shall be in writing, on forms specified by the Authority, and must be accompanied by complete justification for the request. The Design-Builder must have the written approval of the Authority, on a form issued by the Authority, before such a replacement can be made, regardless of the reason for the replacement.

- 18.9.3 The Design-Builder shall make a good faith effort to find another SBE or DVOB to perform at least the same amount of work or services as had been allocated to the original SBE or DVOB subcontractor.

19.0 SUSPENSION OF SERVICES OR WORK

- 19.1 Authority's Right to Suspend Services or Work. The Authority shall have the right to defer the Commencement Date or to suspend the whole, or any part, of the Services and/or Work 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 the Design-Builder suspend performance of the Services and/or Work and upon receipt of such notice, unless otherwise directed in writing by the Authority, the Design-Builder shall immediately discontinue all Services and/or Work, except as necessary to properly secure the Project.
- 19.2 Compensation. In the event of a suspension by the Authority pursuant to this Section, Compensation shall be determined as follows:
- 19.2.1 If the Authority determines that the Services or Work have been suspended for a period cumulatively totaling less than forty-five (45) Days, there shall be no additional compensation paid to the Design-Builder.
- 19.2.2 If the Authority determines that the Services and/or Work have been suspended for a period cumulatively totaling forty-five (45) Days or more, and if the Authority determines that the suspension has resulted from no fault of the Design-Builder, the Parties shall amend this Agreement to provide an adjustment to the Contract Price in an amount deemed proper by the Authority and the Design-Builder after a review of the Design-Builder's submissions relating to the increased costs actually incurred by the Design-Builder as a direct result of the suspension. No such adjustment to the Contract Price will change any of the other terms of this Agreement.
- 19.2.3 When the Authority has determined that a suspension is the fault of the Design-Builder, the Authority may, at its sole option, suspend all payments to the Design-Builder. Payment may be reinstated by the Authority upon completion of the Services and/or Work in accordance with the other provisions of this Agreement, provided that there shall be no upward adjustment in direct or indirect costs or in any other costs. Alternatively, the Authority may terminate this Agreement pursuant to Section 20.2, or carry out the Work and/or Services as provided for in Section 20.3.
- 19.3 Requirement to Secure the Project Site Upon Suspension of the Work. In the event that a suspension of Work is ordered under this Section, the Design-Builder shall perform all Work necessary to ensure the safety of the public, the Authority, the employees and

guests of the Project School District, and to secure all of the completed and partially completed Work.

20.0 DEFAULT AND TERMINATION

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

20.1 Events of Default

20.1.1 The Design-Builder 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 20.1.2.

- (a) The Design-Builder fails to either (i) promptly begin the Services or Work under the Design-Build Contract Documents, or (ii) prosecute the Services or Work in accordance with the Project Schedule;
- (b) The Design-Builder fails to perform the Services or Work in accordance with the Design-Build Contract Documents;
- (c) The Design-Builder refuses to remove and replace rejected materials or unacceptable Work;
- (d) The Design-Builder disregards or otherwise fails to comply with all applicable Legal Requirements;
- (e) The Design-Builder fails to perform its obligations pursuant to the E-Rate program under Section 3.19, above;
- (f) The Design-Builder refuses or otherwise fails to properly staff the Project;
- (g) The Design-Builder fails, absent a valid dispute, to make payments to vendors, suppliers, Subcontractors or Subconsultants for materials, labor or services in accordance with the respective agreements between the Design-Builder and its vendors, suppliers, Subcontractors and/or Subconsultants;
- (h) The Design-Builder fails to maintain or produce any Design-Builder Deliverables or other records required by the Design-Build Contract Documents to be so maintained or produced;

- (i) The Design-Builder fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of this Agreement;
- (j) The Design-Builder fails to obtain and properly maintain the level of insurance coverages outlined in this Agreement;
- (k) The Design-Builder fails to obtain and properly maintain the level of bonding outlined in this Agreement;
- (l) The Design-Builder assigns or transfers its obligations, privileges or rights under this Agreement without the prior, written consent of the Authority;
- (m) The Design-Builder makes any misrepresentation or conceals any material fact;
- (n) The Design-Builder, or either of the individual members if the Design-Builder is a Joint Venture, commences or has commenced against it any action under the United States Bankruptcy Code or any State or Federal insolvency law, the commencement of which, in the Authority's judgment, may effectively impair the ability of the Design-Builder to perform its obligations under this Agreement;
- (o) The Design-Builder fails to discharge or obtain a stay of any judgment or order for the payment of money arising out of the prosecution of the Services or Work (provided that for purposes hereof, posting of a bond in the amount of 124% of such judgment or order shall be deemed an effective stay);
- (p) The Design-Builder fails to pay applicable Prevailing Wage rates on the Project or otherwise violates the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.;
- (q) The Design-Builder fails to comply with a Directive or Contract Change Directive issued by the Authority;
- (r) The Design-Builder fails to perform Services or Work as required under this Agreement or the Design-Build Contract Documents;
- (s) The Design-Builder fails to observe a Directive or a Contract Change Directive from the Authority; or
- (t) The Design-Builder otherwise violates or breaches this Agreement, the Design-Build Contract Documents or any material provision or term thereof.

20.1.2 The Authority shall provide the Design-Builder and its surety with written notice of the Design-Builder's default ("Notice of Default"). For all such Events of Default except those contained in subsections 20.1.1 (m) [misrepresentation] and 20.1.1 (n) [insolvency/bankruptcy] (and any such default that by its nature cannot be cured), the Design-Builder may, within seven (7) Days of receipt of the Notice of Default, commence correction of such default, neglect or violation, with diligence and promptness, fully curing the same within the time prescribed by the Authority, if any, within the Notice of Default. If the Design-Builder's default is capable of cure, but by its nature, cannot be cured within seven (7) Days, such additional period of time shall be allowed as may reasonably be necessary to cure the default, provided that the Design-Builder or its surety commences such cure within such seven (7) Day period and thereafter diligently prosecutes such through completion. Failure of the Design-Builder 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 20.2 of this Agreement.

20.2 Termination for Cause

- 20.2.1 If any default described in Section 20.1 above is not subject to cure or is not cured within the period specified in Section 20.1.2, 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 the Design-Builder and its surety specifying the extent to which the Services and/or Work under this Agreement are terminated and the date upon which such termination shall become effective.
- 20.2.2 Upon Termination for Cause by the Authority pursuant to this Section, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Services and Work that were required to be performed by the Design-Builder by whatever methods the Authority may deem appropriate.
- 20.2.3 In the event this Agreement is terminated for cause pursuant to this Section 20.2, the Authority reserves the right not to make any further payments to the Design-Builder and may require the Design-Builder to repay all or a portion of the monies already paid. The Design-Builder, at its own expense, shall be obligated to take any steps necessary to enable the Authority to complete the Services and/or Work itself, or for the Authority to engage another contractor, design professional or design-builder to complete the Services and/or Work. 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 the Design-Builder are not sufficient to cover the Authority's cost to complete the Services and/or Work itself or engage another

contractor, design professional or design-builder to complete the Services and/or Work , the Design-Builder shall pay the difference to the Authority upon demand.

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

20.3 The Authority's Right to Complete the Services and Work

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

20.4 Termination for Convenience of the Authority

- 20.4.1 Performance by the Design-Builder of its obligations under the Design-Build Contract Documents may be terminated by the Authority in whole or in part, whenever the Authority, in its sole discretion, determines that such termination is in its best interest. Such a termination shall be called a "Termination for Convenience."
- 20.4.2 Any such Termination for Convenience shall be effected by delivery of a "Notice of Termination for Convenience" specifying the extent to which the Services and/or Work under this Agreement are terminated and the date upon which such termination becomes effective.
- 20.4.3 Upon such Termination for Convenience, the Design-Builder shall be entitled to Compensation for the Services and Work actually and satisfactorily performed by the Design-Builder, less payments previously made. The Design-Builder shall also be entitled to the reasonable costs and expenses attributable to such Termination for Convenience.

- 20.4.4 Upon a Termination for Convenience, the Design-Builder shall furnish to the Authority, free of charge, such closeout reports, Documents, and materials as may be reasonably required by the Authority. Materials purchased by the Design-Builder for the Project that have not yet been incorporated into the Work may, at the option of the Authority, be purchased from the Design-Builder at the actual cost and delivered to a prescribed location or otherwise disposed of as mutually agreed.
- 20.4.5 Within sixty (60) Days of the effective termination date, the Design-Builder shall submit to the Authority claims for any costs that were incurred but that are not subject to payment pursuant to this Section 20.4 or any other provision of the Design-Build_Contract Documents. No claim will be allowed for anticipated profits on Services or Work that have not been performed. The Design-Builder'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 20.4.

21.0 CLAIMS

All Claims by the Design-Builder against the Authority shall be governed by the following provisions.

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

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

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

- 21.5 Compliance with Claim Review Procedure. Each Claim shall begin its review at Step One. A Claim shall not proceed to the next step unless the Design-Builder 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, the Design-Builder must sign a full and final release as to any and all matters arising from the Claim.
- 21.6 Step One: The Authority's Review.
- 21.6.1 The Design-Builder must provide to CM and the Authority the required forms as required by this Section to comply with the New Jersey Contractual Liability Act in order to begin the Authority's administrative process for the review of Claims. The Design-Builder shall also submit to the Authority all documentation supporting the Design-Builder's Claim. The documentation provided to the Authority shall serve as the basis for evaluation of the Design-Builder's position regarding the Claim throughout Step One of the administrative process. The Design-Builder shall submit additional information upon request by the Authority. No formal action shall be taken by the Authority unless and until the Authority receives complete Claim documentation from the Design-Builder.
- 21.6.2 Authority Review and Decision. At the option of the Authority, a meeting may be scheduled with the Design-Builder, the Authority and CM to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within ninety (90) Days of the receipt of the required forms and all supporting documentation or within ninety (90) Days of any meeting with the Design-Builder, the Authority and CM, whichever is later. This time limit may be extended by mutual agreement of the Parties, or may be extended in the SDA's sole discretion, based on the complexity, size or nature (i.e. delay claim) of the claim. . The Design-Builder, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If the claimant neither accepts nor rejects in writing the NJSDA's decision within this fifteen (15) day period, the NJSDA will consider the Step One process administratively closed, and the claim will be eligible for Step Two Non-binding Mediation if a request for mediation is made by the Claimant in the time and manner indicated in Section 21.7 ("Step Two Non-Binding Mediation").
- 21.7 Step Two: Non-Binding Mediation. If the Design-Builder rejects in writing the decision of the Authority, there is no further automatic administrative review of the Claim. Within fifteen (15) Days after issuance of a Certificate of Occupancy or Certificate of Acceptance for this Project, the Design-Builder may request in writing that any or all outstanding Claims regarding this Project, which have been processed through Step One of the Claim resolution process, proceed to Step Two, Non-binding Mediation. Such request for mediation must be in writing and must identify with specificity the claims to be mediated. Any Claim not specifically identified shall be deemed withdrawn. No Claim shall proceed automatically to Step Two and the Design-

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

22.0 THE AUTHORITY'S RESPONSIBILITIES

In addition to other responsibilities of the Authority as set forth in this Agreement and the Design-Build Contract Documents, the Authority shall:

- 22.1 Provide the Design-Builder with the Design-Build Contract Documents.
- 22.2 Cooperate with the Design-Builder throughout the Term of this Agreement. The Authority shall perform its responsibilities, obligations and services, including review and acceptance of the Design-Builder's submissions, in a timely manner so as not to delay or interfere with the Design-Builder's performance of its obligations under this Agreement.
- 22.3 Provide, at its own cost and expense and to the extent available, for the Design-Builder's information and use, the following:
 - 22.1.2 Surveys describing the property, boundaries, topography and reference points for use during design and construction, including existing service and utility lines;
 - 22.1.3 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Project Site;
 - 22.1.4 A legal description of the Project Site;
 - 22.1.5 As-built and record drawings of any existing structures at the Project Site; and
 - 22.1.6 Environmental studies, reports and impact statements describing the environmental conditions, including hazardous conditions existing at the Project Site.
 - 22.1.7 ANY RELIANCE BY THE DESIGN-BUILDER ON SUCH INFORMATION PROVIDED BY THE AUTHORITY IS LIMITED BY THE DESIGN-BUILDER'S OBLIGATION TO INVESTIGATE AND VERIFY EXISTING CONDITIONS AS PROVIDED IN SECTION 3.11 HEREIN.

- 22.1 Attend Project related meetings and participate in inspections, as necessary.
- 22.2 Designate a Project Manager as the Authority's representative for the Project who administers this Agreement and manages the Project on behalf of the Authority. The Authority's Project Manager shall be the Design-Builder's point of contact for the Project, but shall have that limited authority specified in the Levels of Operating Authority Policy which document can be found on the Authority's website,

<https://www.njsda.gov/NJSDA/Governance/OperatingAuthority>.

23.0 THE AUTHORITY'S RIGHTS

- 23.1 The Authority shall have the right to perform work related to the Project and to award contracts in connection with the Project that are not part of the Design-Builder's responsibilities under this Agreement or the Design-Build Contract Documents, including, but not limited to, the procurement and installation of selected furniture and furnishings and the procurement, installation and integration of IT systems and equipment. The Design-Builder is obligated to coordinate its Schedule, Services and Work with any work performed or procured by the Authority.
- 23.2 The Authority shall have the right, in its sole discretion, to accept or reject employees and personnel proposed by the Design-Builder to work on the Project. The Design-Builder 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.
- 23.3 The Authority shall have the right to remove any of the Design-Builder'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, the Design-Builder shall promptly submit the name and qualifications of a replacement.
- 23.4 The Authority shall have the right to evaluate the Design-Builder's performance pursuant to the Authority's Performance Evaluation Policy and Procedures. The Authority shall also have the right to consider the Design-Builder's evaluation as a factor used in the technical ranking of the Design-Builder with respect to any submission by the Design-Builder in response to future Requests for Proposals issued by the Authority.
- 23.5 In addition to any of the other rights and remedies of the Authority specified in this Agreement, the Authority reserves the right to bring an action against the Design-Builder for any damages sustained by the Authority from any Services or Work

performed by the Design-Builder when such damage is occasioned by the negligent act, error, omission or willful misconduct of the Design-Builder.

- 23.6 The Authority's acceptance, use of or payment for all or any part of the Design-Builder's performance hereunder or in connection with the Project shall in no way alter the Design-Builder's obligations under this Agreement.
- 23.7 The Authority and any other State inspecting or oversight agencies having jurisdiction reserve the right to audit (or have their agents audit) the records of the Design-Builder in connection with all matters related to this Agreement. If, as a result of such audit, the Design-Builder is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Design-Builder's Invoice amount to an amount considered commensurate with the actual Services provided or Work performed.
- 23.8 The Authority or any other State inspecting or oversight agencies have the right to request, and Design-Builder agrees to furnish free of charge, all information and copies of all records, documents or books the Authority or any other State inspecting or oversight agencies may request of the Design-Builder and its Subcontractors and Subconsultants. The Design-Builder and its Subcontractors and 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 or Work being performed by the Design-Builder and its Subcontractors and Subconsultants pursuant to this Agreement and the Design-Build Contract Documents.

24.0 SOLID WASTE, HAZARDOUS WASTE, UNDERGROUND STORAGE TANKS AND ASBESTOS TRANSPORTATION AND DISPOSAL

24.1 General Requirements

- 24.1.1 The Design-Builder shall be responsible for the loading, transportation, and proper disposal of Solid Waste, as defined at N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-1.6, encountered at the Project Site. The Design-Builder must meet all applicable federal, state and local requirements, laws, or ordinances for the handling, transportation and disposal of Solid Waste.
- 24.1.2 The Design-Builder may subcontract the transportation, disposal and/or brokering of the Solid Waste in accordance with Section 6.4 of this Agreement, but only to subcontractors who are licensed under the New Jersey Solid Waste Management Act and who comply with all conditions of this Article 24. The Design-Builder shall assume responsibility for its own and its subcontractors' compliance with all applicable Legal Requirements for the handling, loading, transportation and disposal of all Solid Waste until completion of disposal.

- 24.1.3 Transportation of Solid Waste for disposal must be done by a licensed New Jersey Solid Waste Transporter, and all equipment utilized in the transportation work must be properly registered in accordance with New Jersey law and this Article 24. All waste generated in a County which has waste flow restrictions must be handled in accordance with the specific requirements of that County.

24.2 Transportation Requirements

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

subsurface evaluation or remedial work, shall possess a valid NJDEP certification under the Underground Storage Tank Certification Program for UST Closure and Subsurface Evaluation (pursuant to N.J.S.A. 58:10A-24 et seq.).

- 24.2.7 Licenses, Certifications and Training. The Design-Builder shall provide appropriately licensed, certified and trained subcontractors and staff needed to perform work relating to Solid Waste disposal, Hazardous Waste handling or removal, or Underground Storage Tank removal, closure or subsurface evaluation. Upon request of the Authority, the Design-Builder shall be required to identify the appropriately licensed staff for such work.
- 24.2.8 Certified Laboratory for Testing. Any testing or analysis of solid waste, hazardous waste, underground storage tanks or asbestos required or advisable under the terms of the Agreement shall be performed by an NJDEP certified laboratory.
- 24.2.9 Asbestos. If asbestos or asbestos-containing materials are present or suspected on the Site, the Design-Builder or designated subcontractors shall handle, containerize and remove the asbestos, asbestos containing materials, or other building materials contaminated with asbestos. The Design-Builder or subcontractor(s) designated to perform asbestos removal work shall possess a New Jersey Asbestos Contractors Type A license from the New Jersey Department of Labor and Workforce Development (NJDOLE), Office of Asbestos Control and Licensing and the individuals working on sites to remove asbestos shall have Asbestos Worker Permits or Supervisor Permits. Workers shall be trained in accordance with all OSHA regulations including: 29 CFR 1910.1001, 29 CFR 1910.1101 and 29 CFR 1926.58 including amendments.
- (a) Asbestos Regulations. The Design-Builder and/or each Subcontractor performing asbestos removal work shall warrant that the firm and its employees are familiar, experienced and compliant with the following regulations:
- (1) U.S. Environmental Protection Agency (EPA): 40 CFR Part 61 Subparts A, B and M of the National Emissions Standards for Hazardous Air Pollutants and Amendments;
 - (2) State of New Jersey: Asbestos Control and Licensing Act (P.L. 1984 C.173) N.J.A.C. 12:120 and N.J.A.C. 8:60 and Amendments;
 - (3) State of New Jersey: Asbestos Hazard Abatement Subcode, Subchapter 8, N.J.A.C. 5:23-8.
- (b) Compliance with this section 24.2.9 shall be determined by verification of supervisor and worker asbestos licenses.

- (c) The Authority may provide additional requirements for the handling of asbestos in additional contract requirements when it deems additional requirements necessary.

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

24.3 Tracking and Documentation Of Solid Waste Disposal

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

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

24.4 Classification of Solid Waste, Hazardous Waste, Recycled Materials and/or Beneficial Use Materials

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

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

25.0 LEGAL RELATIONS AND ADDITIONAL PROVISIONS

- 25.1 Notices. All notices or other communications required by this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by Federal Express or similar guaranteed overnight courier and shall be deemed delivered on the day after the notice or other communications was deposited in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A (Special Conditions).
- 25.2 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, the Design-Build Contract Documents, the Design Manual, the NJSDA Safety Manual, any appendices to this Agreement, and the RFP and any Amendments or addenda thereto.
- 25.3 Order of Precedence. In the event of a conflict, discrepancy or inconsistency between or among the Design-Build Contract Documents, interpretation shall be based on the following descending order of priority:
1. Executed Change Orders
 2. Special Conditions
 3. Supplementary Conditions (if any)
 4. This Agreement,
 5. The Design Build Information Package:
 - a. Performance Specifications
 - b. Educational Specifications
 - c. NJSDA Materials and Systems Standards Manual – Design Requirements

In the event there is any conflict between and among the requirements contained in the Design-Build Contract Documents, the Design-Builder shall provide the higher quality level of service and Work or meet the higher standard, as determined by the Authority in its sole discretion. In the event that the Design-Builder's Construction Documents contain a conflict, the Authority in its sole discretion shall resolve the conflict and direct the Design-Builder to perform pursuant to the Authority's interpretation of the conflict.

- 25.4 Changes to Agreement. Any change to this Agreement must be made in writing in the form of a Change Order or Amendment executed by the Design-Builder by its authorized representative and an appropriately authorized representative of the Authority, or in the form of a Contract Change Directive executed by an appropriately authorized representative of the Authority. Any Services and/or Work performed by the Design-Builder without a Change Order or Contract Change Directive that differ from, or are in addition to, the Services and/or Work required by this Agreement, shall be done at the Design-Builder's own financial risk.

- 25.5 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 by the Authority.
- 25.6 State Sales Tax. Materials, supplies or services for exclusive use in erecting the structures or buildings or otherwise improving, altering or repairing the School Facility pursuant to the Design-Build Contract Documents are exempt from New Jersey State sales tax. Purchases or rentals of equipment are not exempt from any tax under the State Sales Tax Act.
- 25.7 Anti-Trust. The Design-Builder, 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 or Work 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.
- 25.7.1 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.
- 25.8 Anti-collusion. By executing this Agreement, the Design-Builder hereby warrants and represents that (1) this Agreement has not been executed in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; (2) that the Design-Builder's lump-sum Price Proposal for the Project was genuine and not collusive or a sham; (3) that the Design-Builder has not directly or indirectly induced or solicited any other individual or firm to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any individual or firm or anyone else to put in a false or sham bid; (4) that the Design-Builder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the Design-Builder or of any other individual or firm or to fix any overhead, profit, or cost element of such bid price; (5) that all statements of the Design-Builder are true; and (6) that the Design-Builder has not directly or indirectly, submitted a bid price or any breakdown thereof, divulged information or data relative thereto, paid any fee in connection therewith to any corporation, partnership, company, association, organization, bid depository, or any member or agent thereof.
- 25.9 Conflicts of Interest.
- 25.9.1 The Design-Builder shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of

value of any kind to: (i) an Authority officer or employee with which the Design-Builder 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.

- 25.9.2 The solicitation from the Design-Builder of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee shall be reported in writing forthwith by the Design-Builder to the State Attorney General and the Executive Commission on Ethical Standards.
- 25.9.3 The Design-Builder shall not directly or indirectly undertake any private business, commercial or entrepreneurial relationship (whether or not pursuant to employment, contract or other agreement, express or implied) with, or sell any interest in the Design-Builder 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.
- 25.9.4 The Design-Builder 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.
- 25.9.5 The Design-Builder shall not cause or influence, or attempt to cause or influence, any Authority officer or employees to use or attempt to use such officer's or employee's official position to secure unwarranted privileges or advantages for the Design-Builder or any other person.
- 25.9.6 Under N.J.S.A. 52:34-19, it is a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the Authority. It is the policy of the Authority to treat the offer of any gift or gratuity by the Design-Builder, 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.
- 25.9.7 The provisions cited in this Section shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with the Design-

Builder 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.

- 25.9.8 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.
- 25.10 Procedural Requirements. The Design-Builder shall comply with all written procedural instructions that may be issued from time to time by the Authority.
- 25.11 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.
- 25.12 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.
- 25.13 Time is of the Essence. All time limits as stated in this Agreement are of the essence.
- 25.14 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 hereof.
- 25.15 Waiver of Breach. In the event that any provision of this Agreement should be breached by either party and such breach is thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach. Any consent by the Authority to a delay in the Design-Builder's performance of any obligation shall apply only to the particular obligation or transaction to which it relates, and it shall not apply to any other obligation or transaction. Any delay in the Authority's enforcement of any remedy in the event of a breach by the Design-Builder 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.
- 25.16 Negotiated Agreement. This Agreement was negotiated between the Parties and shall be construed in accordance with its plain meaning, without giving any effect to any implication or inference arising from the fact that it may have been drafted by or on behalf of any party to this Agreement.
- 25.17 Peer Review. The Authority may, at its sole discretion, provide all or a portion of the Documents or other items prepared by the Design-Builder to other professionals for review and comment.

- 25.18 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.
- 25.19 Office of State Comptroller. The Office of the State Comptroller, or any other State inspecting or oversight agency may, at its discretion, investigate, examine and inspect the activities of the Design-Builder and all other parties involved with the Project relating to the design, construction and financing of the Project and to the implementation of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The Office of the State Comptroller, or any other State inspecting or oversight agencies may require the Design-Builder or any other party involved with the Project to submit duly verified reports which shall include such information and be in such form as they may require. In addition to the foregoing the Office of the State Comptroller, or any other State inspecting or oversight agencies may investigate, examine, inspect, or audit in any manner and at such times as they may deem necessary. The Design-Builder shall include in any and all contracts with Subcontractors or Subconsultants a provision requiring such Subcontractors and Subconsultants to permit the Office of the State Comptroller, or any other State inspecting or oversight agencies, in their discretion, to investigate, examine, inspect or audit in any manner and at such times as they may deem necessary.
- 25.20 Security Clearance. The Design-Builder and its personnel, and its Subconsultants, Subcontractors, and their personnel, shall be subject to such security clearance at the Project as the Authority may require.
- 25.21 Notice of State Vendor Set-Off for State Tax.
- 25.21.1 Pursuant to L. 1995, c. 159, effective January 1, 1996 and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods and services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.
- 25.21.2 The Director of the Division of Taxation shall give notice of the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State to the taxpayer, pursuant to L. 1987, c. 184 (c. 52:32-35.), shall be stayed.

25.22 Equal Pay Act Compliance. The Design-Builder shall be required to submit payroll information to the Division of Labor and Workforce Development, with copies to the NJSDA, utilizing the New Jersey Department of Labor and Workforce Development's Payroll Certification for Public Works Projects submitted in accordance with the Diane B. Allen Equal Pay Act, N.J.S.A. 34:11-56.14. Guidance and forms for compliance with this requirement are available at:

www.nj.gov/labor/equalpay/equalpay.html



SENT VIA EMAIL AND U.S MAIL

April 10, 2023

Hossam Ibrahim, Vice President
Dobco, Inc.
One Geoffrey Way
Wayne NJ, 07470

Re: Union City New Grade 7 to 9 School Project,
NJSDA Design Build Contract No.: HU-00219-B01
Notice of Contract Change Directive/Construction Change Directive

Dear Mr. Ibrahim:

On behalf of the New Jersey Schools Development Authority ("NJSDA") this letter shall serve to formally direct your firm, Dobco, Inc. ("Dobco"), as Design-Builder for the Union City New Grade 7 to 9 School Project (the "Project"), to proceed, pursuant to Sections 8.3.6 and 8.4.4 of the Design-Build Agreement between NJSDA and Dobco, with the performance of services and work to incorporate the requirements for federal funding of the Project as originally issued to you as a Change Order Proposal Request in early November 2022, and as further clarified on March 10, 2023. Due to the need to expediently incorporate this language into the Project contract and the inability to reach timely agreement on the Change Order Proposal despite extensive discussions, NJSDA has determined to incorporate the proposed federal funding language into the Design Build Contract Documents for the Project, through use of a Contract Change Directive. Accordingly, this letter and the accompanying Construction Change Directive Form #506 shall constitute a formal Contract Change Directive pursuant to Sections 1.16 and 8.4.4 of the Agreement.

NJSDA acknowledges that the incorporation of the federal funding language may require Dobco and its Design Consultant and subcontractors to conform to additional requirements and/or perform services or work in excess of the original contract obligations, and thus these additional duties may entitle Dobco to additional compensation. NJSDA expects that subsequent documentation and discussion of the issue will result in a reconciliation of any cost differential between the original scope of work and any additional obligations identified in the above referenced documents.

In the meantime, your firm is directed to immediately incorporate the identified federal funding requirements into the Design-Build Contract Documents, and to perform any services or work incidental to these federal funding requirements, pursuant to Sections 8.3.6, 8.4.4 and 8.4.9 of the Design-Build Agreement. Please don't hesitate to contact me should you have any questions whatsoever regarding this matter.

Sincerely,

Bob Ryan

Digitally signed by Bob Ryan
Date: 2023.04.19 15:18:05
-04'00'

Robert Ryan, Program Director

cc: Manuel DaSilva, SDA
Cecelia Haney, SDA
Steve Wendling, SDA
Ted Bosnjak, SDA
Louis Uccello, Dobco
Joe DeMarco, Anser

CONSTRUCTION CHANGE DIRECTIVE (CCD)
FOR CONSTRUCTION CONTRACT(S)

Date:	<u>03-20-23</u>	SDA CCD No.:	<u>1</u>
Contract No.:	<u>HU-0029-B01</u>	Contractor CCD No.:	<u>1</u>
Contractor:	<u>Dobco, Inc.</u>	Program Director:	<u>Robert Ryan</u>
PMF/CM:	<u>Anser Advisory Management LLC</u>	School Name:	<u>Union City New 7 to 9 School</u>
PMF/CM PM:	<u>Joe DeMarco</u>	District Name:	<u>Union City Public Schools</u>

The Contractor is directed to make the following changes to the contract:

Description of Work: Incorporate the attached federal funding requirements language into the Design-Build Agreement and flow down language to DB's Design Consultant and other subcontracts as indicated or as appropriate.

While most of the additional federal funding language constitutes obligations that are duplicative of existing obligations included in the Design-Build Contract Documents (e.g., provisions on equal opportunity and affirmative action in hiring, payment of overtime, prohibitions against kickbacks and graft, etc.), the new federal funding language does impose requirements to maximize the use of certain recovered materials, where appropriate, reasonably-priced, and not inconsistent with Project performance and schedule requirements.

**CONSTRUCTION CHANGE DIRECTIVE (CCD)
FOR CONSTRUCTION CONTRACT(S)**

Justification (Reason for Change)

SDA was advised that this Project is poised to receive federal funding. The federal funding requirements language included in this CCD must be incorporated into the Project documents, in order to qualify the Project for federal funding.

**CONSTRUCTION CHANGE DIRECTIVE (CCD)
FOR CONSTRUCTION CONTRACT(S)**

Recommended for Acceptance:

Design Consultant

Signature

N/A -- Design Build

Printed Name

Date

PMF/CM

Joseph W. DeMarco

Digitally signed by Joseph W. DeMarco
DN: C=US, E=Joseph.demarco@anseradvisory.com,
O=Anser Advisory, OU=New Jersey Branch,
CN=Joseph W. DeMarco
Date: 2023.03.21 10:07:16-04'00'

Signature

Joseph W. DeMarco

3/21/23

Printed Name

Date

Recommended and/or Approved by: SDA Program Officer

Signature

Ted Bosnjak

Digitally signed by Ted Bosnjak
Date: 2023.03.29 14:14:44 -04'00'

3/29/23

Printed Name Ted Bosnjak

Date

Recommended and/or Approved by: Program Director

Signature

Bob Ryan

Digitally signed by Bob Ryan
Date: 2023.03.31 10:12:59 -04'00'

Printed Name

Date

ATTACHMENT TO CONTRACT CHANGE DIRECTIVE # 1

The Design-Build Agreement shall be amended to add the following Section 26:

26.0 TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The Project, and this Contract, may be eligible for Federal funding. Accordingly, the following provisions, with exceptions as noted herein, shall be applicable to, and incorporated into, the Design-Build Agreement, to ensure compliance with federal requirements for contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317. 1.1.

- 26.1 **Applicability.** The provisions set forth in this Section 26.0 apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.
- 26.2 **Federal Equal Employment Opportunity Provisions.** All federally assisted construction contracts must include the equal opportunity clause provided under 41 CFR 60-1.4(b), Federally-assisted construction contracts include any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the federal government. Construction work is defined as “the construction, rehabilitation, alteration conversion, extension demolition or repair of buildings highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision inspection, and other onsite functions incidental to the actual construction.” 41 CFR 60-1.3

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant

or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor/Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of these paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

SDA, as the applicant, further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating

is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

SDA as applicant, agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractor and subcontractors/subconsultants with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

SDA as applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractor/Consultants and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

26.3 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Pursuant to 2 CFR 200.321, the SDA must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made, the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The foregoing language shall be construed in harmony with, and shall not modify, supersede or diminish, the obligations of the Design-Builder under the Design Build Agreement to make good faith efforts to meet the established subcontracting goals for Small Business Entities and Disabled Veteran Owned Businesses, in accordance with the provisions of Sections 18.6 and 18.7 of the Design-Build Agreement. Nothing in this section is intended to set subcontracting quotas or fixed participation requirements for minority business enterprises, womens' business enterprises, or labor surplus area firms.

26.4 Goods and Materials—Domestic Preference.

Pursuant to 2 CFR 200.322, as appropriate and to the extent consistent with law, SDA has instituted a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made, the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

The foregoing language shall be construed in harmony with Section 3.24 of the Design-Build Agreement, which references the state statutory requirement to use only domestic materials in public works construction, pursuant to N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1 et seq. Nothing in this section shall be construed to supersede or diminish the Design-Builder's obligation to comply with N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1 et seq.

26.5 Procurement of Recovered Materials.

Pursuant to 2 CFR 200.323, in the performance of the contract, the Contractor must, where applicable, comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a

satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the Contractor to provide recovered materials, the scope of work or specifications are modified to require that:

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless such products cannot be acquired--
 - a. competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. meeting contract performance requirements; or
 - c. at a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site [Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#)
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Interpretive Note: SDA interprets the foregoing language to require that the Contractor (here, the Design-Builder and its Design Consultant and Subcontractors) is responsible to design and construct the Project to maximize the use of products with the highest percentage of recycled or recovered material content when specifying or purchasing materials or items in certain EPA-identified categories, when: 1) the cost of such item is \$10,000 or greater, 2) the use and purchase of such items with recovered material content meets the Project's specified performance requirements and does not affect the Project schedule, and 3) the items containing recovered materials can be procured at a reasonable price.

The Design-Builder shall also make efforts to maximize energy recovery and resource recovery in contracting for solid waste management for the Project.

The following is a list of the items/materials identified in the EPA's "Construction" category, for which the recovered/recycled content must be considered and maximized, where practicable and when consistent with Project requirements. SDA advises that not all of the listed items may be relevant to this Project:

- **Cement and concrete;**
- **rock wool insulation;**
- **fiberglass insulation;**
- **cellulose insulation (loose-fill and spray-on);**

- Perlite composite board insulation;
- plastic, non-woven batt insulation;
- Polyisocyanurate/polyurethane rigid plastic foam insulation;
- foam-in-place insulation;
- glass fiber reinforced insulation;
- phenolic rigid foam insulation;
- structural fiberboard;
- laminated paperboard;
- polyester carpet;
- patio blocks;
- heavy duty floor tiles;
- shower and restroom dividers;
- consolidated or reprocessed latex paint;
- carpet cushion;
- flowable fill;
- railroad grade crossing surfaces,
- modular threshold ramps;
- nonpressure pipe;
- roofing materials.

For further guidance refer to:

[Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#)

- 26.6 **Davis-Bacon Act, 40 U.S.C. 3141-3148, as Amended (NOT APPLICABLE).** This section is not applicable, as compliance with the Davis-Bacon Act is not required by the particular type of federal funding anticipated for this Project.

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Additionally, contractors are required to pay wages not less than once a week.

- 26.7 **Copeland Anti-Kick-Back Act.** Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which apply to contracts and subcontracts for construction, prosecution, completion, or repair of public buildings, public works or buildings, or works financed in whole or in part by Federal loans or grants, and requires payment of wages once a week and allows only permissible payroll deductions.

a. Contractor/Consultant. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable.

b. Subcontracts. The Contractor or its subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the clauses above may be grounds for termination, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

26.8 Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701-3708. Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

26.9 Rights to Inventions Made Under a Contract or Agreement (NOT APPLICABLE). This section is not applicable, as this contract is not for the performance of experimental, developmental, or research work.

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract, subcontract, assignment of contract or substitution of parties with a small business firm or nonprofit organization regarding the performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

26.10 Clean Air Act, 42 U.S.C. 7401-7671q, and the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, as Amended. Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

16.11.1 Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the SDA and understands and agrees that SDA will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

16.11.2 Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the SDA and understands and agrees that SDA will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

26.11 Debarment and Suspension (Executive Orders 12549 and 12689).

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935) from covered transactions.
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

26.12 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

26.13 Prohibition On Certain Telecommunications And Video Surveillance Services Or Equipment. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain – equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered

telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

**Response to Request for Quote
for
Retention of an Integrity Monitor to Provide
Oversight/Monitoring Services of
The New Jersey Schools Development Authority's
Design-Build Construction Contract
Awarded to Dobco, Inc.**

**Technical and Price Proposal
BPA No. 21-PROSV-01439**

Submitted to:

**The State of New Jersey,
Department of the Treasury,
Division of Administration**



Management Consultants &
Certified Public Accountants
1420 K Street, NW
Suite 910

Washington, DC 20005

Tel: (202)-296-7101

Fax: (202)-296-7284

Contact: Mr. Peter R. Regis, CPA

Email: peter.regis@regiscpa.com

www.regiscpa.com

Small Business

Submitted Date: April 18, 2024; 3:00 PM EDT

UEI Number: [REDACTED]

Tax ID Number: [REDACTED]

CAGE Code: [REDACTED]

Current DoD Secret Facility Security Clearance

GSA Schedule: GS-00F-184CA

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MANAGEMENT CONSULTANTS &
CERTIFIED PUBLIC ACCOUNTANTS

Transmittal Letter

Regis & Associates, PC (R&A) is pleased to submit its technical and price proposal to the State of New Jersey, Department of the Treasury, Division of Administration, to provide Oversight/Monitoring Services of the New Jersey Schools Development Authority's (SDA) Design-Build Construction Contract awarded to Dobco, Inc. Regis & Associates, PC is a Washington, DC based Certified Public Accounting firm, founded in 1991 www.regiscpa.com. Our relevant experience includes conducting program integrity oversight, performance auditing, improper payments audits, and numerous other program support activities for such organizations as DOE, FCC, Appalachian Regional Commission, DOL, HUD, GSA, BBG, DCMA, NASA, the District of Columbia Government, DOT, the SEC, TSA, and others. Our relevant experience also includes conducting performance audits, internal controls assessments, CARES Act audits, and incurred cost submission audits for numerous Federal agencies over the past 26 years. These engagements have been conducted in accordance with CARES Act; GAGAS; FAR; the DCAA Contract Audit Manual; GASB; CIGIE standards; AICPA Attestation Standards; OMB 2 CFR 200; and numerous other applicable program guidelines.

Our experience also includes providing audit and oversight services of numerous FCC Universal Service (Broadband) program grants; and in conducting performance audits of CARES Act funding received by over 48 states, from the Federal Government.

REGIS & ASSOCIATES, PC'S VALUE PROPOSITION

- 1) **Experience in conducting 7 audits of Federal programs under the CARES Act. This included auditing the CARES Act programs of 48 states.**
- 2) Conducted audits of over 12 construction grants for the Appalachian Regional Commission, Office of Inspector General.
- 3) **Extensive experience in auditing the financial statements of numerous state and local government agencies over a 9-year period. This includes serving as a major subcontractor on the financial statement audit of the District of Columbia Government for 9 years.**
- 4) Experience in conducting the audit of a large airport construction contract for the Transportation Security Administration.
- 5) Conducted over 34 audits of Broadband program funding and mandates for the FCC-OIG and the Universal Service Administrative Company. **These audits have included oversight of the buildout of broadband infrastructure (construction).**
- 6) Over 18 years of supporting Federal economic and disaster recovery programs for Federal agencies.
- 7) Key personnel with extensive Federal and State programs auditing and oversight experience.
- 8) Experience in conducting over 10 audits of construction projects for the Bureau of Indian Affairs.
- 9) Experience in the audit of a \$30M construction contract for the Architect of the Capitol
- 10) **An audit/oversight approach that combines both GAGAS requirements and commercial auditing best practices**

The process of selecting a CPA firm to provide Monitoring Oversight Services of the Design-Build Construction contract is a critical one. The right firm can be a significant asset in helping the New Jersey Schools Development Authority meet its objectives of fiscal accountability, risk mitigation, and program compliance. That firm should provide value that goes beyond the tasks outlined in the statement of objectives. It should also have the capability to provide forward-looking recommendations on the myriad of issues of significance to the financial management and risk mitigation of the construction project, and compliance with the various mandates originating from Federal agencies, the CARES Act, and the State of New Jersey.

We believe that Regis & Associates, PC is the firm that can give you the answers that you desire. The experience gained in providing auditing, accounting, and management advisory services to Federal and state agencies over many years, will enable us to assume the role of oversight contractors for the Design-Build construction contract; and provide maximum benefits to your organization, with minimal disruption and inconvenience to management. While the final product that a CPA firm delivers may not differ significantly from one firm to another, the value that the firm brings to the process can differ significantly. In addition to providing the services identified in the statement of work, the following benefits would accrue to the SDA, from utilizing the services of Regis & Associates, PC:

- The integration of several IT efficiency tools into our service delivery methodology;
- A contingent of staff that is experienced in conducting risk-based assessments and audits, and is available to meet your oversight needs;
- A Team that is familiar with auditing in a paperless environment;
- Sound advice on the myriad of financial and compliance issues that affect the administration of CARES Act programs, activities, and functions;
- The assembly of multi-disciplinary engagement teams with the required skills and training to adequately assess your needs and develop an integrated approach to solving problems; and
- Development of recommendations that are comprehensive, forward-looking, and reflective of our commitment to the SDA.

On the pages that follow, we have presented, what we believe to be, the distinguishing combination of credentials, which make us the right choice. We strongly believe that the management of the New Jersey Schools Development Authority and Regis & Associates, PC can work well together. We look forward to the beginning of a mutually beneficial professional relationship. If you should have any questions or require additional information, please do not hesitate to give me a call me at [REDACTED].

Peter R. Regis, CPA
Regis & Associates, PC

A – APPROACH FOR ACCOMPLISHING EACH COMPONENT OF THE SCOPE OF WORK

A-1 Understanding of New Jersey Schools Development Authority's Needs

The New Jersey Schools Development Authority (SDA) has undertaken the building of a Community School which is currently being constructed by Dobco, Inc., through a Design-Build construction contract. The cost of the entire construction of the school is \$75 million. This amount is funded in part by \$50 million from US Treasury's Coronavirus Capital Projects Fund (CPF), with the remainder being funded from State funding sources and the Union City School District, in accordance with a Local Share agreement. The SDA is a subrecipient of CPF funds granted to the Department of Community Affairs. It is noted that this construction project is subject to a Project Labor Agreement and to New Jersey Prevailing Wage Requirements. It is anticipated that this construction project will be completed by September, 2025, to allow for school opening.

Under the funding terms of the Design-Build contract, payments are to be made to the Design-Build contractor based on adequately supported invoices and other compliance requirements that invoices submitted for payment should meet. The SDA has paid approximately \$25 million in progress payments to date to the Design-Build contractor.

The SDA desires to engage the services of a Certified Public Accounting (CPA) firm to serve as an Integrity Monitor in providing construction project monitoring of the SDA's in-progress Design-Build construction project for the Community School. These services are to include reviewing:

- the validity and sufficiency of the Design-Builder's payment applications and supporting documentation for progress payments;
- the propriety of authorization of SDA's payment of payment applications;
- the validity and proper documentation of any change orders;
- the Design Builder's compliance with applicable subcontracting goals for Small Business Enterprises, Minority and Women-owned Business Enterprises, and Disabled Veteran Owned Business enterprises;
- the Design Builder's and relevant subcontractors' compliance with applicable state and federal laws, as enumerated in the Design-Build Agreement and in federal guidance applicable to CPF funding, including the New Jersey Prevailing Wage Act, the New Jersey Prompt Payment Act, "Buy American" laws, the Diane B. Allen Equal Pay Act, and others.

It is desired that all payment applications submitted by the Design-Builder from inception of the project to its completion be reviewed. Other significant tasks that are required under this engagement will include:

- Conducting a broad range of engagement planning activities, including conducting a kick-off meeting to review the deliverables and due dates, and establishing key personnel for communications during the course of the engagement.
- Conducting a Risk Assessment of the SDA's existing business processes and controls in place to prevent fraud, waste, or abuse in connection with the COVID-19 Recovery Program. This risk assessment shall include at a minimum, an assessment of:
 - SDA's policies and procedures applicable to the Program;
 - SDA's organizational structure and capacity;
 - SDA's internal controls;
 - The level of risk associated with the Program;
 - SDA's prior audits; and
 - Other risk assessment and business process assessment procedures as deemed necessary, based on materiality or other factors.
- Developing and submitting a risk-based work plan for monitoring the COVID-19 Recovery Program for financial, internal controls, and compliance mandates and pronouncements. This workplan shall incorporate generally accepted sampling methodologies, where sampling is used. Such sampling approach will comply with GAO and AICPA guidance for sampling the particular attributes to be tested.
- Determining the need for onsite monitoring based on the results of the broad base of oversight work conducted, on an ongoing basis.
- Documenting in supporting working papers, our evaluation and conclusion, based on the audit testwork conducted. This will include documenting significant findings noted; the adequacy of cooperation received from the Design-Build contractor; non-compliance with state or federal reporting requirements; allegations of misuse of funds; and other significant matters that are required to be disclosed based on prevailing laws and regulations or technical audit pronouncements.
- Preparing and delivering: Quarterly Integrity Monitor Reports; additional reports or memoranda that serve to enhance the reporting process; a Project Completion Report that summarizes the scope of the engagement and provides a comprehensive picture of all monitoring oversight activities conducted under the engagement; and a Reports of Fraud, Waste, Abuse, or Potential Criminal Conduct. The Integrity Monitor will be



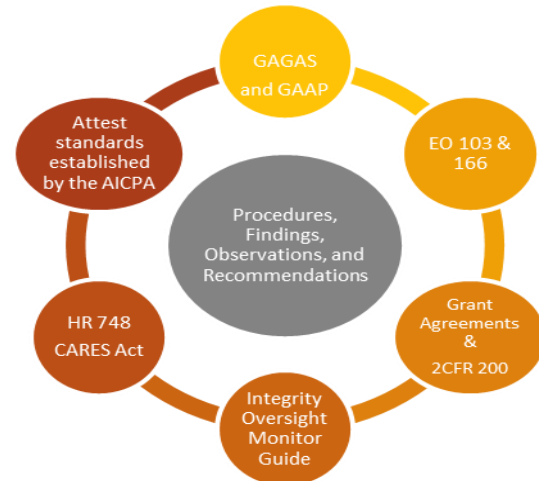
**COSO Enterprise Risk
Management Cube**

required to convey the results in the different reports to designated stakeholders, as deemed necessary by the SDA.

A-2 Approach and Action Plan for Accomplishing Work

The conceptual and analytic framework undergirding our engagement decisions and actions, will comprise of the following:

- **H.R. 748, ("CARES Act")**
- **Executive Orders 166 and 103**
- **Integrity Oversight Monitor Guidelines**
- **Federal-state grant agreements**
- **State-Recovery Program Participant sub-grant agreement**
- **OMB Circular 2CFR 200**
- **GAGAS**
- **AICPA Guidelines**
- **Educational Facilities Construction and Financing Act**
- **N.J.A.C. 6A:26**
- **Project Labor Agreement**
- **Design-Build Agreement**
- **Prevailing Wage Act,**
- **New Jersey Prompt Payment Act,**
- **Buy American" laws,**
- **Diane B. Allen Equal Pay Act**



Below, we have presented our approach to provide Oversight/Monitoring Services of the New Jersey Schools Development Authority's (SDA) Design-Build Construction Contract awarded to Dobco, Inc. Our approach to conducting this engagement will be structured into three phases. Each phase will have clear goals, which will be achieved through the execution of specific tasks and procedures.



We have set forth in detail below, the specific tasks that are associated with each engagement phase. Each phase of the oversight process will be reinforced continuously by documentation, communication, risk management, and quality control. During the course of each phase, we will ensure that the SDA personnel are continuously updated on our progress, in our periodic status reports.

Planning, Risk Assessment, & Internal Controls Assessment

At the commencement of this engagement, we will hold an entrance conference with representatives of the SDA, at a mutually agreeable date and time; to discuss the purpose, scope, process, and schedule of the engagement; and access to project records/reports that may be in the SDA's possession. We will also inquire as to the SDA's designation of a contact person for coordination purposes. In this phase, we will consider significant issues that were discussed with the representatives of the SDA and others during the entrance conference, and assess their impact on the engagement strategy. Below are some of the other tasks to be conducted in this phase:



- Conduct entrance conference with SDA officials to kick-off the monitoring engagement.
- Finalize Regis' monitoring team that will be responsible for execution on this project.
- Document our understanding of the Design-Build project's objectives, scope, budget, timeline, and key performance indicators.
- Review applicable compliance requirements such as New Jersey Prevailing Wage Act, Small and Minority/Women-owned Business Enterprises, 2 C.F.R Part 200, the Guidance for the Coronavirus Capital Project Fund (CPF), and others
- Prepare an oversight plan detailing our approach to accomplishing the requirements of the statement of work.
- Document our understanding of SDA's business processes that are material to the management of the Design-Build construction contract.
- Conduct a risk assessment of the SDA's existing controls in place to prevent fraud, waste, or abuse in connection with the COVID-19 Recovery Program, which will include:
 - ✓ Reviewing SDA's policies and procedures, applicable to this Design-Build project to determine whether they meet the requirements of federal and state laws regulations.
 - ✓ Reviewing the SDA's organizational structure to assess delegation of authority, responsibility, and relations withing and between different divisions or offices of SDA. Inquiring of key personnel to assess SDA's experience and staffing capacity to manage and account for federal grant funds and/or COVID-19 recovery funds.

- ✓ Inquiring of key personnel to assess SDA's experience and staffing capacity to manage and account for federal grant funds and/or COVID-19 recovery funds. Also evaluating the organizational structure to determine whether there is adequate separation of duties surrounding program funding requests and determinations.
 - ✓ Gaining an understanding the SDA's capital project monitoring environment. This includes reviewing the SDA project plan to determine whether it includes consideration of federal and state requirements, eligible uses of funds, and adequate staffing for administering funds.
 - ✓ Assessing and evaluating the SDA's procurement processes and practices relative to state and federal procurement requirements.
 - ✓ Reviewing the SDA's code of conduct or policies to determine whether they include measures to guard against potential conflict of interest.
 - ✓ Reviewing the program's requirements including applicable federal and state laws and regulations, such as the provisions of 2 C.F.R. Part 200 that apply to the Coronavirus Capital Projects Fund grant.
 - ✓ Obtaining and reviewing prior years' audits and inquiring of management as to whether they have considered and addressed any prior audit findings and recommendations that may be applicable to the programs that were the subject of the audits.
 - ✓ Inquiring of SDA's management as to whether they have sub-recipients and whether they monitor their sub-recipients' compliance with program requirements and those outlined in 2 CFR 200.331. Evaluating the guidance, policies and procedures, or other documents that are being used to ensure that the SDA effectively oversees the sub-recipients' use of funds; including those relating to internal recordkeeping, monitoring, and sub-recipient reporting.
 - ✓ Conducting a walkthrough and document the SDA's internal controls that are relevant to the Design-Build construction project. This includes assessing SDA's monitoring and oversight plan to ensure continued performance and compliance with federal and state laws regulations; and for reviewing of risks and threats that are designed to prevent and detect fraud, waste, and abuse.
 - ✓ Identifying and documenting potential risk areas that are susceptible to fraud, waste, or abuse within the program.
- Obtain and review the Design-Build construction project's expenditures population.
 - Conduct analytical analysis of the project expenditures against the budget to identify some anomalies.
 - Select sample capital project expenditures.

- Document sampling methodology in accordance with GAO's Financial Audit Manual guidelines.
- Establish systems for tracking project deliverable milestones.
- Schedule regular progress meetings with the key stakeholders to review status updates, address issues, and track progress against the deliverable milestones.

Deliverables:

- Conduct entrance conference with SDA officials to kick-off the monitoring engagement.
- Submit risk assessment documentation to the State Treasurer.
- Submit the comprehensive work plan that includes planning, fieldwork and reporting to the State Treasurer.

Testing & Analysis

During this phase, our team will perform the substantive procedures identified in the comprehensive workplan that will be approved by the SDA. Our evidence gathering process for this project will be systematic and iterative and will involve: (1) gathering evidence by performing appropriate analytical procedures; (2) evaluating the evidence obtained as to its sufficiency (quantity) and appropriateness (quality); and (3) re-assessing results and gathering further evidence, as necessary, to support the substance of any findings and conclusions resulting from our work. This phase will encompass the following tasks:



- Request the supporting documentation for 100 % of the transactions that support each invoice submitted by the Design-Build contractor.
- Perform substantive test procedures, which include:
 - ✓ Reviewing invoices, receipts, and financial reports to identify any discrepancies or cost overruns.
 - ✓ Evaluating the completeness and accuracy of the Design-Build contractor's payment applications and supporting documentation; including purchase orders, contracts, and approvals.

- ✓ Verifying whether the project and expenditure report were submitted timely (quarterly) and include sufficient information regarding the project's status, expenditure, subawards, civil rights compliance, equity indicators, and community engagement efforts.
 - ✓ Testing whether incurred federal fund costs are allowable and allocable to the project as outlined in the cost principles of 2 C.F.R Part 200.
 - ✓ Ensure that the federal fund costs are used for eligible use during the period of performance, in accordance with the CPF guidance.
 - ✓ Verifying that procurements were made in accordance with applicable policies and procedures.
 - ✓ Verifying the SDA's compliance with New Jersey Prevailing Wage Act. Also testing to determine whether the SDA ensures that capital projects incorporate strong labor standards, including project labor agreements, and community benefit agreements that offer wages at or above the prevailing rate, and include locale hire provision.
 - ✓ Verifying whether SDA complies with applicable subcontracting goals for Small Business Enterprise, Minority and Women-owned Business Enterprises and Disabled Veteran Owned Business Enterprises.
- Prepare follow-up questions, based on the initial results of transaction testing.
 - Identify any weaknesses or deficiencies in internal controls and recommend enhancements to mitigate risks and improve control effectiveness.
 - Submit Notification of Findings and Recommendations (NFRs) to SDA for its response.
 - Assess management's response to NFRs and incorporate, as appropriate.
 - Conduct quality assurance reviews of all aspects of the monitoring tasks conducted.

Reporting

We will document the nature, extent, and timing of procedures performed during this testing phase, as well as the results and conclusions reached, including how these procedures are responsive to the assessed risk of material non-compliance with provisions and regulations or payments for which the Design-Build contractor or its sub-contractors seek reimbursement. We will also document possible material weaknesses, other significant deficiencies, other control deficiencies, or other matters to communicate to the SDA's management and those charged with governance as we become aware of such issues in the course of the monitoring oversight.

Where the results of our work necessitate the issuance of notices to the SDA's management, related to deficiencies, these matters will be communicated in the form of findings. Each finding will contain the following elements:



Each finding will include a recommendation, as appropriate. Our detailed procedures during the reporting phase will consist of the following:

- Prepare draft quarterly report (s)
- Cross-reference the quarterly report (s) to the working papers.
- Complete quarterly report (s) documentation checklist.
- Complete supervisory review checklist.
- Conduct quality assurance review of report.
- Conduct an exit conference.
- Submit the draft quarterly report(s) to the State Treasurer
- Monitor the implementation of corrective actions and track progress towards addressing identified issues.
- Conduct follow-up reviews periodically to assess the effectiveness of corrective actions and ensure sustained compliance with capital expenditure policies and regulations; and the New Jersey Prevailing Wage Act, Small and Minority/Women-owned Business Enterprises, etc. 2 C.F.R Part 200.
- Submit the final quarterly report(s) to the State Treasurer
- Submit a Project Completion Report(s)

Deliverables:

- Submit the draft quarterly report(s) to the State Treasurer
- Submit the final quarterly report(s) to the State Treasurer
- Submit a Project Completion Report(s)

A-3 Project Deliverable Timeline and Milestones

New Jersey School's Development Authority Monitoring Timeline

Task	Duration	Start	Finish
Planning		5/1/2024	6/6/2024
Kick off Meeting	5	5/8/2024	5/8/2024
Submit and received initial documentation requested (including all payment applications approved by SDA and supporting documentation received to-date)	5	5/9/2024	5/15/2024
Risk Assessment	10	5/9/2024	5/22/2024
Work Plan	10	5/23/2024	6/6/2024
Fieldwork		6/7/2024	9/30/2025
Select samples from initial set of payments documentation provided and submit request to SDA	5	6/7/2024	6/14/2024
Initiate review of selected samples and perform necessary follow-ups or if needed conduct meetings with SDA on any relevant questions	15	6/17/2024	7/5/2024
Communicate finding of initial review to SDA for discussion. If necessary report issues of fraud, waste, abuse, and misuse of COVID-19 Recovery Funds immediately to the GDRO, OSC, the State Treasurer, the State Contract Manager, and the Accountability Officer. **	1	7/8/2024	7/8/2024
Select and test available approved payment applications not previously reviewed and or received during Q3 2024	63	7/1/2024	9/30/2024
SDA and construction site visit	5	10/7/2024	10/11/2024
Select and test available approved payment applications not previously reviewed and or received during the Q4 2024	62	10/1/2024	12/31/2024
Select and test available approved payment applications not previously reviewed and or received during the Q1 2025	62	1/1/2025	3/31/2025
Select and test available approved payment applications not previously reviewed and or received during the Q2 2025	63	4/1/2025	6/30/2025
SDA and construction site visit	5	7/14/2025	7/18/2025
Select and test available approved payment applications not previously reviewed and or received during Q3 2025	64	7/1/2025	9/30/2025
Reporting		6/28/2024	9/30/2025
Draft Quarterly Report (Q2 2024)	1	6/28/2024	6/28/2024
Final Quarterly Report (Q2 2024)	15	7/1/2024	7/19/2024
Draft Quarterly Report (Q3 2024)	1	9/30/2024	9/30/2024
Final Quarterly Report (Q3 2024)	15	10/1/2024	10/22/2024
Draft Quarterly Report (Q4 2024)	1	12/31/2024	12/31/2024
Final Quarterly Report (Q4 2024)	15	1/1/2025	1/22/2025
Draft Quarterly Report (Q1 2025)	1	3/31/2025	3/31/2025
Final Quarterly Report (Q1 2025)	15	4/1/2025	4/22/2025
Draft Quarterly Report (Q2 2025)	1	6/30/2025	6/30/2025
Final Quarterly Report (Q2 2025)	15	7/1/2025	7/22/2025
Submit Project Completion Report	64	7/1/2025	9/30/2025
Submit Reports of Fraud, Waste, Abuse, or Potential Criminal Conduct	64	7/1/2025	9/30/2025

** Communication with SDA on any potential findings will be held throughout the engagement. Additionally, any communication on potential fraud, waste and abuse will be communicated immediately to GDRO, OSC, the State Treasurer, the State Contract Manager, and the Accountability Officer

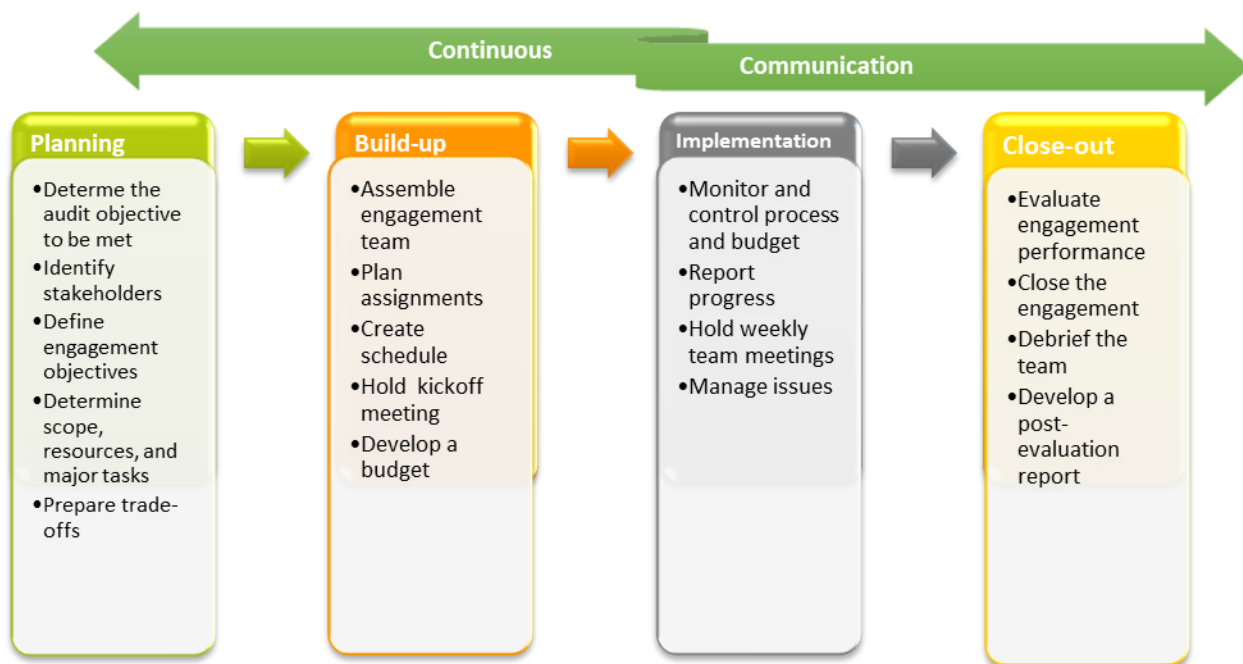
A-4 Project Management Plan

A robust management plan is required to successfully execute this engagement. Our approach and project work plan involve taking a systematic approach in collaborating with the SDA. This will include: identifying needs; prioritizing tasks; executing work; and delivering work products, timely. Our definition of the proposed engagement's success is: Delivering all reports by the stipulated time; and completing the ongoing oversight tasks within the proposed cost, at the desired level of performance, with minimum or mutually agreed upon scope changes, without disturbing the main workflow of the SDA, and without changing the culture of your organization.

Our engagement team will have two Senior Auditors and two Staff Auditor, an engagement manager (the overall project manager), a senior manager, a Quality Assurance Partner, and the Engagement Partner. This Design-Build construction contract monitoring engagement, will be conducted within following management framework:

Our Management Plan will Empower the New Jersey Schools Development Authority to Meet its Objectives and Adhere to Deliverable Schedules

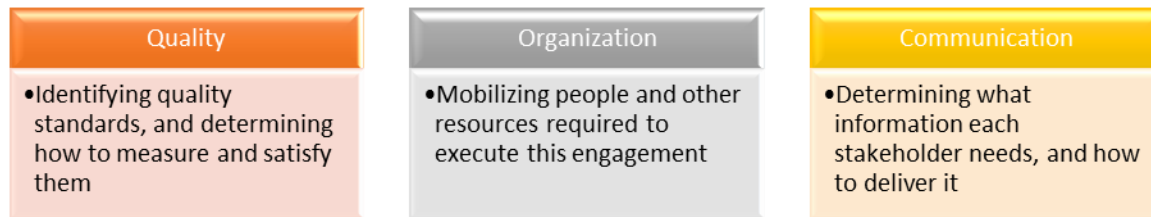
- Proven project and program management methodology have resulted in the successful completion of projects for such clients as GSA, the FCC, the EPA, DOL, TSA, USDA, HUD, DHS, the Navy, DOT, the DC Government, DOL, CMS, NASA, and many others; resulting in a seamless management approach
- Regis has provided auditing and oversight services on nationwide contracts to Federal agencies
- Our management plan will provide unparalleled program management expertise to help ensure highly efficient and effective management of each task
- The extensive use of automated audit tools to bring efficiency to this monitoring engagement



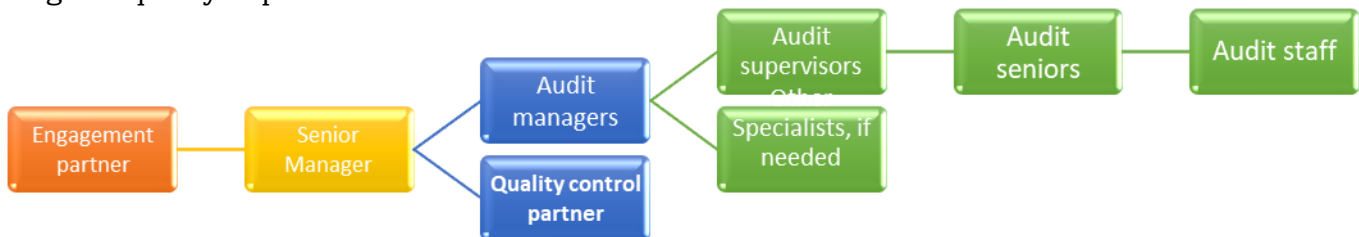


Planning

When defining objectives throughout the engagement, we will think SMART. Our objectives will be specific, measurable, action-oriented, realistic, and time-limited. We will define these objectives within the following framework:

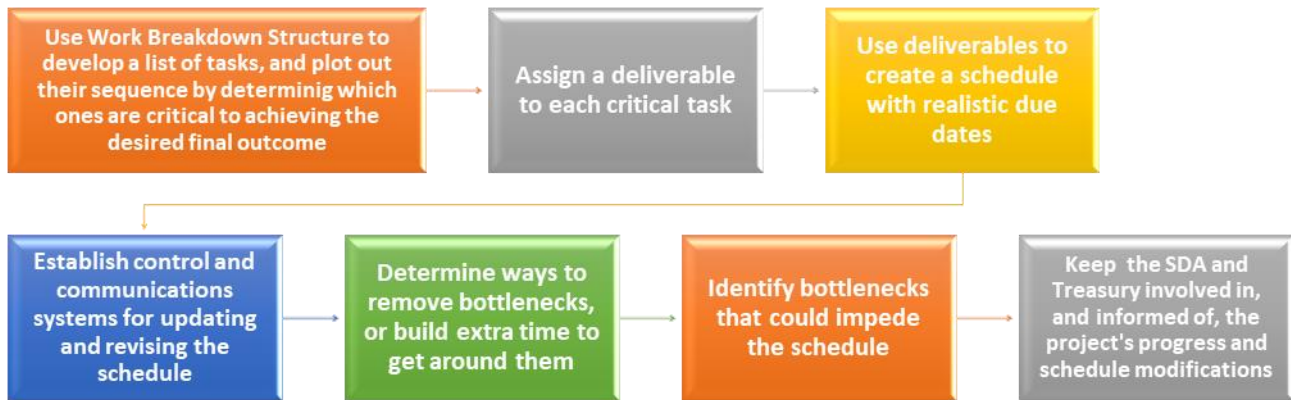


Because of the logistical considerations of this engagement, we will determine scope, resources, and major tasks; using a Work Breakdown Structure that subdivides complex activities into three to six most manageable units. Time, cost, and quality are the three related variables that typically dictate our task execution methodology. Our approach will be adaptive, as changes to other variables are imposed on us. We will provide the right mix of skill sets, experience, knowledge, and management oversight that is essential for success. Our engagement team will consist of the following people, who will work cohesively throughout the life of the engagement to ensure the highest quality of performance.



Buildup

During the course of this engagement, we will link the assessment of skills needed with the Work Breakdown Structure crafted in the Project Planning Phase. We will then flexibly match people to tasks through a process of team communication and cohesion. To create a realistic schedule within time constraints, we will work backward from the drop-dead deadline for reporting, to determine when our deliverables must be ready. We may rely on tools such as the Critical Path Method and a Performance Evaluation and Review Technique chart to help with the sequencing of tasks, and a Gantt Chart to map out their chronological order and duration. Our approach to scheduling various aspects of this engagement will involve the following basic steps:



Implementation

During this phase, we will deploy competent processes to measure progress on the engagement; and will respond quickly to changes in data or information as they are received. We will monitor the pace and quality of completing tasks and will compare them to the planned outputs and quality. We understand the importance of producing deliverables timely and consistent; including project status updates. We will work within the SDA's governance structure to execute:

- Periodic status meetings with officials, as appropriate;
- Periodic project status reports (that meet content specifications) that outline progress, bottlenecks, task order status, and status of deliverables and work products; and
- Other specific reports, as outlined in the task order.

Corresponding with status reporting, we will use formal meetings to:

- Provide a high-level current view of completed and forecasted tasks;
- Provide a summary of risks and issues, including proposed resolutions; and
- Provide an opportunity for open discussion, to address general topics and/or concerns from the contracting officer or other SDA officials.

We will also hold periodic internal firm meetings to ensure that our service delivery methodology reflects synergy amongst our team members.

Closeout

This phase will involve comparing our progress with the scope that everyone agreed on at the beginning, finalizing activities, and presenting final deliverables to the SDA. As part of the closeout phase, we will seek a debriefing with the SDA on our overall performance.

A-5 Firm's Quality Assurance Plan and Independence Policies

Ms. Gwendolyn-Thomas Regis, CPA, Partner, will be responsible for overall quality assurance under this contract. Our personnel will operate under the appropriate quality assurance requirements set forth by *Government Auditing Standards*, and AICPA guidelines. Our commitment to high professional standards is demonstrated by our membership and active participation in the American Institute of Certified Public Accountants' Peer Review Program. Below, is a discussion of some core elements of our planned Quality Assurance Plan:

Development of an Effective Project Work Plan: This detailed Project Work Plan will help clarify project requirements between the SDA and Regis & Associates, PC. This will assist in establishing a mutually agreed-upon scope of work, a realistic schedule, quality assurance standards, management oversight of work, and technical standards.

Development of an Inspection Plan: We will establish an Inspection Plan to monitor and compare all services performed against the criteria listed in the task order. The Inspection Plan will include:

- The methods to be used for identifying and preventing errors in the services performed;
- The areas of work to be inspected and the frequency of inspections;
- The records to be used to document the inspection activities;
- The reporting process to be used for the documented inspection activities;
- The proposed corrective or preventive actions to be taken; and
- A log of corrective or preventive actions performed.

Below, we have presented some of the more critical elements of our quality assurance surveillance plan:

Due Professional Care: Due professional care will be applied to each facet of the services to be provided under this Design-Build Construction Contract monitoring engagement. As with all our other engagements, we will apply the following functional business processes to ensure that all deliverables conform to our quality assurance standards:

- Adequate Task Planning is essential to ensuring that all tasks and sub-tasks are performed in an efficient and cost-effective manner, and that quality deliverables are submitted on a timely basis. Our planning process will include the development of an extensive planning document that is designed to ensure that all team members understand the scope, objectives, methodology, and deliverable that are to result from tasks performed. Planning activities will also include any task-specific training, time budgets, task completion timelines, milestones, task dependencies, and work plans for each major function. Work plans will be distributed to each team member, as a means of acquainting them with the processes and standards of performance. Such performance will be regularly monitored by the project manager, who will monitor performance and

compliance with the specifications outlined in the statement of work. This monitoring will ensure the early identification and resolution of noted issues.

- Adequate documentation of work is critical to ensuring compliance with GAGAS and AICPA documentation standards. This will be accomplished through proper supervisory review of all work products prepared by staff. This includes ensuring that work products contain sufficient documentation of work performed, and that noted outcomes and conclusions reached are documented to ensure adherence to applicable standards.
- Quality assurance review of all deliverables will be conducted to confirm that: (1) all work products conform to the SDA's standards of workmanship, (2) conclusions reached, and recommendations made are proper and supported by work performed, and (3) all issues have been discussed with the appropriate SDA officials. Finally, reports will be reviewed by a senior team member to ensure that: (1) grammatical presentations and format of all deliverables are appropriate; (2) deliverables comply with the firm's internal standards for report preparation; (3) industry standards and requirements for report preparation are adhered to, and (4) there is consistency among all reports/deliverables issued.

Quality Assurance Review Program: Our quality control program has been subject to Peer Reviews by the American Institute of Certified Public Accountants. Regis & Associates, PC has received unqualified opinions on all of its prior peer reviews.

Training and Independence: To ensure compliance with AICPA and Government Auditing Standards, we require that all professional audit staff obtain at least 80 hours of continuing education every two (2) years. In addition, each staff member is required to meet the continuing education requirements noted in *Government Auditing Standards*.

Independence: It is our policy that all audit personnel be familiar with, and adhere to, the independence rules and regulations of the AICPA and *Government Auditing Standards*. All audit personnel are required to review the Firm's client listing, and sign a representation, at least annually, that acknowledges their familiarity with the Firm's requirements. In addition, it is the policy of the Firm to review all potential new engagements to ensure that there are no known organizational conflicts of interest. All employees assigned to this SDA engagement will be required to sign an independence statement and a conflict-of-interest statement. These documents will be executed at the Firm level, as well.

A-6 Use of Information Technology Efficiency Tools

Our capabilities to efficiently analyze audit data are enhanced by our integration of several automated audit tools into our service delivery methodology. These audit tools are:

- **ProSystem fx Engagement** - We use this audit software application to manage audit and related engagements. This application incorporates data security, engagement control,

working paper management and compliance with technical standards, facilitates engagement status reporting, and incorporates an engagement organizer.

- **IDEA** - This data-mining tool is used for data analysis and manipulation, conducting sample selection and analysis of results, identifying anomalies, and overall audit data management. Data analytics on this engagement will be conducted by our managers, who are very familiar with these techniques, and use data analytics tools to conduct audit data analysis and testing. Mr. Samson Estifanos, CPA, is experienced in data analysis. He is experienced in data summarization, extraction, cross matching, reconciliation, profiling, and manipulation. He has demonstrated technical skills in identification of irregularities in databases; such as duplicate records, detection of gaps, and appending a number of databases for pattern and trend analysis.
- **MS Project** - This software application is used to manage engagements at the engagement level and in the aggregate. Our use of this tool will assist us in assessing the status of milestones and tasks, and determining what adjustments need to be made to ensure completion of phases of engagements on time, and in accordance with prevailing technical standards.
- **Engagement Organizer and ExaVault Data Repositories** - These data repositories are used to facilitate file transfers from auditees/clients to and from Regis. This data is stored in secure portals on data systems that meet NIST data security and systems integrity standards. The use of a large data repository will allow us to conduct all aspects of this Integrity Monitoring engagement, remotely.

A-7 Protection of Sensitive Information

The following is a summary of Regis & Associates, PC's Information Technology (IT) and privacy policy, which outlines the measures taken by Regis to secure and protect the confidentiality, integrity, and availability of all sensitive information stored and processed by the firm.

Data Protection Measures:

- **Access Control:** Access to sensitive information is limited to only those employees who need it to perform their job responsibilities. Access is granted, based on the principle of least privilege and is regularly reviewed and revoked when necessary.
- **Encryption:** Sensitive information is encrypted both in transit and at rest, using industry-standard encryption algorithms.
- **Physical Security:** Physical access to sensitive information is restricted and monitored, and all paper copies of sensitive information are securely stored and disposed of when no longer needed.
- **Data Privacy:** Access to confidential client data is on a "need-to-know" basis. Only, employees, who need the information for a legitimate business purpose, are granted access to the information.

- **Data Retention:** Personal information is only retained following our retention policies, in a secured and encrypted portal. This information is securely disposed of, following our policies, when no longer needed.
- **Network Security:** Our network is protected by firewalls, intrusion detection and prevention systems, and regular security patches and updates.
- **Third-Party Service Providers:** Our third-party service providers have appropriate security and privacy policies in place, and undergo regular security audits.
- **Data Backup and Recovery:** Regular backups of sensitive information are taken and stored in a secure location. The firm has an active Disaster Recovery Plan, which is activated when needed.
- **Incident Response:** In the event of a security breach, the firm has a well-defined incident response plan in place to minimize harm and protect sensitive information.
- **Security Awareness and Procedures:** All employees and our contractors are required to take Continuing Professional Education (CPE) on Security Awareness, and present the CPE certificates to the Human Resources department. New employees are required to read the IT security and data privacy policy and verify that they understand it.
- **Insurance:** As part of the firm's disaster recovery and business continuity strategies, a number of insurance policies have been put in place. These include errors and omissions, general liability insurance.
- **Data Sharing and Access:** Personal information is never shared with third parties, without proper authorization and execution of Non-Disclosure Agreements.

Policy Review and Update:

Our policy is reviewed and updated annually, or as needed, in response to changes in the threat landscape or changes in applicable laws and regulations.

Policy Violations:

Any violation of this policy may result in disciplinary action, up to and including, termination of employment.

B. FIRM'S EXPERIENCE IN ENGAGEMENTS OF SIMILAR SIZE AND SCOPE

About Regis & Associates, PC - Founded in 1991, Regis & Associates, PC is a small business, multidisciplinary, management consulting and Certified Public Accounting firm that provides a broad range of professional services to governments and private sector companies. Our core services encompass auditing, Federal financial management and accounting services, financial systems integration, program support, information systems consulting, enterprise security assessments, bank examinations, and other consulting services. The firm is a graduate of the U.S. Small Business Administration's (SBA) 8(a) Program. The Firm is also a member, in good standing, of the AICPA; participates in the AICPA's Peer Review Program; and holds a permit to practice in the District of Columbia. We have also performed numerous engagements, similar to the services desired by the SDA.

Our Specific Experience and Capabilities: Over our history, we have provided a broad range of services to Federal agencies, in support of their economic and disaster recovery programs, activities, and functions. These services have ranged from providing program support services, assessments of program efficiency and effectiveness, conducting improper payments audits and recovery activities, assessing compliance with provisions of laws and regulations, internal controls assessments, risk assessments, and a broad range of program integrity activities. A summary profile of our directly relevant engagement experience is presented below. Subsequent to that summary profile, we have detailed some relevant projects to provide additional information on the nature of our relevant experience.

- Performance audits of Emergency Preparedness Grants to states, for DHS
- Audit of FEMA's Accountable Property in response to hurricanes
- Performance audits of 10 states' corrective measures related to claimants' suspicious email accounts (High-Risk Programs), under the CARES Act, for DOL
- Performance audits of 10 states' corrective measures related to the use of deceased persons Social Security Numbers (High-Risk Programs), under the CARES Act, for DOL
- Performance audits of 10 states' corrective measures related to multi-state claimants (High-Risk Programs), under the CARES Act, for DOL
- Performance audits of 10 states' efforts to recover Improper Payments related to CARES Act funds, for DOL
- Performance audits of 10 states' implementation of the Short-Time Compensation Program, under the provisions of the CARES Act, for DOL
- Performance audits of six states' implementation of the Mixed Earners Program, under the provisions of the CARES Act, for DOL
- Audits of construction grants and contracts awarded under the Recovery Act, for the Bureau of Indian Affairs
- Performance audit of FEMA Mission Assignments for DHS
- Audits of USDA agencies' procurement practices for awards made under the Recovery Act
- Audits of Weatherization Assistance Grants made by the US Department of Energy, under the Recovery Act
- Audits of grants and Improper Payments Recovery related to Afghanistan Reconstruction Activities

• Iraq Relief and Reconstruction Funding data integrity support services and auditability assessment

Below, we have presented our broad base of prior experience that is related to the services desired by the SDA.

<ul style="list-style-type: none"> • Over 70 DCAA-Type audits of NASA contractors for over seven years, nationwide • FAR-Based Paid Voucher Audit of a contractor for USDA-APHIS • 31 Nationwide performance audits of FCC telecommunications beneficiaries and service providers, funded by the Universal Service Funds • Nationwide performance audits of applicable manufacturers and group purchasing organizations for CMS, pursuant to the Open Payments Program • Nationwide performance audits of numerous grants awarded by the Appalachian Regional Commission • Performance audits of 10 states' efforts to recover Improper Payments related to CARES Act funds, for the DOL-OIG • Performance audits of Emergency Preparedness Grants to states, for DHS • Audit of FEMA's Accountable Property in response to hurricanes • Performance audits of 10 states' corrective measures related to claimants' suspicious email accounts (High-Risk Programs), under the CARES Act, for the DOL-OIG • Performance audits of 10 states' corrective measures related to the use of Federal prisoners' Social Security Numbers (High-Risk Programs), under the CARES Act, for the DOL-OIG • Performance audits of 10 states' corrective measures related to multi-state claimants (High-Risk Programs), under the CARES Act, for the DOL-OIG • Performance audits of 10 states' implementation of the Short-Time Compensation Program, under the provisions of the CARES Act, for the DOL-OIG • Sub-contractor on the financial statement audit of Government National Mortgage Association • SSAE 18 audit of the DC Firefighters' Peoplesoft Pension application • Government purchase card auditing services for DCMA under OMB Circular A-123 • Improper payments auditing services to HUD, in accordance with IPERA • Assessment of internal controls over financial reporting, for the GSA Federal Technology Service, under OMB Circular A-123 • Defense Travel Service audit, for the Defense Contract Management Agency 	<ul style="list-style-type: none"> • Government Purchase Card audits for the National Cancer Institute, pursuant to OMB Circular A-123 • Sub-contractor on the financial statement audit of HUD and FHA over several years • Major sub-contractor on the annual financial statement audit of the Government of the District of Columbia for over 8 years • Performance audits of six states' implementation of the Mixed Earners Unemployment Program, under the provisions of the CARES Act, for the DOL-OIG • Audits of construction grants and contracts awarded under the Recovery Act, for the Bureau of Indian Affairs • Performance audit of FEMA Mission Assignments, for DHS • Audits of USDA agencies' procurement practices for awards made under the Recovery Act • Audits of Weatherization Assistance Grants made by the US Department of Energy for the DOE-OIG • Audits of grants and Improper Payments Recovery related to Afghanistan Reconstruction Activities • Iraq Relief and Reconstruction Funding data integrity support services and auditability assessment • Year-end financial management assistance to the Department of Commerce • Financial management support services to the Navy/AA, Navy CIO, the Naval Audit Service, and NCIS • Financial statement compilation for the Armed Forces Retirement Home • Accounting support services to the Broadcasting Board of Governors • Government purchase card management support services to TSA, under OMB Circular A-123 • Nationwide accounting support services to the Federal Aviation Administration in 8 states • Monitoring support of HUD's single-family disposition operations in three HOCs • Nationwide financial management support to the National Oceanic and Atmospheric Administration in three states • Numerous incurred cost submission audits of not-for-profit grantees, for the National Highway Traffic Safety Administration
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<ul style="list-style-type: none"> • Grant and contract audits and indirect cost rate reviews for the Department of State • Two project-based, Section-8 billing studies for HUD, under the Improper Payments Information Act • Government purchase card auditing services, for the Broadcasting Board of Governors, under OMB Circular A-123 • Accounting support services to the Architect of the Capitol • Financial management and OMB Circular A-123 support services to the Bureau of the Census • Financial management support services to the FAA's accountable property function • Physical inventory services to the Department of Transportation-Working Capital Fund • Support services to HUD; in managing the programs, operations, and financial activities of a housing authority in receivership • Financial management and administrative support services to the Federal Highway Administration • Financial statement audit of the Federal Maritime Commission, in accordance with the CFO Act of 1990 • Financial statement audit of the National Council on Disability, in accordance with the CFO Act of 1990 • Financial statement audit of the Administrative Conference of the United States, under the CFO Act • Audits of FEMA mission assignments for DHS • Contractor incurred cost audits, contract closeout, and pre-award accounting system reviews for the Volpe Center • Six years of incurred cost submission audits of contractors, for the Federal Transit Administration • CAS Disclosure Statement adequacy review and compliance audit of a Contractor, for USAID • Two contract and grantee audits for USAID • Two pre-award price proposal audits of \$630M manufacturing proposals for the Transportation Security Administration • Construction contract audit for the Transportation Security Administration • Seven contractor accounting systems reviews for the Federal Highway Administration • Seven price proposal audits of contractors, for the Department of Veterans Affairs 	<ul style="list-style-type: none"> • Sub-contractor on the audits of USAID Missions, worldwide • Two contract audits for the Federal Deposit Insurance Corporation • Numerous grant audits of Federal funding for the Corporation for National Community Service-OIG • Audits of postal installations, for the USPS-OIG • CFO Act audit coordination services for the US Coast Guard • Sub-contractor on the USDA Rural Development's credit reform process audit • Audits of HUD Preservation Offices' Mark-to-Market Program's restructuring activities, and audits of Rehabilitation Escrow Administrators' accounts • Bank and thrift examination services for the OCC and OTS • Performance audit of the President's AIDS Initiative in Africa (PEPFAR), for DOS • Nationwide Representative Payee audits, for the Social Security Administration • Comprehensive procurement systems review, for the Securities and Exchange Commission-OIG • Agreed-upon procedures audits of Participating Administrative Entities, under HUD's Mark-to-Market Program • • Three accounting systems reviews of contractors, for the Federal Transit Administration • • Price proposal audit of a contractor, for the US Coast Guard • Contractor accounting system review for the DHS-Science and Technology Division • Large contract audit for the DHS-Office of Contract Operations • Contract audit of a large facilities maintenance contract, for the Architect of the Capitol • Forward pricing rate proposal audit for the Federal Highway Administration • Contract audits for the Government National Mortgage Association • Contract auditing services for the Drug Enforcement Administration • Two price proposal audits of contractors, for the Federal Transit Administration
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Below, we have detailed some of our relevant engagement experience. This experience includes projects, which have a wealth of experience in providing auditing and oversight on Federal and State programs, activities, and functions. Many of these projects required a thorough working knowledge of the CARES Act and related legislation, state and local government operation, audits of grants, audits of construction projects, and a working knowledge of Generally Accepted Government Auditing Standards.

Construction Grant Audits for the Bureau of Indian Affairs: Regis & Associates, PC was engaged by the Bureau of Indian Affairs, to conduct Construction Contract Audits and Project Management Support Services of facilities/construction projects. These compliance audits were conducted at various tribal or tribal organization (school board) locations or construction sites throughout the United States. They included deferred maintenance backlog work items, facility improvement and repair projects, school replacement projects, and detention facilities projects. Each audit resulted in the issuance of a report/opinion as to whether the contractors or grantees receiving funds and undertaking construction projects had implemented sound recordkeeping systems; and had met the specific requirements contained in the Terms and Conditions of the contract or Grant, in addition to other requirements. These audits were conducted in accordance with *Government Auditing Standards*, AICPA Guidelines, requirements set forth in 2 CFR 200, and subsequent guidance issued by OMB.

Performance Audit of the Mixed Earners Unemployment Compensation (MEUC) Program, Pursuant to the Provisions of the CARES Act: On March 27, 2020, Congress passed the CARES Act to provide expanded Unemployment Insurance (UI) benefits to workers, unable to work due to the COVID-19 pandemic. The expanded UI benefits under the CARES Act required the Employment and Training Administration (ETA) to implement major changes to the existing UI system, with the intent of providing expanded UI benefits to individuals who were unable to work as a direct result of the COVID-19 pandemic. The Mixed Earners Unemployment Compensation (MEUC) program was a new, temporary Federal program, implemented under the Continued Assistance for Unemployed Workers Act (Continued Assistance Act) and the American Rescue Plan Act (ARPA). It provided additional benefits to certain self-employed individuals, who were available for work for a certain period of time. The U.S. Department of Labor (DOL) Office of Inspector General (OIG) engaged Regis & Associates, PC to conduct a performance audit of the MEUC program, the objective of which was to determine whether ETA ensured that State Workforce Agencies (SWAs) implemented the MEUC program for the benefit of unemployed individuals; and to meet the program intent of the Continued Assistance Act and the ARPA.

To meet the audit objectives, we conducted procedures to understand ETA's and SWAs' processes and controls, including information technology and information systems controls, utilized in the implementation of the MEUC program, under the requirements of the Continued Assistance Act and ARPA. In addition, we examined evidence supporting compliance with the Continued Assistance Act and ARPA. We also performed in-depth testing and analyses on 6 SWAs. For the SWAs and territories that were not selected for in-depth examination, we designed and submitted a survey to them, for the purpose of gathering pertinent information related to those SWAs' implementation of the MEUC program. We conducted this performance audit in accordance with Generally Accepted Government Auditing Standard, AICPA pronouncements, and provisions of the GAO Financial Audit Manual, as applicable. This audit resulted in the issuance of a performance audit report presenting findings and conclusions related to the implementation of the MEUC program.

Agreed-upon Procedures Audits of Implementation of the Unemployment Insurance Provisions of the CARES Act in Three States, for the US Dept. of Labor - Office of Inspector General: The CARES Act (P.L. 116-136) was signed into law on March 27, 2020; and provided for expansions to the Department's UI program, at an estimated cost of nearly \$260 billion. The CARES Act added three new expansion initiatives to existing unemployment insurance coverage. These expansion initiatives are the new Pandemic Unemployment Assistance (PUA) Program; the Pandemic Emergency Unemployment Compensation (PEUC) Program; and the Federal Pandemic Unemployment Compensation (FPUC) Program. In early-stage audit work conducted by the U.S. Department of Labor (DOL), Office of Inspector

General (DOL-OIG), on the Unemployment Insurance (UI) Program's expansion under the CARES Act; several kinds of financial and program risks were noted.

The DOL-OIG, Office of Audit (OA) recently engaged Regis & Associates, PC to conduct Agreed-upon-Procedures audits of the PUA, PEUC, and FPUC Programs; as implemented by three states. The scope of these engagements included compiling and assessing data related to each state's implementation of the unemployment insurance (UI) provisions of the CARES Act. Regis conducted assessments in the primary functional areas of the: Status of the States Implementation of the UI Provisions of the CARES Act, State Preparedness, Initial Eligibility Determination, Continued Eligibility Determination, Improper Payment Detection and Recovery, and States' Compliance with the ETA Oversight Requirements.

These engagements were conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, *Generally Accepted Government Auditing Standards*, and the provisions of the CARES Act. The scope of these engagements covered CARES Act-related unemployment benefits paid for the period from March 27, 2020, through July 31, 2020. Each engagement resulted in the issuance of an agreed-upon procedures report, identifying noted findings resulting from our audit procedures. The results of these three engagements were used to assess UI program risk in each of the three states' unemployment insurance programs; and to determine which states would receive more expansive audit examination, based on noted risks. Each report was used by the DOL-OIG to prepare a comprehensive assessment and report to Congress, on the status of the implementation of the provisions of the CARES Act, by state unemployment agencies, nationwide.

Performance Audits of 63 Grantees, for the Appalachian Regional Commission - Office of Inspector General: The Appalachian Regional Commission (ARC) is a regional economic development agency, representing a unique partnership of Federal, state, and local government. ARC was established by an act of Congress in 1965 and is composed of the Governors of the 13 Appalachian states, and a Federal Co-Chairman. Appalachian development plans are produced by the applicable Appalachian Governor, in consultation with local development districts. ARC-funded programs include education and job training; health care; water and sewer systems; housing; and other essentials of comprehensive economic development, and highway construction. ARC's staff is responsible for program development, policy analysis and review, grant development, technical assistance to states, and management and oversight. ARC grants are made to a wide range of entities, including local development districts, State ARC Offices, state and local governments, educational establishments, nonprofit organizations, and a variety of economic development projects.

The ARC Office of Inspector General (OIG) has engaged Regis & Associates, PC to conduct compliance and performance audits/reviews of grants awarded to promote economic development in the Appalachian Region; and, occasionally, conduct assessments of headquarters operations, as determined by the OIG. The objectives of the grant audits are to determine whether expenditures for a specific program were appropriate and properly allocable, allowable, reasonable; made in accordance with the applicable provisions of laws and regulations; conform to the specific terms of the award; and whether the performance objectives were achieved. The auditing services are being conducted in accordance with U.S. Generally Accepted Auditing Standards, AICPA Pronouncements, the provisions of OMB 2 CFR 200, the provisions of the grant agreements, and other applicable guidelines.

Performance Audit of the US Department of Labor's and 10 States' Efforts to Prevent, Detect, and Recover Improper Payments of CARES Act Unemployment Insurance Funds: The CARES Act (P.L. 116-136) was signed into law on March 27, 2020; and provides for expansions to the Department of

Labor's Unemployment Insurance (UI) program. As of January 2, 2021, funding was approximately \$400 billion for UI benefits. On December 27, 2020, the President signed into law, the *Consolidated Appropriations Act, 2021*, which includes the Continued Assistance Act. The expanded UI benefits under the CARES Act required the Employment and Training Administration (ETA) to implement major changes to the existing UI system; including establishing six new programs, each with the intent of providing expanded UI benefits to workers, who were unable to work as a direct result of the COVID-19 pandemic, including nontraditional claimants. Regis & Associates, PC was recently engaged to conduct this performance audit of DOL's and 10 States' efforts in detecting, preventing, and recovering UI payments under the Cares Act and the Continued Assistance Act. This audit was conducted in accordance with AICPA guidelines, the performance auditing standards of GAGAS, and the provisions of the CARES Act and the Continued Assistance Act. The audit is in the final report stage; with message outline, message meeting, statements of facts, and draft findings having been prepared. This audit resulted in numerous findings related to DOL's and the states' internal controls and other aspects of the UI program's operations.

Department of Energy-OIG – Weatherization Assistance Program Audits, Under the Recovery Act: Regis & Associates, PC served on an engagement with the Department of Energy, OIG, to perform several agreed-upon procedures audits (with significant performance audit components). These audits were related to funds awarded to States and US Territories. The objectives of these audits were to assess recipients' accounting for, and use of, Weatherization Assistance Program funds and State Energy Program funds provided by the Recovery Act. These audits also sought to establish whether the performance aspects of the Weatherization Program were met. The audits were conducted in accordance with applicable *Generally Accepted Government Auditing Standards (GAGAS)*, applicable sections of the OIG's Audit Manual, AICPA Guidelines, OMB Circulars, and various energy policy regulations.

Performance Audit of the US Department of Labor's (DOL) and States' Efforts to Address Potentially Fraudulent Claims Submitted by Claimants with Suspicious Email Accounts: The CARES Act (P.L. 116-136) was signed into law on March 27, 2020; and provided for expansions to the Department of Labor's Unemployment Insurance (UI) program. On December 27, 2020, the President signed into law, the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act. The expanded UI benefits under the CARES Act required the Employment and Training Administration (ETA) to implement major changes to the existing UI system; including establishing six new programs, each with the intent of providing expanded UI benefits to workers, who were unable to work as a direct result of the COVID-19 pandemic, including nontraditional claimants.

Regis & Associates, PC was engaged by the DOL, Office of Inspector General (OIG), to conduct a performance audit of DOL and States' efforts to address potentially fraudulent claims submitted by Claimants with Suspicious Email Accounts, as previously identified by the OIG; pursuant to UI programs authorized by the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act (ARPA). These fraudulent claims were, in part, a consequence of the rapid expansion of UI programs under the CARES Act, and the suspension of many internal fraud controls that had been traditionally used or recommended for the processing of UI claims. The specific objective of this audit was to determine to what extent ETA and states took action to follow up on potentially fraudulent CARES Act UI claims submitted by persons with suspicious email accounts that were identified and referred by OIG; from the time of notification to ETA. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$2.02B. This amount consisted of 276,194 suspicious email accounts, which were used to submit 1,579,925 claims across fifty-three states and territories. The OIG provided ETA and the states with detailed information on the specific claimants, who submitted claims and received benefits using suspicious email accounts, so that the ETA and the SWAs could initiate follow-up action and remediate these findings.

To meet the audit objectives, we conducted procedures to understand ETA's and SWAs' processes and controls, including information technology and information systems controls, utilized in the implementation of CARES Act UI programs, under the requirements of the Continued Assistance Act and ARPA. In addition, we examined evidence supporting business processes and internal controls that were implemented to prevent fraudulent claims. We also performed in-depth testing and analysis on 10 SWAs. For the SWAs and territories that were not selected for in-depth examination, we designed and submitted a survey to them, for the purpose of gathering pertinent information related to those SWAs' actions taken to follow-up and remediate claims resulting from the use of suspicious email accounts. We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*, AICPA pronouncements, and provisions of the GAO Financial Audit Manual, as applicable. This audit was also conducted, pursuant to the requirements in the agreements between the States and ETA, ETA Alert Memos, and DOL Unemployment Insurance Guidelines, as applicable. We are currently completing the testing and analysis phases of this engagement; and we have prepared the 10 statements of facts, as a prelude to preparing the final comprehensive performance audit report.

Multi-tiered Oversight of the US Department of Agriculture, Rural Utilities Service, Infrastructure Investment and Jobs Act Funded Broadband ReConnect Program Activities, for the United States Department of Agriculture, Office of Inspector General: The United States Department of Agriculture, (USDA) Rural Utilities Service (RUS) administers the Rural eConnectivity Pilot Program (ReConnect Program) that was authorized by the Consolidated Appropriations Act of 2018. The ReConnect Program provides funding in the form of loans, grants, and loan/grant combinations; for the cost of construction, improvement, or acquisition of facilities and equipment needed to facilitate broadband deployment in rural areas. An important goal of the ReConnect Program is to expand broadband service to rural areas that do not have sufficient access to broadband. Sufficient access to broadband for all Americans is the ultimate goal of the government, as broadband has become an increasingly important aspect of everyday life, especially apparent during the COVID-19 pandemic. To that end, the Infrastructure Investment and Jobs Act (IIJA) was signed into law on November 15, 2021. It provided \$1.926 billion in ReConnect funding to RUS for grants and low-interest loans to eligible internet service providers in areas without sufficient access to broadband. IIJA ReConnect projects have 5 years to completely build out the projects.

Regis & Associates, PC has been engaged by the USDA Office of Inspector General to conduct multi-tiered oversight of RUS Infrastructure Investment and Jobs Act funded broadband ReConnect Program activities. The objectives of this engagement are to assess factors impacting the success of the IIJA ReConnect funded activities, including RUS' recipient evaluation and selection factors, and an identification of program challenges and potential corrective measures. This engagement is being conducted in four sub-tasks; each of which builds on the findings and conclusions developed in the prior tasks, as identified below:

Task 1: Conducting an analysis of RUS' consideration and balance of broadband needs (areas with zero service up to areas with sufficient service) within statutory and program limitations.

Task 2: Conducting an inspection to analyze how RUS evaluates and prioritizes level of service for its broadband program, including reviewing RUS' factors and tools used to determine project selection for broadband service needs. Also, obtaining updated information on the known issue with the mapping software currently utilized by RUS and assessing whether the mapping software issue has been remediated; and the current application of the software. This task includes a physical inspection of the status of broadband construction projects, nationwide.

Task 3: Identifying challenges to ReConnect's success, including but not limited to, challenges for timely or relevant delivery of broadband services, and challenges for program delivery to certain recipients such as specific States, locations, and/or Tribal areas.

Task 4: Conducting analyses of previous performance of awardees in the RUS broadband program as predictive consideration of IIJA ReConnect awardees performance. Also, evaluate RUS' monitoring of awardees performance for projects awarded with previous RUS broadband funding; and providing any predictive analytics or insights as consideration of future performance for current IIJA ReConnect funding awardees, based on the awardees past performance or RUS's monitoring information.

The tasks identified above are being conducted in accordance with GAGAS performance auditing standards or with the Council of Inspectors General on Integrity and Efficiency (CIGIE) Quality Standards for Inspection and Evaluation, as appropriate. The tasks completed to date have resulted in the issuance of reports of an informational nature, or audit reports detailing the results of our analysis or findings and conclusions, as appropriate.

Performance Audit of the US Department of Labor's (DOL) and States' Efforts to Address Potentially Fraudulent Unemployment Insurance (UI) Claims Submitted by Claimants, Who Used the Social Security Numbers of Federal Prisoners: The CARES Act (P.L. 116-136) was signed into law on March 27, 2020; and provided for expansions to the Department of Labor's Unemployment Insurance (UI) program. On December 27, 2020, the President signed into law, the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act. The expanded UI benefits under the CARES Act required the Employment and Training Administration (ETA) to implement major changes to the existing UI system; including establishing six new programs, each with the intent of providing expanded UI benefits to workers, who were unable to work as a direct result of the COVID-19 pandemic, including nontraditional claimants.

Regis & Associates, PC was engaged by the DOL, Office of Inspector General (OIG), to conduct a performance audit of the DOL and States' efforts to address potentially fraudulent unemployment insurance (UI) claims submitted by claimants, who used the Social Security Numbers of Federal Prisoners, as previously identified by the OIG, pursuant to UI programs authorized by the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act (ARPA). These fraudulent claims were, in part, a consequence of the rapid expansion of UI programs under the CARES Act, and the suspension of many internal fraud controls that had been traditionally used or recommended for the processing of UI claims. The specific objective of this audit was to determine to what extent ETA and states took action to follow up on potentially fraudulent CARES Act UI claims submitted by claimants, who used the Social Security Numbers of Federal prisoners, that were identified and referred by OIG; from the time of notification to ETA. This category of potentially fraudulent UI benefit payments amounted to approximately \$98M. This amount consisted of 46,989 claims, which were submitted by 13,446 claimants, across fifty-three states and territories. The OIG provided ETA and the states with detailed information on the specific claimants, who submitted claims and received benefits, using the social security numbers of Federal prisoners, so that the ETA and the SWAs could initiate follow-up action and remediate these findings.

To meet the audit objectives, we conducted procedures to understand ETA's and SWAs' processes and controls, including information technology and information systems controls, utilized in the implementation of CARES Act UI programs, under the requirements of the Continued Assistance Act and ARPA. In addition, we examined evidence supporting business processes and internal controls that were implemented to prevent fraudulent claims. We also performed in-depth testing and analysis on 10 SWAs. For the SWAs and territories that were not selected for in-depth examination, we designed and submitted a

survey to them, for the purpose of gathering pertinent information related to those SWAs' actions taken to follow-up and remediate claims resulting from the fraudulent use of the social security numbers of Federal prisoners. We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standard*, AICPA pronouncements, and provisions of the GAO Financial Audit Manual, as applicable. This audit was also conducted pursuant to the requirements in the agreements between the States and ETA, ETA Alert Memos, and DOL Unemployment Insurance Guidelines, as applicable. We are currently completing the testing and analysis phases of this engagement; and we have prepared the 10 statements of facts, as a prelude to preparing the final comprehensive performance audit report.

Performance Audit of the US Department of Labor's (DOL) and State's Efforts to Address Potentially Fraudulent Unemployment Insurance (UI) Claims Submitted by Multi-state Claimants: The CARES Act (P.L. 116-136) was signed into law on March 27, 2020; and provided for expansions to the Department of Labor's Unemployment Insurance (UI) program. On December 27, 2020, the President signed into law, the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act. The expanded UI benefits under the CARES Act required the Employment and Training Administration (ETA) to implement major changes to the existing UI system; including establishing six new programs, each with the intent of providing expanded UI benefits to workers, who were unable to work as a direct result of the COVID-19 pandemic, including nontraditional claimants.

Regis & Associates, PC was engaged by the DOL, Office of Inspector General (OIG), to conduct a performance audit of the DOL and States' efforts to address potentially fraudulent unemployment insurance (UI) Claims submitted by multi-state claimants; as previously identified by the OIG, pursuant to UI programs authorized by the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act (ARPA). These fraudulent claims were, in part, a consequence of the rapid expansion of UI programs under the CARES Act, and the suspension of many internal fraud controls that had been traditionally used or recommended for the processing of UI claims. The specific objective of this audit was to determine to what extent ETA and states took action to follow up on potentially fraudulent CARES Act UI claims submitted by multi-state claimants, that were identified and referred by OIG; from the time of notification to ETA. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$3.5B. This amount consisted of the use of 226,829 social security numbers, in the submission of 1,466,457 claims, across fifty-four states. The OIG provided ETA and the states with detailed information on the specific claimants, who submitted claims and received benefits, pursuant to the submission of multi-state claims, so that the ETA and the SWAs could initiate follow-up actions and remediate these findings.

To meet the audit objectives, we conducted procedures to understand ETA's and SWAs' processes and controls; including information technology and information systems controls, utilized in the implementation of CARES Act UI programs, under the requirements of the Continued Assistance Act and ARPA. In addition, we examined evidence supporting business processes and internal controls that were implemented to prevent fraudulent claims. We also performed in-depth testing and analysis on 10 SWAs. For the SWAs and territories that were not selected for in-depth examination, we designed and submitted a survey to them, for the purpose of gathering pertinent information related to those SWAs' actions taken to follow-up and remediate claims submitted by multi-state claimants. We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*, AICPA pronouncements, and provisions of the GAO Financial Audit Manual, as applicable. This audit was also conducted, pursuant to the requirements in the agreements between the states and ETA, ETA Alert Memos, and DOL Unemployment Insurance Guidelines, as applicable. We are currently completing the testing and analysis phases of this engagement; and we have prepared the 10 statements of facts, as a prelude to preparing the final comprehensive performance audit report.

Performance Audit of Universal Service Fund Lifeline Beneficiary, for the Federal Communications Commission, Office of Inspector General: Regis & Associates, PC was engaged by the Federal Communications Commission, Office of Inspector General (OIG), to conduct a performance audit of an Eligible Telecommunications Carrier (ETC), operating under the Universal Service Fund (USF) Lifeline Program, which is a broadband program. The audit was conducted in accordance with GAGAS Performance Auditing Guidelines, AICPA Guidelines, and FCC regulations. The scope of the audit included assessing the ETC's compliance with Lifeline Program guidelines, the provisions of Title 47 of the Code of Federal Regulations, 47 C.F.R. § 54.400-423, and related USF rules and orders; and evaluating its internal controls over compliance with the governing legal and regulatory framework. This performance audit included examination of the ETC's submitted FCC Form 497 "Lifeline Worksheet" and Lifeline claim filings for the period spanning June 2017 through March 2018 (the time covering the transition from the FCC Form 497 to the Lifeline Claims System). The objectives of the audit were to determine whether the information in those forms and filings were fairly stated, in conformity with all applicable criteria; and to communicate the results of the audit, in the form of a performance audit report, presenting the findings, conclusions, and recommendations, to the FCC OIG. There were no delays on this engagement, except for time required by the Government to seek approval from the various layers of internal concurrence needed for the final report. The automated audit software ProSystem fx Engagement was used in this audit. Additionally, IDEA was used for data analysis, data mining, and sampling. Engagement Organizer and ExaVault Data repositories were used as repositories to send and receive large data files to and from the auditee.

Performance Audits of 15 Federal Communications Commission Universal Service Fund E-Rate Program Beneficiaries and Services Providers: The Universal Service Administrative Company (USAC) is an independent not-for-profit corporation that operates under the directives of the FCC, in accordance with the provisions of 47 C.F.R. Part 54. Pursuant to governing regulations, USAC serves as the neutral administrator of the Universal Service Fund (USF). **The E-Rate Program is a Broadband Program funded through a Universal Service fee charged to telecommunications companies that provide interstate and/or international telecommunications services.** This Program is designed to support connectivity by schools and libraries, for telecommunications services and/or the internet. This program provides discounts to assist eligible schools and libraries in obtaining affordable telecommunications equipment and/or services, and internet access. Regis & Associates, PC was engaged by USAC, to conduct 15 performance audits of E-rate Program beneficiaries and services providers. The objective of these performance audits was to determine whether each entity complied with the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules, as well as the FCC's orders that govern the E-rate Program; for the Funding Year 2020.

The scope of each audit included conducting audit planning and risk assessments; documenting and assessing internal controls; examining documentation that supported the propriety of use of funding; assessing the competitive bidding process; determining the process for determining beneficiary eligibility; and determining the propriety of service provider billing to USAC, for consistency with service provider agreements. Each audit also included performing physical inventory to determine the location and use of equipment and services; and to determine whether such equipment was delivered and installed, located in eligible facilities, and utilized in accordance with the FCC's Rules. The audit procedures also included evaluating whether the beneficiary had the necessary resources to support the equipment and services for which funding was requested. This audit also included examining invoices submitted for reimbursement for equipment and services delivered to beneficiaries, to determine whether USAC was invoiced in a manner that was consistent with the terms and specifications of the service provider agreements and the E-Rate Eligible Services List.

These audits were conducted in accordance with *Generally Accepted Government Auditing Standards* governing performance audit engagements, AICPA Pronouncements, and other technical pronouncements as agreed to with USAC. The automated audit software, ProSystem fx Engagement, was used for engagement management. Additionally, IDEA was used for data analysis, data mining, and sampling. MS Project was used as a project management tool to manage the various deliverables and milestones of each audit. Engagement Organizer and ExaVault Data repositories were used as repositories to send and receive large data files to and from the auditees, since the audits were conducted remotely. This engagement resulted in the issuance of fifteen performance audit reports, some of which identified findings and recommendations. These reports are currently in the possession of USAC, for final review; **and we have been awarded a follow-on task order to conduct 16 additional audits.**

Audits of AmeriCorps Grantees for the Corporation for National and Community Service (CNCS)

OIG-: CNCS awards grants and cooperative agreements to states, nonprofit entities, and tribes and territories, to assist in the creation of full and part-time national and community service programs. Grantees are required to expend funds, only for allowable purposes, and to provide periodic reports to the Corporation, to demonstrate programmatic and financial compliance with the terms of their grant agreements. Regis & Associates, PC was engaged by the CNCS-OIG, to perform full-scope, incurred-cost audits; and seven agreed-upon procedures (AUP) engagements related to Federal assistance funds awarded to various grantees/sub-grantees throughout the US. The scope of the audits and AUPs covered financial transactions, compliance, and internal control testing of the awards funded by the Corporation. The objectives of the audits and AUPs were to: determine whether each grantee complied with the terms of its grant agreement, determine whether grantee billings were adequately supported, and costs were allowable, determine whether internal controls were adequate, and whether matters raised in previous cure letters were fully addressed. The audits were conducted in accordance with GAGAS and resulted in the determination of the allowability of cost, and the proposal of forward-looking recommendations for improving grants management.

Performance Audit of the US Department of Labor's (DOL) Short-Time Compensation (STC)

Program: The CARES Act (P.L. 116-136) was signed into law on March 27, 2020; and provides for expansions to the Department of Labor's Unemployment Insurance (UI) program. As of January 2, 2021, funding was approximately \$400 billion for UI benefits. On December 27, 2020, the President signed into law, the *Consolidated Appropriations Act, 2021*, which includes the Continued Assistance Act. The expanded UI benefits under the CARES Act required the Employment and Training Administration (ETA) to implement major changes to the existing UI system; including establishing six new programs, each with the intent of providing expanded UI benefits to workers, who were unable to work as a direct result of the COVID-19 pandemic, including nontraditional claimants. Regis & Associates, PC is currently engaged by the DOL-OIG to conduct this performance audit of DOL's and 10 States' efforts implementing the UI provisions of the Short-Time Compensation Program pursuant to the provisions of the CARES Act and the Continued Assistance Act. This audit is being conducted in accordance with AICPA guidelines, *Generally Accepted Government Auditing Standards*, and certain guidelines identified in the GAO Financial Audit Manual. This audit is in the reporting phase and message outlines and draft findings have been prepared for the OIG's review. This audit resulted in numerous findings related to DOL's and the states' internal controls, compliance with laws and regulations, the propriety of use of funds, and other aspects of the Short-Time Compensation program. There was an extension of the period of performance because the Government expanded the scope of the engagement to add more states into the scope from 6 states to 10 states. The automated audit software ProSystem fx Engagement was used on this audit. Additionally, IDEA was used for data analysis, data mining, and sampling. MS Project was used as a project

management tool to manage the various deliverables and milestones of each state audit. Engagement Organizer and ExaVault Data repositories were used as repositories to send and receive large data files to and from the auditees, since the audit was conducted remotely.

Two Project-Based, Section 8 Billing Studies, Under the Improper Payments Information Act; for the US Department of Housing and Urban Development: The US Department of Housing and Urban Development's (HUD) rental assistance programs, which include public housing and various tenant-based and project-based rental housing assistance programs, are administered by third party program administrators. These program administrators include public housing agencies, private housing owners, and contracted management agents. As part of its Rental Housing Integrity Improvement Project (RHIIP) initiative to improve the management of its assisted housing programs, HUD has conducted several studies to quantify errors associated with tenant rent and subsidy determinations, and owners' billings.

Regis & Associates, PC was engaged by HUD, to conduct two Project-Based Section 8 Billing Studies of its billing records over a two-year period. These studies were conducted for the purpose of developing estimates of subsidy errors that are required for agency-wide financial statement preparation purposes. These studies were also conducted in order to provide information to Congress, in accordance with the provisions of the Improper Payments Information Act. The objectives of these billing studies were to determine whether HUD's subsidies were recorded, billed, and collected in accordance with HUD's policies and the Office of Housing's regulations. These regulations include guidelines provided in Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing*. In conducting these studies, we audited 1,500 tenant files in a sample of 150 projects. These projects were distributed over 103 cities, in 34 states, throughout the United States. We were required to select a random sample of 10 tenant files from each project for testing, in accordance with the survey/testing methodology agreed to by HUD.

Our Technical Approach and Management Plan for conducting these studies consisted of six distinct phases. These phases were: I: Planning; II: Pre-Testing of Billing Study Methodology; III: Assessing and Revising Test Procedures; IV: Conducting Billing Study Data Collection; V: Conducting Data Analysis and Quality Control; and VI: Preparing and Issuing Reports. The reporting phase of these engagements consisted of the issuance of reports on the noted errors identified for each project. We also prepared project-wide reports identifying noted errors by classification, the financial impact on subsidies, and recommendations for reducing future errors. The data from this engagement was used to develop the subsidy error rate that was used in the preparation of HUD's agency-wide financial statements.

Performance Audit of the Universal Service Fund, High-Cost Program, Connect America Fund, Phase I; for the FCC-OIG: Phase I incremental support of the High-Cost Connect America Fund (CAF) was established as a key reform tool under FCC Transformation Order No. FCC-11-161. Regis & Associates, PC was engaged by the FCC OIG to conduct this audit, the objectives of which were to: assess the efficacy of internal controls designed and implemented by the FCC and the Universal Service Administrative Company (USAC) to make certain that incremental support disbursements to eligible telecommunications companies (Carriers) were appropriate, as to amounts and purpose; examine a sample of incremental support provided to 72 Carriers to determine whether the Carriers provided broadband service, as mandated; and to recognize enhancements or opportunities to enhance internal controls critical to safeguarding CAF from the risk of fraud, waste, and abuse. This audit was conducted in accordance with *Generally Accepted Government Auditing Standards*; AICPA pronouncements; OMB Circulars; The Telecommunications Act of 1996; The Communications Act of 1934, as amended; FCC 11-161; and other FCC Rulemaking pronouncements. This audit resulted in the issuance of a comprehensive performance

audit report detailing findings and recommendations that were designed to convey the status of the operation of the fund and noted opportunities for enhancement of performance.

Performance Audit of the FCC Universal Service Fund, High-Cost Program, Transformation Order Mandates, for the FCC-OIG: Regis & Associates, PC was engaged by the FCC-OIG, to conduct a performance audit of the implementation of the Universal Service Fund, High-Cost Program Transformation Order Mandates (Transformation Order No. FCC 11-161). Universal service is the driving principle underlying the legal and regulatory provisions that offer access to communications services to all Americans. The Universal Service Fund (USF, or the Fund) is a system of telecommunications subsidies and fees managed by the Universal Service Administrative Company (USAC), under the direction of the FCC, that is intended to promote universal access to telecommunications services in the United States. The goals of the reform include: Enhancing and strengthening universal accessibility to voice service capabilities; Securing universal accessibility to robust modern networks that competently support voice and broadband capacities; Engineering universal accessibility to modern networks that deliver mobile and broadband capacities; Making certain that rates for both voice and broadband services in high cost, rural, and insular areas, are reasonably comparable to rates for similar services in urban areas, thereby ensuring that rates for voice and broadband services are reasonably comparable in all regions of the United States; and Prudently alleviating the burden on individuals and businesses, with regards to their universal service contributions. The audit was conducted in accordance with Generally Accepted Government Auditing Standards; The Telecommunications Act of 1996; The Communications Act of 1934, as amended; FCC 11-161; and other applicable legal and regulatory authorities. The audit resulted in the issuance of a comprehensive report detailing findings and recommendations related to the implementation of the transformation mandates.

Financial Database Integrity and Auditability Assessment for the Special Inspector General for Iraq Reconstruction (SIGIR): Regis & Associates, PC was engaged to conduct a broad range of Independent Verification and Validation and auditability assessment services by SIGIR, which included:

Independent Verification of Iraq Reconstruction Information System (SIRIS) Database: This database was used as a repository for procurement, budget, and financial data on the programs, activities, and functions that were funded from the Iraq Relief Reconstruction Fund (IRRF). This engagement consisted of a complete audit of 100 % of the contents of the financial data in the database. It consisted of Planning, Risk Analysis, Validation of Process Flow Diagrams for all agencies receiving IRRF, Data Analysis and Testing/Validation of all funding data, and Reporting. As part of this engagement's methodology, we developed and executed a written methodology for the validation of SIRIS database contents and reports. That methodology incorporated test procedures to evaluate the completeness, accuracy, and propriety of posting of data fields. This engagement was conducted by utilizing various automated information systems auditing tools to conduct data analysis and manipulation, as well as using traditional Yellow Book auditing processes and procedures. Reporting consisted of the development of a comprehensive report, identifying noted exceptions, and recommendations for their remediation. This included the identification of internal control weaknesses and recommendations for corrective actions.

Audit Feasibility Assessment of Iraq Relief Reconstruction Funds (IRRF): We were engaged by SIGIR to provide IRRF Audit Feasibility Assessment services in support of their federal agency oversight of the Iraq Relief Reconstruction Fund (IRRF). The objective and outcome of this engagement were to validate the distribution of IRRF funding and its accountability among agencies, analyze IRRF accounting transaction data, and assess the data's availability and completeness. Because this engagement was designed to be a pre-cursor to conducting financial audits of Iraq reconstruction efforts, an additional

objective of this engagement was to provide conclusions on the availability and completeness of the IRRF accounting information necessary to plan and execute effective audits.

This engagement was structured in the following three interrelated phases: (1) Validation of IRRF Agency Funding and Accounting Flow Diagrams; (2) Analysis of Agency Financial Management System Data Elements; and (3) Assessment of the Availability and Completeness of IRRF Agency Data. This engagement resulted in the issuance of a comprehensive report identifying noted findings and conclusions related to deficiencies noted on the financial data and the data quality, relative to conducting the audits.

Agreed-Upon Procedures Reviews of HUD's Single Family Asset Disposition Contractors (M&M):

The US Department of Housing and Urban Development (HUD) - Federal Housing Administration, outsources the management, marketing, and sale of its inventory of HUD-owned single-family homes, through its management and marketing contractors. These single-family homes were the collateral on loans, previously insured by FHA, that were foreclosed by the respective lenders. Regis & Associates, PC was engaged by HUD, over a four-year period, to conduct compliance and performance reviews of all M&M contractors' activities, nationwide. The major tasks undertaken under this contract were:

- Development and maintenance of a software-based risk-based targeting module (methodology) for selecting on-site reviews of M&M contractor compliance.
- Performance of monthly manual field compliance reviews in the areas of: Property Maintenance and Repair, Acquisition and Title, Property Appraisals, Stabilization or Abatement of Deteriorated Paint Surfaces, Advertising and Marketing of Real Estate, Subcontractor Management, Contract Negotiations and Preparation of Legal Documents, Oversight of Sales Closings, and Accounting and Reconciliation.
- Hosting and Enhancement of a national web-based, Risk-Based Targeting Model (RBTM).
- Development and Implementation of a strategy for migration from manual field reviews to a web-based review system.

OMB Circular A-123 Compliance Audit of Defense Contract Management Agency's Government Purchase Card Program: The General Services Administration (GSA) administers the Federal government's purchase card program. DCMA engaged Regis & Associates, PC to conduct an audit of its Government Purchase Card Program, in accordance with prevailing standards. The desire for these services was necessitated by management's concerns about fraud, waste, and abuse in the use of government purchase cards. It was desired that the services take the form of an independent performance, compliance, and internal controls review. The audit was conducted in accordance with GAGAS; **OMB Circular A-123, Appendix B**; FAR Part 13.301 and DFARS Subpart 213.301; and DoD Directive 7000.15, *DoD Accountable Officials and Certifying Officers*. The audit resulted in the issuance of a comprehensive report detailing findings noted, and a broad range of recommendations that were designed to remediate the noted findings.

Federal Transit Administration - Financial Management Oversight (FMO) Reviews: Regis & Associates, PC was engaged by the FTA, to perform reviews of selected grantees' financial management systems. The scope of the Financial Management Oversight (FMO) reviews included performing risk-based audit procedures necessary to determine compliance with criteria established by the FTA, for its grantees' financial management systems. These criteria were based on 49 CFR Part 18. The FMO reviews were performed in accordance with AICPA attestation engagement standards, using the FTA's "*Financial Management Oversight Contractors' Guide for Conducting Financial Management Systems Reviews*." Regis & Associates, PC also performed follow-up FMO reviews of Federal grantees, to ensure that the recommendations resulting from the initial full-scope FMO review had been implemented and were

working properly. Under this contract, we also performed numerous financial capacity assessments of Federal grantees that undertake major capital investment projects. These reviews were performed, following the FTA's "Financial Management Oversight Contractors' Guide for Conducting Financial Capacity Assessments"; and were designed to assist the FTA in evaluating the overall financial capacity of the grantees to perform, as agreed per the Terms and Conditions of their Grant Agreement obligations, regarding major construction programs; and the future operations and maintenance of newly constructed assets.

Operational and Performance Audit of DCMA's Defense Travel Service (DTS): DCMA engaged Regis & Associates, PC to conduct a performance and operational audit of DTS. The objectives of the audit were to: Assess whether DCMA's policies and procedures related to travel management, were adequate and in compliance with applicable laws and regulations; determine employee compliance with travel policies; determine the proper authorizations and access controls over various functions within the system. This engagement resulted in the issuance of a comprehensive report, detailing findings related to the efficiency and effectiveness of DTS, as well as various compliance and performance issues; and recommendations for the remediation of noted findings. This audit was conducted in accordance with AICPA Guidelines, OMB Directives, GAGAS, and DCMA policy guidelines.

Statement on Standards for Attestation Engagements (SSAE) No. 18 Examination of the DC Office of Pay and Retirement Services (OPRS), PeopleSoft HCM Payroll Module: The District of Columbia, Office of the Chief Financial Officer (OCFO), Office of Financial Operations and Systems (OFOS), Office of Pay and Retirement Services (OPRS) is a "service provider" to the US Secret Service and US Park Police, for the administration of the Federal Police Pension (FPP) plan, under D.C. Code Section 5-703. Regis & Associates, PC was engaged by OPRS, to conduct an SOC Type 2 audit, in accordance with AICPA's *Statement on Standards for Attestation Engagements (SSAE) No. 18*, of the organization's business system and internal control environment of the PeopleSoft HCM; specifically, the Federal Police Pension (FPP) Module. The objectives of this engagement were to assess the suitability of the design of the controls in place for participant data, pension transactions, pension benefit payments, and reporting. The engagement resulted in the issuance of a comprehensive report that addressed our findings related to the various control objectives, and related assertions, that were made by management; relating to the PeopleSoft HCM Payroll Module.

General Services Administration - Examination of GSA SmartPay 2 DoD Travel Card Refunds: The GSA SmartPay 2 Travel Card Program (the GSA SmartPay 2 Program) delivers a wide variety of benefits to the Department of Defense (DoD); including (i) streamlining procurement and payment processes for the DoD travel business line; (ii) providing access to a variety of technology solutions that improve operational efficiencies, while increasing transparency to spending activities; (iii) delivering robust information management tools that allow for comprehensive program management, as well as supporting critical control and examination functions; (iv) providing Sales Refunds; and (v) providing Productivity Refunds to the DoD, on program spend amounts, based on speed of payment. The Defense Travel Management Office (DTMO) administers the DoD Travel Program, under a GSA SmartPay 2 contract with a commercial bank. Under the GSA SmartPay 2 Program, the commercial bank has processed approximately 35.242 million transactions; with an approximate value of \$37.066B. Regis & Associates, PC (Regis), was engaged by the US General Services Administration (GSA), to perform an examination of the GSA SmartPay 2 Travel Card Refund process, performed by the commercial bank; from November 28, 2008, through September 30, 2014. The primary objective of this examination engagement was to validate the revised travel card refund calculation methodology used by the commercial bank, and identify any potential miscalculations of refunds due to/from DoD or the

commercial bank. This engagement also included assessing the significant internal controls associated with the administration of refunds by the commercial bank.

This examination was conducted in accordance with Generally Accepted Government Auditing Standards; Statement on Standards for Attestation Engagements (SSAE), Attestation Standards, Clarification and Recodification; and other applicable AICPA Guidelines. Additionally, the examination test procedures were governed by the provisions of the prevailing GSA SmartPay 2 Program guidelines that included:

- OMB Circular A-123, Appendix B, *Improving the Management of Government Charge Card Programs* (as applicable);
- Provisions identified in the Citi SmartPay 2 GSA Refund Review Guide;
- The GSA SmartPay 2 Master Contract;
- The DoD Travel Card Services task order, awarded to the commercial bank; and
- The Government Charge Card Abuse Prevention Act of 2012 (Public Law 112-194).

This examination engagement resulted in the issuance of a comprehensive report detailing travel card activities including payments, adjustments, transfers, refunds, and other applicable transactions during the period of the examination.

C. QUALIFICATIONS AND EXPERIENCE OF PERSONNEL ASSIGNED TO THIS ENGAGEMENT

C-1- Key Personnel

Below, we have proposed the Regis & Associates, PC personnel that will serve the SDA on this Design-Build monitoring engagement. The number of staff proposed is more than that which is required for this SDA engagement. **Our proposed staffing complement is designed to provide flexibility to the SDA and build resources into the staffing mix to account for contingencies and any fluctuating demands.** Major differentiating factors among accounting and management consulting firms, are the experience, technical resources, and commitment to client service that they bring to their public sector clients. To meet the expectations outlined in the SDA statement of work, we have selected a core project team, with relevant industry experience. All of these individuals possess extensive experience in very complex accounting and auditing engagements; and are experienced in matters related to CARES Act compliance, OMB Circulars, FAR, 2 CFR 200, SSAE 18, CIGIE Standards, *Government Auditing Standards*, performance auditing standards, CFO Act, GASB, FAM and FISCAM, risk analysis and program compliance, the Inspector General's Act, the Data Act, AICPA guidelines, and many others. Below is a summary of the experience of some of these individuals. **Their detailed resumes have been presented as Appendix - A. All of these individuals meet the continuing professional education requirements of the AICPA and GAGAS.**

	Total Experience in Years	Areas of Experience									Key Personnel
		Government Auditing Standards	Performance Audit Exp	Audits of Fed. Programs, Activities & Functions	Construction Contract Auditing Exp.	State & Local Government Auditing Exp.	Exp. Auditing in a Remote Environment	CARES Act Audit Exp.	Grant and Contract Auditing Exp.	Exp. with IT Audit Tools	
Peter Regis, CPA Partner	36	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Gwendolyn J. Regis, CPA, Partner-QA	34	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Edwin Kago, CPA, Sr. Audit Manager	12	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fidel Wambura, CPA, Audit Manager	11	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Samson Estifanos, CPA, Audit Manager-Technical Review	18	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Adrian Torres, Audit Supervisor	20	✓	✓	✓		✓	✓	✓	✓	✓	
Robin Campbell, Audit Supervisor	30	✓	✓	✓	✓	✓	✓	✓	✓	✓	

	Total Experience in Years	Areas of Experience									Key Personnel
		Government Auditing Standards	Performance Audit Exp	Audits of Fed. Programs, Activities & Functions	Construction Contract Auditing Exp.	State a & Local Government Auditing Exp.	Exp. Auditing in a Remote Environment	CARES Act Audit Exp.	Grant and Contract Auditing Exp.	Exp. with IT Audit Tools	
Saidu Bangura, Senior Auditor	12	✓	✓	✓	✓		✓	✓	✓		
Barbara McCormick, Audit Supervisor	46	✓	✓	✓	✓		✓	✓	✓	✓	
Mark Barnhouse, Staff Auditor	1.5	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Yihua "Kaya" Xu, Staff Auditor	1	✓	✓	✓		✓	✓	✓	✓	✓	
Marwa Elsabie, Staff Auditor	2	✓	✓	✓		✓	✓		✓	✓	
Lingchang (Esther) Kong, Staff Auditor	2	✓	✓	✓		✓	✓		✓	✓	

Peter R. Regis, CPA, Partner: Mr. Regis is a Partner with Regis & Associates, PC and has over thirty-six years of experience in accounting and auditing, both from public and private sector perspectives. His employment, prior to Regis & Associates, PC includes working for the Big-4 accounting firm of PriceWaterhouseCoopers; and a local Washington, DC CPA firm. His relevant experience includes serving as engagement partner on accounting support and financial and performance audit contracts for the Bureau of the Census, the USDA-OIG, the FCC-OIG, the DOL-OIG, the US Coast Guard, the Department of Energy-OIG, the Defense Contract Management Agency, the Department of the Treasury, Federal Aviation Administration, Federal Highway Administration, Broadcasting Board of Governors, Under Secretary of the Navy, the National Science Foundation-OIG, Corporation for National and Community Service-OIG, U.S Department of State, the Architect of the Capitol-OIG, the FDIC, District of Columbia-Office of Inspector General, and many others. He has conducted government purchase card and travel card audits for such agencies as GSA, DCMA, BBG, TSA, and others. He has also conducted numerous grantee and state agency audit engagements for HUD, the Department of Energy-OIG, the Special Inspector General for Afghanistan Reconstruction, USAID grantees, the Bureau of Indian Affairs, the National Science Foundation, the Federal Transit Administration, CNCS, the State of Maryland, USDA-OIG, the Department of State, and many others. He has also served as the engagement partner on four CARES Act performance auditing engagements of over 40 states, for the US Department of Labor - Office of Inspector General. Additionally, he has served as the partner on over 60 incurred cost submissions and systems audits of contractors, for NASA.

Ms. Gwendolyn J. Regis, CPA, Partner, Quality Assurance: As the QA Partner, Ms. Regis will objectively evaluate the significant judgments the engagement team makes, and the conclusions it reaches in formulating the audit report. Ms. Regis has over 34 years of accounting, auditing, program support, and management consulting experience in both the private sector and the governmental environment. This includes serving the Federal Aviation Administration, the Federal Highway Administration, the Department

of Homeland Security, the District of Columbia Government, the Securities and Exchange Commission, the Department of State, the Social Security Administration, the Department of Veterans Affairs, the Federal Transit Administration, DCMA, and many others. Ms. Regis has also conducted numerous grantee and state agency audit engagements for HUD, the Department of Energy, the National Science Foundation, the Federal Transit Administration, the State of Maryland, CNCS, the Department of State, USAID, Bureau of Indian Affairs, the Social Security Administration, the District of Columbia Government, and many others. She has also served as the quality assurance partner on four CARES Act performance auditing engagements of over 40 states, for the US Department of Labor - Office of Inspector General. Additionally, she has served as the quality assurance partner on over 60 incurred cost submissions and systems audits of contractors, for NASA; and four audits of FCC Universal Service Fund funding recipients.

Edwin K. Kago, CPA, Senior Audit Manager: Mr. Kago is a Senior Audit Manager with Regis & Associates, PC. He has more than twelve years of combined auditing, accounting, and management consulting experience in the Federal and commercial sectors. His experience includes serving in a senior capacity on several healthcare audit engagements, grant audits, contract audits, inventory audits, contractor pre-award accounting system reviews, and many others. He is experienced in the application of Government Auditing Standards, AICPA Standards, the CFO Act, Medicare Regulations, OMB Circulars, and internal control guidelines. He also possesses extensive experience in assessing internal controls of governmental organizations and performing SSAE 16 audits of Medicare Administrative Contractors (MACs) and hospitals. His experience also includes conducting a large GSA SmartPay 2 Refund audit for DoD, numerous incurred cost submission audits, and estimating and purchasing systems audits for NASA. His experience also includes conducting Financial Statement Audits of the Centers for Medicare and Medicaid Services, in accordance with the CFO Act of 1990; and audits/reviews of numerous Medicare providers across the US. He has also served as an audit manager on the financial statement audit of the Government of the District of Columbia and Ginnie Mae. He has also conducted audits of grants provided to hospitals by the Center for Medicare and Medicaid (CMS), such as Meaningful Use Incentive grants. He has also conducted numerous contract audits for the Volpe Center and NASA. **His performance auditing experience includes serving as an audit manager on four audits of 40 states' compliance with the provisions of the CARES Act; conducting performance audits, for the FCC-OIG; telecommunications grantee audits of FCC funding, for USAC; numerous grantee audits for the Appalachian Regional Commission-OIG; and many others.**

Fidel Wambura, CPA, Audit Manager: Mr. Wambura serves as an Audit Manager, whose experience includes financial statement audits, audits of internal controls, performance audits, and compliance audits in various industries. His audit experience ranges from audit services in accordance with PCAOB requirements, Government Auditing Standards, Department of Labor's Employee Retirement Income Security Act of 1974 (ERISA), and the Federal Uniform Guidance standards. He is also experienced in the application of OMB Bulletin No. 19-02; OMB Circular No. A-136; GAO/CIGIE Financial Audit Manual; FISCAM; and the Federal Financial Management Improvement Act of 1996 (FFMIA). Mr. Wambura is also experienced in the audits of Federal and state governments. His experience also includes performing over 70 grant audits of various governmental and not-for profit organizations. Mr. Wambura has also conducted performance audits of CARES Act funds and incurred cost submission audits of several large contractors for NASA. Some of his other experience includes auditing the Food for Peace (FFP) Program Title II Audit-USDA and U.S. Agency for International Development – Syria. He also served as manager on performance audits of Appalachian Regional Commission grantees; audit manager on the financial statement audit of District of Columbia Government; audit manager on a performance audit of DOL-ETA's and six states' implementation of the provisions of the Mixed Earners Unemployment Compensation program, under the CARES Act; audit manager on the financial statement audit of Milwaukee Area

Technical College; audit manager on a performance audit of DOL-ETA's and ten states' implementation of the provisions of the Short-Time Compensation program, under the CARES Act; audit manager on the Single Audit of the City of Milwaukee; auditor on the Comprehensive Annual Financial Report (CAFR) Audit of the City of Baltimore; and many others.

Samson Estifanos, CPA, Technical Review Audit Manager: Mr. Estifanos is an Audit Manager, with over 18 years of accounting, auditing, and financial management experience in supporting governmental organizations, non-for-profit organizations, and commercial sector clients. He possesses a strong technical understanding of the provisions of GAAP, GAAS, GAGAS, IFRS, Federal Acquisition Regulation (FAR), 2 CFR 200, the CARES Act, and AICPA Guidelines. He has conducted numerous accounting systems, purchased systems, and estimating systems audits for NASA; as well as incurred cost submission audits. He has an excellent knowledge of financial statements analysis and interpretation; and has served as the quality assurance manager on four CARES Act performance auditing engagements of over 40 states, for the US Department of Labor - Office of Inspector General. He has also served as a manager on numerous performance audits of grantees, for the Appalachian Regional Commission-OIG; USAC grantees; and numerous NASA contractors. He has also served as an audit manager on the financial statement audit of the District of Columbia government.

Adrian Torres, Audit Supervisor: Ms. Torres has twenty years of progressively complex accounting and auditing experience. She has independently performed full-life cycle incurred cost submission audits of small, mid-sized, and large organizations, in accordance with GAGAS, the FAR, and OMB requirements; as well as developed detailed non-routine audit plans. She has led audit teams and provided technical guidance, as well as coaching and mentoring to junior auditors, through individualized professional development plans. Her experience includes serving as an audit supervisor on numerous DCAA-type audits. She has also worked as a cost accounting and compliance manager for several medium and large government contractors, over many years. In addition, she has supervised OMB Circular A-123 audits, forward pricing rate audits, accounting systems audits and reviews, a performance audit for the FCC-OIG, and other engagements. She is intricately familiar with AICPA Attestation Standards, GAGAS, the Federal Acquisition Regulation, the DCAA CAM, and the provisions of various OMB Cost Principles. She has also served as an audit supervisor on three CARES Act performance auditing engagement of several states, for the US Department of Labor - Office of Inspector General.

Robin Campbell, Audit Supervisor: Ms. Campbell is an audit supervisor with over thirty years of experience in conducting a broad range of financial, performance, and incurred cost audits of a broad base of governmental and private sector organizations. Her years of employment include working as a Technical Specialist in a supervisory capacity at the Defense Contract Audit Agency (DCAA), on matters related to government contracts and grant audits. Her extensive audit experience includes conducting incurred cost submission audits of contractors and non-profit organizations; disclosure statements compliance reviews; Cost Accounting Standards compliance audits of contractors and not-for-profit organizations; forward pricing proposal audits; Termination Cost and Delay Claims Equitable Adjustment Audits; Provisional Billing Rates reviews; internal controls assessments; Pre-award and Accounting Systems Reviews of contractors and not-for profit organizations; Pension Closing Settlement Government Share Proposal Audit; Cost Realism Proposal Audit, for the Navy; Special Purpose Audit of Contractor Overpayments; and many others. She has also provided training to other auditors in such areas as CAS, FAR, 2 CFR 200, and internal controls assessments; while employed at DCAA. She recently served as an audit supervisor on several grantee performance audits for the Appalachian Regional Commission - OIG. Ms. Campbell has also served as a supervisor on audits of several states' implementation of the provisions

of the CARES Act, for the DOL-OIG; and on performance audits of 15 telecommunications grantees, for USAC.

Barbara McCormick, Audit Supervisor: Ms. McCormick is an audit supervisor, with over 46 years of experience in conducting a broad range of financial, performance, and incurred cost audits of a broad base of governmental and private sector organizations. Her employment, prior to Regis & Associates, PC, includes fifteen years of employment in various audit capacities at the Defense Contract Audit Agency (DCAA). Her roles on DCAA audit engagements included serving in a supervisory capacity as a Team Lead on numerous audit engagements over a five-year period. Her relevant experience also includes serving as an Administrative Officer, Assistant Director of Fiscal Services, and a Fiscal Clerk at various governmental organizations within the Maryland State government. Her audit experience includes conducting performance audits under the CMS Open Payments Program, and of a telecommunications service provider for the Universal Service Administrative Company. This experience also includes conducting numerous incurred cost submission audits of contractors and non-profit organizations, disclosure statements compliance reviews, Cost Accounting Standards compliance audits of contractors, forward pricing proposal audits, Termination Cost and Delay Claims Equitable Adjustment Audits, Provisional Billing Rates reviews, internal controls assessments, Pre-award and Accounting Systems Reviews of contractors; and many others. She is experienced in the application of the FAR, 2CFR 200, AICPA technical pronouncements, and GAGAS standards.

Saidu Bangura, Senior Auditor: Mr. Bangura has over twelve years of auditing and accounting experience, including 9 years working with Baker Tilly and Big 4 accounting firm of KPMG. He has knowledge and experience in accounting, risk assurance, and auditing services for non-profit organizations, financial institutions, and service organizations. He has performed accounting and auditing engagements of various organizations, in accordance with International Financial Reporting Standards (IFRS), International Public Section Accounting Standards (IPSAS), and International Standards on Auditing (ISA). He is also experienced in the application of GAGAS and AICPA pronouncements, having worked as a senior auditor on the performance audits of telecommunications service providers and beneficiaries, on the financial statement audit of the District of Columbia Government, on performance audits of entities subject the CMS' Open Payments regulations, and others. Mr. Bangura has also worked in the Oil & Gas downstream distribution industry, and on audits of grants provided to organizations to improve broadband in rural US communities.

Mark Barnhouse, Staff Auditor: Mr. Barnhouse is a staff auditor; with experience working on incurred cost submission audits, performance audits, post award accounting systems audits, agreed-upon-procedures audits, and other engagements in the Federal sector. He has a working understanding of the incurred cost submission process and its inter-relationship to the general ledger. He is also experienced in conducting a broad range of test procedures related to incurred cost submissions.

Yihua "Kaya" Xu, Alternate Staff Auditor: Ms. Xu is a staff auditor; with experience working on incurred cost submission audits, performance audits, agreed-upon-procedures audits, and other engagements in the Federal sector. She has a working understanding of the incurred cost submission process and its inter-relationship to the general ledger. She is also experienced in conducting a broad range of test procedures related to incurred cost submissions.

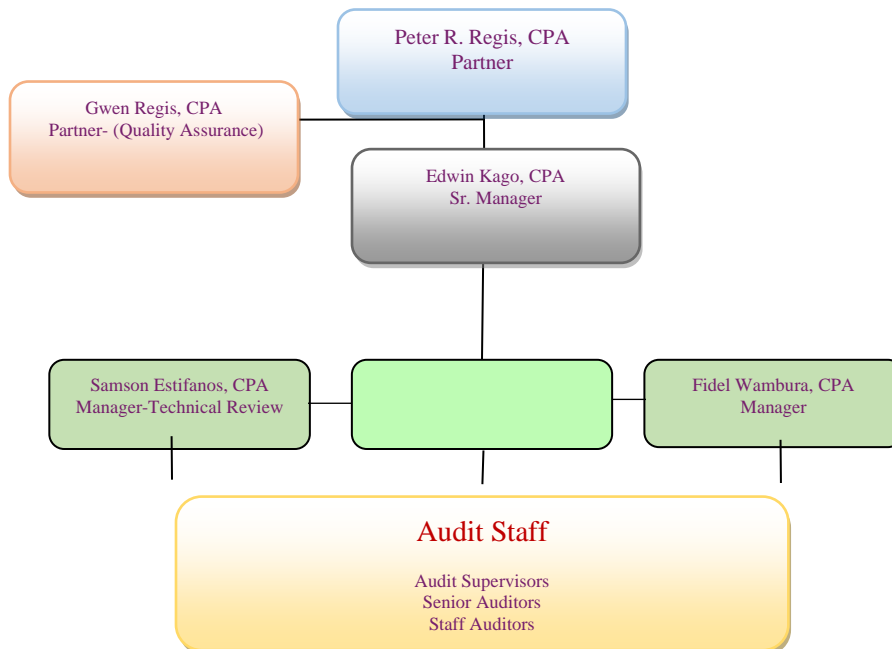
Marwa Elsabie, Staff Auditor: Ms. Elsabie has over two years of auditing and accounting experience, including one year working with the top 10 accounting firm of RSM. She has strong knowledge and experience in accounting and auditing of international organizations, service organizations, partnerships,

and non-profit organizations. These audits were conducted in accordance with U.S. Generally Accepted Auditing Standards (GAAS) and International Financial Reporting Standards (IFRS).

Lingchang (Esther) Kong, Staff Auditor: Ms. Kong has over two years of auditing and consulting experience, including one year working at the international accounting firm of Baker Tilly as an external auditor. She has strong knowledge and experience in accounting and auditing of IPO companies and listed companies, in the manufacturing and technology industries. These audits were conducted in accordance with the U.S. Generally Accepted Auditing Standards (GAAS), International Financial Reporting Standards (IFRS), and Auditing Standards for CPAs in China.

C-2- Project Organization Structure

Below is our project organization structure for conducting this engagement.



D. IDENTIFICATION OF POTENTIAL CONFLICTS OF INTEREST

Regis & Associates, PC and its staff have no conflicts of interest relative to the State of New Jersey, the New Jersey Schools Development Authority, Dobco, Inc., or its subcontractors. We also have no such conflict relative to the employees of any of these organizations.

Appendix- A – Resumes of Key Personnel

Peter R. Regis, CPA

Engagement Partner

				CURRENT POSITION	Engagement Partner
EDUCATION	BBA, Business Administration - Business Administration, University of the District of Columbia, 1984				
PROFESSIONAL CERTIFICATIONS	CPA Certification, District of Columbia, 1985				
RELEVANT SOFTWARE EXPERIENCE	Proficiency in MS Office ProSystem fx Engagement, Data Analytics				
SECURITY CLEARANCE	Secret - Granted by DSS, DOL - Public Trust				
YEARS OF EXPERIENCE	TOTAL: 36	AUDIT: 34	FEDERAL: 29	OFFICE LOCATION	Washington, DC

Engagement Partner on Appalachian Regional Commission (ARC) Grant Performance Audits:

Mr. Regis is currently serving as the engagement partner on these audits for the ARC Office of Inspector General. These grants were awarded to various agencies and organizations to promote economic development in the Appalachian Region. Many of the grants audited relate to infrastructure projects; and include the audits of building renovations, sewer line construction and improvements, road construction and grading, water line construction, and others. The objectives of these audits are to determine whether expenditures for specific programs were appropriate and properly allocated, allowable, reasonable; made in accordance with the applicable provisions of laws and regulations; conformed to the specific terms of the awards; and whether the performance objectives were achieved. These grants are funded from Federal and non-federal sources. These engagements are being conducted in accordance with *Generally Accepted Government Auditing Standards*; the provisions of the grant agreements; applicable Office of Management and Budget (OMB) Circulars; Title 2 CFR Part 200; and AICPA pronouncements. As the partner on this engagement, Mr. Regis was responsible for overall technical direction and quality assurance, reviewing deliverables and audit reports, and client relationship management.

Engagement Partner on U.S. Department of the Interior, Bureau of Indian Affairs (BIA) - Construction Grant and Contract Audits: Mr. Regis has served as the partner on numerous construction grant and contract audits throughout the US, for BIA. The principal purpose of these audits was to assist BIA in ensuring that funds awarded to Indian tribes for construction projects were properly expended in accordance with Federal Acquisition Regulations (FAR), OMB guidance, and other requirements. These audits were conducted in accordance with *Generally Accepted Government Auditing Standards*, AICPA pronouncements, and the provisions of agreements. As the partner on this engagement, he was responsible for overall technical direction and quality assurance, reviewing deliverables and audit reports, and client relationship management. His work resulted in the identification of numerous findings and recommendations designed to identify risks, improve performance, and determine the propriety of funds expended.

Engagement Partner on a CARES Act Performance Audit of the US Department of Labor's (DOL) Short-Time Compensation (STC) Program for the DOL Office of Inspector General: Mr. Regis recently served as the engagement partner on this performance audit, to assess DOL's and ten State Workforce Agencies' compliance with the Program and use of funds requirements, pursuant to the provisions of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As the partner on this engagement, he was responsible for overall technical direction and quality assurance,

reviewing deliverables and audit reports, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the provisions of the CARES Act. This audit resulted in the issuance of an audit report detailing findings and conclusions, relative to compliance with the program and CARES Act requirements.

Engagement Partner on a CARES Act Performance Audit of the US Department of Labor's (DOL) Mixed Earners Unemployment Compensation (MEUC) Program for the DOL-Office of Inspector General: Mr. Regis served on this engagement, the objective of which was to assess DOL's and six State Workforce Agencies' implementation of the MEUC program for the benefit of unemployed individuals; and to meet the Program intent of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As the partner on this engagement, he was responsible for overall technical direction and quality assurance, reviewing deliverables and audit reports, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the provisions of the CARES Act. This audit resulted in the issuance of an audit report detailing findings and conclusions, relative to compliance with the program and CARES Act requirements.

Engagement Partner on Several Open Payments Program Performance Audits for CMS: The Open Payments Program is a national disclosure program that promotes a more transparent health care system. The program is authorized under C.F.R. Title 42 and is administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients like physicians and teaching hospitals. Mr. Regis has served as the engagement partner on the development of a comprehensive audit program and audit plan to conduct audits of covered Manufacturers and Group Purchase Organizations, nationwide. He has also served in a similar capacity on the audits of 10 of these organizations, nationwide. These audits were conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the provisions of CFR Title 42. As the engagement partner, Mr. Regis oversaw the audit strategy, set technical direction, managed client relationships, assisted with quality assurance, and prepared audit reports. These audits have resulted in the issuance of audit reports that address the status of each organization's compliance with the provisions of the Open Payments Program.

Engagement Partner on the Performance Audit of the US Department of Labor's (DOL) and States' Efforts under the CARES Act, to Address Potentially Fraudulent Claims Submitted by Claimants with Suspicious Email Accounts: The CARES Act (P.L. 116-136), the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act, were enacted to provide certain Unemployment Insurance Benefits to unemployed Americans during the COVID-19 pandemic. Mr. Regis served as the engagement partner on this performance audit with the DOL-Office of Inspector General to assess DOL's and 10 sampled states' efforts to address potentially fraudulent unemployment insurance (UI) claims submitted by claimants with suspicious email accounts, as previously identified by the OIG. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$2.02B; and consisted of 276,194 suspicious email accounts, which were used to submit 1,579,925 claims across fifty-three states and territories. As the partner on this engagement, he was responsible for overall technical direction and quality assurance, reviewing deliverables and audit reports, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the provisions of the CARES Act. This audit resulted in the issuance of an audit report detailing findings and conclusions, relative to compliance with the program and CARES Act requirements.

Engagement Partner on a Performance Audit of the US Department of Labor's (DOL) and States' Efforts under the CARES Act, to Address Potentially Fraudulent Unemployment Insurance (UI) Claims Submitted by Claimants, who Used the Social Security Numbers of Federal Prisoners:

The CARES Act (P.L. 116-136), the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act, were enacted to provide certain Unemployment Insurance Benefits to unemployed Americans during the COVID-19 pandemic. Mr. Regis served as the engagement partner on this performance audit with the DOL-Office of Inspector General to assess DOL's and 10 sampled states' efforts to address potentially fraudulent unemployment insurance (UI) claims submitted by claimants, who used the Social Security Numbers of Federal Prisoners, as previously identified by the OIG. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$98M; and consisted of 46,989 claims submitted by 13,446 claimants, across fifty-three states and territories. As the partner on this engagement, he was responsible for overall technical direction and quality assurance, reviewing deliverables and audit reports, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the provisions of the CARES Act. This audit resulted in the issuance of an audit report detailing findings and conclusions, relative to compliance with the program and CARES Act requirements.

Engagement Partner on the Performance Audit of the US Department of Labor's (DOL) and State's Efforts Under the CARES Act to Address Potentially Fraudulent Unemployment Insurance (UI) Claims Submitted by Multi-state Claimants:

The CARES Act (P.L. 116-136), the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act were enacted to provide certain Unemployment Insurance Benefits to unemployed Americans during the COVID-19 pandemic. Mr. Regis served as the engagement partner on this performance audit with the DOL-Office of Inspector General to assess DOL's and 10 sampled states' efforts to address potentially fraudulent unemployment insurance (UI) Claims submitted by multi-state claimants; as previously identified by the OIG. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$3.5B; and consisted of 226,829 social security numbers, submitted by 1,466,457 claimants, across fifty-four states. As the partner on this engagement, he was responsible for overall technical direction and quality assurance, reviewing deliverables and audit reports, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the provisions of the CARES Act. This audit resulted in the issuance of an audit report detailing findings and conclusions, relative to compliance with the program and CARES Act requirements.

Engagement Partner on 31 Performance Audits of Universal Service Administrative Fund E-Rate Beneficiaries and Service Providers:

Mr. Regis has served as the engagement partner on fifteen performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and service providers participating in the FCC's E-Rate Program. The objective of these engagements was to determine whether beneficiaries and service providers were compliant with select rules and regulations of the E-Rate Program. These audits were conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the specific provisions of the E-Rate Program. As the partner on this engagement, he was responsible for overall client relationship management, technical direction, and the final review of all reports.

Engagement Partner on an Audit of CARES Act Improper Payments: The CARES Act (P.L. 116-136), which expanded UI benefits under the CARES Act, required the Employment and Training Administration (ETA) to implement major changes to the existing UI system; including establishing six new programs, each with the intent of providing expanded UI benefits to workers, who were unable to work as a direct result of the COVID-19 pandemic, including nontraditional claimants. Mr. Regis recently served as the engagement partner on an engagement for the US Department of Labor-Office of Inspector General. The engagement

was to conduct a performance audit of DOL's, State Workforce Agencies', and six states' efforts in detecting, preventing, and recovering Unemployment Insurance improper payments under the Cares Act and the Continued Assistance Act. This audit was conducted in accordance with attestation standards established by the AICPA and GAGAS, the provisions of the CARES Act, and the Continued Assistance Act. As the engagement partner, Mr. Regis was responsible for technical oversight of the audit, client relationship management, and communication.

Engagement Partner on a Performance Audit of an Eligible Telecommunications Carrier (ETC) Operating under the Universal Service Fund (USF) Lifeline Program, for the FCC-OIG: Mr. Regis recently served as the engagement partner on this engagement, of which the objectives were to: Determine whether the ETC's FCC Form 497 and Lifeline claims filings contained information that was fairly stated, in conformance with the Lifeline Program's guidelines and the provisions of Title 47 of the Code of Federal Regulations; Assessing whether the ETC was materially compliant with all applicable program guidelines; Evaluating whether the ETC had designed and implemented adequate and effective internal controls, to ensure its compliance with program guidelines and the provisions of Title 47; and Communicating the results of the audit to the FCC-OIG, in the form of a performance audit report presenting findings, conclusions, and recommendations.

Engagement Partner on an Audit of the Universal Service Fund, High-Cost Program, Connect America Fund, Phase I, for the FCC-OIG: Mr. Regis has served as the Quality Assurance Partner on an engagement with the FCC, to conduct an audit of Phase I incremental support of the Connect America Fund (CAF), which was established as a key reform tool under Transformation Order No. FCC-11-161. The audit was conducted in accordance with GAGAS; AICPA Standards; OMB Circulars; The Telecommunications Act of 1996; The Communications Act of 1934, as amended; FCC 11-161; and other FCC Rulemaking pronouncements. The objectives of the audit were to: assess the efficacy of internal controls, designed and implemented by the FCC and the Universal Service Administrative Company (USAC), to ensure that incremental support disbursements to eligible telecommunications companies (Carriers) were appropriate, as to amounts and purpose; and to examine a sample of incremental support to 72 Carriers, to determine whether the Carriers provided broadband service, as mandated.

Engagement Partner on a Performance Audit of the Universal Service Fund, High-Cost Program, Transformation Order Mandates, for the FCC-OIG: Mr. Regis has served as the engagement partner on a performance audit engagement of the implementation of the Universal Service Fund, High-Cost Program, Transformation Mandates (Transformation Order No. FCC 11-161), for the FCC-OIG. The audit was conducted in accordance with GAGAS, AICPA Standards, and OMB Circulars; The Telecommunications Act of 1996; The Communications Act of 1934, as amended; FCC 11-161; and other FCC Rulemaking pronouncements. The objectives of the audit were to: compile a list of all the mandates embodied in the Transformation Order; identify the entity responsible for implementing each mandate; evaluate whether the mandates were being implemented in accordance with FCC rules; and determine whether the implementation could be better achieved to guard the Fund from fraud, waste, and abuse.

Defense Contract Management Agency (DCMA) - OMB Circular A-123, Appendix B, Audit of Government Purchase Card Program: The General Services Administration (GSA) administers the Federal government's credit card program. Established on March 27, 2000, by the Department of Defense, DCMA is assigned responsibility for worldwide contract management; and has, approximately, 10,000 employees stationed throughout the world. Mr. Regis served as the Engagement Partner on an OMB Circular A-123, Appendix B audit engagement of DCMA's Government Purchase Card Program. As the overall Partner on this engagement, Mr. Regis' responsibilities included client relationship management,

engagement strategy management, overall technical direction, and high-level partner reviews of all work products. The audit resulted in the issuance of a comprehensive report detailing findings noted, and a broad range of recommendations that were designed to remediate the noted deficiencies.

Broadcasting Board of Governors (BBG) - OMB Circular A-123, Appendix B, Audit of Government Purchase Card Program: Mr. Regis recently served as the Engagement Partner on an OMB Circular A-123, Appendix B, audit engagement of BBG's Government Purchase Card Program. The audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS); GAO-01-1008G, Internal Control Management and Evaluation Tool; GAO-04-87G, Purchase Card Audit Guide; President's Council on Integrity and Efficiency, *A Practical Guide for Reviewing Government Purchase Card Programs*; and specific BBG purchase card guidelines. As overall manager on this engagement, Mr. Regis' responsibilities included overall client relationship management, resource management, overall technical direction, and assisting in the preparation of the audit report. The audit resulted in the issuance of a comprehensive report, detailing findings noted; and a broad range of recommendations that were designed to remediate the noted deficiencies.

Engagement Partner on Three CARES Act Agreed-Upon Procedures Audits, for the DOL - OIG: Mr. Regis recently served as the engagement partner on three agreed-upon-procedures audits for the US Department of Labor - Office of Inspector General; to audit the PUA, PEUC, and FPUC Programs, as implemented by the states of Texas, North Carolina, and Georgia. The scope of these engagements included compiling and assessing data related to each state's implementation of the unemployment insurance (UI) provisions of the CARES Act. These engagements were conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, Generally Accepted Government Auditing Standards, and the provisions of the CARES Act. The scope of these engagements covered CARES Act-related unemployment benefits for the period of March 27, 2020; through July 31, 2020. As the overall engagement manager, Mr. Regis was responsible for overall engagement administration and quality assurance, technical oversight, and relationship management. Each engagement resulted in the issuance of an agreed-upon procedures report identifying noted findings resulting from our applied procedures.

Partner on an Examination of GSA SmartPay 2 DoD Travel Card Refunds: The Defense Travel Management Office (DTMO) administers the DoD Travel Program, under a GSA SmartPay 2 contract with a commercial bank. Under the GSA SmartPay 2 Program, the commercial bank had processed approximately, 35.242 million transactions; with an approximate value of \$37.066B. Mr. Regis served as the Partner on an examination engagement of the GSA SmartPay 2 Travel Card Refund process, performed by the commercial bank during the period from November 28, 2008; to September 30, 2014. The primary objective of this examination engagement was to validate the revised travel card refund calculation methodology used by the commercial bank, and identify any potential miscalculations of refunds due to/from DoD or the commercial bank. This engagement also included assessing the significant internal controls associated with the administration of refunds by the commercial bank. This examination was conducted in accordance with GAGAS; SSAE 18; AICPA Guidelines; OMB Circular A-123, Appendix B; the SmartPay 2 GSA Refund Review Guide used by the commercial bank, Master Contract and task order; and the Government Charge Card Abuse Prevention Act of 2012.

Engagement Partner on Defense Contract Management Agency (DCMA), Audit of the Defense Travel Service Program: DCMA, which has nearly 10,000 employees stationed throughout the world, uses the Defense Travel Service (DTS) to process its travel functions. In 2006, DCMA converted completely from paper travel orders to the DoD, to fully automated, electronic DTS; and had 38,531 vouchers

processed. Mr. Regis served as the engagement partner on the independent audit of DCMA's travel management system. The objective of the audit was to evaluate the adequacy of travel business processes, including compliance with various provisions of laws and regulations. The audit was conducted in accordance with *Government Auditing Standards*, AICPA standards, and various other DoD and DCMA related travel guidelines. As Partner, Mr. Regis' responsibilities included overall planning, client relationship management, technical direction, and report preparation.

Engagement Partner on US Department of Energy – Weatherization Assistance Grant Program

Audits: Mr. Regis has served as the Engagement Partner on an engagement with the Department of Energy, Office of Inspector General, to perform several agreed-upon procedures audits related to American Recovery and Reinvestment Act of 2009 (Recovery Act) funds awarded to States and US Territories. The objective of these audits was to assess grantees' accounting for, and use of, Weatherization Assistance Program funds, and State Energy Program funds provided by the Recovery Act. The audits were conducted in accordance with agreed-upon-procedures attestation engagement standards contained in Generally Accepted Government Auditing Standards (GAGAS); applicable sections of the OIG's Audit Manual; and the Inspector General Act of 1978. Criteria for the audits included the: Recovery and Reinvestment Act of 2009; Energy Policy Act of 2005; Energy Independence and Security Act of 2007; Weatherization Program Notices and State Energy Program Guidance, issued by the Office of Energy Efficiency and Renewable Energy's Office of Weatherization and Intergovernmental Programs; and the terms of the grant. Mr. Regis' responsibilities as Engagement Partner, included resource oversight, client relationship management, overall technical direction, and deliverables management.

Other relevant experience includes:

- Partner on numerous procurement systems audits for NASA, DOT, and the Volpe Center

Gwendolyn J. Regis, CPA

Partner (Quality Assurance)

				CURRENT POSITION	Partner (Quality Assurance)
EDUCATION	BBA, Bachelor of Business Administration, Accounting; University of the District of Columbia, 1985				
PROFESSIONAL CERTIFICATIONS	Certified Public Accountant, District of Columbia, 1986				
RELEVANT SOFTWARE EXPERIENCE	Proficiency in MS Office ProSystem fx Engagement QuickBooks				
SECURITY CLEARANCE	Secret, Granted by DSS; DOL - Public Trust				
YEARS OF EXPERIENCE	TOTAL: 34	AUDIT: 30	FEDERAL: 25	OFFICE LOCATION	Washington, DC

Quality Assurance Partner on Performance Audit of CARES Act Improper Payments: Ms. Regis recently served as the Quality Assurance Partner on an engagement for the US Department of Labor-Office of Inspector General. The engagement was to conduct a performance audit of DOL's, State Workforce Agencies', and ten states' efforts in detecting, preventing, and recovering Unemployment Insurance improper payments, under the Cares Act and the Continued Assistance Act. This audit was conducted in accordance with attestation standards established by the AICPA, GAGAS, the provisions of the CARES Act, and the Continued Assistance Act. As the Quality Assurance Partner, Ms. Regis was responsible for the quality assurance review of all aspects of the engagement, including substantial involvement in the report preparation process.

Quality Assurance Partner on 31 Performance Audits of Universal Service Administrative Fund E-Rate Beneficiaries and Service Providers: Ms. Regis has served as the quality assurance partner on fifteen performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and service providers participating in the FCC's E-Rate Program. The objective of these engagements was to determine whether beneficiaries and service providers were compliant with select rules and regulations of the E-Rate Program. These audits were conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the specific provisions of the E-Rate Program. Ms. Regis' responsibilities, as Quality Assurance Partner, included assisting in the audit strategy, providing technical input on major engagement decisions, determining the form and content of reports, and serving as the technical writer and editor.

Quality Assurance Partner on a CARES Act Performance Audit of the US Department of Labor's (DOL) Short-Time Compensation (STC) Program for the DOL Office of Inspector General: Ms. Regis recently served as the quality assurance partner on this performance audit to assess DOL's and ten State Workforce Agencies' compliance with the Program and use of funds requirements, pursuant to the provisions of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As the quality assurance partner, Ms. Regis was responsible for the quality assurance review of all aspects of the engagement, including substantial involvement in the report preparation process. This audit was conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the provisions of the CARES Act. This audit resulted in the issuance of an audit report detailing findings and conclusions, relative to compliance with the program and CARES Act requirements.

Quality Assurance Partner on Appalachian Regional Commission (ARC) Grant Performance Audits: Ms. Regis is currently serving as the engagement partner on these audits for the ARC Office of

Inspector General. These grants were awarded to various agencies and organizations to promote economic development in the Appalachian Region. Many of the grants audited relate to infrastructure projects; and include the audits of building renovations, sewer line construction and improvements, road construction and grading, water line construction, and others. The objectives of these audits are to determine whether expenditures for specific programs were appropriate and properly allocated, allowable, reasonable; made in accordance with the applicable provisions of laws and regulations; conformed to the specific terms of the awards; and whether the performance objectives were achieved. These grants are funded from Federal and non-federal sources. These engagements are being conducted in accordance with *Generally Accepted Government Auditing Standards*; the provisions of the grant agreements; applicable Office of Management and Budget (OMB) Circulars; Title 2 CFR Part 200; and AICPA pronouncements. As the quality assurance partner, Ms. Regis was responsible for the quality assurance review of all aspects of the engagement, including substantial involvement in the report preparation process.

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Quality Assurance Partner on 10 Open Payments Program Performance Audits for CMS: The Open Payments Program is a national disclosure program that promotes a more transparent health care system. The program is authorized under C.F.R. Title 42 and is administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients like physicians and teaching hospitals. Ms. Regis has served as the engagement partner on the development of a comprehensive audit program and audit plan to conduct audits of covered Manufacturers and Group Purchase Organizations, nationwide. She has also served in a similar capacity on the audits of 10 of these organizations, nationwide. These audits were conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the provisions of CFR Title 42. As the quality assurance partner, Ms. Regis was responsible for the quality assurance review of all aspects of the engagement, including substantial involvement in the report preparation process. These audits have resulted in the issuance of audit reports that address the status of each organization's compliance with the provisions of the Open Payments Program.

Quality Assurance Partner on U.S. Department of the Interior, Bureau of Indian Affairs (BIA) - Construction Grant and Contract Audits: Ms. Regis has served as the quality assurance partner on numerous construction grant and contract audits throughout the US, for BIA. The principal purpose of these audits was to assist BIA in ensuring that funds awarded to Indian tribes for construction projects were properly expended in accordance with Federal Acquisition Regulations (FAR), OMB guidance, and other requirements. These audits were conducted in accordance with *Generally Accepted Government Auditing Standards*, AICPA pronouncements, and the provisions of agreements. As the quality assurance partner, Ms. Regis was responsible for the quality assurance review of all aspects of the engagement, including

substantial involvement in the report preparation process. Her work resulted in the identification of numerous findings and recommendations designed to identify risks, improve performance, and determine the propriety of funds expended.

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Quality Assurance Partner on the Performance Audit of the US Department of Labor's (DOL) and State's Efforts Under the CARES Act to Address Potentially Fraudulent Unemployment Insurance (UI) Claims Submitted by Multi-state Claimants: The CARES Act (P.L. 116-136), the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act, were enacted to provide certain Unemployment Insurance Benefits to unemployed Americans during the COVID 19 pandemic. Ms. Regis served as the engagement partner on this performance audit with the DOL-Office of Inspector General to assess DOL's and 10 sampled states' efforts to address potentially fraudulent unemployment insurance (UI) Claims submitted by multi-state claimants; as previously identified by the OIG. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$3.5B; and consisted of 226,829 social security numbers, submitted by 1,466,457 claimants, across fifty-four states. As

the quality assurance partner, Ms. Regis was responsible for the quality assurance review of all aspects of the engagement, including substantial involvement in the report preparation process. This audit was conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the provisions of the CARES Act. This audit resulted in the issuance of an audit report detailing findings and conclusions, relative to compliance with the program and CARES Act requirements.

Quality Assurance Partner on a Performance Audit of an Eligible Telecommunications Carrier (ETC) operating under the Universal Service Fund (USF) Lifeline Program, for the FCC-OIG. Ms. Regis served as the quality assurance partner on this engagement, of which the objectives were to: Determine whether the ETC's FCC Form 497 and Lifeline claims filings contained information that was fairly stated, in conformance with the Lifeline Program's guidelines and the provisions of Title 47 of the Code of Federal Regulations; Assessing whether the ETC was materially compliant with all applicable program guidelines; Evaluating whether the ETC had designed and implemented adequate and effective internal controls, to ensure its compliance with program guidelines and the provisions of Title 47; and Communicating the results of the audit, to the FCC-OIG, in the form of a performance audit report presenting findings, conclusions, and recommendations.

Quality Assurance Partner on an Audit of the Universal Service Fund, High-Cost Program Connect America Fund, Phase I, for the FCC-OIG: Ms. Regis has served as the Quality Assurance Partner on an engagement with the FCC, to conduct an audit of Phase I incremental support of the Connect America Fund (CAF), which was established as a key reform tool under Transformation Order No. FCC-11-161. The audit was conducted in accordance with GAGAS; AICPA Standards; OMB Circulars; The Telecommunications Act of 1996; The Communications Act of 1934, as amended; FCC 11-161; and other FCC Rulemaking pronouncements. The objectives of the audit were to: assess the efficacy of internal controls, designed and implemented by the FCC and the Universal Service Administrative Company (USAC) to make certain that incremental support disbursements to eligible telecommunications companies (Carriers) were appropriate, as to amounts and purpose; and examine a sample of incremental support to 72 Carriers to determine whether the Carriers provided broadband service, as mandated.

Quality Assurance Partner on a Performance Audit of the Universal Service Fund, High-Cost Program, Transformation Order Mandates, for the FCC-OIG: Ms. Regis has served as the Quality Assurance Partner on a performance audit engagement of the implementation of the Universal Service Fund, High-Cost Program Transformation Mandates (Transformation Order No. FCC 11-161), for the FCC. The audit was conducted in accordance with GAGAS, AICPA Standards, OMB Circulars; The Telecommunications Act of 1996; The Communications Act of 1934, as amended; FCC 11-161; and other FCC Rulemaking pronouncements. The objectives of the audit were to: compile a list of all the mandates embodied in the Transformation Order; identify the entity responsible for implementing each mandate; evaluate whether the mandates were being implemented in accordance with FCC rules; and determine whether the implementation could be better achieved; to guard the Fund from fraud, waste, and abuse.

Quality Assurance Partner on Three CARES Act Agreed-Upon Procedures Audits, for the DOL-OIG: Ms. Regis recently served as the Quality Assurance Partner on three agreed-upon-procedures audits, for the US Department of Labor - Office of Inspector General; to audit the PUA, PEUC, and FPUC Programs, as implemented by the states of Texas, North Carolina, and Georgia. The scope of these engagements included compiling and assessing data related to each state's implementation of the unemployment insurance (UI) provisions of the CARES Act. These engagements were conducted in accordance with attestation standards established by the AICPA, *Generally Accepted Government Auditing Standards*, and the provisions of the CARES Act. The scope of these engagements covered CARES Act-

related unemployment benefits for the period of March 27, 2020; through July 31, 2020. Ms. Regis' responsibilities, as Quality Assurance Partner, included assisting in the audit strategy, providing technical input on major engagement decisions, determining the form and content of reports, ensuring that all conclusions reached were supported by work performed, and serving as the technical writer and editor. Each engagement resulted in the issuance of an agreed-upon procedures report identifying noted findings resulting from our applied procedures.

Quality Assurance Partner on an Examination of GSA SmartPay 2 DoD Travel Card Refunds:

The Defense Travel Management Office (DTMO) administers the DoD Travel Program, under a GSA SmartPay 2 contract with a commercial bank. Ms. Regis served as the Quality Assurance Partner on an examination engagement of the GSA SmartPay 2 Travel Card Refund process, performed by the commercial bank from November 28, 2008; through September 30, 2014. The primary objective of this examination engagement was to validate the revised travel card refund calculation methodology used by the commercial bank, and identify any potential miscalculations of refunds due to/from DoD or the commercial bank. This engagement also included assessing the significant internal controls associated with the administration of refunds by the commercial bank. This examination was conducted in accordance with GAGAS; SSAE 18; AICPA Guidelines; OMB Circular A-123, Appendix B; the SmartPay 2 GSA Refund Review Guide used by the commercial bank, Master Contract and task order; and the Government Charge Card Abuse Prevention Act of 2012.

Some of her other relevant experience includes serving as:

- Quality Assurance Partner on financial audits of Organizational Representative Payees, for the Social Security Administration.

Edwin K. Kago, CPA

Senior Audit Manager

		CURRENT POSITION	Senior Audit Manager
EDUCATION	MBA, Master of Business Administration & Master of Professional Accountancy, Louisiana Tech University, 2009 Bachelor of Commerce, University of Nairobi, Kenya, 2005		
PROFESSIONAL CERTIFICATIONS	CPA Certification, Louisiana, 2013		
RELEVANT SOFTWARE EXPERIENCE	Proficiency in MS Office ProSystem fx Engagement Data Analytics, using CaseWare IDEA		
SECURITY CLEARANCE	Secret - Granted by DSS Public Trust; Granted by HHS and DOL		
YEARS OF EXPERIENCE	TOTAL: 12 AUDIT: 12	FEDERAL: 10	OFFICE LOCATION Washington, DC

Senior Audit Manager on the Audit of CARES Act Improper Payments: Mr. Kago recently served as the senior audit manager on an engagement for the US Department of Labor-Office of Inspector General. The engagement was to conduct a performance audit of DOL's, State Workforce Agencies', and six states' efforts in detecting, preventing, and recovering Unemployment Insurance improper payments, under the Cares Act and the Continued Assistance Act. This audit was conducted in accordance with attestation standards established by the AICPA, GAGAS, the provisions of the CARES Act, and the Continued Assistance Act. As the senior audit manager, Mr. Kago was responsible for overall engagement planning, overall technical oversight of other managers, client relationship management, and communication.

Senior Audit Manager on Appalachian Regional Commission (ARC) Grant Performance Audits: Mr. Kago is currently serving as the senior audit manager on these audits for the ARC Office of Inspector General. These grants were awarded to various agencies and organizations to promote economic development in the Appalachian Region. Many of the grants audited relate to infrastructure projects and include the audits of building renovations, sewer line construction and improvements, road construction and grading, water line construction, and others. The objectives of these audits are to determine whether expenditures for specific programs were appropriate and properly allocated, allowable, reasonable; made in accordance with the applicable provisions of laws and regulations; conformed to the specific terms of the awards; and whether the performance objectives were achieved. These grants are funded from Federal and non-federal sources. These engagements are being conducted in accordance with *Generally Accepted Government Auditing Standards*; the provisions of the grant agreements; applicable Office of Management and Budget (OMB) Circulars; Title 2 CFR Part 200; and AICPA pronouncements. As the senior manager, he provides technical direction to each audit, conducts quality assurance reviews, and oversees the audit report review process.

Senior Audit Manager on Three CARES Act Agreed-Upon Procedures Audits for the DOL-OIG: Mr. Kago recently served as the senior audit manager on three agreed-upon-procedures audits for the US Department of Labor - Office of Inspector General; to audit the PUA, PEUC, and FPUC Programs, as implemented by the states of Texas, North Carolina, and Georgia. The scope of these engagements included compiling and assessing data related to each state's implementation of the unemployment insurance (UI) provisions of the CARES Act. These engagements were conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, Generally Accepted Government Auditing Standards, and the provisions of the CARES Act. The scope of these

engagements covered CARES Act-related unemployment benefits for the period of March 27, 2020; through July 31, 2020. As the senior audit manager, Mr. Kago was responsible for overall engagement planning, overall technical oversight of other managers, client relationship management, and communication. Each engagement resulted in the issuance of an agreed-upon procedures report identifying noted findings resulting from the applied procedures.

Senior Audit Manager on a Performance Audit of an Eligible Telecommunications Carrier (ETC), operating under the Universal Service Fund (USF) Lifeline Program, for the FCC-OIG: Mr. Kago recently served as the audit manager on this engagement, of which the objectives were to: Determine whether the ETC's FCC Form 497 and Lifeline claim filings contained information that was fairly stated, in conformance to the Lifeline Program's guidelines and the provisions of Title 47 of the Code of Federal Regulations; Assessing whether the ETC was materially compliant with all applicable program guidelines; Evaluating whether the ETC had designed and implemented adequate and effective internal controls, to ensure its compliance with program guidelines and the provisions of Title 47; and Communicating the results of the audit, in the form of a performance audit report presenting findings, conclusions, and recommendations, to the FCC-OIG. As the senior audit manager, Mr. Kago was responsible for engagement planning, fieldwork, reporting, client relationship management, overall staff supervision, and communication.

Audit Manager on a Performance Audit of the US Department of Labor's (DOL) and States' Efforts under the CARES Act, to Address Potentially Fraudulent Claims Submitted by Claimants with Suspicious Email Accounts: The CARES Act (P.L. 116-136), the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act, were enacted to provide certain Unemployment Insurance Benefits to unemployed Americans during the COVID-19 pandemic. Mr. Kago served as the senior audit manager on a performance audit with the DOL-Office of Inspector General to assess DOL and 10 sampled states efforts to address potentially fraudulent unemployment insurance (UI) claims submitted by claimants with suspicious email accounts, as previously identified by the OIG. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$2.02B; and consisted of 276,194 suspicious email accounts, which were used to submit 1,579,925 claims across fifty-three states and territories. As the manager on this engagement, he was responsible for technical direction, staff oversight, preparing deliverables and the audit report, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards*, the GAO Financial Audit Manual, and AICPA pronouncements. The audit resulted in the issuance of a performance audit report addressing noted findings and conclusions related to the objectives of the engagement.

Senior Audit Manager on Several Open Payments Program Performance Audits, for CMS: The Open Payments Program is a national disclosure program that promotes a more transparent health care system. The program is authorized under C.F.R. Title 42 and is administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients like physicians and teaching hospitals. Mr. Kago has served as a senior audit manager on the development of a comprehensive audit program and audit plan to conduct audits of covered Manufacturers and Group Purchase Organizations, nationwide. He has also served in a similar capacity on the audits of 10 of these organizations. These audits were conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the provisions of CFR Title 42. As a senior audit manager on these audits, Mr. Kago oversaw the audit strategy, set technical direction, managed client relationships, assisted with quality assurance, and prepared audit

reports. These audits have resulted in the issuance of audit reports that address the status of each organization's compliance with the provisions of the Open Payments Program.

Senior Audit Manager on a CARES Act Performance Audit of the US Department of Labor's (DOL) Short-Time Compensation (STC) Program: Mr. Kago is currently serving as the senior manager on this performance audit, to assess DOL's and ten State Workforce Agencies' compliance with the Program and use of funds requirements, pursuant to the provisions of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As the senior manager on this engagement, he is responsible for overall technical direction, staff oversight, preparing deliverables, and client relationship management. This audit is being conducted in accordance with *Government Auditing Standards* and AICPA requirements.

Senior Audit Manager on 31 Performance Audits of Universal Service Administrative Fund E-Rate Beneficiaries and Service Providers: Mr. Kago has served as the senior manager on fifteen performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and service providers participating in the FCC's E-Rate Program. The objective of these engagements was to determine whether beneficiaries and service providers were compliant with select rules and regulations of the E-Rate Program. These audits were conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the specific provisions of the E-Rate Program. Mr. Kago's responsibilities, as the senior manager, included overseeing the audit strategy, providing technical input on major engagement decisions, report preparation or review, and staff oversight.

Senior Audit Manager on Incurred Cost Submission Audits of Contractors, for the National Aeronautics and Space Administration: Mr. Kago has performed numerous incurred cost submission audits of contractors for NASA, with an ADV in excess of \$6B. The scope of the audits included conducting planning, fieldwork, and reporting, relative to contractors' compliance with government regulations; determining the allowability of cost incurred; and the development of indirect rates. The audits were conducted in accordance with GAGAS, Federal Acquisition Regulation (FAR), the provisions of the DCAA CAM, Defense FAR Supplement (DFARS), the NASA FAR Supplement, AICPA SSAE 18, and the specific provisions of the contracts.

Senior Audit Manager on a CARES Act Performance Audit of the US Department of Labor (DOL) Mixed Earners Unemployment Compensation (MEUC) Program: Mr. Kago has served on this engagement, the objective of which was to assess DOL's and six State Workforce Agencies' implementation of the MEUC program for the benefit of unemployed individuals, and to meet the Program intent of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As the senior manager on this engagement, he oversaw technical direction, staff oversight, and client meetings; prepared deliverables; and client relationship management. This audit was conducted in accordance with *Government Auditing Standards* and AICPA requirements.

Lead Senior Auditor on the National Railroad Passenger Corporation's (Amtrak) Retirement Plans: Mr. Kago was the lead senior auditor on the National Railroad Passenger Corporation's (Amtrak) retirement plans audit for three years. His primary responsibility was the testing of benefit payments, which included recomputing the benefit payments for the pension plan participants, against the benefit determination formula in the Plan documents. Mr. Kago's findings were provided to management, via management letters, that resulted in overall improvement over the control environment of the retirement plans. He was also responsible for coordinating the non-discrimination testing required by ERISA; and reviewing the U.S. Department of Labor's (DOL) Form 5500, Annual Return/Report of Employee Benefit

Plan, to verify that DOL-required supplemental schedules attached to the Form 5500 were presented fairly in all material respects, in relation to the financial statements taken as a whole. He was also responsible for completing GAAP disclosure checklists, to ensure that the financial reports contained all the required disclosures.

Senior Auditor on the Pension Plan Audit of Lockheed Martin: Mr. Kago served as one of the seniors responsible for performing the procedures for the 401(K) plans and pension plans for Lockheed Martin's retirement plans and their Master Trusts. One of Mr. Kago's key responsibilities included reviewing the accuracy of the U.S. Securities and Exchange Commission (SEC) Forms 11-K, before their filing; and overseeing benefit payments testing. He was also responsible for the review of Service Organization Control (SOC) reports for multiple service providers for the various plans, for the purpose of ensuring that their controls were operating effectively; as well as to determine whether Lockheed had adequate user entity controls related to the functions supported by the service providers.

His other relevant experience includes:

- Audit senior on a financial statement audit of the U.S. DHHS, in accordance with the CFO Act of 1990
- Sr. Audit Manager on the incurred cost audits of numerous contractors for the Volpe Center, DHS, NHTSA, USDA,
- Sr. Audit Manager on the financial statement audit of the Government of the District of Columbia
- Sr. Audit Manager on the financial statement audit of GinnieMae
- Sr. Audit Manager on the financial statement audit of United Medical Hospital
- Sr. Audit Manager on an Incurred Cost Submission Audit of a large not-for-profit grantee, for the National Highway Traffic Safety Administration
- Sr. Audit Manager on examination of contractors' Disclosure Statements, purchasing systems, accounting systems, and estimating systems; for DHS and DOT.

Fidel Wambura, CPA

Audit Manager

		CURRENT POSITION	Audit Manager
EDUCATION	B.S. Accounting, University of Wisconsin; Whitewater; May 2007 Master of Professional Accountancy, University of Wisconsin; Whitewater, WI; May 2011		
PROFESSIONAL CERTIFICATIONS	Certified Public Accountant (CPA), Washington DC and Wisconsin; April 2013		
RELEVANT SOFTWARE EXPERIENCE	<ul style="list-style-type: none"> Proficiency in MS Office ProSystem fx Engagement, TeamMate (Audit Workpaper Software) Data Analytics, using CaseWare IDEA 		
SECURITY CLEARANCE	Public Trust – Granted by DOL-OIG		
YEARS OF EXPERIENCE	TOTAL: 11	AUDIT: 10	FEDERAL: 8
		Office location	Washington, DC

Audit Manager on a CARES Act Performance Audit of the US Department of Labor's (DOL) Short-Time Compensation (STC) Program: Mr. Wambura is currently serving as a manager on this performance audit to assess DOL's and ten State Workforce Agencies' compliance with the Program and use of funds requirements, pursuant to the provisions of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As the manager on this engagement, he is responsible for technical direction, staff oversight, preparing deliverables, and client relationship management. This audit is being conducted in accordance with *Government Auditing Standards* and AICPA requirements.

Audit Manager on a CARES Act Performance Audit of the US Department of Labor (DOL) Mixed Earners Unemployment Compensation (MEUC) Program: Mr. Wambura has served on this engagement, the objective of which was to assess DOL's and six State Workforce Agencies' implementation of the MEUC program for the benefit of unemployed individuals, and to meet the Program intent of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As the manager on this engagement, he was responsible for technical direction, staff oversight, preparing deliverables, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards* and AICPA requirements.

Audit Manager on Three Open Payments Program Performance Audits, for CMS: The Open Payments Program is a national disclosure program that promotes a more transparent health care system. The program is authorized under C.F.R. Title 42 and is administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients like physicians and teaching hospitals. Mr. Wambura has served as the audit manager on three performance audits of covered Manufacturers and Group Purchase Organizations participating in the Open Payments Program. These audits were conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the provisions of CFR Title 42. As the audit manager on these audits, Mr. Wambura was responsible for developing the audit plan, overseeing fieldwork, client relationship management, conducting quality assurance reviews, and preparing audit reports. These audits have resulted in the issuance of audit reports that address the status of each organization's compliance with the provisions of the Open Payments Program.

Audit Manager on Appalachian Regional Commission (ARC) Grant Performance Audits: Mr. Wambura is currently serving as an audit manager on these audits for the ARC Office of Inspector General. These grants were awarded to various agencies and organizations to promote economic development in the Appalachian Region. Many of the grants audited relate to infrastructure projects; and include the audits of building renovations, sewer line construction and improvements, road construction and grading, water line construction, and others. The objectives of these audits are to determine whether expenditures for specific programs were appropriate and properly allocated, allowable, reasonable; made in accordance with the applicable provisions of laws and regulations; conformed to the specific terms of the awards; and whether the performance objectives were achieved. These grants are funded from Federal and non-federal sources. These engagements are being conducted in accordance with *Generally Accepted Auditing Standards*; the provisions of the grant agreements; applicable Office of Management and Budget (OMB) Circulars; Title 2 CFR Part 200; and AICPA pronouncements.

Audit Manager on the Performance Audit of the US Department of Labor's (DOL) and States' Efforts under the CARES Act, to Address Potentially Fraudulent Unemployment Insurance (UI) Claims Submitted by Claimants, who Used the Social Security Numbers of Federal Prisoners: The CARES Act (P.L. 116-136), the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act were enacted to provide certain Unemployment Insurance Benefits to unemployed Americans during the COVID-19 pandemic. Mr. Wambura served as the audit manager on a performance audit with the DOL-Office of Inspector General to assess DOL's and 10 sampled states' efforts to address potentially fraudulent unemployment insurance (UI) claims submitted by claimants, who used the Social Security Numbers of Federal Prisoners, as previously identified by the OIG. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$98M; and consisted of 46,989 claims submitted by 13,446 claimants, across fifty-three states and territories. As the manager on this engagement, he was responsible for technical direction, staff oversight, preparing deliverables and the audit report, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards*, the GAO Financial Audit Manual, and AICPA pronouncements. The audit resulted in the issuance of a performance audit report addressing noted findings and conclusions related to the objectives of the engagement.

Audit Manager on 15 Performance Audits of Universal Service Administrative Fund E-Rate Beneficiaries and Service Providers: Mr. Wambura has served as an audit manager on fifteen performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and service providers participating in the FCC's E-Rate Program. The objective of these engagements was to determine whether beneficiaries and service providers were compliant with select rules and regulations of the E-Rate Program. These audits were conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the specific provisions of the E-Rate Program. Mr. Wambura's responsibilities as an audit manager included overseeing a cluster of audit engagements, technical direction and staff supervision, and report preparation.

Audit Manager on the District of Columbia Government (DC), Comprehensive Annual Financial Report Audit: Mr. Wambura served as a manager on this audit; and was responsible for the following specific departments: DC Lottery, Housing Trust Fund (HTF), and Washington Convention and Sports Authority. His responsibilities included supervising the engagement, planning the audit, designing testing procedures, fieldwork management, coordination with client, and review of audit deliverables.

Milwaukee County, Wisconsin, Annual Comprehensive audit: Mr. Wambura served as the Audit Manager on the single audit and major programs funded under the CARES Act. These included several

programs under the Provider Relief Fund (CFDA 93.498) and Coronavirus Relief Fund (CFDA 21.019). The audit was conducted in accordance with OMB Uniform Guidance, OMB supplement Addendum addressing the COVID-19 audit guidance, State Single Audit Guide, and the Provider Agency Audit Guide. The specific departments audited were; Clerk of Courts, Child Support, District Attorney's Office, Department of Human Health Services, Section 8 – Housing Choice Voucher Program, Milwaukee County Department of Aging, Department of Administration, Department of Family Care, Sheriff's Department, and Department of Transportation. Mr. Wambura also served as the audit manager on the audit of the comprehensive county-wide indirect cost allocation plan, as part of the annual Comprehensive Annual Financial Audit (CAFR). The county prepares this cost allocation plan to determine the amount of central service costs to be allocated to various county-wide cost center departments.

His other relevant audit experience includes:

- Milwaukee Area Technical College (MATC), Annual Comprehensive Audit
- National Aeronautics and Space Administration, Incurred Cost Submission Audits
- Single Audit of City of Milwaukee
- Milwaukee County Transit System (MCTS), Agreed-Upon-Procedures Engagement
- General Mitchell International Airport - Agreed-Upon Procedures
- Commodity Credit Corporation (CCC), Annual Financial Statement Audit
- General Services Administration (GSA), Annual Financial Statement Audit
- US Department of Labor (DOL), Annual Financial Statement Audit
- Pension Benefit Guarantee Corp. (PBGC) single-employer and multiemployer plans; and special purpose financial statements audit, and Annual Financial Statement Audit
- City of Baltimore, Comprehensive Annual Financial Report (CAFR) Audit

Samson Estifanos, CPA

Audit Manager

		CURRENT POSITION	Audit Manager
EDUCATION	MBA, University of Natal, 2003 Bachelor of Arts, Accounting, University of Asmara, 1999		
PROFESSIONAL CERTIFICATIONS	Association of Chartered Certified Accountants (ACCA), UK Certified Public Accountant - State of Virginia; August 2018		
RELEVANT SOFTWARE EXPERIENCE	Proficiency in MS Office ProSystem fx Engagement Data Analytics, using CaseWare IDEA		
SECURITY CLEARANCE	PUBLIC TRUST; GRANTED BY DOL		
YEARS OF EXPERIENCE	TOTAL: 18	AUDIT: 14	FEDERAL: 5
		OFFICE LOCATION	Washington, DC

Technical Review Manager on a Performance Audit of CARES Act Improper Payments: Mr. Estifanos recently served as the technical review manager on an engagement for the US Department of Labor-Office of Inspector General. The engagement was to conduct a performance audit of DOL's, State Workforce Agencies', and six states' efforts in detecting, preventing, and recovering Unemployment Insurance improper payments under the Cares Act and the Continued Assistance Act. This audit was conducted in accordance with attestation standards established by the AICPA, GAGAS, the provisions of the CARES Act, and the Continued Assistance Act. As the technical review manager, Mr. Estifanos was responsible for the technical review of the engagement, assisting with engagement execution, client relationship management, report preparation, and communication.

Audit Manager on 8 Performance Audits of Universal Service Administrative Fund E-Rate Beneficiaries and Service Providers: Mr. Estifanos has served as an audit manager on fifteen performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and service providers participating in the FCC's E-Rate Program. The objective of these engagements was to determine whether beneficiaries and service providers were compliant with select rules and regulations of the E-Rate Program. These audits were conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the specific provisions of the E-Rate Program. Mr. Estifanos' responsibilities as an audit manager included overseeing a cluster of audit engagements, technical direction and staff supervision, and report preparation.

Audit Manager on Appalachian Regional Commission (ARC) Grant Performance Audits: Mr. Estifanos is currently serving as an audit manager on these audits for the ARC Office of Inspector General. These grants were awarded to various agencies and organizations to promote economic development in the Appalachian Region. Many of the grants audited relate to infrastructure projects; and include the audits of building renovations, sewer line construction and improvements, road construction and grading, water line construction, and others. The objectives of these audits are to determine whether expenditures for specific programs were appropriate and properly allocated, allowable, reasonable; made in accordance with the applicable provisions of laws and regulations; conformed to the specific terms of the awards; and whether the performance objectives were achieved. These grants are funded from Federal and non-federal sources. These engagements are being conducted in accordance with *Generally Accepted Government Auditing Standards*; the provisions of the grant agreements; applicable Office of Management and Budget (OMB) Circulars; Title 2 CFR Part 200; and AICPA pronouncements. As the manager, he provides technical direction to each audit, oversees all phases of the audits, and prepares the audit reports.

Technical Review Manager on a CARES Act Performance Audit of the US Department of Labor's (DOL) Short-Time Compensation (STC) Program: Mr. Estifanos recently served as a technical review manager on this performance audit to assess DOL's and ten State Workforce Agencies' compliance with the Program and use of funds requirements, pursuant to the provisions of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. This audit was conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the provisions of the CARES Act. As the technical audit manager, Mr. Estifanos was responsible for the technical review; and compliance of all phases of the engagements, including assuring compliance with prevailing technical pronouncements and contract requirements. This engagement resulted in the issuance of a performance audit report identifying noted findings and conclusions resulting from the work performed.

Audit Manager on Three Open Payments Program Performance Audits for CMS: The Open Payments Program is a national disclosure program that promotes a more transparent health care system. The program is authorized under C.F.R. Title 42 and is administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients like physicians and teaching hospitals. Mr. Estifanos has served as the audit manager on three performance audits of covered Manufacturers and Group Purchase Organizations participating in the Open Payments Program. These audits were conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the provisions of CFR Title 42. As the audit manager on these audits, Mr. Estifanos was responsible for developing the audit plan, overseeing fieldwork, client relationship management, conducting quality assurance reviews, and preparing audit reports. These audits have resulted in the issuance of audit reports that address the status of each organization's compliance with the provisions of the Open Payments Program.

Technical Review Manager on Three CARES Act Agreed-Upon Procedures Audits for the DOL-OIG: Mr. Estifanos recently served as a technical audit manager on three agreed-upon-procedures audits for the DOL-OIG; to audit the PUA, PEUC, and FPUC Programs, as implemented by the states of Texas, North Carolina, and Georgia. The scope of these engagements included compiling and assessing data related to each state's implementation of the unemployment insurance (UI) provisions of the CARES Act. These engagements were conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, Generally Accepted Government Auditing Standards, and the provisions of the CARES Act. The scope of these engagements covered CARES Act-related unemployment benefits for the period of March 27, 2020; through July 31, 2020. As the technical audit manager, Mr. Estifanos was responsible for the technical review; and compliance of all phases of the engagements, including assuring compliance with prevailing technical pronouncements and contract requirements. Each engagement resulted in the issuance of an agreed-upon procedures report identifying noted findings resulting from procedures applied.

Audit Supervisor on Incurred Cost Submission Audits of a Contractor, and Indirect Cost Rate Review of a Grantee for the National Oceanic & Atmospheric Administration (NOAA): Mr. Estifanos recently served as an audit supervisor, on six years of incurred cost submission audits of a contractor; and an indirect cost rate review of a grantee; for NOAA. The scope of these engagements included conducting planning, fieldwork, and reporting, relative to the auditee/awardee's compliance with government regulations; determining the allowability of cost incurred; and the development of auditor recommended indirect rates. The audits and review were conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS); Federal Acquisition Regulation (FAR); the provisions

of the CAM; Defense FAR Supplement (DFARS); 2 CFR 200, 48 Code of Federal Regulations, Chapter 13-Commerce Acquisition Regulation (CAR); and Commerce Acquisition Manual (CAM).

Audit Manager on the Performance Audit of the US Department of Labor's (DOL) and State's Efforts Under the CARES Act to Address Potentially Fraudulent Unemployment Insurance (UI) Claims Submitted by Multi-state Claimants: The CARES Act (P.L. 116-136), the *Consolidated Appropriations Act, 2021*, which included the Continued Assistance Act, were enacted to provide certain Unemployment Insurance Benefits to unemployed Americans during the COVID-19 pandemic. Mr. Estifanos served as the audit manager on a performance audit with the DOL-Office of Inspector General to assess DOL and 10 sampled states efforts to address potentially fraudulent unemployment insurance (UI) Claims submitted by multi-state claimants; as previously identified by the OIG. This category of potentially fraudulent UI benefit payments amounted to, approximately, \$3.5B; and consisted of 226,829 social security numbers, submitted by 1,466,457 claims, across fifty-four states. As the manager on this engagement, he was responsible for technical direction, staff oversight, preparing deliverables and the audit report, and client relationship management. This audit was conducted in accordance with *Government Auditing Standards*, the GAO Financial Audit Manual, and AICPA pronouncements. The audit resulted in the issuance of a performance audit report addressing noted findings and conclusions related to the objectives of the engagement.

Technical Review Manager on Performance Audit of the US Department of Labor's (DOL) Mixed Earners Unemployment Compensation (MEUC) Program, Under the Provisions of the CARES Act: Mr. Estifanos has served as the technical review manager on this engagement, the objective of which was to determine whether the MEUC program was administered in accordance with the provisions of the CARES Act. This audit was conducted in accordance with *Government Auditing Standards* and AICPA requirements. As the technical review manager, Mr. Estifanos was responsible for the technical review of the engagement, assisting with quality assurance oversight of work products, engagement compliance, engagement execution, client relationship management, assistance with report preparation, and communication.

Audit Manager on Incurred Cost Submission Audits of Contractors, for the National Aeronautics and Space Administration: Mr. Estifanos recently performed numerous incurred cost submission audits of contractors, for NASA. The scope of the audits included conducting planning, fieldwork, and reporting, relative to contractors' compliance with government regulations; determining the allowability of cost incurred; and the development of indirect rates. The audits were conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), Federal Acquisition Regulation (FAR), the provisions of the DCAA CAM, Defense FAR Supplement (DFARS), the NASA FAR Supplement, AICPA SSAE 18, and the specific provisions of the contracts.

Audit Manager on Monthly Audits of Various Assets at Various Sites, for the District of Columbia, Office of Finance and Treasury (OFT): Mr. Estifanos has served as an audit manager on this engagement to conduct monthly audits of inventory stocks at various District of Columbia Cashiering Locations; inventory of gift cards stored within vaults at OFT and Department of Human Services (DHS) agency sites; and inventory of card stock stored at District-contracted EBT customer service distribution centers. These engagements included physical verification of inventory items, against books and records; testing and assessment of related internal controls; testing of compliance with certain provisions of laws and regulations; and preparing audit reports for each location. These engagements were conducted in accordance with GAGAS, AICPA Guidelines, and applicable District of Columbia Government regulations.

Mr. Estifanos' responsibilities as an audit manager included assisting with engagement strategy and planning, internal controls assessment, testing and analysis, staff supervision, and report preparation.

His other relevant experience includes:

- Audit Manager on incurred cost submission audits, post award accounting systems examinations, disclosure statement audits, estimating systems audits, and purchasing systems audits of numerous contractors; for NASA, FTA, the Volpe Center, FHWA, and USDA and others;
- Audit Manager on the financial statement audit of the Government of the District of Columbia
- Audit Manager on indirect cost rate reviews of 24 Contractors, for the DC Water and Sewer Authority
- Auditor on the financial statement audits of over ten housing authorities across the US.

Adrian Torres

Audit Supervisor

				CURRENT POSITION	Audit Supervisor
EDUCATION	MS, Human Relations and Business (Org. Development); Amberton University, 2008 BS, Accounting; Hampton University, 1990				
PROFESSIONAL CERTIFICATIONS	CMA, Parts 1&3, 2006				
RELEVANT SOFTWARE EXPERIENCE	Proficiency in MS Office ProSystem fx Engagement Data Analytics, using CaseWare IDEA				
SECURITY CLEARANCE	Secret, Granted by DSS; Public Trust Granted by DOL				
YEARS OF EXPERIENCE	TOTAL: 20	AUDIT: 6	FEDERAL: 5	OFFICE LOCATION	Washington, DC

Audit Supervisor on CARES Act Agreed-Upon Procedures Audit for the DOL-OIG: Ms. Torres recently served as an audit supervisor on an agreed-upon-procedures audit for the US Department of Labor - Office of Inspector General; to audit the PUA, PEUC, and FPUC Programs, as implemented by the state of North Carolina. The scope of this engagement included compiling and assessing data related to the state's implementation of the unemployment insurance (UI) provisions of the CARES Act. This engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, Generally Accepted Government Auditing Standards, and the provisions of the CARES Act. The scope of this engagement covered CARES Act-related unemployment benefits for the period of March 27, 2020, through July 31, 2020. Ms. Torres' responsibilities as an audit supervisor included assisting with planning and fieldwork, supervising junior staff, resolution of technical issues, and preparing the audit report. This engagement resulted in the issuance of an agreed-upon procedures report identifying noted findings resulting from the applied procedures.

Audit Supervisor on 4 Performance Audits of Universal Service Administrative Fund E-Rate Beneficiaries and Service Providers: Ms. Torres has served as an audit supervisor on fifteen performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and service providers participating in the FCC's E-Rate Program. The objective of these engagements was to determine whether beneficiaries and service providers were compliant with select rules and regulations of the E-Rate Program. These audits were conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the specific provisions of the E-Rate Program. Ms. Torres' responsibilities as an audit supervisor included overseeing and conducting planning, fieldwork, and reporting on four audits.

Audit Supervisor on Audit of CARES Act Improper Payments for the DOL-OIG: Ms. Torres recently served as an audit supervisor on an engagement for the US Department of Labor-Office of Inspector General. The engagement was to conduct a performance audit of DOL's, State Workforce Agencies', and six states' efforts in detecting, preventing, and recovering Unemployment Insurance improper payments under the Cares Act and the Continued Assistance Act. This audit was conducted in accordance with attestation standards established by the AICPA, GAGAS, the provisions of the CARES Act, and the Continued Assistance Act. Ms. Torres' responsibilities as an audit supervisor included assisting with planning and fieldwork, supervising junior staff, resolution of technical issues, and preparing the audit report.

Audit Supervisor on two Open Payment Payments Program Performance Audits for CMS: The Open Payments Program is a national disclosure program that promotes a more transparent health care

system. The program is authorized under C.F.R. Title 42 and administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients such as physicians and teaching hospitals. Ms. Torres has served as an audit supervisor on two audits of covered Manufacturers and Group Purchase Organizations, nationwide. These audits were conducted in accordance with Generally Accepted *Government Auditing Standards*, AICPA Pronouncements, and the provisions of CFR Title 42. As the audit supervisor on this engagement, Ms. Torres' responsibilities included assisting with planning and fieldwork, supervising junior staff, resolution of technical issues, and preparing the audit reports.

Audit Supervisor on a Performance Audit of an Eligible Telecommunications Carrier (ETC), operating under the Universal Service Fund (USF) Lifeline Program, for the FCC-OIG: Ms. Torres served as the audit supervisor on this engagement, of which the objectives were to: Determine whether the ETC's FCC Form 497 and Lifeline claim filings contained information that was fairly stated, in conformance to the Lifeline Program's guidelines and the provisions of Title 47 of the Code of Federal Regulations; Assessing whether the ETC was materially compliant with all applicable program guidelines; Evaluating whether the ETC had designed and implemented adequate and effective internal controls, to ensure its compliance with program guidelines and the provisions of Title 47; and Communicating the results of the audit, in the form of a performance audit report presenting findings, conclusions, and recommendations, to the FCC-OIG. As audit supervisor, Ms. Torres was responsible for assisting with engagement planning, conducting fieldwork, and assisting with report preparation.

Audit Supervisor on Contractor Incurred Cost Submission Audits for NASA: Ms. Torres recently served as an audit supervisor auditor on the incurred cost submission audits of over 10 contractors for NASA. These audits covered multiple years for each contractor; and had a total ADV of over \$2.8B. These audits were conducted in accordance with the FAR, AICPA Attestation Standards, CAS, the DCAA CAM, Government Auditing Standards, and the NASA FAR Supplement. As an audit supervisor on these engagements, her responsibilities included assisting with planning and risk assessment, supervising junior staff, resolution of technical issues, and assisting with report preparation.

Lead Auditor on Department of Justice, Money Laundering and Asset Recovery System (MLARS) Audits in accordance with the *Guide for Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies*, OMB A-133; and 2 CFR 200: MLARS has oversight over state, local, and tribal law enforcement agencies that participate in the Federal equitable sharing program. Ms. Torres served as the Lead Auditor on a Compliance Review Team (CRT), where she supervised and performed desk reviews and on-site compliance audits that were designed to ensure participants' compliance with the *Guide's* provisions and the agency's jurisdictions' policies and procedures. Her duties included responsibility for processing quarterly risk matrices, which were instrumental in developing the annual compliance review plan. As the lead auditor, she led audit meetings, conducted risk analyses, documented business processes, supervised fieldwork, and conducted technical reviews of reports prepared by audit team members. Ms. Torres' responsibilities also included monitoring of Federal Agencies' findings, where the audits were conducted by the Office of Inspector General (OIG) and the Office of Justice Programs (OJP). Her duties also included conducting training for senior management of participants, in circumstances where numerous audit findings or ineffective financial controls were noted.

Her other relevant experience includes serving as:

- Senior Compliance Auditor on National Science Foundation (NSF) Grantee Audits
- Senior Auditor on an Incurred Cost Audit of a Large Contractor for USAID

- Change Management Specialist on a Project Management Office Standup, for the Office of Internal Audit and Risk Assessment (IARA), Veterans Health Administration
- Auditor in Support of the Audit Resolution Work Group of the VHA Office of Community Care
- Cost Accounting Manager at Oceaneering, Inc. (CAS and FAR Compliance)
- Government Compliance Cost Accountant at Huntington Ingalls
- Government Compliance Consultant for Cypress Resources (CAS and FAR compliance)
- Senior Compliance Analyst for BAE Systems Ship Repair (CAS and FAR compliance)
- Senior Financial Analyst for Maersk Line Limited (CAS and FAR compliance)

Robin L. Campbell

Audit Supervisor

		CURRENT POSITION	Audit Supervisor
EDUCATION	MBA, Accounting, Mount St. Mary's University, 2008 BA, Bachelor of Arts, Accounting, Hood College, 1992		
PROFESSIONAL CERTIFICATIONS			
RELEVANT SOFTWARE EXPERIENCE	<ul style="list-style-type: none"> • Proficiency in MS Office Suite (Advanced proficiency in Microsoft Excel) • Proficiency in IDEA, and other Data Analytics software • CaseWare, CCH PFX Engagement, • DCAA Management Information System (DMIS), Global Insight/DRI Cost Analyzer, EZ-Quant Statistical Analysis Audit Tool • Audit Planning and Performance System (APPS) 		
SECURITY CLEARANCE	Secret - Granted by DISCO; Public Trust Granted by DOL		
YEARS OF EXPERIENCE	TOTAL: 30	AUDIT: 30	FEDERAL: 30
		OFFICE LOCATION	Washington, DC

Audit Supervisor on Grant Performance Audits of Appalachian Regional Commission (ARC)

Grantees: Ms. Campbell served as the audit supervisor on various grants awarded to various grantees, to promote economic development in the Appalachian Region. The objectives of the grant audits were to determine whether expenditures for a specific program were appropriate and properly allocated, allowable, and reasonable; made in accordance with the applicable provisions of laws and regulations; conformed to the specific terms of the award; and whether the performance objectives were achieved. These engagements were conducted in accordance with U.S. Generally Accepted Auditing Standards, Government Auditing Standards, agreed-upon procedures that emphasize expenditure of funds, the provisions of the grant agreements and applicable Office of Management and Budget (OMB) Circulars, and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

Lead Project Manager on Performance Audits of Universal Service Administrative Fund E-Rate

Beneficiaries and Service Providers: Ms. Campbell is currently serving as the Lead Project Manager on fifteen performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and service providers participating in the FCC's E-Rate Program. The objective of these engagements is to determine whether beneficiaries and service providers are compliant with select rules and regulations of the E-Rate Program. These audits are being conducted in accordance with *Government Auditing Standards*, AICPA pronouncements, and the specific provisions of the E-Rate Program. As the Lead Project Manager on these engagements, Ms. Campbell is responsible for the administrative and compliance requirements for these engagements. She is also responsible for the performance and oversight of several audits, where she oversees audit planning and risk assessment, substantive testing, and technical review of reports.

Audit Supervisor on three Open Payment Payments Program Performance Audits for CMS:

The Open Payments Program is a national disclosure program that promotes a more transparent health care system. The program is authorized under C.F.R. Title 42 and administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients such as physicians and teaching hospitals. Ms. Campbell has served as an audit supervisor on three audits of covered Manufacturers and Group Purchase Organizations, nationwide. These audits were conducted in accordance with Generally Accepted

Government Auditing Standards, AICPA Pronouncements, and the provisions of CFR Title 42. As the audit supervisor on this engagement, Ms. Campbell's responsibilities included assisting with planning and fieldwork, supervising junior staff, resolution of technical issues, and preparing the audit reports.

Audit Supervisor on Contractor Incurred Cost Submission Audits for NASA: Ms. Campbell recently served as an audit supervisor auditor on the incurred cost submission audits of over three contractors for NASA. These audits covered multiple years for each contractor; and had a total ADV of over \$ 280M. These audits were conducted in accordance with the FAR, AICPA Attestation Standards, CAS, the DCAA CAM, Government Auditing Standards, and the NASA FAR Supplement. As an audit supervisor on these engagements, her responsibilities included assisting with planning and risk assessment, supervising junior staff, resolution of technical issues, and assisting with report preparation.

Contractor Incurred Cost Submission Audits: Ms. Campbell has served as the audit supervisor on Contractor Incurred Cost Submission Audits of DoD contractors in Maryland and Virginia, which included segment and corporate home office costs. The respective entity's ADV exceeded \$500 million. These audits were conducted in accordance with the FAR, AICPA Attestation Standards, DFARS, CAS, the DCAA CAM, and Government Auditing Standards. The engagements included multiple cost pools. As the audit supervisor on these engagements, her responsibilities included planning and risk assessment, supervising fieldwork, resolution of technical issues, report preparation, and client relationship management.

Cost Accounting Standards Board (CAS) Initial and Revised Disclosure Statement Audits of Multiple Government Contractors: Ms. Campbell has served as the audit supervisor on CAS Disclosure Statement audits of DoD contractors in Maryland and Virginia. The objectives of these audits were to assess the adequacy of the disclosure statements and; to determine whether the contractors' disclosed cost accounting practices complied with Cost Accounting Standards Board rules, regulations, and standards contained in 48 C.F.R Chapter 99 and FAR Part 31. These examinations covered several segments over multiple years; and were conducted in accordance with GAGAS, FAR, and CAS. Upon audit report issuance, Ms. Campbell provided advisory services to the Defense Contract Management Agency (DCMA) Administrative Contracting Officer, to facilitate adequacy and compliance determinations.

Pension Closing Settlement Government Share Proposal Audit: Ms. Campbell has served as the audit supervisor on this engagement, the objective of which was to assess a pension closing deficit balance; and the Federal Government's share, as proposed by the contractor. The audit was conducted in accordance with CAS 412 and 413, FAR, DCAA CAM, AICPA attestation standards, and GAGAS. The pension costs were attributed to personnel performing on numerous fixed and flexibly priced contracts, held by several business segments over many years. Ms. Campbell worked with DCAA CAS SMEs to develop the audit program and to analyze the results. The audit procedures performed determined that the deficit was significantly less than proposed. Ms. Campbell provided follow-on assistance to the DCMA Administrative Contracting Officer, since numerous agencies were involved; and most of the contracts had ended and were closed, with no remaining funds available to pay for the Federal Government's share of the deficit.

Her other relevant experience includes:

- Cost Realism Audit of Proposal, for the Navy
- Special Purpose Audit of Contractor Overpayments
- Price Proposal Audits, Progress Payment Audits, Contract Closing Audits, and Business Systems Audits

- Defense Contract Audit Agency, Financial Liaison Advisor to U.S. Army Medical Research Acquisition Activity
- Course Developer/Instructor for the Defense Contract Audit Institute
- Operations Auditor, DCAA Mid-Atlantic Region

Barbara L. McCormick

Audit Supervisor

		CURRENT POSITION	Audit Supervisor
EDUCATION	MBA, Forensic Accounting; Stevenson University, 2008 BA, Bachelor of Science, Accounting; Bowie College, 2004		
PROFESSIONAL CERTIFICATIONS			
RELEVANT SOFTWARE EXPERIENCE	<ul style="list-style-type: none"> Proficiency in MS Office Suite (Advanced proficiency in Microsoft Excel) CaseWare ProSystem fx Engagement DCAA Management Information System (DMIS), Global Insight/DRI Cost Analyzer, EZ-Quant Statistical Analysis Audit Tool Audit Planning and Performance System (APPS) Financial Management Information System (FMIS) 		
SECURITY CLEARANCE	Public Trust Granted by the Dept. of Defense		
YEARS OF EXPERIENCE	TOTAL: 46	AUDIT: 15	Accounting: 31
		OFFICE LOCATION	Washington, DC

Selected Relevant Experience

Audit Supervisor on Open Payments Program Performance Audits for CMS: The Open Payments Program is a national disclosure program that promotes a more transparent health care system. The program is authorized under C.F.R. Title 42 and administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients like physicians and teaching hospitals. Ms. McCormick has served as an audit supervisor on the development of a comprehensive audit program and audit plan to conduct audits of covered Manufacturers and Group Purchase Organizations nationwide. These audits are to be conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the provisions of CFR Title 42. As an audit supervisor in the development of the audit program and plan, Ms. McCormick's role included assessing the impact of the requirements of the governing regulations, assessing program risks, designing procedures to mitigate audit risks, preparing sample risk assessments, preparing sampling plans, and developing comprehensive audit procedures from planning to reporting. Her tasks also included developing a quality assurance plan and sample reports for the audits.

Audit Supervisor on the Universal Service Administrative Fund Performance Audit of Telecommunications Provider: Ms. McCormick is currently serving as an audit supervisor on the audit of a large telecommunications services provider, participating in the FCC's Universal Service E-Rate Program ("E-Rate"). The objectives of the engagement are to determine whether the service provider is compliant with select rules and regulations of the E-Rate Program. This audit is being conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the specific provisions of the E-Rate Program. As an audit supervisor on these engagements, Ms. McCormick assists in the development of the audit strategy, risk assessment, preparing the planning document, supervises junior staff, resolves technical issues, and assists in report preparation.

Audit Supervisor on Contractor Incurred Cost Submission Audits for NASA: Ms. McCormick recently served as an audit supervisor auditor on two incurred cost submission audits of contractors for

NASA. These audits covered multiple years for each contractor; and had a total ADV of over \$ 210M. These audits were conducted in accordance with the FAR, AICPA Attestation Standards, CAS, the DCAA CAM, Government Auditing Standards, and the NASA FAR Supplement. As an audit supervisor on these engagements, her responsibilities included assisting with planning and risk assessment, supervising junior staff, resolution of technical issues, and assisting with report preparation.

Field Audit Office (FAO) Assistant for Quality (FAQ) at the Defense Contract Audit Agency (DCAA): Ms. McCormick served as the FAO Assistant for Quality for, approximately, seven years. In this capacity, was responsible for performing the quality assurance function on a broad range of audits conducted by DCAA for the Department of Defense and some civilian agencies. These audits included incurred costs audits, proposal audits, various pre-award/post accounting system audits, disclosure statement audits, provisional billing audits, paid voucher reviews, and CAS compliance audits. As FAQ, Ms. McCormick's duties included reviewing and assessing the adequacy of audit plans, including risk assessments, working papers, and audit reports; to ensure compliance with applicable technical standards. These audits were conducted in accordance with the FAR, AICPA Attestation Standards, DFAR, CAS, the DCAA CAM, *Government Auditing Standards*, and any other standards stipulated by the specific agency.

Senior Auditor and Team Lead on Numerous Contractor Incurred Cost Audits: Ms. McCormick has performed multiple incurred cost submission audits of major contractors and small contractors, for DCAA. These engagements were conducted in accordance with FAR, AICPA Examination Standards, CAS provisions, the provisions of the DCAA CAM, *Government Auditing Standards*, and the provisions of the respective contracts. As the senior auditor and Team Lead on these engagements, her responsibilities included planning and risk assessment, fieldwork, report preparation, supervision of junior audit staff, and client relationship management.

Senior Auditor and team Lead on Numerous Disclosure Statement Audits: Ms. McCormick has performed several disclosure statement audits of contractors, while employed at DCAA. The objectives of these audits were to determine whether contractors disclosed practices complied with Cost Accounting Standards Board rules, regulations, and standards contained in 48 C.F.R Chapter 99, FAR Part 31, AIDAR, and 2 CFR Part 200. The objective also included verifying the completeness and accuracy of the disclosures, including any disclosed cost impact on Government contracts; and whether the Government received any applicable refund or credit due. As a senior auditor and Team Lead on these engagements, Ms. McCormick's audit responsibilities included audit planning, supervision of junior audit staff, conducting fieldwork, and preparing audit reports.

Senior Auditor and Team Lead on Numerous Price Proposal Audits: Ms. McCormick has performed several price proposals audits of contractors, while employed at DCAA. The audits were conducted in accordance with the Contracting Officer's instructions, FAR provisions, the DCAA CAM, and the requirements of the solicitations. Her duties included reviewing the contractors' proposals and the Requests for Proposal to determine whether the contractor's proposal met the requirements of the solicitation. These engagements included the direct supervision of junior audit staff, based on the size and complexity of the engagement. Some of these engagements included providing follow-on services related to the settlement of final rates, and cost adjustments that resulted from the engagements.

Senior Auditor on Numerous Accounting Systems Reviews: Ms. McCormick has conducted many pre-award and post-award accounting system audits over her career. The major objectives of the pre-award accounting system audits were to obtain an understanding of the accounting system, to appropriately complete the Pre-award Survey of Prospective Contractor Accounting System, and to opine

on whether the design of the contractor's system was acceptable for the award of a prospective Government contract. The post award accounting system audits were conducted to examine non-major contractors' compliance with the system criteria, as prescribed in DFARS 252.242-7006(c), *Accounting System Administration*. Ms. McCormick's duties included obtaining an understanding of the contractor's compliance with DFARS 252.242-7006(c); determining whether the contractor was compliant with the accounting system criteria prescribed in DFARS 252.242-7006(c); and reporting both significant deficiencies and less severe significant deficiencies, in compliance with the DFARS criteria.

Senior Auditor and Team Lead on Numerous Contractor Claim Audits: Ms. McCormick has performed several contractor claims audits, while employed at DCAA. The primary purpose of these audits was to review the monetary adjustment aspect of an equitable adjustment to determine whether the proposed or claimed costs, resulting from an asserted Government caused delay or disruption, and complied with the terms of the contract and DFARS 252.243-7001, *Pricing of Contract Modifications* (or similar supplemental regulation clause). These audits were to evaluate the reasonableness, allocability, and allowability of proposed or claimed costs; and determine whether the contractor experienced any losses, such as increased costs or unabsorbed overhead, because of the asserted delay or disruption. As a Team Lead on these engagements, her responsibilities included developing the audit strategy and audit plan, supervising fieldwork, preparing the audit reports, and presenting results to management. On these engagements, some contractor claims that were questioned as a result of the audit, were litigated, with a favorable outcome to the government.

Senior Auditor on Numerous Contractor Termination Audits: Ms. McCormick has served as a senior auditor on these audits of numerous contractors. The objective of these termination audits was to develop information and documentation to serve as a basis for reporting to the Termination Contracting Officer (TCO), the allowable costs, settlement expenses, and profit and/or loss under the terminated contract; based on a contractor's proposal and supporting records. These engagements were conducted, pursuant to the provisions of the FAR, AICPA Attestation Standards, and the DCAA CAM. Several of these audits resulted in the questioning of claims which were ultimately sustained.

Significant Awards: During employment at DCAA, Ms. McCormick received the following awards:

- Multiple DCAA Outstanding Ratings
- DCAA Mid-Atlantic Region Incurred Cost Team Award

Saidu F. Bangura

Senior Auditor

		CURRENT POSITION	Senior Auditor
EDUCATION	Bachelor of Science in Applied Accounting, Institute of Public Administration and Management, University of Sierra Leone; December 2010		
PROFESSIONAL CERTIFICATIONS	Member of Association of Chartered Certified Accountants (ACCA), United Kingdom		
RELEVANT SOFTWARE EXPERIENCE	Proficiency in MS Office Data Analytics, using CaseWare IDEA ProSystem fx Engagement, Draftworx Advanced Excel User – Ability to create pivot tables, VLOOKUP		
SECURITY CLEARANCE			
YEARS OF EXPERIENCE	TOTAL: 12	AUDIT: 9	OFFICE LOCATION Washington, DC

Financial Statement Compilation of the District of Columbia Health Benefit Exchange Authority:

The District of Columbia Health Benefit Exchange Authority (the Authority) implements and administers a health care exchange program in the District of Columbia, in accordance with the Patient Protection and Affordable Care Act (the Affordable Care Act). Mr. Bangura has served as the senior accountant on the financial statement compilations of the Authority, under a multi-year contract. In this capacity, he was responsible for the preparation of the financial statements, researching the application of GASB and other technical standards, assisting in the preparation of footnote disclosures and supplementary information, and providing audit support during the annual financial statement audit.

Senior Auditor on Open Payment Payments Program Performance Audits: The Open Payments Program is a national disclosure program that promotes a more transparent health care system. The program is authorized under C.F.R. Title 42 and administered by the Centers for Medicare & Medicaid Services (CMS). The Program houses a publicly accessible database of payments and other transfers of value that Covered Drug Manufacturers and Group Purchase Organizations (GPOs), including drug and medical device companies, make to covered recipients such as physicians and teaching hospitals. Mr. Bangura has served as a senior auditor on two audits of covered Manufacturers and Group Purchase Organizations, nationwide. These audits were conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the provisions of CFR Title 42. Mr. Bangura's responsibilities as a senior auditor included assessing program risks, preparing risk assessments, preparing sampling plans, overseeing fieldwork, and preparing audit reports.

Senior Auditor on Performance Audits of Appalachian Regional Commission (ARC) Grantees:

Mr. Bangura is currently serving as a senior auditor on the audits of various grants awarded to various agencies, not-for-profit organizations, and universities; to promote economic development in the Appalachian Region. The objectives of these grant audits are to determine whether expenditures for specific programs are appropriate and properly allocated; allowable and reasonable; made in accordance with the applicable provisions of laws and regulations; conform to the specific terms of the awards; and whether the performance objectives are achieved. These audits are being conducted in accordance with *Government Auditing Standards*; the provisions of the grant agreements and applicable Title 2 U.S. Code of Federal Regulations (CFR) Part 200. Mr. Bangura's primary duties as a senior auditor are to assist with major components of planning and risk assessment; conduct testing of expenditures and compliance with provisions of laws and regulations; and assist with report preparation.

Senior Auditor on the Universal Service Administrative Fund Performance Audits: Mr. Bangura is currently serving as a senior auditor on these engagements, to conduct fifteen performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and Service Providers participating in the Federal Communications Commission's E-Rate Program. The objectives of the engagements are to determine whether Beneficiaries and Service Providers are compliant with select rules and regulations of the E-Rate Program. These audits are being conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the specific provisions of the E-Rate Program. As a senior auditor on these engagements, Mr. Bangura assists with planning and risk assessment, performs substantive testing, assists with process documentation, and assists with the writing of audit findings.

Senior Auditor on Monthly Audits of Various Assets at Various Sites for the District of Columbia, Office of Finance and Treasury (OFT): Mr. Bangura is currently serving as a senior auditor on this engagement to conduct periodic monthly audits of inventory stocks at District of Columbia Cashiering Locations; inventory of gift cards stored within OFT and Department of Human Services (DHS) agency sites; and inventory of cards stock stored at District-contracted EBT customer service distribution centers. These engagements include physical verification of inventory items, against books and records; testing and assessment of related internal controls; testing of compliance with certain provisions of laws and regulations; and preparing audit reports for each location. These engagements are being conducted in accordance with *Government Auditing Standards*, AICPA Guidelines, and applicable District of Columbia Government regulations. As a senior auditor on this engagement, Mr. Bangura assists in conducting testing and analysis, and preparing audit reports.

Senior Auditor on Contractor Incurred Cost Submission Audits for NASA: Mr. Bangura recently served as a senior auditor on the incurred cost submission audits of two contractors for NASA. These audits covered multiple years for each contractor; and had a total ADV of over \$300M. These audits were conducted in accordance with the FAR, AICPA Attestation Standards, CAS, the DCAA CAM, Government Auditing Standards, and the NASA FAR Supplement. As a senior auditor on these engagements, his responsibilities included assisting with planning and risk assessment, supervising junior staff, resolution of technical issues, and assisting with report preparation.

Financial Statement Audit of China Union Investment (Liberia) Bong Mines Co., Ltd: Mr. Bangura served as an audit senior on the financial statements audit of this company; which conducts mining exploration, development, and production of iron ore concentrates. The audit was conducted in accordance with International Financial Reporting Standards (IFRS), and other applicable laws and regulations. In this capacity, he was tasked with documenting business processes; risk assessments; and testing internal controls in the areas of inventories, property, plant, and equipment; related party transactions; loans and advances; sales; receivables and payables; and expenses. He was responsible for examining the financial statements in accordance with International Financial Reporting Standards, and the Liberia Business Corporation Act of the Association Laws of Liberia. Mr. Bangura was also responsible for the compilation, update, and final documentation of all audit findings related to internal controls. His responsibilities also included performing audit procedures to address identified risks, monitoring and supervision of team members, coaching staff, and reviewing work papers.

Financial Statements Audit of Iron Resources Limited: Mr. Bangura served as a senior auditor on the financial statements audit of this company, which holds exploration licenses and engages in the exploration, development, and exploitation of ore minerals. The audit was conducted in accordance with International Financial Reporting Standards, and applicable laws and regulations in Liberia. As a senior auditor, Mr. Bangura assisted with documentation of business processes and risk assessment; and testing of

internal controls in areas such as property, plant, and equipment; inventories; cash and cash equivalents; related party transactions; receivables and payables; and expenses. He was also responsible for the review of the financial statements for compliance with IFRS and other governing regulations; and compilation, update, and final documentation of all audit findings related to internal controls. Mr. Bangura worked closely with group auditors to ensure that group referral instructions received from SCG Audit, Ghana, the auditor of the parent company, were completed in a timely manner. His responsibilities also included performing audit procedures to address identified risks, monitoring and supervision of team members, and reviewing work papers.

Financial Statements Audit of Firestone Liberia, Ltd. (subsidiary of Bridgestone Americas, Inc.):

Mr. Bangura served as an audit senior on a joint team with Deloitte, on the financial statements audit of Firestone Liberia; which owns rubber plantations; and oversees the rubber production cycle, from the nursery to the processing of rubber concentrates. The audit was conducted in accordance with Generally Accepted Auditing Standards, and applicable laws and regulations in Liberia. In this capacity, he assisted with the documentation of business processes and risk assessments; and testing of internal controls in areas such as property, biological assets, human resources, and expenses.

Capacity Assessment of Project Implementation and Delivery at the Ministry of Public Works, Liberia: Mr. Bangura served as an audit senior on a joint team with Ernst & Young, to perform a USAID capacity assessment of project implementation and delivery at the Ministry of Public Works, Liberia. This capacity assessment was conducted in accordance with the USAID guidelines, to support the ministry's capacity development. On this assignment, Mr. Bangura assisted with the documentation of business processes, examined the performance of existing systems, and identified existing capacity and needs.

His other Relevant experience includes serving as:

- Senior auditor on a United Nations Development Program capacity assessment and financial audit of key ministries and organizations
- Senior auditor on a financial statement audit of Salala Rubber Corporation
- Senior auditor on a financial statement audit of Abi Jaoudi and Azar Trading Company
- Senior auditor on a financial statement audit of BHP Billiton Mining Company
- Senior auditor on a financial statement audit of Prestige Motors Corporation

Mark Barnhouse

Staff Auditor

		CURRENT POSITION	Staff Auditor
EDUCATION	Bachelor of Science in Accounting, Perdue School of Business, Salisbury University; December 2021 Upper-Division Certificate in Fraud and Forensic Accounting, Perdue School of Business, Salisbury University; December 2021		
PROFESSIONAL CERTIFICATIONS			
RELEVANT SOFTWARE EXPERIENCE	<ul style="list-style-type: none"> • Proficiency in MS Office • ProSystem fx Engagement • IDEA • Tableau • Intuit QuickBooks • Advanced Excel user – Ability to create pivot tables, Vlookups 		
SECURITY CLEARANCE	Public Trust - US Department of Labor		
YEARS OF EXPERIENCE	TOTAL: 1.50	AUDIT: 1.50	OFFICE LOCATION Washington, DC

Staff Auditor on an Incurred Cost Submission and Post Award Accounting Systems Audit of a Contractor, for the National Aeronautics and Space Administration (NASA): As a staff auditor on this engagement, Mr. Barnhouse's task assignments included assisting with process documentation and assessing internal controls, assisting with the risk assessment process, conducting transactions testing, and assisting with writing of the audit report. The audit was conducted in accordance with *Generally Accepted Government Auditing Standards* (GAGAS), Federal Acquisition Regulation (FAR), the provisions of the CAM, the NASA FAR Supplement, and AICPA Attestation Standards.

Staff Auditor on a Performance Audit of One US Department of Labor (DOL) High-Risk Program: Mr. Barnhouse is currently serving as a staff auditor on this performance audit to assess DOL's and ten State Workforce Agencies' follow-up actions, relative to taking remedial actions on findings noted by the OIG. This audit is being conducted pursuant to the provisions of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As a staff auditor on this

Monthly Audits of Various Assets at Various Sites, for the District of Columbia, Office of Finance and Treasury (OFT): Mr. Barnhouse is currently serving as a staff auditor on ongoing engagements to conduct monthly audits of inventory stocks at District of Columbia Cashiering Locations; inventory of gift cards stored within OFT and Department of Human Services (DHS) agency sites; and inventory of cards stock stored at District-contracted EBT customer service distribution centers. These engagements include physical verification of inventory items, against books and records; testing and assessment of related internal controls; testing of compliance with certain provisions of laws and regulations; and preparing audit reports for each location. These engagements are being conducted in accordance with *Government Auditing Standards*, AICPA Guidelines, and applicable District of Columbia Government regulations. As a staff auditor on this engagement, Mr. Barnhouse assists in conducting testing and analysis, and preparing audit reports.

Accounting Intern: As an accounting intern while attending college, Mr. Barnhouse assisted local non-profit organizations in performing non-attest services to gain an understanding the nature of the client's operations, and the services provided to the surrounding community. His engagement activities also

included assisting in the preparation of financial statements in accordance with GAAP; assisting in the evaluation of clients' internal controls; and assisting in the assessment of risks.

AmeriCorps Audit Intern: As an AmeriCorps audit intern while in college, Mr. Barnhouse collaborated with the State of Maryland and Commonwealth of Virginia officials on financial crimes investigations. In his capacity as an intern, he assisted in the analysis of financial documents; observed witness and suspect interviews; and utilized technology, including Tableau and IDEA data analytics software, to identify potentially fraudulent activities.

Yihua “Kaya” Xu

Staff Auditor

		CURRENT POSITION	Staff Auditor
EDUCATION	M.A., Master of Accounting, Auditing Track; University of Maryland, Robert H. Smith School of Business, 2022 BS, Bachelor of Science, Accountancy; Oregon State University, 2021 AA, Business; Tacoma Community College, 2017		
PROFESSIONAL CERTIFICATIONS			
RELEVANT SOFTWARE EXPERIENCE	<ul style="list-style-type: none"> Proficiency in MS Office Suite (Advanced proficiency in Microsoft Excel) ProSystem fx Engagement IDEA Tableau SQL Alteryx 		
SECURITY CLEARANCE	Public Trust - US Department of Labor		
YEARS OF EXPERIENCE	TOTAL: 1	AUDIT: 1	ACCOUNTING: 0
		OFFICE LOCATION	Washington, DC

Staff Auditor on a Performance Audit of One US Department of Labor (DOL) High-Risk Program:

Ms. Xu is currently serving as a staff auditor on this performance audit to assess DOL's and ten State Workforce Agencies' follow-up actions, relative to taking remedial actions on findings noted by the OIG. This audit is being conducted pursuant to the provisions of the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act. As a staff auditor on this engagement, Ms. Xu conducts process documentation, assists in assessing internal controls, and conducts transaction testing. This audit is being conducted in accordance with *Government Auditing Standards* and AICPA requirements.

Staff Auditor on Several Performance Audits of Beneficiaries and Service Providers Receiving Universal Service Administrative Funds:

Ms. Xu is currently serving as a staff auditor on these engagements, to perform sixteen performance audits of Universal Service E-Rate Program (“E-Rate”) beneficiaries and Service Providers participating in the Federal Communications Commission's E-Rate Program. The objectives of these audits are to determine whether Beneficiaries and Service Providers are compliant with select rules and regulations of the E-Rate Program. These audits are being conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the specific provisions of the E-Rate Program. As a staff auditor on these engagements, Ms. Xu performs transaction testing, assists with process documentation and assessing internal controls, and assists with the writing of audit findings.

Staff Auditor on an Incurred Cost Submission Audit of a Contractor, for the National Aeronautics and Space Administration (NASA):

Ms. Xu recently served as a staff auditor on an Incurred Cost Submission audit of a government contractor, for NASA. Her primary area of focus on this engagement consisted of conducting testing of expenditure transactions, relative to contractors' compliance with government regulations; and determining the allowability, allocability, and reasonableness of cost incurred. The audit was conducted in accordance with *Generally Accepted Government Auditing Standards* (GAGAS), Federal Acquisition Regulation (FAR), the provisions of the CAM, the NASA FAR Supplement, and AICPA Attestation Standards.

Staff Auditor on Several Incurred Cost Submission Audits of Grantees, for the National Highway Traffic Safety Administration (NHTSA):

Ms. Xu recently served as a staff auditor on Incurred Cost

Submission audits of three not-for-profit organizations, for NHTSA. Her primary area of focus on these engagements consisted of reconciling the ICS to the auditees' trial balances, assisting with the adequacy review, conducting testing of expenditure transactions relative to grantees' compliance with government regulations; and determining the allowability, allocability, and reasonableness of cost incurred. These audits were conducted in accordance with *Generally Accepted Government Auditing Standards* (GAGAS), Federal Acquisition Regulation (FAR), the provisions of the CAM, provisions of 2 CFR 200, and AICPA Attestation Standards.

Staff Auditor on Monthly Audits of Various Assets at Various Sites, for the District of Columbia, Office of Finance and Treasury (OFT): Ms. Xu is currently serving as a staff auditor on ongoing engagements to conduct monthly audits of inventory stocks at District of Columbia Cashiering Locations; inventory of gift cards stored within OFT and Department of Human Services (DHS) agency sites; and inventory of cards stock stored at District-contracted EBT customer service distribution centers. These engagements include physical verification of inventory items, against books and records; testing and assessment of related internal controls; testing of compliance with certain provisions of laws and regulations; and preparing audit reports for each location. These engagements are being conducted in accordance with *Government Auditing Standards*, AICPA Guidelines, and applicable District of Columbia Government regulations. As a staff auditor on these engagements, Ms. Xu assists in conducting testing and analysis, and preparing audit reports.

Marwa Elsabie

Staff Auditor

		CURRENT POSITION	Staff Auditor
EDUCATION	Bachelor of Accounting, Kuwait University; October 2020,		
RELEVANT SOFTWARE EXPERIENCE	<ul style="list-style-type: none"> Proficiency in MS Office CaseWare audit software SAP S4 Hana Advanced Excel User – Ability to create pivot tables, Xlookups 		
SECURITY CLEARANCE			
YEARS OF EXPERIENCE	TOTAL: 2	AUDIT: 2	OFFICE LOCATION Washington, DC

Staff Auditor on Performance Audits of Appalachian Regional Commission (ARC) Grantees: Ms. Elsabie is currently serving as a staff auditor on the audits of various grants awarded to various agencies, not-for-profit organizations, and universities; to promote economic development in the Appalachian Region. The objectives of these grant audits are to determine whether expenditures for specific programs were appropriate and properly allocated; allowable and reasonable; made in accordance with the applicable provisions of laws and regulations; conformed to the specific terms of the awards; and whether the performance objectives were achieved. These audits are being conducted in accordance with *Government Auditing Standards*; the provisions of the grant agreements and applicable Office of Management Budget Circulars; and Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). As a staff auditor, Ms. Elsabie's primary role is to conduct testing of expenditures and compliance with provisions of laws and regulations; and assisting with report preparation.

Staff Auditor on the Audit of the District of Columbia CAFR: Ms. Elsabie has worked as a staff auditor on the financial statement audit of the Government of the District of Columbia. The audit was conducted in accordance with AICPA guidelines, Government Auditing Standards, GASB pronouncements, and other governing pronouncements. Her duties included working on such entities as: E-911; the District of Columbia Lottery Board, the Not-for-Profit Hospital, the District of Columbia Convention Center, and the main District of Columbia CAFR engagement. One these engagements, her audit assignments have included documenting business processes, conducting testing of revenue and expenditures; summarizing board minutes; conducting tie-outs of financial statements; coordination of audit meetings; conducting inventory counts; testing of investments and capital assets; and various other tasks related to the audit.

Staff Auditor on the Universal Service Administrative Fund Performance Audits: Ms. Elsabie is currently serving as a staff auditor on these engagements, to perform fifteen performance audits on Universal Service E-Rate Program ("E-Rate") beneficiaries and Service Providers participating in the Federal Communications Commission's E-Rate Program. The objectives of the engagements are to determine whether Beneficiaries and Service Providers are compliant with select rules and regulations of the E-Rate Program. These audits are being conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the specific provisions of the E-Rate Program. As a staff auditor on these engagements, Ms. Elsabie performs transaction testing, assists with process documentation, and assists with the writing of audit findings.

Monthly Audits of Various Assets at Various Sites for the District of Columbia, Office of Finance and Treasury (OFT): Ms. Elsabie is currently serving as a staff auditor on this engagement to conduct monthly audits of inventory stocks at District of Columbia Cashiering Locations; inventory of gift cards stored within OFT and Department of Human Services (DHS) agency sites; and inventory of cards stock stored at District-contracted EBT customer service distribution centers. These engagements include physical verification of inventory items, against books and records; testing and assessment of related internal controls; testing of compliance with certain provisions of laws and regulations; and preparing audit reports for each location. These engagements are being conducted in accordance with Government Auditing Standards, AICPA Guidelines, and applicable District of Columbia Government regulations. As a staff auditor on this engagement, Ms. Elsabie assists in conducting testing and analysis, and preparing audit reports.

Financial Statement Audit of Al Mazaya Holding: Ms. Elsabie served as an Audit Associate on the financial statement audit of this company. The company is publicly traded and offers ready-to-use residential and commercial spaces in Kuwait and Dubai. The audit was conducted in accordance with International Financial Reporting Standards (IFRS), and other relevant laws and regulations. In this role, she assisted in examining financial statements, general ledgers, and transaction cycles. She also conducted substantive testing and analytic procedures in order to address the Risk of Material Misstatement (RMM). Ms. Elsabie was in charge of collecting, updating, and completing audit documentation for all findings; and assisting in the testing of internal controls for financial statement line items such as sales, inventory, expenses, and payables. Her duties also included documenting and cross-referencing work papers and reviewing audit reports.

Financial Statement Audit of Safwan Trading & Contracting Co.: Ms. Elsabie served as an Audit Associate on the financial statement audit of this privately held company, which deals in pharmaceutical products and medical equipment. This audit was conducted in accordance with International Financial Reporting Standards (IFRS), and other industry-specific laws and regulations. As an Audit Associate, she assisted in planning and documenting business processes; assessing risks; and gathering audit evidence, using CaseWare audit software. She also assisted in examining financial statements, general ledger analysis, and assessing transaction cycles. Ms. Elsabie also conducted substantive testing and analytical procedures to address RMM. Her responsibilities also included auditing cash, accounts receivable and payable, revenues and expenses, and cross-referencing the audit report to supporting working papers.

Financial Statement Audit of First Dubai for Real Estate Development: Ms. Elsabie served as an Audit Associate on the financial statement audit of this publicly held shareholding company, engaged in real estate development and investment operations. In this role, she was responsible for auditing the financial statements, in accordance with IFRS auditing standards and principles. She used CaseWare audit software to assist in engagement planning, documenting transaction cycles, assessing risks, and analyzing audit evidence. She also assisted in examining financial statements, general ledgers, and transaction cycles; and carried out substantive testing and analytical procedures, in order to address RMM. Her duties also included auditing cash, accounts receivable and payable, revenues and expenses; and cross-referencing the audit report to supporting working papers.

Financial Statement Audit of Ali Alghanim Sons Automotive Company K.S.C: Ms. Elsabie served as an Audit Associate on the financial statement audit of this company, which engages in the automotive business. The audit was conducted in accordance with IFRS, and other industry-specific laws and regulations. In this capacity, she assisted in the analysis of the general ledger, the financial statements, and transaction cycles. She also conducted substantive testing and analytical procedures to address RMM; and

was responsible for compiling, maintaining, and completing the audit documentation of findings. Ms. Elsabie also assisted in the testing of internal controls for items such as sales, inventory, expenses, and payables. She was also responsible for cross-referencing the audit report to supporting working papers.

Financial Statement Audit of Ahleia Electrical Company, WLL: Ms. Elsabie served as an Audit Associate on the financial statement audit of this company, which engages in Electrical Services business activities. The audit was conducted in accordance with IFRS, and other industry-specific laws and regulations. In this capacity, she assisted in examining financial statements, general ledgers, and transaction cycles. Ms. Elsabie conducted in-depth testing and analytical procedures; and was responsible for compiling, maintaining, and completing the audit documentation of all findings. She also assisted in the testing of internal controls for items such as sales, inventory, expenses, and payables. She was also responsible for cross-referencing the audit report to supporting working papers.

Financial Statement Audit of Enhanced Engineering & Multi Technologies: Ms. Elsabie served as an Audit Associate on the financial statement audit of this company, which engages in the Information Technology and Services industry. The audit was conducted in accordance with IFRS, and other industry-specific laws and regulations in Kuwait. In this capacity, she assisted in the examination of financial statements, general ledgers, and transaction cycles; and conducted substantive testing and analytical procedures to address RMM. She was responsible for gathering, updating, and completing audit documentation for all findings. Her other duties included testing of internal controls for financial statement line items such as sales, inventory, expenses, and payables. Her responsibilities also included reviewing and cross-referencing the audit report to supporting working papers.

Financial Statement Audit of Elkhebra Legal Consultants and Lawyers: Ms. Elsabie served as an Audit Associate on the financial statement audit of this company, which operates within the Industrial Sector, focusing on Commercial Services. In this capacity, she assisted in planning and documenting business processes; assessing risks; and gathering audit evidence, using CaseWare audit software. She also examined financial statements, general ledgers, and transaction cycles; and conducted substantive testing and analytical procedures for such areas as cash, accounts receivable and payable, revenues, and expenses. She also reviewed and cross-referenced the audit report to supporting working papers.

Lingchang (Esther)Kong

Staff Auditor

		CURRENT POSITION	Staff Auditor
EDUCATION	Bachelor of Financial Management in Dept of Accounting, Qingdao University; June 2020 Master of Applied Economics with a Financial Economics focus, Johns Hopkins University, December 2022		
RELEVANT SOFTWARE EXPERIENCE	<ul style="list-style-type: none"> Proficiency in MS Office Various audit software applications Python, R, GMAS, Stata Bloomberg, Wind QuickBooks Familiar with some ERP systems 		
SECURITY CLEARANCE			
YEARS OF EXPERIENCE	TOTAL: 2	AUDIT: 2	OFFICE LOCATION Washington, DC

Senior Auditor on the District of Columbia Government (DC), Annual Financial Statement Audit:

Ms. Kong served as a senior auditor on the comprehensive annual financial audit. As a senior auditor, she worked on various components of the DC Government where she performed testing of various types of expenditures and assisted with process walkthroughs.

Staff Auditor on Several Performance Audits of Beneficiaries and Service Providers Receiving Universal Service Administrative Funds:

Ms. Kong is currently serving as a staff auditor on two performance audits of Universal Service E-Rate Program ("E-Rate") beneficiaries and Service Providers participating in the Federal Communications Commission's E-Rate Program. The objectives of these audits are to determine whether Beneficiaries and Service Providers are compliant with select rules and regulations of the E-Rate Program. These audits are being conducted in accordance with *Government Auditing Standards*, AICPA Pronouncements, and the specific provisions of the E-Rate Program. As a staff auditor on these engagements, she performs transaction testing, assists with process documentation and assessing internal controls, and assists with the writing of audit findings.

Monthly Audits of Various Assets at Various Sites, for the District of Columbia, Office of Finance and Treasury (OFT):

Ms. Kong has served as a senior auditor on engagements to conduct monthly audits of inventory stocks at District of Columbia Cashiering Locations; inventory of gift cards stored within OFT and Department of Human Services (DHS) agency sites; and inventory of cards stock stored at District-contracted EBT customer service distribution centers. These engagements included physical verification of inventory items, against books and records; testing and assessment of related internal controls; testing of compliance with certain provisions of laws and regulations; and preparing audit reports for each location. These engagements were conducted in accordance with *Government Auditing Standards*, AICPA Guidelines, and applicable District of Columbia Government regulations. As a senior auditor on this engagement, she assists in conducting testing and analysis, and preparing audit reports.

Staff Auditor on Annual Financial Statements Audits of ZYF Lopsking Material Technology Co., Ltd:

As a Staff Auditor on this audit engagement, Ms. Kong performed financial analyses of clients' historical and projected financial statements in response to questions from CSRC. Her duties included conducting internal controls testing of cash and cash equivalents, and fixed assets. She also performed

substantive procedures of accounts including cash and cash equivalents; short-term investments; property, plant, and equipment; intangible assets; short-term loans payable; long-term debt; administration expenses; financial expenses; selling expenses; interest income; and interest expense. Ms. Kong also developed various types of financial models to value financial instruments held by the client. She also conducted due diligence and assisted in the preparation of audit reports.

Staff Auditor on IPO Company Pre-listing Auditing Services (Shandong Goldencell Electronics Technology Co., Ltd): As a staff auditor on the audit engagement, Ms. Kong performed financial statement auditing services for 2018, 2019, and 2020 in accordance with the IPO standards of China Securities Regulatory Commission. Her tasks included providing the client with advice during the pre-IPO audit period, to ensure sound capital market operations. This included M&A advice to help improve their internal controls and simplify the future IPO process; global market expansion advice to maintain and increase revenue and profits to meet the IPO standards of investments and capital assets; and various other audit tasks.

Tax/Accounting Associate at CWP Consulting: Ms. Kong participated in assisting with research, filing, data entry, recording, and maintaining accurate and complete financial records for the clients of this Washington, DC based firm. She prepared financial reports such as balance sheets and income statements, invoices, and other documents. Ms. Kong also supported the professional tax preparers in the preparation of Forms 1040 for individuals, and Forms 1120 for business.

Investment Banking Intern at CITICS (Citic Securities): Ms. Kong provided IPO company equity financing underwriting services on this engagement. As a member of a team, she determined the risks and price of a particular security, through market research; to assist CITICS' clients raise equity capital. She also developed various financial models to value debt for capital-raising transactions. During this internship, Ms. Kong also provided listed company private placement debt services. As part of this process, she executed transactions and was actively involved in distributions to institutional investors. She helped coordinate all transaction documentation, as well as support the syndication and distribution of offerings to global private placement investors.

Capital Market Legal Services Intern at Grandall Law Firm (Hangzhou branch): As an Intern, Ms. Kong provided information on public company matters; including document filings and other public disclosures, corporate governance, board and shareholder items, and securities law compliance matters. She also provided advice on matters for the management of the Corporation and its subsidiaries. She identified and analyzed complex M&A legal issues, developed conclusions, and made recommendations for issues resolution. Ms. Kong also performed investigations into the legality of the client's product (hoverboards) in global markets; and wrote a report to help the client with marketing forecasting.

Appendix- A – Pricing

Regis & Associates, PC								
Integrity Monitoring - Price Sheet								
Cell to be completed by Bidder								
	Staffing Category	Hourly Billing Rate (\$)	Hours	Amount (\$)	Total Cost (\$)	Hourly Discounted Billing Rate (\$)	Amount (\$)	Total Cost (discounted) (\$)
Risk Assessment	Partner	\$184.11	6	\$1,104.66	\$15,347.94	\$184.11	\$1,104.66	\$15,347.94
	Senior Manager	\$152.49	14	\$2,134.86		\$152.49	\$2,134.86	
	Manager	\$128.75	20	\$2,575.00		\$128.75	\$2,575.00	
	Supervisor	\$97.01	45	\$4,365.45		\$97.01	\$4,365.45	
	Senior Auditor	\$82.67	45	\$3,720.15		\$82.67	\$3,720.15	
	Staff Auditor	\$65.81	22	\$1,447.82		\$65.81	\$1,447.82	
				\$0.00			\$0.00	
			152				\$0.00	
Work Plan Development	Partner	\$184.11	4	\$736.44	\$12,695.99	\$184.11	\$736.44	\$12,695.99
	Senior Manager	\$152.49	10	\$1,524.90		\$152.49	\$1,524.90	
	Manager	\$128.75	15	\$1,931.25		\$128.75	\$1,931.25	
	Supervisor	\$97.01	40	\$3,880.40		\$97.01	\$3,880.40	
	Senior Auditor	\$82.67	40	\$3,306.80		\$82.67	\$3,306.80	
	Staff Auditor	\$65.81	20	\$1,316.20		\$65.81	\$1,316.20	
				\$0.00			\$0.00	
			129				\$0.00	
On-going Monitoring	Partner	\$184.11	13	\$2,393.43	\$109,778.06	\$184.11	\$2,393.43	\$109,778.06
	Senior Manager	\$152.49	49	\$7,472.01		\$152.49	\$7,472.01	
	Manager	\$128.75	141	\$18,153.75		\$128.75	\$18,153.75	
	Supervisor	\$97.01	261	\$25,319.61		\$97.01	\$25,319.61	
	Senior Auditor	\$82.67	381	\$31,497.27		\$82.67	\$31,497.27	
	Staff Auditor	\$65.81	379	\$24,941.99		\$65.81	\$24,941.99	
				\$0.00			\$0.00	
			1224				\$0.00	
Reports	Partner	\$184.11	26	\$4,786.86	\$21,980.13	\$184.11	\$4,786.86	\$21,980.13
	Senior Manager	\$152.49	25	\$3,812.25		\$152.49	\$3,812.25	
	Manager	\$128.75	37	\$4,763.75		\$128.75	\$4,763.75	
	Supervisor	\$97.01	41	\$3,977.41		\$97.01	\$3,977.41	
	Senior Auditor	\$82.67	41	\$3,389.47		\$82.67	\$3,389.47	
	Staff Auditor	\$65.81	19	\$1,250.39		\$65.81	\$1,250.39	
				\$0.00			\$0.00	
			189				\$0.00	
Allowance for Travel Expenses and Reimbursement if on-site monitoring required				\$10,000.00				
Total Cost (non-discounted)					\$169,802.12			
Total Cost (if discounted)								\$169,802.12

Appendix- B –Vendor Engagement Form

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