

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
AND THE NEW JERSEY DEPARTMENT OF EDUCATION**

**This Memorandum of Agreement** (MOA) is made this \_\_\_\_ Day of \_\_\_\_, 2008, by and between the NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY (the “SDA”), located at 1 West State Street, Trenton, New Jersey 08625, and the NEW JERSEY DEPARTMENT OF EDUCATION (“DOE”), located at 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625.

**WHEREAS** the Legislature enacted the Educational Facilities Construction and Financing Act (the “Act”), P.L., c. 72 as amended by P.L. 2007, c. 137, N.J.S.A. 52:18A-237, to address inadequacies in the quality, utility and safety of public school facilities throughout the State of New Jersey and to meet the constitutional requirement for a thorough and efficient system of free public school; and

**WHEREAS** the SDA has been made responsible for constructing school facilities in SDA-districts; and

**WHEREAS** the Act requires that “students are educated in physical facilities that are safe, healthy, conducive to learning and located as far as possible in economically and socially viable communities;” and

**WHEREAS**, the DOE has adopted rules to ensure educational facilities in the State are safe, healthy and educationally adequate to support the delivery of a thorough and efficient education to which all students are entitled, as defined by the Core Curriculum Content Standards; and

**WHEREAS** the DOE is uniquely qualified to provide the SDA with the experience, expertise and services in providing evaluation and approval for educational eligibility, adequacy and efficacy necessary to implement SDA mandates and responsibilities under the Act; and

**WHEREAS** SDA mandate, duties and responsibilities for school construction activities remain dependent upon DOE evaluation and approval for educational eligibility, adequacy and efficacy; and

**WHEREAS** interagency cooperation is permitted by N.J.S.A. 52:14-1 et seq.; and

**WHEREAS** under Executive Order 24 the SDA is authorized to call upon any department, office, or agency of State government to provide information, resources or other assistance to discharge its responsibilities, and each department, officer, division and agency of this State is required to cooperate with the SDA and to furnish it with necessary assistance; and

**NOW, THEREFORE**, the SDA and DOE do hereby agree to the following:

1. Purpose of the MOA. The purpose of this MOA is to obtain for the SDA from the DOE assistance in monitoring, administering and providing programmatic standards on SDA school facilities construction projects that are funded in whole or in part by the SDA. DOE will assign necessary staff to perform the work required by this MOA.

2. Compensation. In return for the services set forth in Attachment A and in accordance with the estimated budget, the SDA shall pay a sum not to exceed \$XXX,XXX per year. DOE shall submit invoices quarterly with an itemization of the costs for services rendered to the SDA on a form approved by the SDA. The DOE will dedicate a total of one (1) full time employee to perform informational support services for or on behalf of the SDA. In order to ensure that the broad purposes of the MOA are achieved, the DOE will work closely with the SDA so that the one (1) employee is fully dedicated to performing informational support services and so that the responsibilities of such employee may be modified from time to time to meet the SDA's changing needs under the School Construction Program and the MOA. DOE will maintain on file all documentation regarding the time spent on SDA school facilities projects. These records will be available for review by staff of the SDA or their designated representatives at mutually agreeable times. DOE will have access to all SDA files related to all school facilities projects. The invoices submitted by the DOE to the SDA for the aforementioned costs shall not exceed \$XXX,XXX per year. Any costs incurred by the DOE in excess of the aforementioned amounts shall be the responsibility of the DOE.

3. DOE Scope of Services. For the Period of January 1, 2009 through December 31, 2009, DOE shall perform or oversee services described in Attachment A and in paragraph 2 above.

#### **A. SDA RESPOSNIBILITIES:**

During the term of the MOA:

1. The SDA agrees to fund salary and all benefits provided by SDA for its Employees, who will receive such salary and benefits directly from the SDA.
2. SDA will be available for consultation by DOE during the mobility assignment on the performance evaluation of the Employee. DOE will determine work assignments with input from SDA, and the funding source to support those assignments shall be determined solely by SDA.

#### **B. DOE RESPOSNIBILITIES:**

During the term of the MOA:

1. DOE will undertake timekeeping for the Employee. The DOE will provide bi-weekly time sheets that will be completed by the Employee, and signed by the Employee and his/her supervisor at DOE.
2. DOE agrees to train Employee in responsibilities needed to support SDA activities.
3. DOE will supervise the work, performance and attendance of the Employee, including standard Employee performance review in consultation SDA.
4. DOE agrees that it will not require Employee to act in any way contrary to the SDA's Code of Ethics and, furthermore, the Employee's service with DOE will be subject to all applicable provisions of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.

5. DOE agrees that all responsibilities, tasks and activities given and expected of Employee must support SDA efforts and interests solely and exclusively, and include, but are not limited to, those as found in Attachment A.

### **C. GENERAL PROVISIONS:**

1. Performance Standards. DOE shall perform all services required under this MOA in a good, skillful and prompt manner, consistent with the level of care ordinarily exercised by members of their respective professions currently practicing under similar circumstances.

2. Termination for Convenience of the SDA. The SDA or the DOE may terminate this MOA for their mutual convenience on thirty (30) days written notice to the other party. In the event of such termination, DOE shall be entitled to payment for services rendered as of the effective date of termination, which shall include non-cancelable expenses incurred as of the effective date of the termination.

3. Termination for Cause. The SDA or the DOE may terminate this MOA for cause, including, but not limited to, breach of the terms of this MOA, on thirty (30) days written notice to the other party to this MOA. The SDA or the DOE may avoid termination if, within seven (7) days of the notice of termination for cause, it commences action to correct the matter noticed as the cause for the termination, fully curing same within the time prescribed by the other party in the notice; failure to do so will result in termination of the MOA.

4. Operation of DOE Beyond Expiration or Termination of this MOA. It is the intent of both parties that DOE succeed in accomplishing the mission set forth herein. The parties understand and agree that continuation by the SDA of DOE's efforts beyond the expiration date of this MOA depends on a mutually written agreement at the relevant time between the SDA and DOE for further services and funding. In this connection, any services to be rendered by DOE and funded by the SDA in the years following the end of calendar year 2009 shall be pursuant to an SDA approved scope of services, timeline and budget, following submission of a proposal in this regard by DOE, on or before October 1<sup>st</sup> of the year preceding the extension (example, proposal is due October, 2009 for services to be extended to the end of calendar year 2010). No language included in this MOA precludes or infringes upon the statutory obligation of the DOE to enforce its wage and hour laws (including prevailing wage) on projects funded in whole in or in part by the SDA, prior to, during or after the period encompassed by this MOA regardless of funding (or lack thereof) provided by the SDA to the DOE for the enforcement of the prevailing wage laws.

5. Disclosure of Information. The parties to this MOA acknowledge that they will be sharing government records which may be protected from disclosure to third parties under N.J.S.A. 47:1A-1 et seq., the New Jersey Open Public Records Act (OPRA). That is, certain shared government records and/or information contained within those records may fall within one of the enumerated exceptions to the "readily accessible for inspection, copying or examination by citizens of this State" rule set forth within OPRA. In the event that either party receives a request from a third party for access to a shared government record, the party to whom the request has been submitted shall respond to the request in accordance with the provisions of OPRA and shall

provide timely notice to the other party of both the request for access and the disposition of that request.

6. Amendment. This MOA may be amended only by mutual consent of the parties. Any amendment shall be memorialized in writing.

7. Effective Date and Duration. DOE shall perform services set forth in this MOA for the period of January 1, 2009 through December 31, 2009. The period of performance may be extended by mutual consent of DOE and the SDA.

8. Notices. Any notice given under this MOA shall be a written communication directed by one party to the other party at the following respective addresses:

SDA:           New Jersey Schools Development Authority  
                  1 West State Street  
                  P.O. Box 991  
                  Trenton, N.J. 08625-0991  
                  Attn: Janesa Urbano, Chief Counsel

DOE: Department of Education  
100 River View Plaza  
P.O. Box 500  
Trenton, N.J. 08628-0500  
Attn: Lucille E. Davy, Commissioner

9. Assignment. This MOA may be assigned by the SDA to another department, agency, or authority of the State of New Jersey to which the statutory responsibilities assigned to the SDA have been transferred, in which event; DOE shall remain bound to the terms of this MOA with respect to such assignee party. DOE may not assign this MOA to another party except to the extent such assignment may be to another department, agency or authority of the State of New Jersey.

10. Authority. By execution this MOA, the parties represent that they are duly authorized and empowered to enter into this MOA and to perform all duties and responsibilities established within.

11. Signatures. By execution of this MOA, the undersigned duly authorized representatives of the SDA and DOE hereby agree that the parties shall in good faith abide by and fulfill both the spirit and letter of this MOA.

**For the Department of Education:**

\_\_\_\_\_  
Lucille E. Davy,  
Commissioner

Date: \_\_\_\_\_

**For the New Jersey Schools Development Authority:**

\_\_\_\_\_  
Kris Kolluri  
Chief Executive Officer

Date: \_\_\_\_\_

**Reviewed and approved as to form:**

\_\_\_\_\_  
Janesa Urbano  
Chief Counsel, NJSDA

Date: \_\_\_\_\_