



August 17, 2011

Mr. Walter Hrycenko, Superintendent  
Brick Township School District  
101 Hendrickson Avenue  
Brick, NJ 08724-2599

**Subject: EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCING ACT  
SECTION 15 GRANT AGREEMENT *OFFER LETTER***

**Re: Brick Township School District/Ocean County  
Osbornville Elementary School  
Project Description: Install air-conditioning in rooms with server equipment.  
Ventilate rooms with electrical equipment. Replace existing domestic hot water  
heater.  
DOE Project #: 0530-070-10-1024  
SDA Project #: 0530-070-10-G1BC  
Grant #: G5-4772  
Total Project Cost: \$84,789  
Grant Amount: \$33,916**

Dear Superintendent Hrycenko:

It is our understanding that your District has obtained approval from the Department of Education (the "DOE") for a school facilities project and has elected to receive a Section 15 Grant. It is also our understanding that the District has obtained the other required approvals which are preconditions to receiving a Section 15 Grant.

In order to receive a Section 15 Grant, the District must submit documentation which will enable the New Jersey Schools Development Authority ("NJSDA") to verify that all necessary approvals required for the Grant have been received. Paragraph 2.2 of the Section 15 Grant Agreement (the "Agreement") addresses these requirements. Upon verification of the necessary approvals and required documentation, the District shall enter into a contract which shall set forth the terms and conditions of the Agreement, including the terms of the disbursement of the State Share. For your reference, the Agreement will be sent to you via email.

To facilitate the submission of these documents, attached is the Section 15 Grant Agreement Submission Checklist, which summarizes the requirements under Paragraph 2.2. **The Grant Agreement Submission Checklist, along with the accompanying documentation, must be returned to our office within 180 days from the date of this letter.**

**Please note that this grant offer is based on the DOE Preliminary Eligible Cost (PEC) letter. When the District submits the Grant Agreement Submission Checklist items which include the DOE Final Eligible Cost (FEC) letter, SDA will be executing the Agreement based on the FEC letter.**

Upon verification that all the documentation required by the Agreement has been provided, the NJSDA will execute the Agreement and the District's funding will commence.

Should you have any questions or require assistance, please contact Kashif Khan, Grant Analyst at 609-341-5906. We look forward to working with you on this project.

Sincerely,



Gregory Voronov  
Director, Capital Planning & Grants Administration

copies: (with enclosures)

Seçil Uztetik Onat, Senior Manager, Capital Planning & Grants Administration, NJSDA

Kashif Khan, Grant Analyst, Capital Planning & Grants Administration, NJSDA

Edythe Maier, Office of Corporate Governance & Compliance, NJSDA

James Edwards, School Business Administrator, Brick Township School District

## Section 15 Grant Agreement Submission Checklist

Please make sure your Grant Agreement submission includes the following:

- (Two)** Originally-executed Grant Agreement signature pages (Page 35)  
(Submit signature pages only; please **do not** submit the entire Grant Agreement)
- (One)** Certified original of District Board resolution "**Authorizing execution and delivery of the Grant Agreement**" (It is required that this EXACT language be included in the board resolution. Failure to include this EXACT language will result in a delay in the Execution of the Grant Agreement)
- (One)** Certified original of District Board resolution evidencing "**Delegation of Authority to School Business Administrator for supervision of the School Facilities Project**" (It is required that this EXACT language be included in the board resolution. Failure to include this EXACT language will result in a delay in the Execution of the Grant Agreement.)
- (One)** Original Eligibility Checklist (Appendix III)—Certified by School Business Administrator
  - DOE Preliminary Eligible Cost (PEC) Letter
  - DOE Final Eligible Cost (FEC) Letter
  - DOE Educational Adequacy Approval Letter (If Applicable)
  - DOE Approval of Schematics (If Applicable)
  - DOE Approval of Land Acquisition (If Applicable)
  - If Local Share is funded through issuance of School Bonds, a certified copy of the Referendum to voters showing proof of voter approval of Local Share.
  - If Local Share is funded through Capital Reserve Account, evidence that the District complied w/ DOE Regulations governing the use of Capital Reserve Account for Local Share: Board Secretary's Report (Balance Sheet section) showing available funds & Board Resolution authorizing use and purpose of funds.
  - If Local Share is funded through Capital Outlay, evidence that the Districts' budget passed: Sample ballot showing budget question, County Clerk's Certification, Vote tabulations, pages B1& B2 of the budget along with Capital Outlay Projects supporting pages.
  - If the Districts' budget failed, include: the original budget statement, Town Council Resolution reinstating the budget and the Districts' resolution accepting Council's Recommendations with a list of accounts affected and related dollar amounts.
  - If Local Share is funded through use of a Lease Purchase Agreement, include copy of the agreement with appropriate signatures, DOE approval letter, and amortization schedule.  
**Lease Purchase Agreements cannot exceed 5 years in duration.**
  - In the case of use of funds other than School bonds, evidence that such funds are available to the District for expenditure.
- (One)** Copy of DOE Forms 130/131 and Drawings (if available)
- (One)** Original School Business Administrator Certification (Appendix V)

**If you have any questions regarding these items, please contact the NJSDA Grants Dept. at (609) 341-5926.**

# **New Jersey Schools Development Authority**

## **EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCING ACT SECTION 15 GRANT AGREEMENT**

**G5-4772**

**BRICK TOWNSHIP SCHOOL DISTRICT**

**Osbornville Elementary School**

**SDA# 0530-070-10-G1BC**

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**EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCING ACT  
GRANT AGREEMENT**

This **Educational Facilities Construction and Financing Act Grant Agreement** (the "Grant Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 200\_ by and between THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY (the "Development Authority"), a public body corporate and politic of the State of New Jersey, having its offices at 1 West State Street, Trenton, New Jersey 08625 and \_\_\_\_\_ (the "District"), a school district established pursuant to Title 18A of the New Jersey Statutes, having its offices at \_\_\_\_\_.

**ARTICLE I - BACKGROUND AND DEFINITIONS**

**1.1 Background**

The "Educational Facilities Construction and Financing Act," P.L.2000, c.72 enacted on July 18, 2000 and amended on August 6, 2007 by P.L. 2007, c. 137 (the "Act"), establishes a comprehensive program (the "Program") for the design, renovation, repair and new construction of primary and secondary schools throughout the State. The Act was adopted by the Legislature in response to the New Jersey Supreme Court's decision in Raymond Abbott et al. v. Fred G. Burke, 153 N.J. 480 (1998) ("Abbott V"), which requires the State to provide certain educational infrastructure improvements in districts known as the "Abbott Districts" (defined in P.L.1996, c.138, C.18A:7F-3).

The Legislature provided for a Program covering not only the Abbott Districts, but all school districts in the State. The Act was amended in 2007 to bring about certain reforms to the Program.

The Development Authority was created effective August 6, 2007 as successor to the New Jersey Schools Construction Corporation, pursuant to Section 3 of P.L. 2007, c. 137 (C.52:18A-237). Under the Act, the Development Authority is required to construct all of the school facilities projects in the Abbott Districts, and administer grants to assist in the funding of school facilities projects for districts other than Abbott districts pursuant to Section 15 of the Act. Pursuant to Section 15, the "State Share" payable to the district shall equal the product of the project's "Final Eligible Costs" (as hereinafter defined) and the "District Aid Percentage" (as hereinafter defined) or 40%, whichever is greater. The State Share shall be funded either from the proceeds of bonds issued by the New Jersey Economic Development Authority ("Financing Authority") pursuant to the Act or from monies appropriated to the Financing Authority from the General Fund pursuant to the Annual Appropriations Act. The funding of the State Share shall not commence until the district secures financing for the "Local Share" (as hereinafter defined).

Section 15 further provides that the Development Authority and a school district shall enter into an agreement setting forth, in addition to other requirements and conditions, the terms of the disbursement of the State Share. This Agreement is being entered into by the District and the Development Authority pursuant to N.J.S.A.18A:7G-15.

The parties hereby agree as follows:

## **1.2 Definitions**

The following terms are used in this Agreement and shall, unless the context clearly requires otherwise, have the meanings set forth herein. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

Any references to particular sections of the New Jersey Administrative Code (N.J.A.C.) shall be deemed to refer to any sections of the N.J.A.C. that amend or supersede sections of the N.J.A.C. indicated in this Agreement.

"Act" means the Educational Facilities Construction and Financing Act, P.L.2000, c.72, N.J.S.A. 18A:7G-1 et seq. as amended.

"Agreement" or "Grant Agreement" means this agreement (and all attachments thereto) between the Development Authority and the District.

"Approved Costs" means costs of the School Facilities Project which are eligible to be paid from the proceeds of the Grant and have been or shall be paid by the District.

"Approved Long-Range Facilities Plan" means the plan required to be submitted to the Commissioner by a District and approved by the Commissioner pursuant to N.J.S.A. 18A:7G-4.

"Authorized Officer" means (i) with respect to the District, any person or persons authorized pursuant to a resolution of the governing body of the District to perform any act or execute any document relating to the Grant and this Agreement, including the School Business Administrator; and (ii) with respect to the Development Authority, any person or persons authorized to perform any act or execute any document relating to the Grant and this Agreement.

"Bond Counsel" means any lawyer or firm of lawyers nationally recognized in the field of municipal finance and satisfactory to the Financing Authority.

"Capital Reserve Account" means the account of the District established pursuant to N.J.A.C. 6A:23-2.13.

"Change Order" means a written order, directing or authorizing some change, in whatever degree to a Design Consultant Contract or Construction Contract, including but not limited to an increase or decrease in the scope of work to be performed by the Design Consultant or the Contractor, as the case may be, or an acceleration of time for the performance of such work, or a change in the sequence in which such work is being performed.



"Checklist" means a form to be provided by the Development Authority and to be completed by the District at various Milestones in the design and construction of the School Facilities Project prior to receiving certain Disbursements of the Grant. There may be a Design Phase Checklist, a Construction Phase Checklist, and a Final Completion Checklist or a checklist or other certification to be submitted by the District for other stages in the completion of a school facilities project. The District may file a Checklist electronically if such option is made available to the District by the Development Authority.

"Closeout" means the process by which the Development Authority determines that all applicable administrative actions and all required work have been completed by the District.

"Code" means the "Internal Revenue Code of 1986, as amended", as the same may from time to time be amended and supplemented, including any regulations promulgated there under, any successor code thereto, and administrative and judicial interpretations thereof.

"Commencement Date" means the date on which this Agreement has been fully executed by all the parties thereto and the District has delivered to the satisfaction of the Development Authority, any and all documentation required by this Agreement.

"Commissioner" means the Commissioner of the New Jersey Department of Education or his or her designee.

"Completion Date" means the date specified by the District for completion of the School Facilities Project, which may be changed by the District upon written notice to the Development Authority.

"Construction Contract" means the agreement between the District and the Contractor governing the construction of all or a portion of the School Facilities Project and any documents attached thereto and amendments thereof. There may be one or more Construction Contracts for the School Facilities Project.

"Construction Phase" means that phase of the School Facilities Project in which construction of the School Facilities Project is undertaken by a Contractor or Contractors.

"Consultant" means a consultant, including a Design Consultant, engaged by the District for the School Facilities Project providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A Consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services. There may be one or more Consultants engaged by the District for the School Facilities Project.

"Contract" means any contract between a Contracted Party and the District for the School Facilities Project. The term "Contract" includes the Design Consultant Contract, the Construction Contract and any other contracts, subcontracts and agreements between the (i) District and its Consultants; (ii) District and its Contractors; (iii) Contractors and their Subconsultants and Subcontractors; and (iv) Consultants and their Subconsultants and Subcontractors.

"Contracted Party," means any of the Consultants, Contractors, and their Subconsultants and Subcontractors and any other party providing materials or services to the District in connection with the School Facilities Project.

"Contractor" means that person or firm engaged by the District to undertake the construction of the School Facilities Project. There may be either a single "general" Contractor who has overall contractual responsibility for delivering all of the construction services needed to complete the School Facilities Project or there may be multiple Contractors who have responsibility for delivering particular aspects of the School Facilities Project.

"DCA" means the New Jersey Department of Community Affairs.

"Department" means the New Jersey Department of Education.

"Department Regulations" means regulations issued by the Commissioner and/or the State Board of Education that govern the financing, construction and maintenance of the School Facilities Project, as may be in effect as of the date of this Agreement and thereafter.

"Design Consultant" means the architect or engineer or other consultant selected by the District to provide design services and/or construction administration services in connection with the School Facilities Project pursuant to the Design Consultant Contract.

"Design Consultant Contract" means the agreement between the District and the Design Consultant for design of the School Facilities Project and any documents attached to such agreement and any amendments to such agreement.

"Design Phase" means that phase of the School Facilities Project in which the design of the School Facilities Project is undertaken by the Design Consultant.

"Development Authority" means the New Jersey Schools Development Authority created pursuant to Section 3 of P.L. 2007, c.137 (c.52:18A-237) as successor to the New Jersey Schools Construction Corporation for the purpose of implementing provisions of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, as amended to construct school facilities projects in Abbott Districts and assist in the funding of such projects in districts other than Abbott Districts.

"Disbursement" means a release of a portion of the Grant to the District to pay for Approved Costs.

"Disbursement Schedule" means the particular schedule of Disbursements for the Grant. There are two possible Disbursement Schedules. The Disbursement Schedule applicable to the Grant shall be as indicated in Appendix II - Special Conditions.

"District Aid Percentage" means the number, expressed as a percentage derived from dividing the District's actual core curriculum standards aid calculated pursuant to N.J.S.A. 18A:7F-15 available as of the date of the Commissioner's determination of Preliminary Eligible Costs by the District's actual thorough and efficient (T&E) budget calculated pursuant to N.J.S.A. 18A:7F-13(d) available as of the date of the Commissioner's determination of Preliminary Eligible Costs.

"District Board" means the board of education of the District.

"DOL" means the Department of Labor.

"Event of Default" means any event specified in Section 6.1.

"Excess Costs" means the additional costs of the School Facilities Project, if any, which shall be borne by the District which result from design factors that are not required to meet the facilities efficiency standards and are not approved pursuant to N.J.S.A. 18A:7G-5(g) or are not authorized as community design features included in final eligible costs pursuant to N.J.S.A. 18A:7G-6(c).

"Expiration Date" means the date upon which the Term of this Agreement automatically ends, which shall be the third anniversary of the date of final payment of the Grant and Closeout.

"Final Completion" means that point in time when all requirements of all Contracts for the School Facilities Project have been fully performed, all items on the Punchlist have been performed, all manuals, warranties and as-builts are delivered, all liens have been released, a final certificate of occupancy, continued use or completion has been issued, the School Facilities Project is included in the District's insurance coverage.

"Final Eligible Costs" means the final Approved Costs as determined pursuant to N.J.S.A. 18A:7G-5(h)(1) and N.J.A.C. 6A:26-3.6. The Final Eligible Costs for this School Facilities Project are set forth in Appendix II - Special Conditions.

"Financing Authority" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c.80 (C.34:1B-1 *et seq.*).

"Financing Authority Bonds" means bonds issued by the Financing Authority pursuant to N.J.S.A. 18A:7G-14, proceeds of which may fund all or part of the Grant.

"Governmental Authority" means the United States, the State or any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality that has jurisdiction over the School Facilities Project or any part thereof or over the design, construction, equipping, use or occupancy of the School Facilities Project.

"Grant" means the funds to be provided to the District by the Development Authority to pay for the

Approved Costs subject to the terms and conditions of this Agreement. The amount of the Grant is set forth in Appendix II - Special Conditions and may be reduced pursuant to Section 2.1.5.

"Initial Local Share" means the initial amount of the funding to be provided by the District as set forth in Appendix II - Special Conditions.

"Local Share" means the Total Costs less the State Share as determined pursuant to N.J.S.A. 18A:7G-15.

"Long-Range Facilities Plan" means the plan required to be submitted to the Commissioner by a District pursuant to N.J.S.A. 18A:7G-4.

"Milestones" means critical activities of the Design Phase and the Construction Phase of a School Facilities Project which are expected to be completed and the percentage of the Grant to be paid provided that all conditions precedent have been satisfied to the sole satisfaction of the Development Authority.

"Other Facilities" means athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities including, but not limited to, grandstands and night field lights, greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building or facility used solely for school administration.

"Performance Evaluation Policy and Procedure" means the policies and procedures developed by the Development Authority for the purpose of evaluating the performance of Consultants and Contractors who perform services in connection with School Facilities Projects.

"Plans and Specifications" means the plans and specifications of the School Facilities Project prepared by the Design Consultant and approved by the Department pursuant to N.J.A.C. 6A:26-5.4.

"Preliminary Eligible Costs" means the initial Approved Costs of the School Facilities Project determined pursuant to the formulas set forth in N.J.S.A. 18A:7G-7, which shall be deemed to include the costs of construction and other allowable costs.

“PSCL” means the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., together with all applicable regulations and guidance issued by the DCA in connection therewith.

"Punchlist" means the list, prepared before Substantial Completion, of incomplete or defective work to be performed or remedied by a Contractor after Substantial Completion.

"Request for Disbursement" means a written certified statement by the District, in such form and manner as specified in Exhibit A attached hereto requesting that Grant funds be disbursed to the District by the Development Authority for Approved Costs which shall provide a complete description of the Approved Costs that have been paid or shall be paid, as applicable, and shall be certified by the vendor and the Authorized Officers of the District. The Request for Disbursement shall include a Voucher.

"Requirements" means any law, ordinance, order, rule or regulation of a Governmental Authority applicable to the School Facilities Project, to this Agreement and the work performed there under and hereunder.

"School Bonds" means the bonds, notes or other obligations, if any, issued by the District to finance the Local Share.

"School Business Administrator" means the person appointed by the District Board pursuant to N.J.A.C. 6A:9-12.1 et seq.

"School Facility" means and includes any structure, building or facility used wholly or in part for educational purposes by a District or community provider and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, but shall exclude other facilities.

"School Facilities Project" means the project approved by the Commissioner pursuant to N.J.S.A. 18A:7G-5(h) and as described in Appendix IV attached hereto.

"State" means the State of New Jersey.

"State Share" means the State's proportionate share of the Final Eligible Costs, which equals the District Aid Percentage or 40%, whichever is greater as provided in N.J.S.A. 18A:7G-15. The State Share for this School Facilities Project is indicated in Appendix II - Special Conditions.

"Subconsultant" means a consultant to whom the Consultant subcontracts part of the work for which the Consultant is responsible.

"Subcontractor" means the contractor to whom a Contractor or Consultant subcontracts part of the work for which such Contractor or Consultant is responsible.

"Substantial Completion" means that point in time **a)** when all of the following have occurred: (i) essential requirements of the Contracts have been fully performed so that the purpose of the Contracts is accomplished; (ii) the Punchlist has been created; (iii) there are no important or material omissions or technical defects or deficiencies regarding the School Facilities Project; (iv) a temporary certificate of occupancy, continued use or completion has been issued; (v) the School Facilities Project is ready for occupancy in accordance with its intended purpose; (vi) the School Facilities Project has been included in the District's insurance coverage **and; b) when the School Business Administrator and Design Consultant have certified as to such in the forms attached as Exhibits G-1 and G-2 respectively.**

"Suspension" means a temporary cessation of Disbursements to the District.

"Term" means the term of this Agreement, which shall commence on the Commencement Date and shall end on the Expiration Date, unless sooner terminated.

"Termination" means the cancellation of this Agreement as a result of an Event of Default or by mutual consent of the parties.

"Time-sensitive Project" means either an emergent project, as that term is defined in N.J.A.C.6A:26-1.2 or a School Facilities Project necessitating an abbreviated Disbursement Schedule because the standard Disbursement Schedule would not accommodate a District's need to have the School Facility operational by the commencement of or during the school year.

"Total Costs" means the actual total amount spent on the School Facilities Project. The estimated amount of the Total Costs upon the Commencement Date is set forth in Appendix II - Special Conditions and shall be adjusted to reflect the actual total amount spent on the School Facilities Project upon its completion.

"Unavoidable Delays" means any delays due to weather, strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes similarly beyond the control of the District; provided, however, that any lack of funds beyond those funds to be provided pursuant to this Agreement shall not be deemed a cause beyond the control of the District.

"Voucher" means the voucher in the form attached hereto as Exhibit A executed and delivered to the Development Authority by the District, together with a Request for Disbursement.

## **ARTICLE II - THE GRANT**

### **2.1 The Grant**

2.1.1 Pursuant to and in accordance with the provisions of the Act and this Agreement, the Development Authority shall provide to the District the Grant to pay for the State Share of Final Eligible Costs. The Grant shall be in the amount indicated in Appendix II - Special Conditions, shall not be increased at any time for any reason and may be decreased upon Final Completion as set

forth in Section 2.1.5 hereof. The proceeds of the Grant shall be used by the District solely to pay for Approved Costs.

2.1.2 Under no circumstances will the Financing Authority, or the Development Authority be responsible for providing funds in excess of the Grant. Cost overruns shall be the sole responsibility of the District. The award of this Grant does not commit the Financing Authority, the Development Authority or the State to award any continuation or supplemental funds. There shall be no Grant modification increasing the Grant.

2.1.3 The District shall have no legal or equitable interest in the assets or in any amount from time to time on deposit in the funds and accounts of the Financing Authority and the Development Authority which may provide funding of the Grant.

2.1.4 The right of a District to receive Disbursements from the Development Authority under this Agreement shall not be assigned.

2.1.5 Prior to Final Completion and the final Disbursement, the District shall certify to the Development Authority the Total Costs of the School Facilities Project. If such amount is less than the Final Eligible Costs, the Grant shall be adjusted accordingly pursuant to the following:

2.1.5.1 The Total Costs shall be subtracted from the Final Eligible Costs.

2.1.5.2 The amount determined in paragraph 2.1.5.1 shall be multiplied by the District Aid Percentage or 40%, whichever is greater.

2.1.5.3 The number determined in paragraph 2.1.5.2 shall be subtracted from the original amount of the Grant. The remaining number represents the final Grant.

2.1.6 The District shall have 180 days from the date of the Development Authority's offer of a Grant Agreement to return an executed Grant Agreement together with all applicable attachments, to the Development Authority for execution by the Development Authority. In the event that the Development Authority has not received an executed Grant Agreement with all applicable attachments, it will notify the District on or before 30 days prior to the end of the 180-day time period that failure to receive an executed grant agreement and all applicable attachments by day 180 will result in rescission of the Grant Agreement offer.

**2.1.7 The District shall have 365 days from the project completion date to submit all required documents to the Development Authority so that the final grant amount may be paid, unless the District obtains a written confirmation of an extension from the Development Authority for a delayed submission.**

## **2.2 Conditions of the Grant**

The Development Authority's obligation to administer the Grant and the District's rights and obligations with respect to disbursement and use of the Grant proceeds under this Agreement shall be subject to the satisfaction of the following conditions:

2.2.1 The District shall deliver to the Development Authority two (2) copies of this Agreement fully executed by the District;

2.2.2 The District shall deliver to the Development Authority a certified copy of a resolution of the District Board authorizing the execution and delivery of this Agreement and the District Board's delegation of authority to the School Business Administrator for supervision of the School Facilities Project;

2.2.3 The District shall deliver to the Development Authority a certification executed by the School Business Administrator attached as Appendix V certifying to the following: (i) all adoptions and approvals required to be given by the District or by any other Governmental Authority with respect to this Agreement have been obtained; (ii) the District has full legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; and (iii) this Agreement has been duly authorized, executed and delivered by the District, and assuming the due authorization, execution and delivery by the Development Authority, constitutes a valid and binding agreement of the District enforceable in accordance with its terms, except as the enforcement thereof may be limited to bankruptcy, insolvency, moratorium and other laws affecting the rights of creditors generally or equitable principles, whether considered in a proceeding at law or in equity;

2.2.4 The District or the Department shall provide the following to the Development Authority:

2.2.4.1 Approval of the School Facilities Project by the Department pursuant to N.J.S.A. 18A:7G-5(h) and N.J.A.C. 6A:26-3.3. Such approval includes approval of educational specifications and schematic plans, if applicable, by the Department pursuant to N.J.A.C. 6A:26-5.2 and 5.3.

2.2.4.2 Determination of Final Eligible Costs and the State Share by the Department pursuant to N.J.S.A. 18A:7G-5(h) and N.J.A.C. 6A:26-3.6.

2.2.4.3 If land was acquired as part of the School Facilities Project, approval of the land acquisition by the Department pursuant to N.J.A.C. 6A:26-7.1. If an existing facility was acquired, the District shall obtain approvals of the school site and the facility from the Department pursuant to N.J.A.C. 6A:26-7.3.

2.2.4.4 Evidence that the Local Share has been approved in accordance with the provisions for the approval of capital projects pursuant to N.J.S.A. 18A:22-1 et seq., N.J.S.A. 18A:24-1 and P.L.1991, c. 139 (C.18A:7A-46.1 et seq.), as applicable to the District pursuant to N.J.S.A. 18A:7G-11 and pursuant to N.J.A.C. 6:23A-2.7;

(A) If the Local Share is funded through the issuance of School Bonds, a certified copy of the referendum that the District submitted to the voters for approval of the Local Share evidencing proof of voter approval of the Local Share.

(B) If the Local Share is funded through the Capital Reserve Account, evidence that the



District complied with the requirements of the Department Regulations governing the use of the Capital Reserve Account for the Local Share.

(C) If the Local Share is to be funded through sources other than School Bonds or the Capital Reserve Account, such as a lease purchase agreement of not in excess of five years duration, the District shall obtain approval of Local Share in accordance with N.J.A.C. 6A:26-3.7 and any statutory and regulatory authorities specifically governing that source of Local Share, such as N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10, evidence of approval and financial commitment to fund the Local Share as prescribed by applicable law.

(D) If the Local Share is funded through sources other than School Bonds, such as gifts, grants, other private sources, or other public funds such as municipal surplus, evidence that the funds have been committed and are authorized for use for the School Facilities Project pursuant to the terms of the funding sources and applicable law.

2.2.5 The District shall deliver to the Development Authority a brief description of the School Facilities Project and the proposed timetable for completion of the School Facilities Project.

2.2.6 The District shall deliver to the Development Authority any waiver request in the form and as required by Section 2.5.

### **2.3 Disbursement of the Grant**

2.3.1 Submission of Request for Disbursement The District shall submit a Request for Disbursement to the Development Authority in the form attached hereto as Exhibit A-1, which shall provide a complete description of the Approved Costs and shall be signed by the Authorized Officers of the District. The Request for Disbursement shall only be for Approved Costs which have been incurred by the District. The Request for Disbursement and the acceptance of the funds by the District pursuant thereto, shall constitute an affirmation by the District and the Authorized Officers signing such affirmation that to the best of their knowledge, the representations and warranties contained in this Agreement and the information contained in the Request for Disbursement are and remain true and correct in all material respects as of the date thereof, unless the Development Authority is notified to the contrary in writing specifying the details. This Request for Disbursement shall be submitted along with the Payment Request Checklist in the form attached hereto as Exhibit A-2.

2.3.2 Conditions Precedent to Payment of a Disbursement The Development Authority shall not be under any obligation to make Disbursements of the Grant unless: (i) this Agreement has been duly executed and delivered by the parties hereto; (ii) no Event of Default, nor any event which, with the passage of time or service of notice, would constitute an Event of Default, shall have occurred and shall be continuing hereunder at the time of the Request for Disbursement; (iii) all of the conditions precedent contained within this Agreement to the Request for Disbursement have been discharged completely and to the full satisfaction of the Development Authority, including submission of the requested documents; (iv) the Disbursement does not exceed the amount of the Grant; (v) the Disbursement will be used only for Approved Costs; (vi) none of the items for which

payment is requested has formed the basis of any previous Request for Disbursement or Disbursement from this Agreement; and (vii) the District is in compliance with all Requirements of Governmental Authorities with respect to the School Facilities Project.

2.3.3 Disbursement Schedules: Disbursement of the Grant shall be made pursuant to one of the Schedules described in this Section 2.3.3. The Disbursement Schedule applicable to the Grant shall be as indicated in Appendix II - Special Conditions.

2.3.3.1 Disbursement Schedule "1" (School Facilities Projects with Final Eligible costs of greater than \$250,000.)

(A) The first Disbursement of the Grant in the amount of ten percent (10%) of the Grant shall be made upon:

- i. Approval by the Department of the final Plans and Specifications pursuant to N.J.A.C. 6A:26-5.4;
- ii. Satisfactory compliance with all Environmental Regulations including the Madden Bill, if applicable, as determined by the Development Authority;
- iii. Submission of a certificate or other documentation acceptable to the Development Authority evidencing compliance with Executive Order No. 24 (2002)-United States Green Building Council's "Leadership in Energy and Environmental Design" (LEED), Version 2.0, if applicable;
- iv. Completion to the satisfaction of the Development Authority of the Design Phase Checklist;
- v. Submission to the Development Authority of acceptable documentation of the Design Consultant's required insurance coverage; and

vi. Submission of a Request for Disbursement as set forth in Section 2.3.1.

(B) Following the first Disbursement and up to the Disbursement upon Final Completion, the Development Authority shall make Disbursements to the District upon submission to the satisfaction of the Development Authority of a Request for Disbursement based upon construction completion as follows:

- i. When the School Facilities Project is 35 percent complete as determined by the Development Authority, the District will receive 30 percent (30%) of the Grant;
- ii. When the School Facilities Project is 65 percent complete as determined by the Development Authority, the District will receive 40 percent (40%) of the Grant; and
- iii. When the School Facilities Project **has reached Substantial Completion as evidenced by submission of the certifications attached hereto as Exhibits G-1 and G-2 to the satisfaction of the Development Authority**, the District will receive 15 percent (15%) of the Grant.

(C) The Development Authority shall not make scheduled Disbursements for construction percentages completed as identified in (B) above unless and until:

- i. A Construction Phase Checklist has been completed to the satisfaction of the Development Authority for each contract/bid advertisement of the work constituting the relevant percentage completed; and
- ii. Acceptable documentation of required insurance coverages has been submitted to the Development Authority.

(D) Upon Final Completion, the District shall prepare and submit to the Development Authority, for review and approval, a Request for Disbursement together with the Final Payment Request Checklist. Upon approval, the Development Authority shall disburse the amounts remaining under the Grant, the District shall thereupon make final payment to its Contracted Parties and thereupon, the Development Authority shall be released from any further responsibility to make any payments in connection with the School Facilities Project.

2.3.3.2 Disbursement Schedule "2" - School Facilities Projects with Final Eligible Costs of less than or equal to \$250,000.

- (A) The first Disbursement of the Grant in the amount of fifty and one-half percent (50.5%) of the Grant for fifty percent construction completion shall be made upon:
  - i. Satisfactory compliance with all Environmental Regulations including the Madden Bill, if applicable, as determined by the Development Authority;
  - ii. Approval by the Department of the final Plans and Specifications pursuant to N.J.A.C. 6A:26-5.4;

- iii. Completion to the satisfaction of the Development Authority of the Design Phase Checklist;
- iv. Submission of a Request for Disbursement as set forth in Section 2.3.1.
- v. Submission to the Development Authority of acceptable documentation of the required insurance coverage.

(B) The second Disbursement of the Grant in the amount of 40 percent (40%) of the Grant shall be made upon a showing to the satisfaction of the Development Authority of **Substantial Completion as evidenced by submission of the certifications attached hereto as Exhibits G-1 and G-2**, acceptable documentation of required insurance coverages has been submitted to the Development Authority, completion to the satisfaction of the Development Authority of the Construction Phase Checklist for each contract/bid advertisement of the work constituting the relevant percentage completed and submission of a Request for Disbursement as set forth in 2.3.1.

(C) Upon Final Completion, the District shall prepare and submit to the Development Authority for review and approval, a Request for Disbursement together with the Final Payment Request Checklist attached hereto as Exhibits A-1 and A-2, which shall contain a certification as to the Total Costs spent on the School Facilities Project. Upon approval, the Development Authority shall disburse the amounts remaining under the Grant, the District shall thereupon make final payment to its Contracted Parties, and thereupon, the Development Authority shall be released from any further responsibility to make any payments in connection with the School Facilities Project.

2.3.4 Notwithstanding anything to the contrary, none of the proceeds of the Grant shall be used by the District to pay costs incurred by the District for any litigation or threatened litigation that may ensue in connection with any of the Contracts.

2.3.5 In the case of special circumstances and/or extraordinary need, the District may request a waiver from the applicable schedule of Disbursements indicated in Section 2.3.3 by application to the Development Authority, indicating the reasons for such request and a proposed schedule of Disbursements. Upon review by the Development Authority, the Development Authority may approve the waiver and shall notify the District accordingly.

## **2.4 Post Expenditure Review by the Development Authority**

In the event that the Development Authority shall find that a payment made by the District from the Grant is for a cost other than an Approved Cost, the District shall reimburse the Development Authority for the ineligible payment, within thirty (30) days of notice by the Development Authority by certified mail.

## **ARTICLE III - DISBURSEMENT OF THE GRANT**

### **3.1 Undertaking**

The District hereby agrees to acquire, design, construct and install the School Facilities Project in accordance with the Plans and Specifications and the approval of the Department and agrees that it will use its best efforts to cause such acquisition, design, construction and installation to be conducted as soon as practicable, and to complete the School Facilities Project by the Completion Date, except to the extent that such date is delayed as the result of Unavoidable Delays. If during the construction of the School Facilities Project, the District determines that a change in a Construction Contract is required, it shall comply with any and all requirements for approval of a request for a Change Order pursuant to N.J.A.C. 6A:26-4.9 and any other applicable Department Regulations. Any changes in the School Facilities Project which may impact educational adequacy (the number, size, configuration, location or use of educational spaces) shall be reviewed and approved by the Department as required under N.J.A.C. 6A:26-4.9 prior to such changes being made. Notwithstanding anything to the contrary, any changes whether reviewed by the Department or not, shall not be eligible for funding under this Agreement.

### **3.2 District Responsible for Letting of Contracts**

3.2.1 The District shall be responsible for the letting of Contracts for the design, acquisition, construction and installation of the School Facilities Project, supervision of design and construction, acceptance of the completed School Facilities Project or parts thereof, and all other matters incidental to the performance of the duties and powers expressly granted herein to be undertaken in connection with the acquisition, construction and completion of the School Facilities Project.

3.2.2 The District shall engage a Design Consultant to design the School Facilities Project, if applicable, pursuant to the PSCL and the rules and regulations adopted pursuant thereto and shall complete the Design Phase Checklist in the form attached hereto as Exhibit B, if applicable. **If the District engages a Construction Management Firm (CMF) to manage the School Facilities Project, the CMF shall be prequalified pursuant to the Development Authority prequalification process.**

3.2.3 The District shall engage Contractors pursuant to the PSCL and the rules and regulations adopted pursuant thereto and the procedures set forth therein and shall for each separate bid advertisement and ensuing Construction Contract complete the Construction Phase Checklist in the form attached hereto as Exhibit C, if applicable, prior to the Development Authority's disbursement for a construction percentages completed that includes each such Contractor's work. **All Contractors** engaged by the District **and Subcontractors** named in the branches specified in N.J.S.A. 18A:18A-18 **who perform any work on the School Facilities Project shall be prequalified prior to the submission of any bids**, pursuant to the Development Authority prequalification process. Any Contractors whose contract amount is less than the bid threshold pursuant to N.J.S.A. 18A:18A-3 shall not be required to be prequalified pursuant to the Development Authority prequalification process.

3.2.4 The District shall continually monitor its performance under this Agreement to assure that time schedules are being met and that the completion of the School Facilities Project will occur in a timely, efficient and effective manner.

3.2.5 In performing responsibilities under this Agreement, the District shall comply and shall cause the Contracted Parties to comply with all Requirements applicable to this Agreement and to the work to be done hereunder. All such Requirements are hereby incorporated into this Agreement.

3.2.6 The District warrants that it will obtain and maintain, during the Term, all licenses, certifications, authorizations, or any documents required by all Governmental Authorities wherever necessary, to perform this Agreement. The District shall promptly notify the Development Authority and the New Jersey State Police in writing of any disciplinary action against itself or, if it has knowledge of, any Contracted Party or any change in the status of any license, permit, or other authorization required by law with reference to the School Facilities Project or this Agreement.

3.2.7 The District shall inform the Development Authority in writing as soon as possible if any of the following types of conditions occur and shall describe the action taken, or contemplated, in response thereto, and the Development Authority assistance needed, if any, to respond to any such condition: (i) problems, delays or adverse conditions that will materially affect the ability to attain project objectives, prevent the meeting of time schedules and goals, or preclude the completion or accomplishment of tasks within established time periods; and (ii) favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work or tasks than originally projected.

3.2.8 The Development Authority and the New Jersey State Police may, in their discretion and at their cost, make site visits to: (i) review accomplishments and progress to date and management control systems; (ii) audit the financial records pertaining to this Agreement; and (iii) provide such technical assistance as may be required.

3.2.9 If the District is not performing satisfactorily its obligations under this Agreement, the Development Authority may require remedial measures to fulfill the project requirements, including the following: (i) requiring that the District obtain additional Development Authority approvals before proceeding or obtain outside technical or managerial assistance; or (ii) the Development Authority may terminate this Agreement as set forth in Section 6.1.

3.2.10 The Development Authority, by entering into this Agreement with the District, does not acquire any responsibility for the administration or success of the School Facilities Project. The District retains full and complete responsibility for the administration and success of the School Facilities Project, notwithstanding the execution of this Agreement.

3.2.11 The District's bid specification for any work on the School Facilities Project shall state and all Contracts shall contain provisions that the Development Authority shall have the right to establish and maintain a Consultant and Contractor Performance Evaluation Policy and Procedure. The performance of any Consultants and Contractors engaged by the District for the School Facilities Projects shall be evaluated by the District. This evaluation shall consider, among other things, the Consultants' and Contractors' ability to deliver and complete the School Facilities Project within the specified time frame and budget established by the District and consistent with the requirements of the Contracts.

### **3.3 Debarment**

3.3.1 The District and its Consultants or Contractors shall not enter into a Contract for work on the School Facilities Project with any person or firm who has been debarred, suspended or disqualified from State, Development Authority or Federal government contracting.

3.3.1.1 The District shall insert in all Contracts with all Contracted Parties, and shall cause all Contractors and Consultants to insert into all of their Contracts with all Subconsultants and Subcontractors, a clause stating that the Contracted Party, its Subconsultants or

Subcontractors may be debarred, suspended or disqualified from contracting and/or working on the School Facilities Project if found to have committed any of the acts listed in N.J.A.C. 38A-4.1 et seq.

3.3.1.2 The District's bid specification for any work on the School Facilities Project shall require all bidders to submit a sworn statement by the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's, the Financing Authority's, the Development Authority's or the Federal government's List of Debarred, Suspended or Disqualified Bidders as a result of action taken by any State or Federal agency. Bid specifications for the School Facilities Project shall also state that the District shall immediately notify the State, the Financing Authority, the Development Authority and the New Jersey State Police in writing whenever it appears that a bidder is on the Treasurer's, the Financing Authority's, the Development Authority's or the Federal government's List. The State and/or the Financing Authority, and/or the Development Authority reserve the right in such circumstances to immediately suspend such bidder from contracting and to take such other action as is deemed appropriate pursuant to N.J.A.C. 17:19-3.1 et seq. or any applicable regulation issued by the Financing Authority (e.g., N.J.A.C. 19:30-2. 1 et seq.) or the Development Authority (e.g., N.J.A.C. 19:38A-4.1 et seq.).

3.3.1.3 The District shall have a continuing and affirmative obligation so long as this Agreement is in effect to immediately notify the State, the Financing Authority, the Development Authority and the New Jersey State Police in writing whenever it obtains knowledge that any Contracted Party, Subconsultant or Subcontractor is on the Treasurer's, the Financing Authority's, the Development Authority's or the Federal government's List. The State reserves the right in such circumstances to immediately suspend such Contracted Party, Subconsultant or Subcontractor from contracting and/or engaging in work on the School Facilities Project and to take such other action as it deems appropriate pursuant to N.J.A.C. 17:19-3.1 et seq. or any applicable regulation issued by the Financing Authority or the Development Authority.

### **3.4 Prevailing Wage**

The District's bid specification for any work on the School Facilities Project shall state and all Construction Contracts shall contain provisions that the Contractor and the Subcontractor, as applicable, shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. The District shall not hire any Contractor or Subcontractor to perform any work for the District who is listed or is on record in the Office of the Commissioner, Department of Labor, as having failed to pay prevailing wages in accordance with the provision of the New Jersey Prevailing Wage Act.

### **3.5 Law Against Discrimination and Affirmative Action**

The District's bid specification for any work on the School Facilities Project shall state and all Contracts shall contain provisions that the Contracted Party shall comply with the anti-discrimination provisions of N.J.S.A. 10:2-1 et seq., the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., N.J.A.C. 17:27-1.1 et seq. and N.J.A.C. 6A:7-1.8. The District and its Contracted Parties shall, in addition, agree by contract and guarantee to afford equal opportunity in performance of this Agreement in accordance with an affirmative action program approved by the State Treasurer. During the Term, the District and the Contracted Parties shall abide by the following provisions and shall provide in any Contracts provisions as follows:

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

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

3.5.3 The District and its Contracted Parties shall send to each labor union or representative of workers with whom the Contracted Parties have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the District, advising the labor union or workers' representative of the District's and its Contracted Parties' commitments under this Agreement and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

### **3.6 Conflict of Interest and Anti-Collusion**

3.6.1 No official or employee of the District who is authorized in his or her official capacity to negotiate, make, accept or approve or to take part in such decision regarding a Contract in connection with the School Facilities Project shall have any financial or other personal interest in any such Contract.

3.6.2 The School Ethics Law, N.J.S.A. 18A:12-21 *et seq.* and N.J.A.C. 6A:28-1.1 *et seq.* are by this reference incorporated as part of this Agreement. The District represents and affirms that none of its employees, and to the best of its knowledge after inquiry its Contracted Parties or employees of its Contracted Parties, is engaged in any conduct that constitutes a conflict of interest under, or a violation of, the School Ethics Law or its implementing regulations.

(A) The District shall report in writing to the Attorney General, the New Jersey State Police and the Executive Commission on Ethical Standards the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor.

(B) The District shall not influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.



### **3.7 Assignability**

The District's bid specification for any work on the School Facilities Project shall state and all Contracts awarded by the District in connection with the School Facilities Project shall state that the Contracts are assignable to the Development Authority.

### **3.8 Corrupt Practices**

The District shall administer and award all Contracts free from bribery, graft and other corrupt practices. The District shall bear the responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The District shall pursue all available judicial and administrative remedies and take all appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The District shall promptly notify the Development Authority and the New Jersey State Police promptly after such allegations or evidence come to the Authorized Officer's attention, and shall advise the Development Authority and the New Jersey State Police of the status and ultimate disposition of any such matter.

### **3.9 Public Works Contractor Registration Act**

All Contractors and Subcontractors who bid on the School Facilities Project shall be registered pursuant to N.J.S.A. 34:11-56.48 et seq.

### **3.10 Business Registration and Use Tax**

The District's bid specification, request for proposals, or other documents notifying potential Contractors of bidding opportunities for any work on the School Facilities Project shall contain provisions that the Contractor and the Subcontractor shall comply with the business registration and use tax requirements of N.J.S.A. 52:32-44, amended by P.L. 2004, c. 57.

3.10.1 Pursuant to N.J.S.A. 52:32-44, all Contractors who bid on the School Facilities Project shall provide a copy of the business registration certification, issued by the Department of the Treasury, at the time of submission of their bid proposals to the District. Failure to include this form with the proposal or bid will result in rejections of the bid. The Contractor must (a) obtain proof of valid business registration from a Subcontractor before entering a Contract with the Subcontractor and shall forward said business registrations to the District; (b) provide written notice to all Subcontractors that they are required to submit a copy of their business registration certificate to the Contractor; and (c) maintain and submit to the District a list of the names of any Subcontractors and their current addresses, updated as necessary during the course of the Contract performance, and to be complete and accurate before a request for final payment is made.

3.10.2 Pursuant to N.J.S.A. 52:32-44g, the Contractor and any Subcontractor providing goods or performing services under the Contract for work on a School Facilities Project, and each of their affiliates, shall, during the term of the Contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax on all their sales of tangible personal property delivered into the State.

### **3.11 Diligent Prosecution of the School Facilities Project**

3.11.1 The District and the Contracted Parties agree to diligently pursue the design and construction

of the School Facilities Project. The District shall give prompt written notice to the Development Authority of any complete or partial termination of the work on the School Facilities Project by any Contracted Party. If, subject to Unavoidable Delays, the construction of the School Facilities Project has not commenced within eighteen (18) months after the Commencement Date, such event is an Event of Default under this Agreement.

3.11.2 In the event of default of any Contracted Party under any Contract, or in the event of a breach of warranty with respect to any materials, workmanship or performance guaranty, either separately or in conjunction with others, the District shall reasonably exhaust the remedies against the defaulting Contracted Party and against each such surety for the performance of such Contracts. The District shall prosecute or defend any action or proceeding, or take any other action involving the Contracted Party, that the District deems reasonably necessary.

### **3.12 Sign Display**

The District will be provided with a sign from the Development Authority upon execution of the Agreement which shall be visibly erected at the School Facilities Project site to the extent permitted by zoning laws indicating that financing was made available through the Development Authority. The District shall remove the sign from the site upon completion of the work under the grant.

### **3.13 Maintenance of the School Facilities Project**

Upon Final Completion and thereafter, the District shall ensure that the School Facilities Project is properly maintained so that its useful life can be achieved and shall ensure that all warranties remain in full force and effect. The District shall submit a plan for the maintenance of the School Facility Project to the Development Authority prior to Closeout, which shall, in addition to other requirements, provide for the establishment and funding of a maintenance reserve fund in accordance with Department Regulations. See N.J.A.C. 6A:26A. Furthermore, prior to Closeout, the District shall establish dates for equipment testing, acceptance periods, warranties and instructional requirements and shall thereafter maintain the School Facilities Project in accordance therewith.

## **ARTICLE IV - REPRESENTATIONS OF THE DISTRICT**

### **4.1 Organization**

4.1.1 The District is a local school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes.

4.1.2 The District has full legal right and authority and all necessary licenses and permits required as of the Commencement Date to carry out and consummate all transactions contemplated by this Agreement.

4.1.3 The proceedings of the District approving this Agreement and authorizing its execution, issuance and delivery on behalf of the District have been duly and lawfully adopted. The "authorizing resolution" approving execution of this Agreement by the District was duly adopted in accordance with applicable State law, at a meeting or meetings duly called pursuant to necessary public notice and held in accordance with applicable State law and at which quorums were present and acting throughout.

4.1.4 This Agreement has been duly authorized, executed and delivered by an Authorized Officer; and, assuming that the Authorized Officer has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered this Agreement, this Agreement constitutes the legal, valid and binding obligations of the District, enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally.

#### **4.2 Full Disclosure**

There is no fact that the District has not disclosed to the Development Authority in writing or otherwise that materially adversely affects or (so far as the District can now foresee) that will materially adversely affect the properties, activities, prospects or conditions (financial or otherwise) of the District or the School Facilities Project, or the ability of the District to otherwise observe and perform its duties, covenants, obligations and agreements under this Agreement.

#### **4.3 Compliance with Existing Laws and Agreements**

The authorization, execution and delivery of this Agreement and the observance and performance by the District of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Agreement and the compliance by the District with the provisions of this Agreement will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed of trust, agreement or other instrument to which the District is a party or by which the School Facilities Project, the District or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the District was established or any Requirement to which the District or its properties or operations is subject.

#### **4.4 Governmental Consent**

As of the Commencement Date, the District has obtained to the extent obtainable by the Commencement Date, and shall in the future obtain all permits and approvals required by any governmental body or officer for the making, observance and performance by the District of its duties, covenants, obligations and agreements under this Agreement including but not limited to any approvals or findings by the Department, the Commissioner, DCA and the Development Authority. The District has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the District of its duties, covenants, obligations and agreements under this Agreement. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the District as a condition to the authorization, execution and delivery of this Agreement or the consummation of any transaction herein contemplated.

#### **4.5 Compliance with Requirements**

The District is in compliance with all laws, ordinances, government rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the District to conduct its activities or the condition (financial or otherwise) of the District. **The District agrees to operate and maintain the School Facilities Project in accordance with all applicable**

**Requirements now in force or that may be enacted hereafter, including, but not limited to such environmental protection, worker's compensation, sanitation, safety, non-discrimination and zoning laws, ordinances, rules and regulations as shall be binding upon the District.**

#### **4.6 Use of Proceeds**

The proceeds of the Grant will be used by the District solely for the purpose of paying Approved Costs and shall not be used for any other purpose whatsoever.

#### **4.7 Litigation**

Except as disclosed on Exhibit F, there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the District, threatened against or affecting the District, its properties or powers which, if adversely determined, would (i) materially adversely affect the transactions contemplated hereby; (ii) adversely affect the validity or enforceability of this Agreement; or (iii) materially adversely affect the ability of the District to perform its obligations under this Agreement.

#### **4.8 No Defaults**

No event has occurred and no condition exists that upon authorization, execution and delivery of this Agreement, would constitute an Event of Default hereunder. The District is not in breach of, or default under, any applicable law or administrative regulation of the State or of the United States, or any applicable judgment, decree or agreement, note, resolution, ordinance, agreement, duty, covenant, obligation or other instrument to which the District is a party or is otherwise subject, the consequence of which or the non-correction of which would materially and adversely affect the School Facilities Project or this Agreement.

#### **4.9 No Material Adverse Change**

There has been no material adverse change in the financial condition of the District since the date of the final adoption of the "authorizing resolution." The District shall promptly notify the Development Authority of any material adverse change in the activities, prospects or condition (financial or otherwise) of the School Facilities Project or in the ability of the District to otherwise observe and perform its duties, covenants, obligations and agreements under this Agreement.

#### **4.10 Binding Obligation of the District**

The obligation of the District to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the School Facilities Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either, or in the rules or regulations of any Governmental Authority, any failure of the State, the Development Authority or the Financing Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the School

Facilities Project or this Agreement, or any rights of set-off, recoupment, abatement or counterclaim that the District might otherwise have against the State, the Development Authority or the Financing Authority or other party or parties.

#### **4.11 Disclaimer of Warranties and Indemnification**

4.11.1 The District acknowledges and agrees that:

(A) The Development Authority and the Financing Authority do not make any warranties or representations, either express or implied as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the School Facilities Project or any portion thereof or any other warranty or representation with respect thereof.

(B) In no event shall the Development Authority or the Financing Authority or their agents be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement, or the School Facilities Project or the existence, furnishing, functioning or use of the School Facilities Project or any item or products or services provided for in this Agreement.

(C) During the Term, to the fullest extent permitted by law, and as set forth fully in Section 5.5, the District shall indemnify and hold the Development Authority and the Financing Authority harmless from and against, and the District shall pay any and all liability, loss, cost, damage, claim, demand, judgment or reasonable expense of any and all kinds or nature and, however arising, or claimed to arise, that the Development Authority or the Financing Authority may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real or personal or upon or arising out of Contracts entered into by the District, or arising out of the acquisition, construction, installation, operation or closure of the School Facilities Project.

4.11.2 It is mutually agreed by the District, the Development Authority, and the Financing Authority that neither the Development Authority nor Financing Authority nor its members, officers, agents, servants, or employees shall be liable for any action performed under this Agreement, and the District shall hold such individuals harmless from any claim or suit or whatever nature resulting therefrom.

This Section 4.11 shall survive the termination of this Agreement.

#### **4.12 No Untrue Statements**

Neither this Agreement, nor any other document, certificate or statement related to this Agreement or the School Facilities Project, furnished to the Development Authority, the Financing Authority, the Commissioner, DCA or the Department by the District either (i) contains any untrue statement of a material fact or (ii) omits a material fact necessary to make the statements contained within this Agreement, document, certificate or other statement not misleading or incomplete.

#### **4.13 Continuing Representations**

The representations of the District contained herein shall be true at the time of execution of this Agreement and shall be true at all times during the Term.

## **ARTICLE V - COVENANTS OF THE DISTRICT**

### **5.1 Preservation of Existence**

In accordance with applicable law, the District shall at all times relevant to this Agreement, preserve and maintain its existence, comply with all laws applicable to the District and obtain and maintain in effect all approvals or authorizations of any government or governmental department, agency or authority that may at any time be required by or necessary to the performance of its obligations hereunder or under any other agreements or instruments material to this Agreement and the School Facilities Project and take all necessary and lawful action to ensure that such obligations shall be fully assumed by any governmental entity that may succeed to the functions, duties or responsibilities of the District by operation of law and by any entity that may at any time legally act in place of the District.

### **5.2 Compliance with Requirements**

The District agrees that it shall comply with all applicable Requirements and written policies now or hereafter in effect and maintain in effect all approvals or authorizations of any Governmental Authority that may at any time be required by or necessary to the performance of its obligations hereunder or under any other agreements or instruments material to this Agreement and the School Facilities Project.

### **5.3 Right to Examine, Inspect and Audit the School Facilities Project**

5.3.1 The Development Authority, the Financing Authority, the New Jersey State Police, the Department, the DCA and the DOL and their duly authorized agents may at their discretion and cost, investigate, audit, examine and inspect the activities, documents, work product arising from audits, records and accounts pertaining to the School Facilities Project and all other parties involved with the School Facilities Project as further set forth below:

5.3.1.1 They shall have the right, at all reasonable times and upon prior notice, to enter upon and examine, inspect and audit the School Facilities Project but shall not be required to do so if in their sole judgment such notice and times cannot be provided and to make any copies or abstracts of any document, record or account.

5.3.1.2 They shall have the right to make any copies or abstracts of any document, record or account relating to the School Facilities Project.

5.3.1.3 They may engage the services, from time to time, of a construction management firm to assist the Development Authority in monitoring the School Facilities Project, in which case, such firm(s) shall have the right to enter upon and examine, inspect and audit the School Facilities Project at reasonable times, upon reasonable notice and at the Development Authority's and/or the New Jersey State Police's cost.

5.3.1.4 They reserve the right to have access to all work product produced in connection with audits made by the District or its accountant or by the Contracted Parties or their accountants.

5.3.2 The responsibilities of the District and/or the Contracted Parties with regard to access to the activities, documents, records and accounts pertaining to the School Facilities Project include,

but are not limited to, the following:

5.3.2.1 The District's bid specification for any work on the School Facilities Projects shall state and all Contracts awarded by the District in connection with the School Facilities Project shall state that the Development Authority, the Financing Authority, the New Jersey State Police, the Department, the DCA and the DOL and their duly authorized agents may, at their discretion and cost, investigate, audit, examine and inspect the activities, documents, work product arising from audits, records and accounts (pertaining to the School Facilities Project) of the District and all other parties involved with the School Facilities Project.

5.3.2.2 The District shall keep those records and accounts and shall require all Contracted Parties to keep those records and accounts for the School Facilities Projects as necessary in order to evidence compliance with the Act, the PSCL, this Agreement, the Department Regulations and all other Requirements.

5.3.2.3 The District and the Contracted Parties shall submit to the Development Authority, the Financing Authority, DCA, the New Jersey State Police or their agents, at their request, such certifications, documents, reports and information related to the School Facilities Projects, this Agreement and other applicable State laws and regulations as may be required.

5.3.2.4 The District shall include in all Contracts a provision requiring Contracted Parties to permit the Development Authority, the Financing Authority, DCA and the New Jersey State Police and their agents to investigate, audit, examine and inspect in such manner and at such times as the Development Authority, the Financing Authority and the New Jersey State Police deem necessary and requiring them to furnish facilities for such access, inspection and document reproduction.

5.3.2.5 The District or the Contracted Parties, as the case may be, shall furnish facilities for such access, inspection and document production.

#### **5.4. Record Retention**

5.4.1 Financial records, supporting documents, and all other records of the District and the Contracted Parties which relate in any way to the School Facilities Project and/or to the Grant shall be retained during the Term of the Agreement and for ten (10) years after Closeout, provided however, if any litigation, claim or audit relating to the School Facilities Project and/or to the Grant is commenced prior to the Expiration, such records and documents shall be retained until all litigation, claims or audit findings involving the records have been resolved.

5.4.2 The Financing Authority or the Development Authority may request transfer of certain records to its custody from the District and the Contracted Parties for a maximum period of ten (10) years after the Expiration Date in the event that the Financing Authority or the Development Authority determines, at their discretion, that such records possess long-term retention value. The Financing Authority and the Development Authority will make arrangements with the District and the Contracted Parties to reproduce or share retention, at the Financing Authority's and/or the Development Authority's expense, of any records that are continuously needed for joint use.

## **5.5 Release and Indemnification**

5.5.1 To the fullest extent permitted by law, the District shall indemnify, protect, defend and save harmless the Development Authority, the Financing Authority and their agents, servants, officers and employees from and against any loss, damage, injury, cost or expense, and from and against any claim, demand, liability, lawsuit, judgment, action or other proceeding arising or claimed to arise from, in connection with, or as a result of the acts or omissions of the District, its agents, servants, officers, employees, Contracted Parties or any other person at the District's request, subject to its direction or on its behalf, or arising or claimed to arise from, in connection with or as a result of this Agreement, or arising or claimed to arise from, in connection with, or as a result of the acquisition, construction, installation, ownership, operation or closure of the School Facilities Project.

5.5.2 The District shall immediately notify the Development Authority, and the Financing Authority of any damage for which it or the Development Authority or the Financing Authority might be liable and shall, at its sole expense: (A) appear, defend, and pay all charges for attorneys, all costs, and all other expenses arising in connection with any damage; and (B) promptly satisfy and discharge any judgment rendered against the Development Authority or the Financing Authority or its agents (unless same is being diligently appealed through judicial action), or any settlement entered into by the Development Authority or the Financing Authority after consultation with the District, for any damage. The District shall not assert any defense that would be available to the Development Authority or the Financing Authority but not to the District, whether arising pursuant to the New Jersey Tort Claims Act or otherwise, without having first obtained the written approval of the State Attorney General.

The provisions of this Section 5.5 shall survive the Expiration or Termination of this Agreement.

## **5.6 Exclusion of Interest from Federal Gross Income and Compliance with Code**

The District covenants and agrees that it shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Financing Authority Bonds from Federal gross income for purposes of Federal income taxation as that status is governed by Section 103(a) of the Code. The provisions of this Section 5.6 can be amended by the Financing Authority in its sole discretion at any time upon the advice of Bond Counsel. The District shall submit information at the times and in the manner as may be required by Bond Counsel, from time to time. Without limiting the generality of the preceding sentences, the District covenants and agrees to comply with the restriction on private use of the State Share funded School Facilities Project. The limitations on private use are set forth in Appendix I to this Agreement. This Section 5.6 and Appendix I shall survive the expiration or termination of this Agreement.

## **5.7 Insurance**

The following minimum types and levels of insurance shall be maintained in force and effect for the Term and for the life of the School Facilities Project (except that the Builder's Risk insurance shall be required only until Closeout). These coverages shall be maintained either through insurance policies from insurance companies licensed to do business in the State and rated as A- or better as determined by A.M. Best Company or through formal, fully funded self-insurance programs authorized by law and acceptable to the Development Authority. All policies shall incorporate a provision requiring the giving of written notice to the Development Authority by certified mail, return receipt requested, at least thirty (30) days prior to the cancellation or non-renewal of any such



policies. Unless current documentation is already on file with the Development Authority, the District must submit certificates of insurance showing the full amount of coverage in force, documentation of self-insurance, or both to the Development Authority. No payments shall be made under this Agreement until acceptable documentation of insurance coverage is received. *The minimum required coverages are:*

5.7.1 **Professional Liability Insurance (Errors & Omissions)**

When the District engages or causes to be engaged a Consultant to perform services that are commonly the subject of professional liability insurance, such coverage shall be required, retroactive to the effective date of the Consultant contract, covering any and all bodily injury and property damage arising from the work there under in an amount not less than \$1 million per claim. Such coverage must be maintained for a period of five (5) years after the date of final payment by the Development Authority under the pertinent contract or, or if said coverage is not commercially available for such term, then for such shorter period of time as such insurance is commercially available.

5.7.2 **Commercial General Liability Insurance**

**The District and all Contracted Parties must maintain Commercial General Liability Insurance**, covering any and all bodily injury and property damage arising out of or in connection with the work performed hereunder. The policy shall include coverage for contractual liability, products/completed operations, explosion, and collapse and underground operations in an amount not less than \$1million. The policy shall name the State, the Department, the Development Authority and the Financing Authority as additional insureds.

**The District must maintain Commercial General Liability Insurance**, together with such excess coverage or umbrella coverage with the same terms and conditions as the underlying coverage, in an amount such that the District's commercial general liability insurance and excess/umbrella equals \$5 million. The policy shall name the State, the Department, the Development Authority and the Financing Authority as additional insureds.

5.7.3 **Worker's Compensation Insurance**

**The District and all Contracted Parties must maintain Worker's Compensation Insurance**, in accordance with the laws of the State and any other jurisdiction required to protect employees of the District and any and all Contracted Parties, who will be engaged in the performance of the work hereunder:

A. WORKER'S COMPENSATION	Statutory
B. EMPLOYER'S LIABILITY	\$500,000 each accident

5.7.4 **Builder's Risk Insurance**

**The District and/or the general Contractor who has overall contractual responsibility for delivering all of the construction services needed to complete the School Facilities Project must maintain Builder's Risk Insurance**, providing coverage for all risk of physical loss or damage to the property described hereunder in an amount equal to the completed value of the work contracted herein and furnished under Construction Contracts for the School Facilities Project; excepting excavations, foundations and other structures customarily excluded by such insurance. The policy shall name the State, the Department, the Development Authority and the Financing Authority as loss payee as their interests may appear.

### **5.7.5 Comprehensive Automobile Liability Insurance**

**The District and all Contracted Parties must maintain Comprehensive Automobile Liability Insurance**, including coverage for any and all owned, non-owned, hired or borrowed vehicles, covering bodily injury and property damage. Such coverage shall be in the amount of \$1,000,000 combined single limit. The policy shall name the State, the Department, the Development Authority and the Financing Authority as additional insureds.

### **5.8 Performance and Payment Bonds**

The District shall require the provision of performance bonds or other security pursuant to N.J.S.A. 18A:18A-25.

### **5.9 Bid Guarantee**

The District shall require that all bidders submit with their bids an unconditional certified check, cashier's check, or bid guarantee in an amount of ten percent (10%) of the bidder's base bid, but not in excess of \$20,000. Such bid guarantee serves as a guarantee that, should a bidder's bid be accepted, the bidder will execute and comply with the Contract.

5.9.1 Within ten (10) days after delivery to the District of a Contract executed by the selected bidder, together with all other items that may be required to be submitted therewith, the District shall return the bid guarantee to each unsuccessful bidder.

5.9.2 If the selected bidder fails to execute the Contract or to provide all guarantees, insurance and other items required, the funds represented by such bidder's bid guarantee shall be released to the District and become and remain the property of the District. Delivery of the bid guarantee constitutes the agreement of the bidder and the surety or other entity that issued the bid guarantee that such amount shall be released to the District in such event.

5.9.3 All bid guarantees must be issued by a surety licensed to issue such guarantees in the State and must be acceptable to the District and the Development Authority. Certified or cashier's checks shall be drawn on a state or national bank rated "A" by at least two nationally recognized rating agencies. Checks shall be made payable to the District.

### **5.10 Certifications**

The District shall require all Contracted Parties to enter into certifications at the times prescribed in this Section 5.10: the Design Consultant, upon award of its Contract in the form attached hereto as Exhibit E-1, at Substantial Completion in the form attached hereto as Exhibit G-2 and again at Final Completion in the form attached to the Final Completion Checklist attached hereto as Exhibit D; any other Consultants upon award of their Contracts; the Contractors upon award of their Contracts in the form attached hereto as Exhibit E-2; the School Business Administrator, upon submission of the Eligibility Checklist, attached hereto as Appendix III, along with the School Business Administrator Certification, attached hereto as Appendix V, at construction completion stages identified in the Disbursement Schedule, at Substantial Completion in the form attached hereto as Exhibit G-1 and at Final Completion in the form attached hereto as Exhibit D.

## **5.11 Right of Entry**

Notwithstanding anything else to the contrary, the School District hereby grants to the Development Authority, the Financing Authority, the Department, the New Jersey State Police, and their duly authorized agents, a non-exclusive, non-transferable right to enter upon, inspect and monitor, the School Facilities Project for the purposes set forth in this Agreement upon reasonable notice, at reasonable times and without cost to the District.

## **5.12 Costs**

If the cost to complete the School Facilities Project exceeds the Total Costs computed at the time of determination of Final Eligible Costs, the District shall be responsible for funding any such additional costs or reducing the scope of the School Facilities Project with the approval of the Department and the State; and the Financing Authority and the Development Authority shall have no liability therefore whatsoever.

## **ARTICLE VI - SUSPENSION, TERMINATION, APPEALS, CLOSEOUT**

### **6.1 Events of Default**

6.1.1 If any of the following events occur, it is hereby declared to be and shall constitute an “Event of Default” under this Agreement.

(A) Failure by the District to observe and perform any duty, covenant, condition or agreement on its part to be observed or performed under this Agreement, which failure shall continue for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied is given to the District by the Development Authority, unless the Development Authority shall agree in writing to an extension of such time prior to its expiration, provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Development Authority may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) days from delivery of the written notice referred to above or if corrective action is instituted by the District within the applicable period and diligently pursued until the Event of Default is corrected.

(B) Any representation made by or on behalf of the District contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement or the Grant, is false or misleading in any material respect.

(C) A determination is made by the Development Authority that (i) the Grant was obtained by fraud; or (ii) gross abuse or corrupt practices have occurred in the administration of the School Facilities Project by the District.

(D) Subject to Unavoidable Delays, the construction of the School Facilities Project has not commenced within eighteen (18) months after the Commencement Date.

(E) Subject to Unavoidable Delays, the construction of the School Facilities Project has not reached Final Completion on or before the Completion Date.

(F) The District has utilized Grant moneys for costs that are not Approved Costs.

(G) Work on the School Facilities Project has ceased without good cause as agreed to by the Development Authority. The term "good cause" shall include, but not be limited to, circumstances beyond the control of the District or any of the Contracted Parties such as fire, flood, riot or strike.

(H) The District has contracted with a Contractor or a Subcontractor in one of the four branches specified in N.J.S.A. 18A:18A-18 and such Contractor or Subcontractor has not been prequalified.

(I) The District has disbursed Grant monies to a debarred, suspended or disqualified firm.

(J) The District fails to permit the Development Authority, the Financing Authority, DCA or the New Jersey State Police entry or inspection as permitted by this Agreement.

6.1.2 Notice of Default The District shall give the Development Authority prompt written notice of the occurrence of any Event of Default referred to in Section 6.1.1 and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the District becomes aware of the existence thereof.

6.1.3 Remedies Whenever an Event of Default as defined in Section 6.1.1 shall have occurred and be continuing, the Development Authority shall notify the Department and DCA and shall have the right to take one or more of the following remedial steps:

(A) Suspension. The Development Authority may upon notice to the District suspend this Agreement and withhold further payments and prohibit the District from incurring additional obligations of Grant funds pending corrective action by the District.

(B) Termination. The Development Authority may terminate this Agreement. The Development Authority shall promptly notify the District, in writing, of its determination and the reasons for the Termination together with the date on which the Termination shall take effect. The closeout procedures described in Section 6.5 shall apply.

(C) Repayment of Grant. The Development Authority may demand that an amount equal to the Grant received under this Agreement be immediately returned to the Development Authority and upon notice to the District, the same shall be immediately due and payable by the District and any costs to the Development Authority resulting from default by the District. Any moneys collected by the Development Authority pursuant to this Section 6.1.3 shall be applied, in order of priority, (i) first, to pay any amounts to be repaid to the Development Authority from the Grant; and (ii) second, to pay any attorneys' fees or other fees and expenses owed by the District pursuant to this Agreement.

(D) Withholding of Funds. The Development Authority may withhold, upon written notice to the District, Grant Disbursements or any portion thereof where it determines that a District has failed to comply with any provision of the Act, any condition of the Grant Agreement or any requirement of N.J.A.C. 19:32. The Development Authority may also release the Grant Disbursement but refer the matter to the Department for further action, which may include audit and/or a request to the Treasurer to withhold funds payable by the State from the

District.

(E) Assumption of Contracts. At the option of the Development Authority, in its sole discretion, the Development Authority may, without prejudice to any other rights or remedies, take assignment of any of the Contracts in order to complete the School Facilities Project and the District shall take whatever actions are necessary in order to ensure the proper assignment to the Development Authority of such Contracts.

(F) Fees and Expenses. The District shall on demand pay to the Development Authority the reasonable fees and expenses of attorneys and other reasonable expenses (including without limitation the reasonably allocated costs of in-house counsel and legal staff) incurred by the Development Authority in the collection of the repayment of the Grant or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements, of the District upon an Event of Default under this Section 6.1.

## **6.2 Termination by Mutual Agreement**

The Development Authority and the District may terminate this Agreement when both parties agree that the continuation of the School Facilities Project would not produce beneficial results commensurate with the further expenditure of funds. The Development Authority and the District shall agree upon the conditions for Termination including the date on which the Termination shall take effect. The closeout provisions specified in Section 6.5 shall apply.

## **6.3 Obligations at Own Risk**

In the event that this Agreement is suspended and/or terminated pursuant to this Article VI, any obligations undertaken by the District after the Termination or the Suspension shall be paid for solely by the District and the Development Authority shall have no liability whatsoever for the payment thereof.

## **6.4 Other Remedies**

The Development Authority may take whatever other action at law or in equity that may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observances of any duty, obligation, agreement or covenant of the District hereunder.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE DEVELOPMENT AUTHORITY, AND THE FINANCING AUTHORITY SHALL NOT BE LIABLE FOR THE CONSTRUCTION OF OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT THE SCHOOL FACILITIES PROJECT. FURTHER, THE DEVELOPMENT AUTHORITY, AND THE FINANCING AUTHORITY SHALL NOT BE LIABLE FOR PAYMENT OF ANY EXPENSES INCURRED IN CONNECTION WITH THE EXERCISE OF ANY REMEDY AVAILABLE TO THE DEVELOPMENT AUTHORITY OR THE FINANCING AUTHORITY OR FOR THE PERFORMANCE OR NON-PERFORMANCE OR ANY OTHER OBLIGATION OF THE DISTRICT.

## **6.5 Closeout Procedures**

The Closeout of this Agreement shall mean the process by which the Development Authority determines that all applicable administrative actions and all required work have been completed by the District. This process shall include the steps enumerated below.

6.5.1 Upon payment pursuant to Section 2.3, in the event there are any Grant proceeds that have not been expended on Approved Costs, such unexpended Grant proceeds shall be released to the Development Authority and the amount of the Grant shall be reduced by the amount of the unexpended proceeds.

6.5.2 Any proceeds of School Bonds issued by the District for the purpose of funding the Local Share of the School Facilities Project that remain unspent upon completion of the School Facilities Project shall be used by the District to reduce the outstanding principal amount of the School Bonds either through i) redeeming the School Bonds at their earliest call date; or ii) applying such proceeds to payment of principal on the School Bonds as such principal becomes due as further set forth in N.J.A.C. 6A:26-4.6. In no event shall such proceeds be utilized to pay the interest expense on the School Bonds issued for any School Facilities Project.

6.5.3 The District shall refund to the Development Authority any Development Authority funds spent on any costs that were disallowed by the Development Authority as not being Approved Costs. Such refund shall be made within thirty (30) days of the request by the Development Authority.

6.5.4 In the event that a final audit has not been performed on behalf of the District prior to the Closeout of this Agreement, the Development Authority retains the right to recover any appropriate amount after fully considering any recommendation on disallowed costs resulting from the final audit.

6.5.5 The Development Authority retains the right to request any additional information from the District or its Consultants or Contractors necessary to close out this Agreement and may retain any final Grant amount not disbursed until the closeout procedures are completed to the satisfaction of the Development Authority.

## **6.6 Appeals**

Pursuant to N.J.A.C. 19:32-1.17, appeals arising from decisions of the Development Authority may be requested in writing, and an opportunity given for any informal hearing on the papers, in person or via telephone with Development Authority staff. Such written request for an informal hearing must be made within 30 days of the receipt of the Development Authority's decision. In the event of any adverse decision after an informal hearing or if a District determines not to seek an informal hearing, and further, if the dispute or controversy is a contested case, as defined in N.J.S.A. 52:14B-2(b), a District may request, within 45 days of the written decision resulting from the informal hearing or the determination of the Development Authority if an informal hearing is not sought, a formal hearing.

## **ARTICLE VII - MISCELLANEOUS**

### **7.1 Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, if any, both written and oral between the parties with respect to the subject matter hereto.

### **7.2 Amendments, Supplements and Modifications**

This Agreement, including the schedules attached hereto, may not be amended, supplemented or modified except in writing and signed by an Authorized Officer of the Development Authority and an Authorized Officer of the District.

### **7.3 Severability**

In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

### **7.4 Binding Effect**

This Agreement shall inure to the benefit of and shall be binding upon the heirs, successors and administrators of the parties hereto.

### **7.5 No Assignment**

This Agreement and the rights, privileges and obligations of the District under this Agreement shall not be assigned by the District. This Development Authority may assign the Agreement to another instrumentality of the State in its sole discretion.

### **7.6 Applicable Law**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State.

### **7.7 Counterparts**

This Agreement 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.

## **7.8 Notifications**

Any notices or other instruments delivered pursuant to this Agreement shall be in writing and shall be sent by facsimile, registered or certified mail, postage prepaid, or by delivery by a nationally recognized overnight delivery service, addressed as indicated in Appendix II - Special Conditions.

## **7.9 Disclaimer of Agency Relationship**

The District's status shall be that of an independent principal and not as an agent or employee of the State. Nothing contained in the Agreement shall be construed to create, either expressly or by implication, the relationship of agency between the Development Authority, the Financing Authority and the District or its Contracted Parties.

## **7.10 Computation of Time**

When this Agreement refers to a period of time in terms of days, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.

## **7.11 Captions and Headings**

Captions and headings used in this Agreement are for convenience of reference only and shall in no way be deemed to define, limit, explain, or amplify any term or provision.

## **7.12 Waiver of Breach**

Failure of the Development Authority to take action against non-compliance with any provision of this Agreement shall not be construed as a waiver unless explicitly stated as such. The waiver by either party of any breach of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision.

## **7.13 Waiver of Jury Trial**

In the event of litigation, the District waives any right it may have to a trial by jury.

## **7.14 Procedural Requirement**

The District shall comply with all written procedural requirements that may be issued from time to time by the Development Authority.



**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed as set forth below:

**THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
**Signature**

Gregory Voronov

\_\_\_\_\_  
**Print Name**

Director, Capital Planning & Grants Administration

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**District Name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Title**

**REVIEWED AND APPROVED AS TO FORM ONLY**

\_\_\_\_\_  
**Signature**

Robert McNamara

\_\_\_\_\_  
**Print Name**

Associate Counsel, Office of Chief Counsel

\_\_\_\_\_  
**Title**

**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed as set forth below:

**THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
**Signature**

Gregory Voronov

\_\_\_\_\_  
**Print Name**

Director, Capital Planning & Grants Administration

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**District Name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Title**

**REVIEWED AND APPROVED AS TO FORM ONLY**

\_\_\_\_\_  
**Signature**

Robert McNamara

\_\_\_\_\_  
**Print Name**

Associate Counsel, Office of Chief Counsel

\_\_\_\_\_  
**Title**

## **APPENDIX I**

### **Limitation On Private Use Of The School Facilities Project**

## APPENDIX I

### LIMITATION ON PRIVATE USE OF THE SCHOOL FACILITIES PROJECT

1. Government Ownership. The School Facilities Project is or will be owned (or treated as owned for federal income tax purposes) by the District. The District will not sell, lease or otherwise dispose of the School Facilities Project in whole or in part to any person (including the federal government and including 501(c)(3) organizations) who is not a state or local government unit, prior to the last maturity date of the New Jersey Economic Developmental Authority bonds ("Financing Authority Bonds") without the express written consent of the NJEDA, which consent will not be granted unless the NJEDA obtains an approving opinion of bond counsel to the NJEDA to the effect that such proposed sale, lease or other disposition of the School Facilities Project will not cause interest on any NJEDA Bonds to become includable in gross income for federal income tax purposes.
2. Private Use Test. The School Facilities Project will not be used directly or indirectly in a trade or business carried on by a natural person, or in any activity carried on by a person other than a natural person, excluding use by a state or local governmental unit and use as member of the general public ("Private Use").
3. Definitions and Rules Relating to Private Use. For purposes of this Appendix to the Agreement, a Private Use consists of ownership or leasing of the School Facilities Project in whole or in part or any contract or other arrangement, including without limitation, leases, management contracts, incentive payment contracts, guarantee contracts, take or pay contracts, or put or pay contracts, which provides for an actual or beneficial use of the School Facilities Project by a person or persons (including the federal government) who are not state or local government units on a basis different from the general public or pursuant to which such person or person have special legal entitlements to use the School Facilities Project. Except as otherwise permitted by this Appendix, the District will not enter into any service contracts with any person or persons who are not state or local governmental units for services to be provided with respect to the School Facilities Project, except with respect to any permissible "management contract" wherein certain general rules described below are complied with. For purposes hereof, "management contract" means a management, service, or incentive payment contract between a qualified user and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility. "Qualified user" means a state or local government unit or an instrumentality thereof; qualified user includes the District. "Service provider" means any person other than a qualified user that provides services under a contract to, or for the benefit of, a qualified user.

General rules concerning permissible management contracts include the following:

1. The compensation paid to the service provider must be reasonable and no compensation may be based, in whole or in part, on a share of the net profits from the operation of the facility; reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties is not by itself treated as compensation.

2. Compensation based on (A)(i) a percentage of gross revenues or adjusted gross revenues (as defined below) of a facility or (ii) a percentage of expenses from a facility, but not both, (B) a capitation fee (as defined below), or (C) a per-unit fee (as defined below) is generally not considered to be based on a share of net profits.
3. A productivity reward equal to a stated dollar amount based on increases or decreases in gross revenue (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract, generally does not cause the compensation to be based on a share of net profits. "Adjusted gross revenues" means gross revenues of all or a portion of a facility, less allowances for bad debts and contractual and similar allowances.
4. If the compensation arrangements of a management contract are materially revised, the requirements for compensation arrangements are retested as of the date of the material revision and the management contract is treated as one that was newly entered into as of the date of the material revision.

Possible management contracts include the following:

4. Ninety-five percent (95%) periodic fixed fee arrangements, wherein at least ninety-five (95%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. A "periodic fixed fee" means a stated dollar amount for services rendered for a specified period of time; the stated dollar amount may automatically increase according to a specified objective external standard that is not linked to the output or efficiency of a facility, e.g., the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. Capitation fees and per-unit fees are not periodic fixed fees. A fee shall not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is a single stated dollar amount. The term of the contract, including all renewal options, must not exceed the lesser of eighty percent (80%) of the reasonably expected useful life of the financed property and fifteen (15) years.
5. Eighty percent (80%) periodic fixed fee arrangements, wherein at least eighty percent (80%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The rules pertaining to periodic fixed fees set forth in paragraph (A) above apply to this paragraph (B) as well. The term of the contract, including all renewal options, must not exceed the lesser of eighty percent (80%) of the reasonably expected useful life of the financed property and ten (10) years.

6. Fifty percent (50%) periodic fixed fee arrangements, wherein either at least fifty percent (50%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or a combination of a periodic fixed fee and a capitation fee. A "capitation fee" is a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially; e.g., a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance organization plan for whom the service provider agrees to provide all needed medical services for a specific period. A capitation fee may include a variable component of up to twenty percent (20%) of the total capitation fee, designed to protect the service provider against risks such as catastrophic loss. The term of the contract, including all renewal options, must not exceed five (5) years. The contract must be terminable by the qualified user on a reasonable notice, without penalty or cause, at the end of the third year of the contract term.
7. Per-unit arrangements, wherein all of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee. A "per-unit fee" means a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party or the qualified user. For example, a stated dollar amount for each specified medical procedure performed, car parked or passenger mile is a per-unit fee; separate billing arrangements between physicians and hospitals generally are treated as per-unit fee arrangements. The term of the contract, including all renewal options, must not exceed three (3) years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the second year of the contract term.
8. Percentage of revenue or expense fee arrangements, wherein all of the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fees. During the start up period, however, compensation may be based on a percentage of either gross revenues, adjusted gross revenues or expenses of a facility. The term of the contract, including renewal options, must not exceed two (2) years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This type of contract is permissible only with respect to contracts under which the service provider primarily provides services to third parties (e.g., radiology services to patients), and management contracts involving a facility during an initial start up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (e.g., a contract for general management services for the first year of operations).

The following definitions apply for the purposes of the foregoing paragraphs:

"Renewal option" means a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option, even if it is expected to be renewed.

"Penalties" for terminating a contract include a limitation on the qualified user's right to compete with the service provider, a requirement that the qualified user pay liquidated damages for cancellation of the contract. A requirement effective on cancellation that the qualified user reimburse the service provider for ordinary and necessary expenses or a restriction on the qualified user against hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the qualified user, such as a loan or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm's length, that could operate to provide the qualified user from terminating the contract (e.g., provisions under which the contract terminates if the management contract is terminated or that place substantial restrictions on the selection of a substitute service provider).

The following additional requirement applies to permissible management contracts:

The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances. This requirement is satisfied if (i) not more than twenty percent (20%) of the voting power of the qualified user in the aggregate is vested in the service provider and its directors, officers, shareholders and employees; (ii) overlapping board members do not include the chief executive officers of the service provider or its governing body or the qualified user or its governing body; and (iii) the qualified user and the service provider under the contract are not related parties.

## **APPENDIX II**

### **Special Conditions**



**SPECIAL CONDITIONS**

- 1. **School Facilities Project No. 0530-070-10-G1BC**  
**Grant Number: G5-4772**  
**Location: Brick Township School District**

- 2. **Costs**

2.1	Total Costs*	\$84,789
2.2	Final Eligible Costs	\$84,789
2.3	Excess Costs	\$0

- 3. **State Share Percentage:** 40%

- 4. **Funding**

4.1	State Share (Grant)	\$33,916
4.2	Initial Local Share	\$50,873

- 5. **Disbursement Schedule #2 (FEC less than or equal to \$250,000)**

<u>Milestones</u>	<u>% of Grant to be Paid</u>
50% Construction completed.....	50.5%
Substantial completion.....	45.0%
100% Construction completed.....	remainder of the Grant

- 6. **Notices**

If to the New Jersey Schools Development Authority:

P. O. Box 991  
Trenton, NJ 08625-0991  
Attn: Capital Planning & Grants Administration

If to the District: Mr. Walter Hrycenko, Superintendent  
Brick Township School District  
101 Hendrickson Avenue  
Brick, NJ 08724-2599

\*Estimated upon Commencement Date, to be adjusted upward or downward based upon the actual amount spent on the School Facilities Project.

**APPENDIX III**  
**Eligibility Checklist**

**FORM OF ELIGIBILITY CHECKLIST FOR A GRANT PURSUANT TO SECTION 15 OF THE "EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCING ACT," P.L.2000, C.72 and P.L.2007, C.137**

**INSTRUCTIONS FOR COMPLETION OF THE ELIGIBILITY CHECKLIST**

1. This Eligibility Checklist is to be completed by a District (the "District") which has received approval from the New Jersey Department of Education (the "Department") of a School Facilities Project and wishes to apply for funding from the New Jersey Schools Development Authority (the "Development Authority"), pursuant to Section 15 of the Educational Facilities Construction and Financing Act, P.L.2000, c.72 and P.L.2007, c.137 (the "Act"). Terms not otherwise defined herein shall have their meaning as set forth in the Development Authority Regulations regarding Section 15 Grant Agreements codified at N.J.A.C. 19:32-1.1 et seq.
2. The District is required to submit this Eligibility Checklist pursuant to N.J.A.C. 19:32-2.2.
3. The School Business Administrator shall complete this Eligibility Checklist and shall certify that his/her responses are true and complete.
4. The District shall submit the completed Eligibility Checklist and attachments to:

New Jersey Schools Development Authority  
Procurement and Contract Services – Grants Department  
1 West State Street  
P.O. Box 991  
Trenton, New Jersey 08625-0991  
Attention: Grants Management
5. If you have questions regarding these Instructions or any part of the Eligibility Checklist, you may contact the New Jersey Schools Development Authority by mail at the above listed address, by telephone at (609) 341-5926, or by fax at (609) 633-8858.
6. Any costs incurred by the District prior to the submission and approval by the Development Authority of this Eligibility Checklist shall be at the risk of the District.

## ELIGIBILITY CHECKLIST

**School District:** \_\_\_\_\_ **County:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_ **DOE Project No.** \_\_\_\_\_

**Name and Title of Contact Person:** \_\_\_\_\_

**Contact's Telephone:** \_\_\_\_\_ **Facsimile:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

Consult the instructions that accompany this form for guidance on its completion.

If an explanation is required for any Item, please attach an addendum.

1. The school facilities project was approved by the Department. N.J.S.A. 18A:7G-5(h) and N.J.A.C. 6A:26-3.3. **Attach a copy of said approval.**
2. Final Eligible Costs and State Share have been determined by the Department. N.J.S.A. 18A:7G-5(h) and N.J.A.C. 6A:26-3.6 and 6A:26-3.8. **Attach a copy of said determination.**
3. The Department has approved educational adequacy and schematics if applicable. N.J.A.C. 6A:26-5.1. **Attach a copy of said approval.**
4. If land was acquired as part of the school facilities project, the Department approved the land acquisition. N.J.A.C. 6A:26-7.1. **Attach a copy of said approval.**
5. The Local Share has been approved in accordance with the provisions for the approval of capital projects N.J.S.A. 18A:22-1 et seq., N.J.S.A. 18A:24-1 and P.L.1991, c. 139 (C.18A:7A-46.1 et seq.), as applicable to the District pursuant to N.J.S.A. 18A:7G-11 and pursuant to N.J.A.C. 6A:26-3.7.
  - 5.a. If the Local Share was funded through the issuance of School Bonds, attach a certified copy of the referendum that the District submitted to the voters for approval of the Local Share and proof of voter approval.
  - 5.b. If the Local Share was funded through the Capital Reserve Account, attach evidence that the District complied with the requirements of the Department Regulations governing the use of the Capital Reserve Account for the Local Share.
  - 5.c. In the case of use of funds other than School Bonds, evidence that such funds are available to the District for expenditure.
6. If a District received approval from the Department for the School Facilities Project prior to the effective date of the Development Authority Regulations, the District may request a waiver from compliance with certain provisions of the Grant Agreement. The District's request for a waiver must specify the specific provisions of the Grant Agreement that the District is requesting should not apply together with the reasons why such compliance is not possible.

**ELIGIBILITY CHECKLIST**

**CERTIFICATION BY SCHOOL BUSINESS ADMINISTRATOR**

I, the School Business Administrator for the above named District, hereby swear and certify to the following:

- A. The responses provided in answer to this Eligibility Checklist are true and complete to the best of my knowledge. All statements contained in the attached Eligibility Checklist are true and correct; and all such statements have been made with full knowledge that the Development Authority and the State of New Jersey rely upon the truth of the statements contained in this Eligibility Checklist in determining eligibility for a grant pursuant to Section 15 of the Educational Facilities Construction and Financing Act," P.L.2000, c.72 and P.L.2007, c.137 (the "Act") to the District for the school facilities project.

Sworn and subscribed to before me

By: \_\_\_\_\_  
Signature, School Business Administrator

this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
(Print Name)

Notary Public of

My commission expires: \_\_\_\_\_, 200\_\_.

## **APPENDIX IV**

### **Description of School Facilities Project**

Please complete with information currently available.  
Remaining information can be submitted as it becomes available.

## Appendix IV Description of School Facilities Project Project Data Information Form

District: \_\_\_\_\_ School: \_\_\_\_\_  
 Project #: \_\_\_\_\_ SDA Grant Number: G5- \_\_\_\_\_  
 Business Administrator: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 Design Consultant: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 Construction Mgmt Firm: \_\_\_\_\_ Phone #: \_\_\_\_\_

Project Type			
New: <input type="checkbox"/>	Add: <input type="checkbox"/>	Add/Rehab: <input type="checkbox"/>	Rehab: <input type="checkbox"/>

Key Construction Dates (estimates)	
Start: _____	Completion: _____

Student Population of this Facility	
Current: _____	Unhoused: _____

Estimated Furniture, Fixtures, & Equipment Cost
\$ _____

Square Footage		
New: _____	Addition: _____	Rehabilitation: _____

LEED Required	
Yes: <input type="checkbox"/>	No: <input type="checkbox"/>

Cost Per Square Foot		
<b>Total Cost per Square Foot</b>		
New: _____	Addition: _____	Rehabilitation: _____
<b>Construction Cost per Square Foot (hard costs only)</b>		
New: _____	Addition: _____	Rehabilitation: _____

EO 215 Required	
Yes: <input type="checkbox"/>	No: <input type="checkbox"/>

Land Purchased	
Yes: <input type="checkbox"/>	No: <input type="checkbox"/>

Project Description: (please provide a brief description, including type of rehabilitation if applicable)

Please list any Special Features (i.e., Science Labs, Media Center, etc.) or Ineligible Costs (i.e., Pools, Field Lighting, etc.)

Please list any Community Design Features (those available for public use) included in this Project:

Bidder/Award Information					
	# of Bids	Award Date		# of Bids	Award Date
General Contractors	_____	_____	Other _____	_____	_____
			(Specify Trade)		
Structural Steel	_____	_____			
Electrical Contractors	_____	_____	Other _____	_____	_____
			(Specify Trade)		
Plumbing Contractors	_____	_____			
HVAC Contractors	_____	_____	Other _____	_____	_____
			(Specify Trade)		
Other					

## **APPENDIX V**

### **School Business Administrator Certification**



**SCHOOL BUSINESS ADMINISTRATOR CERTIFICATION**

School District: \_\_\_\_\_

County: \_\_\_\_\_

Project Name: \_\_\_\_\_

DOE Project No./State Plan No. \_\_\_\_\_

SDA Grant Number: G5- \_\_\_\_\_

STATE OF NEW JERSEY }

  }ss.

COUNTY OF \_\_\_\_\_ }

I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the County of \_\_\_\_\_ and the State of New Jersey of full age, being duly sworn according to law on my oath, depose and say that I am the School Business Administrator for the above-referenced School Facilities Project (the "School Facilities Project"). I understand that the School Facilities Project is being undertaken by the District (the "District") and that the District has entered into an Educational Facilities Construction and Financing Act Grant Agreement (the "Agreement") with the New Jersey Schools Development Authority (the "Development Authority"), the Development Authority will provide funding for the School Facilities Project and the District will enter into contracts for the design and construction of such School Facilities Project. Terms not otherwise defined herein shall have their meaning as set forth in such Agreement.

I. The undersigned hereby swears and affirms to the following:

- A. All adoptions and approvals required to be given by the District or by any other Governmental Authority with respect to the Agreement have been obtained.
- B. The District has full legal right, power and authority to enter into the Agreement and to consummate the transactions contemplated thereby.
- C. The Agreement has been duly authorized, executed and delivered by the District, and assuming the due authorization, execution and delivery by the Development Authority, constitutes a valid and binding agreement of the District enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, moratorium and other laws affecting the rights of creditors generally or equitable principles, whether considered in a proceeding at law or in equity.

I further swear and affirm that all statements contained in this Certificate are true and correct; and that all such statements have been made with full knowledge that the Development Authority, the Financing Authority and the State of New Jersey rely upon the truth of the statements contained herein in entering into the Agreement and in providing payments to the District for the School Facilities Project pursuant to the Agreement.

Sworn and subscribed to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

By: \_\_\_\_\_  
 School Business Administrator

Notary Public of

Name: \_\_\_\_\_  
*(Please print name)*

My commission expires: \_\_\_\_\_, 200\_\_.

## **APPENDIX VI**

### **Insurance Coverage Types and Minimum Required Amounts**

## Section 15 Grants Insurance Coverage Types and Minimum Required Amounts

Reference: Grant Agreement Sec. 5.7

Type of Coverage	Minimum Amt.	Responsible Parties	Time Period	Add'l. Insureds
<b>Commercial General Liability</b>	\$1,000,000 \$4,000,000 Excess/Umbrella ----- \$5,000,000 Total	The School District	<b>Current</b> (Life of the School Facilities Project )	1. State of NJ 2. DOE 3. NJSDA 4. NJEDA
	\$1,000,000	All Contracted Parties	<b>Current</b> (Life of the School Facilities Project )	1. State of NJ 2. DOE 3. NJSDA 4. NJEDA
<b>Comprehensive Auto Liability</b>	\$1,000,000	The School District and all Contracted Parties	<b>Current</b> (Life of the School Facilities Project )	1. State of NJ 2. DOE 3. NJSDA 4. NJEDA
<b>Worker's Compensation</b> (Employer's Liability)	Statutory \$500,000 Each Accident	The School District and all Contracted Parties	<b>Current</b> (Life of the School Facilities Project )	N/A
<b>Professional Liability</b> (Errors and Omissions)	\$1,000,000 Each Claim	Design Consultant, CMF (performing Design Work)	<b>Current</b> (Execution up through 5 years after final Grant payment)	N/A
<b>Builder's Risk (new construction/additions)</b>	Total Project Value, less excavations, foundations, and other structures customarily excluded	The School District and/or the General Contractor	Required from beginning of construction until Closeout	1. State of NJ 2. DOE 3. NJSDA 4. NJEDA as "loss payee"

**SAMPLE INSURANCE FORMS.xls: DESIGN CONSULTANT**

<b>CERTIFICATE OF LIABILITY INSURANCE</b>				DATE (MM/DD/YYYY) 01/01/03		
<b>PRODUCER:</b>  XYZ Insurance 123 Any Street Anywhere, NJ 12345				THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
<b>INSURED</b>  ABC Architects 789 Any St Anywhere, NJ 12345				INSURERS AFFORDING COVERAGE		
				INSURER A:		
				INSURER B:		
				INSURER C:		
				INSURER D:		
				INSURER E:		
<b>COVERAGES</b>						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	<input type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE		01/01/03	01/01/04	EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE	\$
					MED EXP	\$
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		01/01/03	01/01/04	COMBINED SINGLE LIMIT	\$ 1,000,000
					BODILY INJURY (per person)	\$
					BODILY INJURY (per accident)	\$
					PROPERTY DAMAGE	\$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY:	\$
					EACH ACCIDENT	\$
					AGGREGATE	\$
	<input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM		01/01/03	01/01/04	EACH OCCURRENCE	
					AGGREGATE	\$
	<input type="checkbox"/> PROPERTY <input type="checkbox"/> BUILDER'S RISK				STATED VALUE	
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		01/01/03	01/01/04	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	
					EL EACH ACCIDENT	\$ 500,000
					EL DISEASE-POLICY LIMIT	\$
					EL DISEASE-EA EMPLOYEE	\$
	<input type="checkbox"/> OTHER <input checked="" type="checkbox"/> PROFESSIONAL LIABILITY		01/01/03	01/01/04	EACH CLAIM	\$1,000,000
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS						Listing of Additional Insured
THE STATE OF NJ, NJ DEPARTMENT OF EDUCATION, NJ SCHOOLS DEVELOPMENT AUTHORITY , AND NJ ECONOMIC DEVELOPMENT AUTHORITY ARE NAMED AS ADDITIONAL INSURED WITH RESPECT TO COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE LIABILITY.						

SAMPLE

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPNAY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE

**SAMPLE INSURANCE FORMS.xls: SCHOOL DISTRICT**

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
01/01/03

**PRODUCER:**

XYZ Insurance  
123 Any Street  
Anywhere, NJ 12345

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURERS AFFORDING COVERAGE**

**INSURED**

School District  
123 State St  
Anywhere, NJ 12345

INSURER A:  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE		01/01/03	01/01/04	EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE	\$
					MED EXP	\$
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		01/01/03	01/01/04	COMBINED SINGLE LIMIT	\$ 1,000,000
					BODILY INJURY (per person)	\$
					BODILY INJURY (per accident)	\$
					PROPERTY DAMAGE	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY:	\$
					EACH ACCIDENT	\$
					AGGREGATE	\$
	EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM		01/01/03	01/01/04	EACH OCCURRENCE	\$ 4,000,000
					AGGREGATE	\$
	PROPERTY <input checked="" type="checkbox"/> BUILDER'S RISK Builder's risk must be for Total Project cost less any excavations, foundations, or other structures normally excluded.		START OF CONSTRUCTION	END OF CONSTRUCTION	STATED VALUE	\$ project cost
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		01/01/03	01/01/04	X WC STATUTORY LIMITS	
					EL EACH ACCIDENT	\$ 500,000
					EL DISEASE-POLICY LIMIT	\$
					EL DISEASE-EA EMPLOYEE	\$
	OTHER					

**SAMPLE**

Listing of Additional Insured

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

THE STATE OF NJ, NJ DEPARTMENT OF EDUCATION, NJ SCHOOLS DEVELOPMENT AUTHORITY, AND NJ ECONOMIC DEVELOPMENT AUTHORITY ARE NAMED AS ADDITIONAL INSURED WITH RESPECT TO COMMERCIAL GENERAL LIABILITY, AUTOMOBILE LIABILITY, & BUILDER'S RISK AS LOSS PAYEES AS THERE INTEREST MAY APPEAR.

**CERTIFICATE HOLDER**

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

**EXHIBIT A-1**

**Form 806 GA  
Request for Disbursement**

**New Jersey Schools Development Authority**  
**REQUEST FOR DISBURSEMENT - SCHEDULE #1**  
*Please use this form when FEC is greater than \$250,000*

*Please Submit Original*  
**NJSDA 806GA**

**District** \_\_\_\_\_ **Project Number:** \_\_\_\_\_

**SDA Grant Number:** G5- \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Total Project Cost:** \$ \_\_\_\_\_

**Final Eligible Cost:** \$ \_\_\_\_\_

**State Share:** \$ \_\_\_\_\_ (District Aid %)

Disbursement Schedule #1	Percent of Grant	Total Value	Previous Disbursements	Current Disbursements
Design Phase Checklist	10.0%			
Construction Completion 35%	30.0%			
Construction Completion 65%	40.0%			
Substantial Construction Completion	15.0%			
Final Completion Checklist	5.0%			
<b>TOTAL</b>	<b>100.0%</b>			

**CERTIFICATION BY SCHOOL BUSINESS ADMINISTRATOR**

This Request for Disbursement and the attached vendor list have been reviewed and were found to be accurate and in compliance with the requirements of the Grant Agreement and PSCL. Therefore, I hereby certify that to the best of my knowledge, the costs of goods and services included with this Request for Disbursement have been incurred by the District for the approved/eligible portion of the above-referenced school facilities project and request the release of payment in the amount specified above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Title

\_\_\_\_\_  
Fax Number

New Jersey Schools Development Authority  
**REQUEST FOR DISBURSEMENT - SCHEDULE #1**  
*Please use this form when FEC is greater than \$250,000*

Please Submit Original  
 NJSDA 806GA

District \_\_\_\_\_ Project No.: \_\_\_\_\_

SDA Grant Number: G5- \_\_\_\_\_

Project Name: \_\_\_\_\_

**CUMULATIVE VENDOR LIST (From project inception through this submission)**

Vendors Under Direct Contract with the District for this Project:

Vendor	Service	A	B	C	D	E	F	G
		Base Contract	Change Orders	A + B Revised Contract	Invoices Previously Submitted	Invoices Submitted This Period	D + E Total Cost Paid to Date	C - F Contract Balance
<b>TOTALS</b>								

- All requests for disbursements must be accompanied by copies of all invoices for the currently requisitioned services.
- Please attach your detailed Backup Schedule/ Report showing how you determined the Total Cost amount by vendor. If any invoices included in the Total Cost column were allocated among several projects, also provide your allocation schedule.
- Please note that any change orders that modify the approved school facilities project cannot be submitted for reimbursement.



**New Jersey Schools Development Authority**  
**REQUEST FOR DISBURSEMENT - SCHEDULE #2**  
*Please use this form when FEC is less than or equal to \$250,000*

*Please Submit Original*  
**NJSDA 806GA**

**District** \_\_\_\_\_ **Project Number:** \_\_\_\_\_

**SDA Grant Number:** G5- \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Total Project Cost:** \$ \_\_\_\_\_

**Final Eligible Cost:** \$ \_\_\_\_\_

**State Share:** \$ \_\_\_\_\_ (District Aid %)

Disbursement Schedule #2	Percent of Grant	Total Value	Previous Disbursements	Current Disbursements
Construction Completion 50%	50.5%			
Substantial Construction Completion	45.0%			
Final Completion Checklist	4.5%			
<b>TOTAL</b>	<b>100.0%</b>			

**CERTIFICATION BY SCHOOL BUSINESS ADMINISTRATOR**

This Request for Disbursement and the attached vendor list have been reviewed and were found to be accurate and in compliance with the requirements of the Grant Agreement and PSCL. Therefore, I hereby certify that to the best of my knowledge, the costs of goods and services included with this Request for Disbursement have been incurred by the District for the approved/eligible portion of the above-referenced school facilities project and request the release of payment in the amount specified above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Title

\_\_\_\_\_  
Fax Number

New Jersey Schools Development Authority  
**REQUEST FOR DISBURSEMENT - SCHEDULE #2**  
*Please use this form when FEC is less than or equal to \$250,000*

Please Submit Original  
 NJSDA 806GA

District \_\_\_\_\_ Project No.: \_\_\_\_\_

SDA Grant Number: G5- \_\_\_\_\_

Project Name: \_\_\_\_\_

**CUMULATIVE VENDOR LIST (From project inception through this submission)**

Vendors Under Direct Contract with the District for this Project:

Vendor	Service	A	B	C	D	E	F	G
		Base Contract	Change Orders	A + B Revised Contract	Invoices Previously Submitted	Invoices Submitted This Period	D + E Total Cost Paid to Date	C - F Contract Balance
<b>TOTALS</b>								

- All requests for disbursements must be accompanied by copies of all invoices for the currently requisitioned services.
- Please attach your detailed Backup Schedule/ Report showing how you determined the Total Cost amount by vendor. If any invoices included in the Total Cost column were allocated among several projects, also provide your allocation schedule.
- Please note that any change orders that modify the approved school facilities project cannot be submitted for reimbursement.

## **EXHIBIT A-2**

### **Payment Request Checklists for Schedule 1 and Schedule 2 Disbursements**

**Section 15 Grant  
Payment Request Checklist  
Schedule 1  
Request for Design Phase Payment**

<u>Design Phase</u>	
_____	Appendix IV Description of School Facilities Project- Project Data Form
_____	DOE 130/ 131
_____	DOE Final Educational Adequacy Approval letter (if applicable)
_____	Design Phase Checklist (Notarized with Original Signature)
_____	Form E-1 Design Consultant Certification (Notarized with Original Signature) - For all professional services- Architects,CMF, Engineers etc.
_____	Proof of compliance with Madden Bill, P.L. 2007, c.1 (if applicable) - Please provide a completed Preliminary Assessment Report to SDA (www.state.nj.us/dep/srp/isra/forms/pa_form.doc)
_____	Proof of compliance with E.O. 215 Environmental Assessment (if applicable)
_____	Proof of compliance with EO 24 LEED (if applicable)
_____	Form 806GA, Pages 1 & 2 (Original Signature)
_____	Backup schedule(s)/ report(s) for Form 806GA Page 2
_____	Invoices/AIA documents
_____	Certificates of Insurance <sup>1,2</sup> District Design Consultant CMF (if applicable)
_____	General Construction Permits, if issued

<sup>1</sup> Must have four additional insureds: State of NJ; NJ Dept of Education; NJ Schools Development Authority;  
NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements

**Section 15 Grant  
Payment Request Checklist  
Schedule 1  
Request for 35% and/or 65% Payment**

*Use this checklist when submitting for 35%, 65% or 35 & 65% Construction Phase payments.*

<u>35%</u> <u>Construction</u>	<u>65%</u> <u>Construction</u>	
_____	_____	Proof of compliance with Madden Bill, P.L. 2007, c.1 (if applicable)
_____	_____	- DEP Approval of Remedial Action Workplan, if applicable
_____	_____	- DEP No Further Action letter, if applicable
_____	_____	- Remedial Work required by DHSS, if applicable
_____	_____	- DHSS Safety certification, if applicable
_____	_____	Form 806GA, Pages 1 & 2 (Original Signature)
_____	_____	Backup schedule(s)/ report(s) for Form 806GA Page 2
_____	_____	Invoices/AIA documents
_____	_____	Certificates of Insurance <sup>1,2</sup>
_____	_____	District
_____	_____	Design Consultant
_____	_____	CMF (if applicable)
_____	_____	General Contractor
_____	_____	All Contracted Parties
_____	_____	Form E-2 Contractor Certification (Notarized with Original Signature)
_____	New contractors	
_____	_____	Construction Checklist (Notarized with Original Signature)
_____	New contractors	
_____	_____	Contractor bid summary sheets (if over threshold)
_____	New contractors	
_____	_____	General Construction Permits (indicate 'n/a' if previously submitted)

<sup>1</sup> Must have four additional insureds: State of NJ; NJ Dept of Education; NJ Schools Development Authority; NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements

**Section 15 Grant  
Payment Request Checklist  
Schedule 1  
Request for Substantial Payment**

*If you are submitting for Substantial and Final payments at the same time, use the Substantial & Final Payment Request Checklist.*

**Substantial**

- \_\_\_\_\_ Form 806GA, Pages 1 & 2 (Original Signature)
- \_\_\_\_\_ Backup schedule(s)/ report(s) for Form 806GA Page 2
- \_\_\_\_\_ Invoices/AIA documents
- \_\_\_\_\_ Certificates of Insurance <sup>1,2</sup>
  - \_\_\_\_\_ District
  - \_\_\_\_\_ Design Consultant
  - \_\_\_\_\_ CMF (if applicable)
  - \_\_\_\_\_ General Contractor
  - \_\_\_\_\_ All Contracted Parties
- \_\_\_\_\_ Form E-2 Contractor Certification (Notarized with Original Signature)  
New contractors
- \_\_\_\_\_ Construction Checklist (Notarized with Original Signature)  
New contractors
- \_\_\_\_\_ Contractor bid summary sheets (if over threshold)  
New contractors
- \_\_\_\_\_ DEP No Further Action letter, if applicable
- \_\_\_\_\_ DOH certification, if applicable
- \_\_\_\_\_ Temporary Certificate of Occupancy/ Certificate of Approval
- \_\_\_\_\_ Business Administrator Certification of Substantial Completion (Notarized with Original Signature)
- \_\_\_\_\_ Design Consultant Certification of Substantial Completion (Notarized with Original Signature)

<sup>1</sup> Must have four additional insureds: State of NJ; NJ Dept of Education; NJ Schools Development Authority; NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements

**Section 15 Grant  
Payment Request Checklist  
Schedule 1  
Request for Substantial & Final Payment**

*Use this checklist if you are submitting for Substantial and Final payments at the same time.*

**Substantial &  
Final**

\_\_\_\_\_ Form 806GA, Pages 1 & 2 (Original Signature)  
- For Final Payment, 'Current Contract' amount should equal ' Total Incurred to Date' by vendor.

\_\_\_\_\_ Backup schedule(s)/ report(s) for Form 806GA Page 2

\_\_\_\_\_ Invoices/AIA documents

\_\_\_\_\_ Certificates of Insurance <sup>1,2</sup>  
 \_\_\_\_\_ District  
 \_\_\_\_\_ Design Consultant  
 \_\_\_\_\_ CMF (if applicable)  
 \_\_\_\_\_ General Contractor  
 \_\_\_\_\_ All Contracted Parties

\_\_\_\_\_ Form E-2 Contractor Certification (Notarized with Original Signature)  
New contractors

\_\_\_\_\_ Construction Checklist (Notarized with Original Signature)  
New contractors

\_\_\_\_\_ Contractor bid summary sheets (if over threshold)  
New contractors

\_\_\_\_\_ DEP No Further Action letter, if applicable

\_\_\_\_\_ DOH certification, if applicable

\_\_\_\_\_ Certificate of Approval/ Occupancy

\_\_\_\_\_ Business Administrator Certification of Final Completion <sup>3</sup> (Notarized with Original Signature)

\_\_\_\_\_ Design Consultant Certification of Final Completion <sup>3</sup> (Notarized with Original Signature)

\_\_\_\_\_ Maintenance Plan Agreement Sch. M-1 (signed copy)

\_\_\_\_\_ Indicator 7.6 (signed copy)

<sup>1</sup> Must have four additional insureds: State of NJ; NJ Dept of Education; NJ Schools Development Authority; NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements

<sup>3</sup> If you are submitting for Substantial and Final at the same time, only the Final Certifications are required.

**Section 15 Grant  
Payment Request Checklist  
Schedule 1  
Request for Final Payment Only**

*If you submitted a combined Substantial and Final Payment Request Checklist, disregard this schedule.*

**Final**

- \_\_\_\_\_ Form 806GA, Pages 1 & 2 (Original Signature)  
- For Final Payment, 'Current Contract' amount should equal ' Total Incurred to Date' by vendor.
  
- \_\_\_\_\_ Backup schedule(s)/ report(s) for Form 806GA Page 2
  
- \_\_\_\_\_ Invoices/AIA documents
  
- \_\_\_\_\_ Certificates of Insurance <sup>1,2</sup>
  - \_\_\_\_\_ District
  - \_\_\_\_\_ Design Consultant
  - \_\_\_\_\_ CMF (if applicable)
  - \_\_\_\_\_ General Contractor
  - \_\_\_\_\_ All Contracted Parties
  
- \_\_\_\_\_ Certificate of Approval/ Occupancy
  
- \_\_\_\_\_ Business Administrator Certification of Final Completion <sup>3</sup> (Notarized with Original Signature)
  
- \_\_\_\_\_ Design Consultant Certification of Final Completion <sup>3</sup> (Notarized with Original Signature)
  
- \_\_\_\_\_ Maintenance Plan Agreement Sch. M-1 (signed copy)
  
- \_\_\_\_\_ Indicator 7.6 (signed copy)

<sup>1</sup> Must have four additional insureds: State of NJ; NJ Dept of Education; NJ Schools Development Authority; NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements



**Section 15 Grant  
Payment Request Checklist  
Schedule 2  
Request for 50% Payment**

**50%  
Construction**

- \_\_\_\_\_ Appendix IV Description of School Facilities Project- Project Data Form
- \_\_\_\_\_ DOE 130/ 131
- \_\_\_\_\_ DOE Final Educational Adequacy Approval letter (if applicable)
- \_\_\_\_\_ Design Phase Checklist (Notarized with Original Signature)
- \_\_\_\_\_ Form E-1 Design Consultant Certification (Notarized with Original Signature)  
- For all professional services- Architects,CMF, Engineers etc.
- \_\_\_\_\_ Form 806GA, Pages 1 & 2 (Original Signature)
- \_\_\_\_\_ Backup schedule(s)/ report(s) for Form 806GA Page 2
- \_\_\_\_\_ Invoices/AIA documents
- \_\_\_\_\_ Certificates of Insurance <sup>1,2</sup>
  - \_\_\_\_\_ District
  - \_\_\_\_\_ Design Consultant
  - \_\_\_\_\_ CMF (if applicable)
  - \_\_\_\_\_ General Contractor
  - \_\_\_\_\_ All Contracted Parties
- \_\_\_\_\_ Form E-2 Contractor Certification (Notarized with Original Signature)
- \_\_\_\_\_ Construction Checklist (Notarized with Original Signature)
- \_\_\_\_\_ Contractor bid summary sheets (if over threshold)
- \_\_\_\_\_ General Construction Permits
- \_\_\_\_\_ Proof of compliance with Madden Bill, P.L. 2007, c.1 (if applicable)
  - \_\_\_\_\_ - Please provide a completed Preliminary Assessment Report to SDA  
([www.state.nj.us/dep/srp/isra/forms/pa\\_form.doc](http://www.state.nj.us/dep/srp/isra/forms/pa_form.doc))
  - \_\_\_\_\_ - Remedial Work required by DHSS, if applicable
  - \_\_\_\_\_ - DHSS Safety certification, if applicable
- \_\_\_\_\_ - DEP Approval of Remedial Action Workplan, if applicable
- \_\_\_\_\_ - DEP No Further Action letter, if applicable

NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements.

**Section 15 Grant  
Payment Request Checklist  
Schedule 2  
Request for Substantial Payment**

*If you are submitting for Substantial and Final payments at the same time, use the Substantial & Final Payment Request Checklist.*

**Substantial**

- \_\_\_\_\_ Form 806GA, Pages 1 & 2 (Original Signature)
- \_\_\_\_\_ Backup schedule(s)/ report(s) for Form 806GA Page 2
- \_\_\_\_\_ Invoices/AIA documents
- \_\_\_\_\_ Certificates of Insurance <sup>1,2</sup>
  - \_\_\_\_\_ District
  - \_\_\_\_\_ Design Consultant
  - \_\_\_\_\_ CMF (if applicable)
  - \_\_\_\_\_ General Contractor
  - \_\_\_\_\_ All Contracted Parties
- \_\_\_\_\_ Form E-2 Contractor Certification (Notarized with Original Signature)  
New contractors
- \_\_\_\_\_ Construction Checklist (Notarized with Original Signature)  
New contractors
- \_\_\_\_\_ Contractor bid summary sheets (if over threshold)  
New contractors
- \_\_\_\_\_ Proof of compliance with Madden Bill, P.L. 2007, c.1 (if applicable)
  - DHSS Safety certification, if applicable  
n/a if submitted
  - DEP No Further Action letter, if applicable  
n/a if submitted
- \_\_\_\_\_ Temporary Certificate of Occupancy/ Certificate of Approval
- \_\_\_\_\_ Business Administrator Certification of Substantial Completion (Notarized with Original Signature)
- \_\_\_\_\_ Design Consultant Certification of Substantial Completion (Notarized with Original Signature)

<sup>1</sup> Must have four additional insureds: State of NJ; NJ Dept of Education; NJ Schools Development Authority; NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements

**Section 15 Grant  
Payment Request Checklist  
Schedule 2  
Request for Substantial & Final Payment**

Use this checklist if you are submitting for Substantial and Final payments at the same time.

**Substantial &  
Final**

- \_\_\_\_\_ Form 806GA, Pages 1 & 2 (Original Signature)  
- For Final Payment, 'Current Contract' amount should equal ' Total Incurred to Date' by vendor
  
- \_\_\_\_\_ Backup schedule(s)/ report(s) for Form 806GA Page 2
  
- \_\_\_\_\_ Invoices/AIA documents
  
- \_\_\_\_\_ Certificates of Insurance <sup>1,2</sup>
  - \_\_\_\_\_ District
  - \_\_\_\_\_ Design Consultant
  - \_\_\_\_\_ CMF (if applicable)
  - \_\_\_\_\_ General Contractor
  - \_\_\_\_\_ All Contracted Parties
  
- \_\_\_\_\_ Form E-2 Contractor Certification (Notarized with Original Signature)  
New contractors
  
- \_\_\_\_\_ Construction Checklist (Notarized with Original Signature)  
New contractors
  
- \_\_\_\_\_ Contractor bid summary sheets (if over threshold)  
New contractors
  
- \_\_\_\_\_ Proof of compliance with Madden Bill, P.L. 2007, c.1 (if applicable)
  - DHSS Safety certification, if applicable  
n/a if submitted
  - DEP No Further Action letter, if applicable  
n/a if submitted
  
- \_\_\_\_\_ Certificate of Approval/ Occupancy
  
- \_\_\_\_\_ Business Administrator Certification of Final Completion <sup>3</sup> (Notarized with Original Signature)
  
- \_\_\_\_\_ Design Consultant Certification of Final Completion <sup>3</sup> (Notarized with Original Signature)
  
- \_\_\_\_\_ Maintenance Plan Agreement Sch. M-1 (signed copy)
  
- \_\_\_\_\_ Indicator 7.6 (signed copy)

<sup>1</sup> Must have four additional insureds: State of NJ; NJ Dept of Education; NJ Schools Development Authority; NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements

<sup>3</sup> If you are submitting for Substantial and Final at the same time, only the Final Certifications are required.

**Section 15 Grant  
Payment Request Checklist  
Schedule 2  
Request for Final Payment Only**

*If you submitted a combined Substantial and Final Payment Request, disregard this schedule.*

**Final**

- \_\_\_\_\_ Form 806GA, Pages 1 & 2 (Original Signature)  
- For Final Payment, 'Current Contract' amount should equal ' Total Incurred to Date' by vendor.
- \_\_\_\_\_ Backup schedule(s)/ report(s) for Form 806GA Page 2
- \_\_\_\_\_ Invoices/AIA documents
- \_\_\_\_\_ Certificates of Insurance <sup>1,2</sup>
  - \_\_\_\_\_ District
  - \_\_\_\_\_ Design Consultant
  - \_\_\_\_\_ CMF (if applicable)
  - \_\_\_\_\_ General Contractor
  - \_\_\_\_\_ All Contracted Parties
- \_\_\_\_\_ Certificate of Approval/ Occupancy
- \_\_\_\_\_ Business Administrator Certification of Final Completion <sup>3</sup> (Notarized with Original Signature)
- \_\_\_\_\_ Design Consultant Certification of Final Completion <sup>3</sup> (Notarized with Original Signature)
- \_\_\_\_\_ Maintenance Plan Agreement Sch. M-1 (signed copy)
- \_\_\_\_\_ Indicator 7.6 (signed copy)

<sup>1</sup> Must have four additional insureds: State of NJ; NJ Dept of Education; NJ Schools Development Authority; NJ Economic Development Authority

<sup>2</sup> See Grant Agreement Appendix VI for Summary of Insurance Requirements

# **EXHIBIT B**

## **Form of Design Phase Checklist**

## DESIGN PHASE CHECKLIST

New Jersey Schools Development Authority  
Procurement and Contract Services  
Instructions for Completing the Checklist for The Design Phase  
Section 15 School Facilities Project

1. This Checklist is for school districts to follow when selecting a Design Consultant and/or Construction Manager (“CMF”) for a School Facilities Project to be undertaken by the District pursuant to the Educational Facilities Construction and Financing Act Grant Agreement (the “Agreement”) between the District and the New Jersey Schools Development Authority (the “Development Authority”). These instructions are to aid Districts in adhering to the statutory requirements of the Public School Contracts Law (“PSCL”), N.J.S.A. 18A:18A-1 *et seq.*, and other related statutory and regulatory requirements. Terms not otherwise defined herein shall have their meaning as set forth in the Agreement.
2. The Board of Education’s School Business Administrator or other individual serving as purchasing agent pursuant to N.J.S.A. 18A:18A-2 is responsible for ensuring that the District complies with the various laws and regulations that are required to be followed in the procurement process for the selection of the Design Consultant and/or CMF. The Checklist is the verification that the proper steps were taken. The Checklist may be revised, as the Development Authority deems necessary.
3. One Checklist is to be prepared for each Design Consultant and/or CMF contract or project assignment. A CMF may be a firm (Construction Management Firm) or person (often referred to as a Clerk of the Works).
4. Regardless of who serves as the purchasing agent for the Board of Education, the School Business Administrator is to complete the Checklist by checking the yes, no or not applicable column, as appropriate, for each listed item, and noting the date the District took action on listed items. The Development Authority reserves the right to request additional documentation or information, as deemed necessary. The District should contact the Public School Contracting Unit for guidance in the event there is no School Business Administrator.
5. Except as required on the Checklist, copies of records and other documentation are not to be filed with the Development Authority; however all such records and documents relating to the School Facilities Project and the procurement process, must be kept on file by the District in the event the Development Authority and/or the Office of Fiscal Accountability and Compliance needs to verify certain information and also for auditing purposes.

6. Submit original, notarized Checklist and attachments to:

**New Jersey Schools Development Authority  
Procurement and Contract Services – Grants Department  
P.O. Box 991  
Trenton, NJ 08625-0991**

7. **The Design Checklist(s) shall be submitted to the above address no later than 10 days after contracts have been executed. Any costs incurred by the District prior to the approval of the Checklist by the Development Authority and/or the Office of Fiscal Accountability and Compliance shall be at the risk of the District.**
8. Questions regarding the Checklist or the contracting process can be addressed to the NJSDA Grants Department at (609) 341-5926.

**CHECKLIST FOR THE DESIGN PHASE**  
**Section 15 School Facilities Project**  
**New Jersey Schools Development Authority**  
**Procurement and Contract Services**

School District/  
Board of Education: \_\_\_\_\_

County: \_\_\_\_\_

School Name: \_\_\_\_\_

Project Description: \_\_\_\_\_

Architect  
(Design Consultant): \_\_\_\_\_

CMF: \_\_\_\_\_

DOE Project Number: \_\_\_\_\_

SDA Grant Number: G5- \_\_\_\_\_

**Submission to the New Jersey Schools Development Authority**  
**Procurement and Contract Services**

I hereby certify that the responses provided in answer to this Design Phase Checklist are true and complete to the best of my knowledge. All statements contained in this Checklist are true and correct; and all such statements have been made with full knowledge that the Office of Fiscal Accountability and Compliance, New Jersey Schools Development Authority, New Jersey Economic Development Authority and the State of New Jersey rely upon the truth of the statements contained in this Design Phase Checklist in providing payments to the District for the School Facilities Project pursuant to the Agreement.

Name of School Business Administrator: \_\_\_\_\_

Qualified Purchasing Agent:  Yes  No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Tel No: \_\_\_\_\_

Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_ 200 \_\_\_\_

\_\_\_\_\_, Notary Public of \_\_\_\_\_

My commission expires: \_\_\_\_\_ 200 \_\_\_\_

**PLEASE SUBMIT ORIGINAL, NOTARIZED FORM.**



**DESIGN PHASE CHECKLIST**

**Consult the Instructions that accompany this form for guidance on its completion.**

- Check the Yes, No or Not Applicable column as appropriate for each Item.
  - Shaded areas do not require information.
  - Any 'No' or 'Not Applicable' answer should be explained in the explanation column.
- If additional space is required for explanations, please attach an addendum.

**Part 1 – Classification of the Design Consultant**

1. Is the Design Consultant a Registered Architect or Licensed Engineer?      \_\_\_Yes      \_\_\_No
2. Is the Design Consultant an Employee of the District:
- a. Is the Design Consultant on the District’s payroll?      \_\_\_Yes      \_\_\_No
- b. Does the Design Consultant receive benefits from the District?      \_\_\_Yes      \_\_\_No

**If you answered yes to question 2, skip questions 3 & 4 and continue with Items 5 & 6 ONLY (\*Items 3 & 4 and 7-10 are Not Applicable).**

3. Is the District entering into an outside contract with the Design Consultant?      \_\_\_Yes      \_\_\_No

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanations	Statutory Reference	For SDA use only [Do not write in this column]
4				Was a professional service resolution or a motion passed by the Board authorizing a contract with the Design Consultant?			NJSA 18A:18A-5a(1)	
5				Did the School Business Administrator ensure that funds were available prior to awarding the contract?			NJAC 6A:26-4.5	

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanations	Statutory Reference	For SDA use only [Do not write in this column]
6				Did the Board pass a resolution or motion delegating to the Design Consultant the authority to prepare all plans, specifications, drawings and necessary bid-related documents for the project?			NJSA 18A:18A-16	
7				Did the Design Consultant provide a Business Registration Certificate?			52:32-44	
8a				Did the Design Consultant execute the Development Authority's Consultant Certification Form? (Exhibit E-1)				
8b				Please provide <u><i>originally executed</i></u> Exhibit E-1 as attachments to this submitted form.				
8c				Please provide proof of required Design Consultant's insurance coverage as attachments to this submitted form.				

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanations	Statutory Reference	For SDA use only [Do not write in this column]
9				Does the Design Consultant contract contain the required Development Authority language from the Grant Agreement? If "No," please list in the 'Explanation' Box those sections which were not included.				
10a.				Was a Notice of Award of a professional services contract published in the official newspaper of the District? Attach proof of publication.			NJSA 18A:18-5a(1)	
10b.				Was design consultant (architect) an "architect of record"?				
11				Is a copy of the Design Consultant's contract available to the public for inspection?			NJSA 18A:18-5a(1)	
12				Were the plans prepared in order to meet or exceed 26 points toward the "Leadership in Energy & Environmental Design (LEED)" Version 2.0 rating scale in accordance with Executive Order 24 (2002)?			NJ - E.O. #24 (Gov. McGreevey) 2002	

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanations	Statutory Reference	For SDA use only [Do not write in this column]
13				Has the District complied with the requirements of Executive Order 215 (1989), if applicable? (If environmental assessment is not required due to size of footprint, provide letter from design consultant.)			NJ – E.O. #215 (Gov. Kean) 1989	

**Part 2- Use of a Construction Management Firm (CMF)**

14. If the District using an employee as a Clerk of the Works:

- a. Is the individual on the District’s payroll?  Yes  No
- b. Does the individual receive benefits from the District?  Yes  No

**If yes skip question 16 and continue with Item 17.**

15. Is the District using an Extraordinary Unspecifiable Services process to hire the CMF:

- a. Did the district solicit two or more proposals for these services?  Yes  No

**If yes, please list firms solicited and quotations received on an addendum sheet.**

- b. Did the District publicly bid for the services of a CMF?  Yes  No

**If yes, please summarize all bids received on an addendum sheet (include name and amounts).**

- c. Is the CMF a Registered Architect or Licensed Engineer?  Yes  No

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanations	Statutory Reference	For SDA use only Do not write in this column
16				Was a resolution or motion passed by the Board authorizing a contract with the CMF?				
17				Did the School Business Administrator ensure that funds were available prior to awarding the contract?				
18a				Did the CMF execute the Development Authority's Consultant Certification Form? (Exhibit E-1)				
18b				Please provide <i>originally executed</i> Exhibit E-1 as attachments to this submitted form.				
18c				Please provide proof of required CMF's insurance coverage as attachments to this submitted form.				
19				Does the final executed CMF contract contain the required Development Authority language from the Grant Agreement? If "No," please list in the 'Explanations' Box those sections which were not included.				
20				Did the CMF provide a Business Registration Certificate?			52:32-44	

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanations	Statutory Reference	For SDA use only Do not write in this column
21				Was a notice of award of the contract published in the official newspaper of the District? <b>Date required.</b>			NJSA 18A:18A-5a(1)	
22				Is a copy of the CMF contract available to the public for inspection?			NJSA 18A:18A-5a(1)	
23				<b>File this completed form with the New Jersey Schools Development Authority, Procurement and Contract Services – Grants Department, PO Box 991, Trenton, NJ 08625-0991, no later than 10 days after contracts have been executed.</b>				

**Selected Text of Relevant Grant Agreement Citations**  
**Must be included in contracts**

The following information is to be utilized as a guide and summary only and must be read in conjunction with the Agreement. It must not be used as an alternative or substitute for the reading of the Agreement.

**Grant Agreement §3.3.1.1**

The District shall insert in all Contracts with all Contracted Parties, and shall cause all Contractors and Consultants to insert into all their Contracts with all Sub-consultants and Subcontractors, a clause stating that **the Contracted Party, its Subconsultants or Subcontractors may be debarred, suspended or disqualified from contracting and/or working on the School Facilities Project if found to have committed any of the acts listed in N.J.A.C. 17:19-3.1 et seq and 6:20-6.7 et seq.**

**N.J.A.C. 17:19-3.2:**

**(Debarment, Suspension and Disqualification of a Person(s))**

- (a) In the public interest, the Division of Property Management and Construction shall debar a person for any of the following causes:
1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract there under, or in the performance of such contract or subcontract;
  2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;
  3. Violations of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);
  4. Violations of any of the laws governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivisions;
  5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10.5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10.2-1 et seq.), or the act prohibiting discrimination by industries engaged in defense work in the employment of person therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);
  6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;
  - ...
  18. Causing or influencing or attempting to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her position to secure unwarranted privileges or advantages for the vendor or any other person.

**Grant Agreement §3.5**

All Contracts shall contain provisions that the Contracted Party shall comply with the anti-discrimination provisions of N.J.S.A. 10:2-1 et seq., the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., N.J.A.C. 17:27-1.1 et seq. and N.J.A.C. 6:4-1.6. The District and its Contracted Parties shall, in addition, agree by contract and guarantee to afford equal opportunity in performance of the Grant Agreement in accordance with an affirmative action program approved by the State Treasurer.

**Grant Agreement §3.5.1**

During the term, all Contracts shall contain the following provisions:

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

**Grant Agreement §3.5.2**

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

**Grant Agreement §3.7**

The District shall include a provision in each contract awarded by the District in connection with the School Facilities Project which states that the contracts are assignable to the Development Authority.

**Grant Agreement §5.3.2.4**

The District shall include in all contracts a provision requiring Contracted Parties to permit the Development Authority, the Authority and the Unit of Fiscal Integrity and their agents to investigate, audit, examine and inspect in such manner and at such times as the Development Authority and the Unit of Fiscal Integrity deem necessary.



# **EXHIBIT C**

## **Form of Construction Phase Checklist**

## **CONSTRUCTION PHASE CHECKLIST**

New Jersey Schools Development Authority  
Capital Planning & Grants Administration

### Instructions for Completing the Checklist for The Construction Phase Section 15 School Facilities Project

1. This Checklist is for school districts to follow when selecting construction contractor(s) for projects to be undertaken by the District pursuant to the Educational Facilities Construction and Financing Act Grant Agreement (the “Agreement”) between the District and the New Jersey Schools Development Authority (the “Development Authority”) These instructions are to aid Districts in adhering to the statutory requirements of the Public School Contracts Law (“PSCL”), N.J.S.A. 18A:18A-1 et seq., and other related statutory and regulatory requirements. Terms not otherwise defined herein shall have their meaning as set forth in the Agreement.
2. Regardless of who serves as the purchasing agent for the Board of Education, the Board of Education’s School Business Administrator or other individual serving as purchasing agent pursuant to N.J.S.A. 18A:18A-2 is responsible for ensuring that the District complies with the various laws and regulations that are required to be followed in the procurement process for the selection of a construction contractor(s). The Checklist is the verification that the proper steps were taken. The Checklist may be revised, as the Development Authority deems necessary.
3. The Office of Fiscal Accountability and Compliance (“OFAC”) is assisting the Development Authority in overseeing the Districts’ compliance with the PSCL.
4. One Checklist is to be prepared for each separate bid opening date, regardless of how many individual contracts may be part of the bid specification.
5. Except as required on the Checklist, copies of records and other documentation are not to be filed with the Development Authority; however, all such records and documents relating to the School Facilities Project and the bid procurement process must be kept on file by the District in the event the Development Authority and/or the OFAC needs to verify certain information and also for auditing purposes.

6. Submit *original, notarized* Checklist and attachments to:

**New Jersey Schools Development Authority  
Capital Planning & Grants Administration  
P.O. Box 991  
Trenton, NJ 08625-0991**

7. **The Construction Checklist(s) shall be submitted to the above address no later than 10 days after contracts have been executed. Any costs incurred by the District prior to the approval of the Checklist by the OFAC and/or the Development Authority shall be at the risk of the District.**
8. Questions regarding the Checklist or the contracting process can be addressed to the NJSDA Grants Department at (609) 341-5926.

**CHECKLIST FOR THE CONSTRUCTION PHASE**  
**Section 15 School Facilities Project**

**New Jersey Schools Development Authority  
Capital Planning & Grants Administration**

School District/  
Board of Education: \_\_\_\_\_

County: \_\_\_\_\_

School Name: \_\_\_\_\_

Project Description: \_\_\_\_\_

Architect  
(Design Consultant): \_\_\_\_\_

CMF: \_\_\_\_\_

DOE Project Number: \_\_\_\_\_

SDA Grant Number: G5-\_\_\_\_\_

**Submission to the New Jersey Schools Development Authority  
Capital Planning & Grants Administration**

I hereby certify that the responses provided in answer to this Construction Phase Checklist are true and complete to the best of my knowledge. All statements contained in this Checklist are true and correct; and all such statements have been made with full knowledge that the Office of Fiscal Accountability and Compliance, New Jersey Economic Development Authority, New Jersey Schools Development Authority and the State of New Jersey rely upon the truth of the statements contained in this Construction Phase Checklist in providing payments to the District for the School Facilities Project pursuant to the Agreement.

Name of School Business Administrator: \_\_\_\_\_

Qualified Purchasing Agent:  Yes  No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Tel No: \_\_\_\_\_

Sworn and subscribed to before me this \_\_\_\_\_ Day of \_\_\_\_\_ 200 \_\_\_\_\_

\_\_\_\_\_, Notary Public of \_\_\_\_\_

My commission expires: \_\_\_\_\_ 200 \_\_\_\_\_

**PLEASE SUBMIT ORIGINAL, NOTARIZED FORM.**

## CHECKLIST FOR THE CONSTRUCTION PHASE

**Consult the Instructions that accompany this form for guidance on its completion.**

- Check the Yes, No or Not Applicable column as appropriate for each Item # or sub-item.
  - Shaded areas do not require information.
  - Any “No” and “Not Applicable” answer should be explained in the explanation column.
- If additional space is required for explanations, please attach an addendum.

### **SECTION ONE- PUBLIC SCHOOL CONTRACTS LAW**

#### **PART 1 - PREPARATION AND REVIEW OF PLANS AND SPECIFICATIONS**

<b>Item #</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Actions</b>	<b>MM/DD/YY</b>	<b>Explanation(s)</b>	<b>Statutory Reference</b>	<b>Column for SDA use only [Do not write in this column]</b>
1				Was approval of the project obtained from the Commissioner of Education?			18A:7G-5d	
2				Were the plans approved by Department of Education’s Office of School Facilities for educational adequacy and schematics?			18A:18A-16; 18A:18A-49	
3				Were the specifications accepted by the District, or a designee, before the specifications were made available to potential bidders?				

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
4				Were the plans approved for compliance with Uniform Construction Code?			18A:18A-16; 18A:18A-49	
5				Did the School Business Administrator ensure that funds were available prior to awarding the contract?				
6	Review that specifications include statutorily required provisions:							
6a				Specifications are drafted to ensure free, open and competitive bidding and do not include prohibited practices			18A:18A-15	
6b				Provide for facilities for the physically handicapped			18A:18A-17	
6c				The manner in which bids are to be prepared: (i) separate branches of work; (ii) single overall contract; or (iii) both			18A:18A-18b	
6d				Completion of project by a fixed date or within a fixed number of working days			18A:18A-19	
6e				Provide that American goods and products are to be used wherever available			18A:18A-20	

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
6f				Bidder must be pre-qualified by the Development Authority			18A:7G-33, 18A:18A-26	
6g				Provide that award of contract or rejection of all bids must be made within 60 days of the bid opening			18A:18A-36a	
6h				Provide that execution of contract by all parties be done within 21 days of award			18A:18A-36b	
6i				Provide that the Contractor and the Subcontractor shall comply with the business registration and use tax requirements of N.J.S.A. 52:32-44			52:32-44	
7	Review that specifications include statutorily required submissions by the bidder:							
7a				Pre-Qualification of Bidder: Notice of Classification Total Amount on Uncompleted Contracts			18A:18A-26,18A:18A-27	
7b				List names of sub-contractors			18A:18A-18b	

<b>Item #</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Actions</b>	<b>MM/DD/YY</b>	<b>Explanation(s)</b>	<b>Statutory Reference</b>	<b>Column for SDA use only [Do not write in this column]</b>
7c				Certificate from Surety Company to issue Performance Bond			18A:18A-25	
7d				Certification of no material adverse change in qualification information			18A:18A-32	
7e				Affirmative Action Certification			10:5-31	
7f				Provide for compliance with the Prevailing Wage laws			34:11-56.27	
7g				Stockholder Disclosure Certification			52:25-24.2	
7h				Sworn contractor certification regarding qualifications and credentials			18A:7G-37	
7i				Public Works Contractor Registration Certificate			34:11-56.48	
7j				Bid guarantee (10% not to exceed \$20,000)			18A:18A-24	
7k				Contractor Business Registration Certificate			52:32-44	



**PART 2 - DEVELOPMENT AUTHORITY GRANT AGREEMENT:**

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
8				Review that specification(s) include mandatory Grant Agreement Requirements:				
8a				Certified sworn statement from bidder on non-debarment/disqualification/suspension (Grant Agreement reference: §3.3.1.2)			17:19-3.1 et seq.	
8b				Prevailing Wage, Contractor & Business Registration (Grant Agreement reference: §3.4)				
8c				District’s right to establish and maintain contractor performance evaluations (Grant Agreement reference: §3.2.11)				
8d				Laws against Discrimination (Grant Agreement reference: § 3.5)				
8e				Specification(s) includes provision that the contract will be assignable to Development Authority (Grant Agreement reference: § 3.7)				
8f				Audit Allowance (Grant Agreement reference: § 5.3.2.4)				

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
8g				Define minimum types and levels of insurance coverage (Grant Agreement reference: §5.7) (List NJSDA, NJDOE, NJEDA and State of New Jersey as additional insured.)				

**PART 3 - ADVERTISEMENT FOR RECEIPT OF BIDS**

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
9				Was an advertisement for the receipt of bids published in an official newspaper no less than ten (10) days prior to due date?			18A:18A-21(a)	
10				Did the advertisement include the manner of submitting and receiving bids and the time and place at which the bids will be received?			18A:18A-21(b)	
11	<b>Bid Addenda</b> - Seven days (Saturdays, Sundays and holidays excepted) given to bidders for notices of revisions or addenda to advertisements or bid documents:						18A:18A-21c(2) and 21d	
11a				Addenda #1				
11b				Addenda #2				
11c				Addenda #3				
11d				Addenda #4				
11e				Addenda #5 (if additional addenda, include information on attachment)				

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
12a				Were any challenges to bid specifications received less than 3 business days prior to bid opening?			18A:18A-15	
12b				If yes, was the challenge(s) rejected? If no, please explain the district's response to the challenge(s) on an addendum sheet.				

**PART 4 - RECEIPT OF BIDS AND PREPARATION TO AWARD CONTRACTS**

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
13				Did the District officially receive and open bids at the scheduled date, time and place indicated in the bid documents and bid advertisement? <b>(not on a Monday, or any day directly following a State or federal holiday) as of 1/17/2007</b>			18A:18A-21b	
14				Did the District make a record of the prices and terms of each bid? <b>Please attach a summary of all bids received.</b>			18A:18A-21b	
15				Did the District review all bids for compliance with technical specifications and statutory submission requirements?				

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
16				Did the District maintain a copy of any Design Consultant’s recommendation(s) for award of contract(s) in the project file?				
17				If the award recommendation is to a bidder other than the one with the lowest price, submit an analysis that explains the reason(s) for rejecting the low bid.				
18				Was a resolution or motion passed to award the contract?				
19a				Did the Contractor(s) execute the Development Authority’s Contractor Certification Form(s)? (Exhibit E-2)				
19b				Please provide <i>originally-executed</i> Exhibit E-2 as attachments to this submitted form.				
19c				Please provide proof of required Contractor’s insurance coverage as attachments to this submitted form.				
20				Does the contract contain the required Development Authority language from the Grant Agreement? Refer to page C-13.				

Item #	Yes	No	N/A	Actions	MM/DD/YY	Explanation(s)	Statutory Reference	Column for SDA use only [Do not write in this column]
21				Was a Prevailing Wage Contractor and Business Registration certification requested from Department of Labor?			34:11-56.28	
22				Was the execution of contract(s) by all parties done within 21 days of award?			18A:18A-36b	
23				Did the District issue a Notice to Proceed to contractor(s)?				
24				<b>File this completed form with the New Jersey Schools Development Authority, Capital Planning &amp; Grants Administration, PO Box 991, Trenton, NJ 08625-0991, no later than 10 days after contracts have been executed.</b>				

**Selected Text of Relevant Grant Agreement Citations  
Must be included in bid specifications and contracts**

The following information is to be utilized as a guide and summary only and must be read in conjunction with the Agreement. It must not be used as an alternative or substitute for the reading of the Agreement.

**Grant Agreement §3.3.1.1**

The District shall insert in all Contracts with all Contracted Parties, and shall cause all Contractors and Consultants to insert into all their Contracts with all Sub-consultants and Subcontractors, a clause stating that **the Contracted Party, its Subconsultants or Subcontractors may be debarred, suspended or disqualified from contracting and/or working on the School Facilities Project if found to have committed any of the acts listed in N.J.A.C. 17:19-3.1 et seq and 6:20-6.7 et seq.**

**N.J.A.C. 17:19-3.2:**

**(Debarment, Suspension and Disqualification of a Person(s))**

- (a) In the public interest, the Division of Property Management and Construction shall debar a person for any of the following causes:
1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract there under, or in the performance of such contract or subcontract;
  2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;
  3. Violations of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);
  4. Violations of any of the laws governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivisions;
  5. Violation of the “Law Against Discrimination” (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.), or the act prohibiting discrimination by industries engaged in defense work in the employment of person therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);
  6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;
  - ...
  18. Causing or influencing or attempting to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her position to secure unwarranted privileges or advantages for the vendor or any other person.

**Grant Agreement §3.4**

All Construction Contracts shall contain provisions that the Contractor and Subcontractor(s), as applicable, shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

**Grant Agreement §3.5**

All Contracts shall contain provisions that the Contracted Party shall comply with the anti-discrimination provisions of N.J.S.A. 10:2-1 et seq., the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., N.J.A.C. 17:27-1.1 et seq. and N.J.A.C. 6A:7-1.8. The District and its Contracted Parties shall, in addition, agree by contract and guarantee to afford equal opportunity in performance of the Grant Agreement in accordance with an affirmative action program approved by the State Treasurer.

**Grant Agreement §3.5.1**

During the term, all contracts shall contain the following provisions:

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

**Grant Agreement §3.5.2**

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

**Grant Agreement §3.7**

The District shall include a provision in each contract awarded by the District in connection with the School Facilities Project which states that the contracts are assignable to the Development Authority.

**Grant Agreement §5.3.2.4**

The District shall include in all contracts a provision requiring Contracted Parties to permit the Authority, the Development Authority and the Unit of Fiscal Integrity and their agents to investigate, audit, examine and inspect in such manner and at such times as the Authority, the Development Authority and the Unit of Fiscal Integrity deem necessary.

## **EXHIBIT D**

### **Form of Final Completion Certifications**



**SCHOOL BUSINESS ADMINISTRATOR CERTIFICATION UPON FINAL COMPLETION**

**School District:** \_\_\_\_\_

**County:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**DOE Project Number:** \_\_\_\_\_

**SDA Grant Number:** \_\_\_\_\_

I, the School Business Administrator for the above named District, hereby swear and certify to the following:

A. The responses provided in answer to this Final Payment Request Checklist are true and complete to the best of my knowledge. All statements contained in the attached Final Payment Request Checklist are true and correct; and all such statements have been made with full knowledge that the Development Authority, the Financing Authority and the State of New Jersey rely upon the truth of the statements contained in this Final Payment Request Checklist in providing payments to the District for the School Facilities Project pursuant to the Agreement.

B. The School Facilities Project has been fully completed in accordance with the Plans and Specifications and all Contracts and all amendments to such Contracts and Change Orders. Notwithstanding any of such amendments or Change Orders, the educational requirements of the School Facilities Project have been met. The District has received any and all warranties, manuals, information, instruction, and documentation necessary to effectively maintain and utilize the School Facilities Project. Any and all items contained on the Punchlist and any and all final inspections have been fully reviewed, completed and documented.

C. Any and all costs the Development Authority paid to the District and/or any parties pursuant to the Agreement were Approved Costs.

I further swear and affirm that all statements contained in this Certificate are true and correct; and that all such statements have been made with full knowledge that the Development Authority, the Financing Authority and the State of New Jersey rely upon the truth of the statements contained herein in entering into the Agreement and in providing payments to the District for the School Facilities Project pursuant to the Agreement.

This \_\_\_\_ Day of \_\_\_\_\_ 200

By: \_\_\_\_\_  
School Business Administrator

(Name) \_\_\_\_\_

Notary Public of \_\_\_\_\_

My commission expires: \_\_\_\_\_, 200\_\_\_\_\_.



to make any contract to sell or furnish real or personal property or services to the District, the Development Authority, the Financing Authority or the State. I further understand that it is a violation of law to offer, pay, or give to any employee of the District, the Development Authority, the Financing Authority or the State any fees, commission, compensation, gift or gratuity for or because of any official act or a violation of any official duty. Any person who does so may be subject to punishment.

C. No Collusion

The Consultant has not directly or indirectly entered into any agreement, participated in any collusion, bid rigging or otherwise taken any action in restraint of free, competitive bidding in connection with the School Facilities Project; the prices in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition; the prices have not been knowingly disclosed directly or indirectly by the Consultant to any other bidder, unless otherwise required by law; and no attempt has been made by the Consultant to induce any other person or business entity to submit or not submit a bid for the purpose of restricting competition.

D. No Discrimination

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

E. Prevailing Wage, Contractor and Business Registration

If applicable, the Consultant has complied and will continue to comply with the New Jersey Contractor Registration Act, P.L. 1999, c. 238, the business registration and use tax requirements of N.J.S.A. 52:32-44, as amended by P.L. 2004, c. 57, and the New Jersey Prevailing Wage Act, P.L. 1963, c. 150, and all amendments thereto, with respect to the School Facilities Project and any contracts related to school construction entered into on behalf of the District, the Development Authority, the Financing Authority or the State, except those contracts not within the contemplation of these acts. The Consultant shall not hire any Subconsultant to perform any work on the School Facilities Project who is listed or is on record in the Office of the Commissioner, Department of Labor, as having failed to pay prevailing wages in accordance with the provisions of the New Jersey Prevailing Wage Act.

To the best of my knowledge and belief, all statements contained in the Consultant's bid/proposal and this Certification are true and correct; and all such statements have been made with full knowledge that the Development Authority, the Financing Authority and the State of New Jersey rely upon the truth of the statements contained in this Certification in providing payments to the District for the School Facilities Project pursuant to the Agreement.

This \_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_  
By: \_\_\_\_\_  
Design Consultant  
(Name) \_\_\_\_\_  
(Title) \_\_\_\_\_  
Notary Public of \_\_\_\_\_ Notary Signature \_\_\_\_\_

My commission expires: \_\_\_\_\_, 200\_\_\_\_.

**NOTE: The Final Completion Checklist has been replaced with the Payment Request Checklist for Final Payment (see Exhibit A-2).**

## **EXHIBIT E-1**

### **Form of Consultant Certification and Consent**



B. No Collusion

The Consultant has not directly or indirectly entered into any agreement, participated in any collusion, bid rigging or otherwise taken any action in restraint of free, competitive bidding in connection with the School Facilities Project; the prices in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition; the prices have not been knowingly disclosed directly or indirectly by the Consultant to any other bidder, unless otherwise required by law; and no attempt has been made by the Consultant to induce any other person or business entity to submit or not submit a bid for the purpose of restricting competition.

C. No Discrimination

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

D. Prevailing Wage, Contractor and Business Registration

If applicable, the Consultant has complied and will continue to comply with the New Jersey Contractor Registration Act, P.L. 1999, c. 238, the business registration and use tax requirements of N.J.S.A. 52:32-44, as amended by P.L. 2004, c. 57, and the New Jersey Prevailing Wage Act, P.L. 1963, c. 150, and all amendments thereto, with respect to the School Facilities Project and any contracts related to school construction entered into on behalf of the District, the Development Authority, the Financing Authority or the State, except those contracts not within the contemplation of these acts. The Consultant shall not hire any Subconsultant to perform any work on the School Facilities Project who is listed or is on record in the Office of the Commissioner, Department of Labor, as having failed to pay prevailing wages in accordance with the provisions of the New Jersey Prevailing Wage Act.

E. Prequalification - if applicable

The Consultant certifies that the Consultant is prequalified by the Development Authority as required by a supplement to N.J.S.A. 18A:18A-27 as of January 14, 2004 and that, since the latest prequalification application was filed by the Consultant with the Development Authority, there has been no change in any circumstance, condition or status that may adversely impact Consultant's prequalification with the Development Authority. The Consultant certifies that it will immediately report to the Development Authority any change in the information provided by the Consultant in its prequalification application currently on file with the Development Authority.

The Consultant certifies that it will immediately notify the Development Authority and the Bureau of Fiscal Oversight (PO Box 063, Trenton, NJ 08625) of any director, partner, officer, or employee of the Consultant, or of any shareholder owning 5% or more of the Consultant's stock, who:

1. Is the subject of investigation involving any violation of criminal law or other federal, state, or local law or regulation by any governmental agency; or
2. Is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
3. Is convicted of any crime under state or federal law, or of any disorderly persons offense or misdemeanor involving a business related offense.

II. The undersigned hereby consents to the following:

A. Consent to Documents

The Consultant agrees and hereby consents to permit the Development Authority, the Financing Authority, the Department of Education, the Department of Community Affairs, other State agencies, the Bureau of Fiscal Oversight and their respective agents, representatives, consultants, subconsultants, contractors, subcontractors, and their agents and representatives (the "Project Team") access to ALL DOCUMENTS RELATED TO THE CONTRACT, including, but not limited to, the following:

1. Prequalifying information and work product.
2. All confidential memos and certifications required to be kept by any governmental agency, including, but not limited to, the Department of Community Affairs, the Department of Labor, the Department of Education, the Department of Environmental Protection, the Department of Treasury, the Division of Consumer Affairs, Licensing Boards, the Development Authority and the Financing Authority.
3. All documents required to be kept by the contract documents, including, but not limited to, contracts, specifications, change orders, alternate submissions, approvals/rejections, unit prices, product data, time of performance schedules, construction photographs, quality control management and reports, value engineering information, up-to-date project accounting system, intermediate and final audits, as-builts and close-out documentation.
4. All documents related to the approval process for the School Facilities Project, including, but not limited to, project siting, land acquisition, surveys, and real estate documents (deeds, leases, and title report, including searches for easements, mortgages, judgments, liens, unpaid taxes, water & sewer, and property description by metes & bounds).
5. All documents related to the payment, in connection with the Contract, of professionals, including but not limited to surveyors, title abstractor/company, lawyers, appraisers, soil engineers, bond counsel, underwriters, financial and investment advisors, trustees, official printers and bond insurers.

B. Right to Inspect and Audit

The Consultant agrees to allow the Project Team upon request, at all reasonable times, to inspect and copy any and all of the above-described documents to the extent such documents are in its possession, custody or subject to its control. The Consultant agrees to make the requested documents available for inspection and copying within the State of New Jersey regardless of the location of the documents. The Consultant hereby waives any objection it might otherwise raise permitting the Project Team, including the Bureau of Fiscal Oversight and its authorized representatives to investigate, examine and inspect all activities related to this contract pursuant to P.L. 2000, c. 72. The Consultant further releases and holds harmless the Bureau of Fiscal Oversight and its authorized representatives, the Development Authority, the Financing Authority and the State of New Jersey.



All statements contained in the Consultant's bid/proposal and this Certification and Consent are true and correct; and all such statements have been made with full knowledge that the Development Authority, the Financing Authority and the State of New Jersey rely upon the truth of the statements contained in this Certification and Consent in providing payments to the District for the School Facilities Project pursuant to the Agreement.

Sworn and subscribed to before me

This \_\_\_\_ Day of \_\_\_\_\_ 200\_\_\_\_

By: \_\_\_\_\_  
Signature of Principal

(Name) \_\_\_\_\_

Notary Public of \_\_\_\_\_ (Title) \_\_\_\_\_

My commission expires: \_\_\_\_\_, 200\_\_\_\_.

## **EXHIBIT E-2**

### **Form of Contractor Certification and Consent**

**CONTRACTOR CERTIFICATION AND CONSENT**  
**UPON AWARD OF CONTRACT**

This certification should be completed by the Contractors engaged by the District for the School Facilities Project. This certification should be completed upon award by the District of the Construction Contract. If the District is undertaking multiple School Facilities Projects, this certification should be completed for each School Facilities Project.

**School District:** \_\_\_\_\_

**County:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**DOE Project Number:** \_\_\_\_\_

**SDA Grant Number:** \_\_\_\_\_

STATE OF NEW JERSEY }  
  }ss.  
COUNTY OF \_\_\_\_\_}

I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the County of \_\_\_\_\_ and the State of New Jersey of full age, being duly sworn according to law on my oath, depose and say that I am \_\_\_\_\_ of the firm of \_\_\_\_\_, (the "Contractor") for the above-referenced School Facilities Project (the "School Facilities Project"). My firm has entered into a contract with the District (the "District") for the School Facilities Project with full authority to do so. I understand that the School Facilities Project is being undertaken by the District and that the District has entered into an Educational Facilities Construction and Financing Act Grant Agreement (the "Agreement") with the New Jersey Schools Development Authority (the "Development Authority"). Pursuant to the Agreement, the Development Authority will provide funding for the School Facilities Project and the District will enter into contracts for the design and construction of such School Facilities Project. Terms not otherwise defined herein shall have their meaning as set forth in such Agreement.

I. The undersigned hereby swears and affirms to the following:

A. No Gratuities

The Contractor has not offered or tendered, directly or indirectly, the payment of any fee, commission or compensation of any kind or the granting of any gift or gratuity of any kind, whether or not in connection with the purchase, sale, or contract, to any person in the employ of the District, the Development Authority, the Financing Authority or the State of New Jersey (the "State") having any duties or responsibilities in connection with the purchase or acquisition of any property or services by the District, the Development Authority, the Financing Authority or State, by or on behalf of any seller, supplier or provider of services, who has made, negotiated, solicited or offered to make any contract to sell or furnish real or personal property or services to the District, the Development Authority, the Financing Authority or the State. I further understand that it is a violation of law to offer, pay, or give to any employee of the District, the Development Authority, the Financing Authority or the State any fees, commission, compensation, gift or gratuity for or because of any official act or a violation of any official duty. Any person who does so may be subject to punishment.

B. No Collusion

The Contractor has not directly or indirectly entered into any agreement, participated in any collusion, bid rigging or otherwise taken any action in restraint of free, competitive bidding in connection with the School Facilities Project; the prices in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition; the prices have not been knowingly disclosed directly or indirectly by the Contractor to any other bidder, unless otherwise required by law; and no attempt has been made by the Contractor to induce any other person or business entity to submit or not submit a bid for the purpose of restricting competition.

C. No Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, gender or sexual orientation and has complied and will continue to comply with all State and Federal laws and Executive Orders respecting non-discrimination.

D. Prevailing Wage, Contractor and Business Registration

If applicable, the Contractor has complied and will continue to comply with the New Jersey Contractor Registration Act, P.L. 1999, c. 238, the business registration and use tax requirements of N.J.S.A. 52:32-44 as amended by P.L. 2004, c. 57, and the New Jersey Prevailing Wage Act, P.L. 1963, c. 150, and all amendments thereto, with respect to the School Facilities Project, the District, the Development Authority, the Financing Authority or the State, except those contracts not within the contemplation of these Acts. The Consultant shall not hire any Subconsultant to perform any work on the School Facilities Project who is listed or is on record in the Office of the Commissioner, Department of Labor, as having failed to pay prevailing wages in accordance with the provisions of the New Jersey Prevailing Wage Act.

E. Prequalification

The Contractor certifies that the Contractor and the Subcontractors in the four branches listed in N.J.S.A. 18A:18A-18 are prequalified by the Development Authority and that, since the latest prequalification application was filed by the Contractor with the Development Authority, there has been no change in any circumstance, condition or status that may adversely impact Contractor's prequalification with the Development Authority. The Contractor certifies that it will immediately report to the Development Authority any change in the information provided by the Contractor in its prequalification application currently on file with the Development Authority.

The Contractor certifies that it will immediately notify the Development Authority and the Bureau of Fiscal Oversight (PO Box 063, Trenton, NJ 08625) of any director, partner, officer, or employee of the Contractor, or of any shareholder owning 5% or more of the Contractor's stock, who:

1. Is the subject of investigation involving any violation of criminal law or other federal, state, or local law or regulation by any governmental agency; or
2. Is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
3. Is convicted of any crime under state or federal law, or of any disorderly persons offense or misdemeanor involving a business related offense.

II. The undersigned hereby consents to the following:

A. Consent to Documents

The Contractor agrees and hereby consents to permit the Development Authority, the Financing Authority, the Department of Education, the Department of Community Affairs, other State agencies, the Bureau of Fiscal Oversight and their respective agents, representatives, consultants, subconsultants, contractors, subcontractors, and their agents and representatives (the "Project Team") access to ALL DOCUMENTS RELATED TO THE CONTRACT, including, but not limited to, the following:

1. Prequalifying information and work product.
2. All confidential memos and certifications required to be kept by any governmental agency, including, but not limited to, the Department of Community Affairs, the Department of Labor, the Department of Education, the Department of Environmental Protection, the Department of Treasury, the Division of Consumer Affairs, Licensing Boards, the Development Authority and the Financing Authority.
3. All documents required to be kept by the Contract, including, but not limited to, contracts, specifications, change orders, alternate submissions, approvals/rejections, unit prices, product data, time of performance schedules, construction photographs, quality control management and reports, value engineering information, up-to-date project accounting system, intermediate and final audits, as-builts, close-out documentation.
4. All documents related to the approval process for the School Facilities Project, including, but not limited to, project siting, land acquisition, surveys, and real estate documents (deeds, leases, and title report, including searches for easements, mortgages, judgments, liens, unpaid taxes, water & sewer, and property description by metes & bounds).
5. All documents related to the payment, in connection with the Contract, of professionals, including but not limited to surveyors, title abstractor/company, lawyers, appraisers, soils engineers, bond counsel, underwriters, financial and investment advisors, trustees, official printers, bond insurers.

B. Right to Inspect and Audit

The Contractor agrees to allow the Project Team upon request, at all reasonable times, to inspect and copy any and all of the above-described documents to the extent such documents are in its possession, custody or subject to its control. The Consultant agrees to make the requested documents available for inspection and copying within the State of New Jersey regardless of the location of the documents. The Contractor hereby waives any objection it might otherwise raise permitting the Project Team, including the Bureau of Fiscal Oversight and its authorized representatives to investigate, examine and inspect all activities related to this contract pursuant to P.L. 2000, c. 72. The Contractor further releases and holds harmless the Bureau of Fiscal Oversight and its authorized representatives, the Development Authority, the Financing Authority and the State of New Jersey.

All statements contained in the Contractor's bid/proposal and this Certification and Consent are true and correct; and all such statements have been made with full knowledge that the Development Authority, the Financing Authority and the State of New Jersey rely upon the truth of the statements contained in this Certification and Consent in providing payments to the District for the School Facilities Project pursuant to the Agreement.

Sworn and subscribed to before me

This \_\_\_\_ Day of \_\_\_\_\_ 200\_\_\_\_

By:

\_\_\_\_\_  
Signature of Principal

(Name)

Notary Public of \_\_\_\_\_

(Title)

My commission expires: \_\_\_\_\_, 200\_\_\_\_.

## **EXHIBIT F**

**Litigation (District to provide a schedule, if any)**

## **EXHIBIT G-1**

# **School Business Administrator Certification Upon Substantial Completion**



**SCHOOL BUSINESS ADMINISTRATOR CERTIFICATION UPON SUBSTANTIAL COMPLETION**

**School District:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**DOE Project Number:** \_\_\_\_\_

**SDA Grant Number:** \_\_\_\_\_

STATE OF NEW JERSEY       }  
  }ss.  
COUNTY OF \_\_\_\_\_}

I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the County of \_\_\_\_\_ and the State of New Jersey of full age, being duly sworn according to law on my oath, depose and say that I am the School Business Administrator for the above-referenced School Facilities Project (the "School Facilities Project"). I understand that the School Facilities Project is being undertaken by the District (the "District") and that the District has entered into an Educational Facilities Construction and Financing Act Grant Agreement (the "Agreement") with the New Jersey Schools Development Authority (the "Development Authority"). Pursuant to the Agreement, the Development Authority will provide funding for the School Facilities Project and the District will enter into contracts for the design and construction of such School Facilities Project. Terms not otherwise defined herein shall have their meaning as set forth in such Agreement.

I. I, the undersigned hereby swears and certifies to the following:

- A. The essential requirements of the Contracts have been fully performed so that the purpose of the Contracts is accomplished.
- B. The Punchlist has been created.
- C. There are no important or material omissions or technical defects or deficiencies regarding the School Facilities Project.
- D. The temporary certificate of occupancy, continued use or completion has been issued.
- E. The School Facilities Project is ready for occupancy in accordance with its intended purpose.

I further swear and affirm that all statements contained in this Certificate are true and correct; and that all such statements have been made with full knowledge that the Development Authority, the Financing Authority and the State of New Jersey rely upon the truth of the statements contained herein in entering into the Agreement and in providing payments to the District for the School Facilities Project pursuant to the Agreement.

Sworn and subscribed to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Notary Public of \_\_\_\_\_

My commission expires: \_\_\_\_\_, 200\_\_.

By: \_\_\_\_\_

(Notary Signature)

(Notary Name)

(Business Administrator Signature)

## **EXHIBIT G-2**

### **Design Consultant Certification Upon Substantial Completion**



## **EXHIBIT H**

### **School Business Administrator Quarterly Status Report**

**Due:** 3 weeks after the end of each calendar year quarter (3/31, 6/30, 9/30 & 12/31).  
*If this timeframe cannot be met, please contact your grant analyst by the due date.*  
*Include all grants which were executed starting in 2009 and which have not been closed out.*

School District: \_\_\_\_\_  
 County: \_\_\_\_\_  
 Sec. 15 Grant Projects Executed Starting 1/1/09  
 Quarterly Status Report  
 As of \_\_\_\_\_  
 (Mo./ Day/ Year)

Grant No.	DOE Project No.	School	Madden Bill <sup>1</sup> Environmental Assessment (Indicate: N/A; In process; or Completed)	E.O. 215 Environmental Assessment (Indicate: N/A; In process; or Completed)	Design Phase Completed? (Y/N/ n/a)	Estimated/ Actual Construction Start Date (Mo/yr)	Estimated % of Construction Completed	Estimated/ Actual Construction Completion Date (Mo/ Yr)	Comments on Status of Project

<sup>1</sup> P.L. 2007, c.1 (Effective 1/11/07)