

OGC CONTRACT NO. ___/F18

SC NO.:
ABC CODE:

AGREEMENT FOR SERVICES

Request for Proposal Water Testing Program Management Services

In consideration of the mutual promises set forth below, intending to be legally bound, **THE SCHOOL DISTRICT OF PHILADELPHIA**, a body corporate and political subdivision formed and existing under the laws of the Commonwealth of Pennsylvania (the “School District”), located at the Education Center, 440 North Broad Street, Philadelphia, Pennsylvania 19130-4015, and _____, a _____ (the “Water Consultant” or “Contractor”), located at _____, have executed and delivered this Agreement for Services (the “Contract”) as of _____, 2018.

1. *The Engagement, the Work, the Standard Terms and Conditions.* Subject to the terms and conditions set forth in this Contract, the School District engages the Water Consultant to carry out the work (the “Work”) set forth in (a) the attached Exhibit “A-1” – Statement of Work; (b) the attached Exhibit “A-2” – School District Request for Proposal Water Testing Program Management Services (the “RFP”); and (c) the attached Exhibit “A-3” – the Water Consultant’s Proposal submitted in response to the RFP (each of which includes any sub-exhibits, attachments or addenda incorporated therein), and Exhibit “B” – the Water Consultant’s Budget (the “Budget”). The Work includes all Materials the Water Consultant has agreed to provide, the time frames in which the Water Consultant has agreed to complete the Work, and all other requirements the Water Consultant must satisfy in order to complete the Work during the Term (defined in Section 3 below). The terms and conditions of this Contract include the School District Standard Terms and Conditions (the “Standard Terms and Conditions”) attached hereto as Exhibit “C”.

2. *Resolution.* The School Reform Commission authorized this Contract by its resolution number _-_, dated _____, 2018. The Parties have attached the resolution to this Contract as Exhibit “D” for reference but have not made the resolution a part of this Contract. The School District has no power to contract for the Work outside the scope of the resolution.

3. *Contract Term.* The term of the Contract shall be for a period of up to five (5) years and shall begin April 1, 2018 and continue through June 30, 2023 (the “Term” or the “Initial Term”), unless terminated sooner by the School District as provided in this Contract. The Water Consultant shall commence the Work promptly on the first day of the Term and complete

the Work not later than the last day of the Term, except for those matters which contemplate performance after the expiration or termination of this Contract.

a. *Option to Renew.* The School District may, at its sole discretion, renew this Contract for up to one (1) additional successive one (1)-year periods (“Additional Term”). Pricing shall be subject to renegotiation between the Parties at the time the School District exercises its option to renew. The Water Consultant only guarantees the quoted pricing for the Initial Term. Except as expressly stated otherwise in an Amendment, the terms and conditions of this Contract shall apply throughout the Additional Term. At least sixty (60) calendar days prior to the expiration of the then current contract term, the School District, at its sole discretion, may notify the Water Consultant, in writing, of its intention to recommend renewal of this Contract for up to an additional one (1)-year period to the SRC. Within ten (10) days of the Water Consultant’s receipt of the School District’s notice of its intention to recommend renewal of this Contract, the Water Consultant shall supply a written price quote to the School District. Renewal shall be effective only upon formal approval by resolution of the SRC. The total authorized contract term under this Contract may be for a maximum time period of up to six (6) years through June 30, 2024, unless the SRC or a successor entity authorizes a further renewal or extension by Resolution.

4. *Compensation.* As compensation for the satisfactory performance of the Work carried out by the Water Consultant hereunder, the School District shall pay the Water Consultant, in arrears, a total fee not to exceed _____ **Dollars** (**\$ _____**), **conditioned, however, upon the continued availability of funds, as set forth in Sections 6 and 7 of the Standard Terms and Conditions** (the “Compensation”).

a. *Budget.* The Water Consultant shall carry out the Work and bill the School District strictly in conformity with the Water Consultant’s Budget attached as Exhibit “B”, and the School District shall pay the Water Consultant strictly in conformity with the Contractor’s Budget.

b. *Fee Structure.* The Water Consultant shall earn the Compensation on the following basis (check one):

flat fee, pro-rated and billed monthly, or otherwise, as provided in Section 5 below;

at the hourly rate or rates per hour of labor specified in Exhibit “B” or Exhibit “A”, and billed monthly, or otherwise, as provided in Section 5 below; or

on such other basis as the Parties have specified, if any, in Exhibit “B” or Exhibit “A-2” or Exhibit “A-3”, and billed monthly, or otherwise, as provided in Section 5 below.

5. *Invoices.* The Water Consultant shall submit timely invoices to the School District Responsible Official named in Section 7 below and, unless the Parties have agreed to a different schedule as set forth in Exhibit “A” or Exhibit “B” hereto, the Water Consultant shall submit not more than *one invoice per month*. The Water Consultant shall submit its final invoice not later than ten (10) business days after the last day of the Term. The Water Consultant shall submit invoices in accordance with Section 3 of the Standard Terms and Conditions. All invoices shall include an itemization of charges and, at a minimum, a detailed description of the Work performed. The School District shall have no obligation to make any payment to the Water Consultant before receipt of an invoice that conforms to the requirements of this Contract.

6. *Federal Employer Identification Number.* The Water Consultant’s federal employer identification number is: ___-____.

7. *Notices.* The Parties shall give notices and other communications required under this Contract in conformity with Section 21 of the Standard Terms and Conditions, and shall send all notices to:

School District Responsible Official: Water Consultant:

Name:	Francine Locke	
Title:	Director, Environmental Services	
Party:	The School District of Philadelphia	
Address:	440 N. Broad Street, 3 rd Floor, Portal C Philadelphia, PA 19130-4015	
Telephone:	(215) 400-5213	() ___-___
Fax:	(215) 400-4751	() ___-___
E mail address:	flocke@philasd.org	
Program Office (School District):	Environmental Management and Services	

8. *Order of Precedence.* The Parties have attached the following Exhibits to this Contract, each of which the Parties have agreed to incorporate in and make a part of this Contract:

<i>Exhibit</i>	<i>Exhibit Name</i>
“A-1”	Statement of Work
“A-2”	Request for Proposal
“A-3”	The Water Consultant’s Proposal
“B”	The Water Consultant’s Budget
“C”	School District Standard Terms and Conditions
“E”	The Water Consultant’s M/WBE Participation Plan

In the event of a conflict between any Exhibit and another Exhibit, or this Agreement for Services, the following order of precedence shall apply: first, this Agreement for Services; second, Exhibit "C"; third, Exhibit "A-1"; fourth, Exhibit "A-2"; fifth, Exhibits "A-3" and "E"; and sixth, Exhibit "B". The Parties acknowledge and agree that each shall construe the terms, covenants and conditions set forth in this Contract, including each Exhibit hereto, as consistent with one another insofar as possible, so as to give effect to the fullest extent possible to each particular clause; where more than one clause, covenant or term may address the same subject matter the Parties shall comply with the most restrictive of the pertinent clauses, covenants or terms. The Parties shall not construe particular clauses, covenants or terms to conflict with one another if, in light of the terms of the Contract taken as a whole, the Parties can reasonably construe the clauses, covenants or terms in a manner which does not give rise to a conflict.

9. *Modifications.* The Parties have agreed to the following modifications to the terms and conditions set forth elsewhere in this Contract.

a. *Standard of Performance.* Strike subsection 1.a., *Standard of Performance*, of Section 1, **General Conditions of the Work**, page 1, Exhibit "C", the Standard Terms and Conditions, and substitute:

a. *Standard of Performance.* The Contractor shall exercise a high standard of professional skill, care, diligence and competence in the rendition of its Work under this Contract in accordance with the professional standards prevailing in the metropolitan Philadelphia area for the provision of services such as those provided in this Contract. The Contractor's Work under this Contract shall be performed as expeditiously as is consistent with said professional standards and sound professional practices. The Contractor shall use its best efforts to assure timely and satisfactory completion of its Work in accordance with the schedules for the School District Project. The Contractor shall at all times act in the best interest of the School District, consistent with the professional obligations assumed by it in entering into this Contract. The Contractor shall perform all Work under this Contract in accordance with the terms and conditions of this Contract and to the reasonable satisfaction of the School District. The Contractor shall remain responsible for the professional quality, technical accuracy, completeness and coordination of all Work and Deliverables furnished under this Contract. The Contractor shall be responsible for the means, methods, techniques, sequences, and procedures to perform the Work required under this Contract. All Work shall be done in consultation with or under the direction of a representative of the School District Director of Environmental Services.

(1) All Work to be performed by the Water Consultant that requires the exercise of professional skills or judgment shall be accomplished by professionals certified or licensed to practice in the applicable professional discipline in the Commonwealth of Pennsylvania.

(2) The Contractor shall be fully responsible and liable for the performance of all Work, on-time and on-budget, required under this Contract whether performed by the Contractor's own personnel or by Subcontractors of the Contractor.

(3) All Work or Deliverables furnished by the Contractor or its Subcontractors found to be defective, solely as a result of the errors, omissions or negligence of the Contractor or its Subcontractors, shall be promptly corrected by the Contractor or its Subcontractors, at no additional cost to the School District.

(4) The Contractor shall revise the Work or Deliverables, at no additional cost to the School District, in accordance with the written directives of the School District's designated representatives, provided such directives are not inconsistent with previous approvals or instructions. The Contractor shall also make revisions in the Work or Deliverables, at no additional cost to the School District, whenever such revisions are required by reason of any of the Work or Deliverables being inconsistent with the approvals or instructions previously given by the School District, or such revisions are due to causes solely within the control of the Contractor or its Subcontractors.

b. *Meetings.* Strike subsection 1.f., *Meetings*, of Section 1, **General Conditions of the Work**, page 1, Exhibit "C", the Standard Terms and Conditions, and substitute:

f. *Meetings; Minutes, Reports, Communications and Correspondence.* The Contractor shall prepare for, attend, and participate in meetings with School District representatives of the Office of Environmental Management and Services. Upon request or as required by this Contract, the Contractor shall prepare and distribute minutes of meetings, progress reports, and any other reports, correspondence and communications to School District representatives of the Office of Environmental Management and Services, in an electronic format designated by the School District. Upon request or as required by this Contract, the Contractor shall provide the School District with oral or written reports of its activities, on a monthly basis or more often as needed or required.

c. *Inspections.* Add subsection 1.i., *Inspections*, to Section 1, **General Conditions of the Work**, page 1, Exhibit "C", the Standard Terms and Conditions:

i. *Inspections.* The School District shall have the right to inspect the Work of the Contractor at all times and locations. The School District shall at all times have access to the Work whenever it is in preparation or progress.

d. *Best Pricing.* Strike Section 5., **Best Pricing**, of Section 1, **General Conditions of the Work**, page 3, Exhibit "C", the Standard Terms and Conditions.

e. *Independent Contractor.* Strike Section 8., **Independent Contractor**, page 3, Exhibit "C", the Standard Terms and Conditions, and substitute:

8. **Status of Contractor.** The Contractor is an authorized representative of the School District, and shall have the powers, duties and responsibilities that are delegated by the School District to the Contractor under this Contract. The Contractor is not an employee of the

School District and its agents, employees and Subcontractors are not entitled to any benefits or privileges acquired in the ordinary course of employment from the School District.

f. *Subcontracts.* Add subsection 10.c. *Subcontract Duties and Responsibilities*, to Section 10, **Subcontracts**, page 4, Exhibit “C”, the Standard Terms and Conditions:

c. *Subcontract Duties and Responsibilities.* If the Contractor employs any subcontractors to perform any of the Work, all terms and conditions under the Contract applying to the Contractor apply equally to its Subcontractors. The Contractor shall be as fully responsible for the acts and omissions of its Subcontractors, and for everyone, either directly or indirectly employed by them, as it shall be for the acts and omissions of persons directly employed by it. Subcontractors, if any, shall look only to the Contractor for payment, satisfaction, or legal redress in the event of any dispute arising out of the Contract Documents, and hereby waive any claim or cause of action against the School District arising out of the Contract or other transaction with the Contractor. The School District shall have no obligation to pay nor to see to the payment of any monies to any Subcontractor of the Contractor, except as may otherwise be required by law.

g. *Indemnification.* Strike subsection 13.a., *Indemnification*, of Section 13, **Indemnification; Litigation Cooperation; Notice of Claims**, page 5, Exhibit “C”, the Standard Terms and Conditions, and substitute:

a. *Indemnification.* The Contractor agrees to assume liability for and does specifically agree to indemnify, save, protect, and hold harmless the School District, its SRC members, board directors, officers, employees and agents, from and against any and all liability, losses, claims, suits, actions, costs, damages and expenses (including, but not limited to, attorneys’ fees, court costs and legal expenses of whatever kind or nature) imposed on or asserted against the School District, and arising out of or in any way related to the Contractor’s carrying out the provisions of this Contract, including, but not limited to, any claim for actual or alleged loss of life, bodily injury, personal injury, or damage to property, alleged to have been caused, in whole or in part, by the negligent acts, errors, omissions, breaches of contract or employment discrimination of the Contractor, its officers, agents, employees, servants, or Subcontractors acting pursuant to this Contract; or arising out of this Contract with the School District and related to any claim whatsoever brought by or against any agent, servant, employee, or Subcontractor of the Contractor for any alleged negligence or condition caused or contributed to, in whole or in part, by the School District; and from any claim for license fees or taxes for which the Contractor is or may become responsible. The Contractor agrees that in the event that any employee of the Contractor makes any claim or files a lawsuit against the School District for any alleged injury on School District property or in connection with services being performed by the Contractor under this Contract that the Contractor shall fully defend, indemnify and hold harmless the School District for all damages, losses and expenses which may result therefrom (including attorneys’ fees, court costs and legal expenses of whatever kind or nature). This indemnity provision is expressly intended to waive the statutory immunity afforded to the

Contractor as an employer pursuant to §481(b) of the Pennsylvania Workers' Compensation Act, 77 P.S. §481(b), and to permit the School District to seek contribution or indemnity from the Contractor in the event that the School District is sued by an employee of the Contractor. The parties further intend that this waiver satisfy the judicial requirements applicable to an express waiver as articulated by the Superior Court of Pennsylvania in Bester v. Essex Crane Rental Corp. v. Russell Construction Co., 619 A.2d 304 (Pa. Super. 1993).

h. *Insurance.* Strike Section 15, **Insurance**, pages 6 and 7, Exhibit "C", the Standard Terms and Conditions, and substitute:

15. **Insurance.** The Contractor shall, at its own expense, procure and maintain the types and minimum limits of insurance specified below covering the performance of the Work. All insurance shall be procured from reputable insurers who are financially responsible and authorized to do business on an admitted basis in the Commonwealth of Pennsylvania or otherwise acceptable to the School District's Office of Risk Management. All insurance must be afforded by an insurance carrier with at least an A- (Excellent) rating from a reputable agency (e.g., A.M. Best). All insurance herein, except the professional liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall work be performed until the required evidence of insurance has been provided. The insurance shall provide for at least thirty (30) days prior written notice to be given to the School District in the event coverage is materially changed, cancelled or non-renewed. The School District of Philadelphia and its officers, employees and agents shall be named as additional insureds on all liability policies (except Workers' Compensation & Professional Liability), and the policies shall be so endorsed. Endorsements are required stating that the coverage afforded the School District and its officers, employees and agents as additional insureds will be primary to any other coverage available to them, and that no act or omission of the School District or its officers, employees and agents shall invalidate the coverage, other than an act or omission that would constitute willful misconduct or gross negligence. The Contractor will waive all rights of recovery against the School District of Philadelphia (where allowed by law) and all the additional insureds for loss or damage covered by any of the insurance maintained by the Contractor.

(a) **Workers' Compensation and Employer's Liability.**

- (1) Workers' Compensation: Statutory Limits.
- (2) Employers' Liability: \$500,000 Each Accident – Bodily Injury by Accident; \$500,000 Each Employee – Bodily Injury by Disease; and \$500,000 Policy Limit – Bodily Injury by Disease.
- (3) Other states insurance coverage and Pennsylvania endorsement.

(b) **Commercial General Liability Insurance.**

- (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for

products and completed operations. Products/Completed Operations must be maintained for at least 2 years after final payment (including coverage for Additional Insureds as set forth below. The General Aggregate should apply on a per project basis. The School District may require higher limits of liability if, in the School District's sole discretion, the potential risk so warrants.

- (2) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
- (2A) Policy must be endorsed to include "Resulting Damage".
- (3) The School District may require higher limits of liability if in the School District's sole discretion, the potential risk so warrants.

(c) **Automobile Liability Insurance.**

- (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (2) Coverage: Owned, non-owned, and hired vehicles.
- (3) If transportation of hazardous material is involved, the policy shall include the following endorsements: MCS-90 and ISO-9948.

(d) **Professional Liability Insurance.**

- (1) Limit of Liability: \$5,000,000 with a deductible not to exceed \$100,000.
- (2) Coverage: Contractor's errors and omissions, including liability assumed under this Contract.
- (3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of the performance of the Services required under this Contract shall be maintained in full force and effect for a retroactive date prior to work and an extending reporting period of 60 months after the work is completed.

(e) **Excess Umbrella Liability.**

- (1) Limit of Liability: at least \$5,000,000.00 combined single limit and at least \$5,000,000.00 aggregate limit with an additional insured endorsement for the School District on the liability policy. The General Aggregate must apply on a per project basis.
- (2) Coverage: Limits in excess of underlying limits in underlying primary insurance policies and broader coverage than combined scope of underlying primary insurance policies.

(f) **Environmental Liability/Contractor's Pollution Insurance:**

- (1) Limit of Liability: \$1,000,000 with a deductible not to exceed \$100,000.

- (2) Coverage: Pollution Liability.
 - (i) Remediation: 5 Years Completed Operations.
 - (ii) Pay on behalf of or in lieu of indemnity.
 - (iii) Occurrence form – Gradual and Sudden/Accidental Pollution.
 - (iv) Covered operations – all those performed by or on behalf of the Named Insured.
 - (v) Include coverage for the insured’s liability for services or contracting operations performed by others on its behalf.
 - (vi) Coverage Extensions Required: Transportation; Non-Owned Disposal Site & Microbial Matter.

(g) **Crime Insurance:** The Subcontractor shall be responsible for maintaining Crime Insurance, which includes the Employee Theft and Theft, Disappearance and Destruction coverage parts, in an amount not less than \$250,000 Per Occurrence. The Employee Theft Coverage part should include the Clients’ Property Endorsement (ISO Form CR 04 01, or its equivalent).

(h) **Owned, Leased, Rented or Borrowed Equipment:** The Contractor shall maintain Property Coverage for their owned, leased, rented or borrowed equipment, tools, trailers, etc.

(i) **Property Coverage:** The Contractor shall provide coverage for damage to their work, materials to be part of the project (on-site and off-site), and in transit.

Based on the scope and size of a School District project, the School District shall have the right to revise the insurance requirements specified above.

Evidence of Insurance Coverage. Certificates of Insurance evidencing the required coverages and Endorsements must specifically reference the School District Contract Number set forth on the first page of the Contract (the Contract Number can be typed in the ‘Description’ section of the certificate). The original Certificate of Insurance and Endorsement shall be submitted to the address below:

School District of Philadelphia
Office of Risk Management
Attn.: Riccardo Zucaro, Director of Insurance Risk Management
440 North Broad Street, Suite 325
Philadelphia, Pa 19130-4015
Fax: (215) 400-4591
Phone: (215) 400-4590

with a copy to:

The School District of Philadelphia
Office of Environmental Management and Services

440 North Broad Street, 3rd Floor, Portal C
Philadelphia, PA 19130-4015
Attn.: Francine Locke, Director of Environmental Services
(Fax No.: 215-400-4731)

The Certificate of Insurance and the Endorsement must be submitted to the School District at least ten (10) calendar days before any contractual services or Additional Term or renewal begins. The ten (10) calendar day requirement for advance documentation of coverage may be waived in situations where such waiver will, in the sole judgment of the School District Director of Insurance Risk Management, benefit the School District. Under no circumstances shall the Contractor actually begin services (or continue services, in the case of renewal or an Additional Term) without providing the evidence of insurance. The School District reserves the right to require the Contractor to provide certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) calendar days written notice to the Contractor.

Notice of Claim or Lawsuit. The Contractor shall advise the School District in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon the Contractor's services, omission or breach, that it will abide fully by Section 13 (*Indemnification; Litigation Cooperation; Notice of Claims*) and Section 15 (*Insurance*) of this Contract, and that the applicable insurance carrier(s) has (have) been advised to defend, indemnify, and hold harmless the School District in accordance with the provisions of Section 13 (*Indemnification; Litigation Cooperation; Notice of Claims*) and Section 15 (*Insurance*) of this Contract. The Contractor shall not decline to provide the School District with full protection and coverage under Section 13 (*Indemnification; Litigation Cooperation; Notice of Claims*) and Section 15 (*Insurance*) of this Contract because some other contractor or consultant may, in whole or in part, be responsible for the occurrence, death, injury, damage, or loss to persons or property, or economic loss, damage, or expense, or because the School District may be a co-insured or an additional insured on some other contractor's or consultant's policy of insurance. The Contractor agrees that any violation of this Paragraph of Section 15 (*Insurance*) shall be deemed a material breach of this Contract.

Self-Insurance. The Contractor may not self-insure any of the coverages required under this Contract without the prior written approval of the School District Director of Insurance Risk Management. In the event that the Contractor desires to self-insure any of the coverages listed above, it shall submit to the School District's Director of Insurance Risk Management, prior to the commencement of Services hereunder, a certified copy of the Contractor's most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., state approval) as may be requested by the School District's Director of Insurance Risk Management. In the event such approval is granted, it is understood and agreed that the School District, its commission members, board directors, officers, employees and agents shall be entitled to receive the same coverages and benefits under the Contractor's self-insurance program that they would have received had the insurance requirements been satisfied by a reputable insurance carrier authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the School District Director of Insurance Risk Management. If at the time of

commencement of the Initial Term of this Contract, the Contractor self-insures its professional liability or workers' compensation and employers' liability coverage, the Contractor may, in lieu of the foregoing, furnish to the School District Director of Insurance Risk Management and School District a current copy of the State certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this Contract by the Contractor to the School District, or to limit the Contractor's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by the Contractor hereunder.

i. *Risk of Loss.* Add subsection 17.c., *Risk of Loss*, to Section 17., **Materials; Intellectual Property**, page 8, Exhibit "C", the Standard Terms and Conditions:

c. *Risk of Loss.* During the performance of the Work, the Contractor shall be responsible for any loss or damage to the documents, data, records, reports, and files that are produced by the Contractor under this Contract while they are in its possession, and any such documents, data, records, reports, and files lost or damaged shall be restored at the expense of the Contractor.

j. *Review and Access.* Add subsection 17.d., *Review and Access*, to Section 17., **Materials; Intellectual Property**, page 8, Exhibit "C", the Standard Terms and Conditions:

d. *Review and Access.* Full access to the Work during the Contractor's preparation of documents, data, records, reports, and files shall be available to the School District and other public agencies interested in this Work during normal business hours upon reasonable notice.

k. *Termination or Expiration.* Add subsection 17.e., *Termination or Expiration*, to Section 17., **Materials; Intellectual Property**, page 8, Exhibit "C", the Standard Terms and Conditions:

e. *Termination or Expiration.* Upon termination or expiration of this Contract, the Contractor shall deliver copies of those records, data, information and other documents, delivery of which is required by this Contract, to the School District. Said copies of records, data, information and documents shall remain the property of the School District.

l. *Publicity.* Add subsection 17.f., *Publicity*, to Section 17., **Materials; Intellectual Property**, page 8, Exhibit "C", the Standard Terms and Conditions:

f. *Publicity.* Neither the School District nor the Contractor shall publicize this Contract or the Work, or attribute any comments or views about this Contract or the Work to employees or agents or officials of the other party, by press conference, press release, advertising or public relations materials without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that nothing in this Section shall be

construed to prohibit the Contractor from making any disclosure relating to this Contract or Work that is required under federal or state securities laws or state or local election laws, or to prohibit either party from publicizing, with reasonable prior notice to the other party, the fact that this Contract has been entered into, the subject matter of this Contract, or the amount of this Contract. Except as may be required for its performance of this Contract, or as mutually agreed by the School District and the Contractor, the Contractor shall refer all press and public inquiries regarding the Work or the Contract to the School District's designated representative during the term of this Contract. At any time thereafter, the Contractor may respond to press and public inquiries regarding the Work and the Contract following notice to the School District's designated representative. During the term of this Contract, the Contractor shall provide reasonable assistance to the School District in public relations activities, and shall prepare appropriate information for, and when requested, attend public meetings regarding the Work.

m. *Stoppage or Abandonment.* Add subsection 20.b., *Stoppage or Abandonment*, to Section 20., ***Termination for Convenience***, page 10, Exhibit "C", the Standard Terms and Conditions:

b. *Stoppage or Abandonment.* The School District may order the Contractor, in writing, to stop or abandon all or any part of its Work, for the convenience of the School District, or for work stoppages beyond the control of the School District or the Contractor. Any increased costs incurred as a result of the stoppage or abandonment of the Work shall be an equitable amount determined by the School District and the Contractor in view of all the facts and circumstances. If the Work is abandoned, the School District shall pay the Contractor for all Work performed to the date of the abandonment in accordance with Section 20., ***Termination for Convenience***, of this Contract. The School District shall have the right to stop the Work or any part thereof in the event that the Contractor fails to remedy any defects in any of the Work, or commits an Event of Default under Section 19, ***Default; Notice and Cure; Remedies***, of this Contract, following written notice by the School District, or fails to carry out any part of the Work in accordance with this Contract, by issuing a written Stop Work Order, which shall be signed by the School District's Contract Administrator. Any Stop Work Order shall state in reasonable detail the cause(s) for its issuance. Upon receiving a Stop Work Order, the Contractor shall immediately cease working on that part of the Work specified in the Stop Work Order until the School District notifies the Contractor in writing to resume the Work. The Contractor shall resume the Work immediately upon receipt of such written notice from the School District.

n. *Suspension for Convenience.* Add subsection 20.c., *Suspension for Convenience*, to Section 20., ***Termination for Convenience***, page 10, Exhibit "C", the Standard Terms and Conditions:

c. *Suspension for Convenience.* The School District shall have the right, at any time during the term of this Contract, to suspend all or any part of the Work, for the convenience of the School District, for the period of time that the School District, in its sole discretion, determines to be in the best interest of the School District, upon fourteen (14) days' prior written notice to the Contractor (except that in the event of a public emergency, as determined by the

School District, no such period of notice shall be required). If a suspension of the Work pursuant to this subsection is for greater than thirty (30) days, the Contractor shall have the right to submit a claim to the School District for the payment of costs for all Work performed in accordance with the provisions of this Contract prior to the effective date of the suspension. The Contractor shall be entitled to a one-day extension of the time of performance provided in this Contract for each day that it is suspended pursuant to this subsection. The School District shall have the right, during the period of any suspension pursuant to this subsection, to terminate this Contract as provided in this Contract.

o. *Disputes.* Add subsection 24. m., *Disputes*, to Section 24, **Miscellaneous**, pages 12-13, Exhibit “C”, the Standard Terms and Conditions:

m. *Disputes.* The Parties agree to exercise every reasonable effort to resolve disputes that may arise under this Contract through informal negotiation and cooperation. If the Parties are unable to resolve any disputes arising under this Contract, then a Party claiming that a dispute has arisen in connection with this Contract or its subject matter will give prompt notice to the other Party describing the dispute in reasonable detail. Promptly after receipt of the Dispute Notice, the Parties will negotiate in good faith to resolve the Dispute. Either Party may escalate the Dispute negotiations to higher level personnel, by notice to the other Party, as specified below:

School District	Water Consultant	Time After Dispute Notice
Environmental Manager	Project Manager	15 days
Director, Environmental Services	Principal in Charge	15 days

All limitations periods and the running of laches are tolled during the pendency of dispute resolution.

p. *Non-Applicability of Pennsylvania Prompt Payment Acts.* Add subsection 24.n., *Non-Applicability of Pennsylvania Prompt Payment Acts*, to Section 24, **Miscellaneous**, pages 12-13, Exhibit “C”, the Standard Terms and Conditions:

n. *Non-Applicability of Pennsylvania Prompt Payment Acts.* The School District is a “distressed school district” under the Public School Code, Act of March 10, 1949, P.L. 30, No. 14 (24 P.S. §6-691) and a “first class school district” under the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (known as “PICA Act”), Act of June 5, 1991, P.L. 9, No. 6 (53 P.S. §12720.104), and therefore the prompt payment provisions of the Award and Execution of Public Contracts Law, Act of December 12, 1994, P.L. 1042, No. 142 (73 P.S. §§1626.8(c)(2) & (4)), and the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions, Act of May 15, 1998, P.L. 358, No. 57 (62 Pa.C.S.A. §§3938(b)(2) & (4)), do not apply to the School District of Philadelphia and its building, construction, alterations, improvements, demolition, or repair contracts. The School District has no obligation to make progress payments, final payments, retainage payments, or any other type of payment, within the time periods set forth in the Award and Execution of

Public Contracts Law or the Commonwealth Procurement Code, General Procurement Provisions, or to pay any interest, penalties, attorneys' fees, costs, and expenses to the Contractor or any of its Subcontractors under the Award and Execution of Public Contracts Law or the Commonwealth Procurement Code, General Procurement Provisions. Contractors, Subcontractors, and suppliers cannot make, assert or file a claim, cause of action or lawsuit against the School District for violation of the prompt payment provisions of the Award and Execution of Public Contracts Law, or the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions. The School District is also a "school district" and a "political subdivision" of the Commonwealth of Pennsylvania, and therefore the Contractor and Subcontractor Payment Act, Act of February 17, 1994, P.L. 73, No. 7 (73 P.S. §501 *et seq.*), does not apply to the School District and its construction contracts. The School District has no obligation to make progress payments, final payments, retainage payments, or any other type of payment, within the time periods set forth in the Contractor and Subcontractor Payment Act, or to pay interest, penalties, attorneys' fees, costs, and expenses to the Contractor or any of its Subcontractors under the Contractor and Subcontractor Payment Act. Contractors, Subcontractors, and suppliers cannot make, assert or file a claim, cause of action or lawsuit against the School District for violation of the Contractor and Subcontractor Payment Act. The Contractor shall comply with all terms and conditions of the Pennsylvania prompt payment acts (Award and Execution of Public Contracts Law, 73 P.S. § 1626 *et seq.*, and the prompt payment provisions of the Commonwealth Procurement Code, General Procurement Provisions, 62 Pa.C.S.A. §3931 *et seq.*, and the Contractor and Subcontractor Payment Act, 73 P.S. §501 *et seq.*) with regard to its own payments to its Subcontractors, if applicable to the Contractor or the Work of the Contractor.

REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

In witness whereof, the Parties, intending to be legally bound, have executed and delivered this Contract as of the day and year set forth above.

By: _____
_____ [Name]
_____ [Title]

Approved as to form:

THE SCHOOL DISTRICT OF PHILADELPHIA

Attorney, The School District
of Philadelphia

By: _____
William R. Hite, Jr., Ed.D.
Superintendent

Exhibit “A-1”

The Water Consultant’s

Statement of Work

Background

The School District engages the Water Consultant to carry out the work (the “Work”) set forth in this Contract. The Parties have generally described the Work in Exhibits “A-1”, “A-2” and “A-3” to this Contract. References to “Exhibit A” elsewhere in this Contract shall mean Exhibits “A-1”, “A-2” and “A-3”; please refer to Section 8, *Order of Precedence*, page 3, the Agreement for Services.

1. **Incorporation of Background and Definitions.**

1.1 Incorporation of Background. The above Background is incorporated by reference into this Contract.

1.2 Definitions. Except as expressly provided otherwise in this Contract, capitalized terms shall have the meanings specified in this Paragraph 1.2. Such meanings shall be applicable to both the singular and plural of the term defined. Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa; and pronouns of any gender shall be deemed to include and designate the masculine, feminine, and neuter genders. “Or” shall include “and/or”.

(a) Additional Services – has the meaning attributed thereto in Section 9, *Water Consultant’s Additional Services*, herein.

(b) Additional Term – means the optional additional one (1)-year or twelve (12)-months term described in Section 3.a, *Option to Renew*, page 2 of the Agreement for Services.

(c) Applicable Law – means and includes all federal, state and local statutes, ordinances, resolutions and regulations, including the rules and regulations of any government authority, School District rules, regulations and policies applicable to the School District, the Architectural Designer and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

(d) Basic Services – has the meaning attributed thereto in Paragraph 2.1, *Basic Services*, herein.

(e) City or Local – means the City of Philadelphia and its legislative, executive, and administrative branches of government.

(f) Contract or Agreement for Services – means this professional services contract for water testing program management services, including all exhibits or documents attached hereto and/or incorporated herein, as amended from time to time by written amendment executed by both parties, and all modifications or revisions made in accordance with the terms hereof.

(g) Contract Administrator – means the person designated by a party pursuant to Section 7, *Notices*, page 3 of the Agreement for Services.

(h) Contract Modification – has the meaning attributed thereto in Section 11, *Changes*, herein.

(i) Deliverables – means all required submittals, work product, materials, documents, drawings, magnetic media and reports, including all underlying information, data and research, to be provided to the Water Consultant at regular review points and at the completion of the work as expressly noted herein or as may be required by the Water Consultant.

(j) Effective Date – means the date first written above.

(k) Federal – means the United States of America and its legislative, executive, and administrative branches of government.

(l) Force Majeure Condition – means a force majeure event or condition described in Section 12, *Force Majeure*, herein.

(m) Initial Term – means the Initial Term specified in Section 3, *Contract Term*, pages 1-2 of the Agreement for Services.

(n) Notice to Proceed – means written authorization by the Contract Administrator for the School District to commence its respective services.

(o) OSHA – means the Occupational Health and Safety Act of 1970.

(p) Project or Water Project – means water testing program management services in School District facilities and K-12 schools.

(q) Proposal – means the Proposal submitted by the Water Consultant in response to the RFP, together with all subsequent modifications and supporting materials submitted by the Water Consultant to the School District in response to the RFP.

(r) Request for Proposal or RFP – means the Request for Proposal Water Testing Program Management Services issued by the School District, including all Addenda thereto issued, if any.

(s) School District or Owner – means the School District of Philadelphia.

(t) Services or Work – mean, collectively, those functions or tasks necessary to complete the work covered under this Contract, including without limitation those basic services, and such additional services as may be directed by the School District, to be provided by the Water Consultant in accordance with the terms and conditions of this Contract.

(u) SRC or School Reform Commission – means the School District’s School Reform Commission appointed pursuant to 24 P.S. §6-696, or any successor body.

(v) State – means the Commonwealth of Pennsylvania and its legislative, executive, and administrative branches of government.

(w) Subconsultant or Subcontractor – means any person, firm, partnership, corporation, other entity, or combination thereof, or their respective duly authorized representative(s), who has or will enter into a contract or consulting agreement with the Water Consultant to perform any Work covered by this Contract.

(x) Subcontract – means a contract or consulting agreement entered into by the Water Consultant with a Subcontractor or Subconsultant in order to perform, directly or indirectly, its Services under this Contract.

(y) Term – means the Term specified in Section 3, *Contract Term*, pages 1-2 of the Agreement for Services.

(z) Termination Notice – means a notice given by the School District of its intent to terminate and its termination of this Contract. The termination procedure is set forth in Paragraph 20.a. of the Standard Terms and Conditions (Exhibit “C”).

(aa) Water Consultant or Contractor – means the qualified professional services firm performing water testing program management services pursuant to this Contract.

(bb) Work Schedule or Project Schedule – means that schedule submitted to and approved by the School District for the completion of those tasks necessary to complete the Work, as may be amended from time to time subject to the written approval of the School District.

1.3 General Rules of Construction. Except as expressly stated otherwise, all references to “Paragraph(s)” or “Section(s)” in this Contract are references to Paragraphs and Sections of this Contract or the Exhibits attached to this Contract; and all references to Exhibit(s) are references to the Exhibits attached hereto. The table of contents and headings used in this Contract are for reference and convenience only, do not in any way define, limit, describe, or amplify the provisions of this Contract or the scope or intent of its provisions, are not a part of this Contract, and will not enter into the interpretation of this Contract. All references to “days” in this Contract mean calendar days unless otherwise stated. The term “business day” means Monday through Friday, excluding holidays observed by the School District.

2. **General Description of the Scope of Water Consultant’s Services.**

2.1 Basic Services. All services that the Water Consultant is required to perform for the Project under this Contract shall constitute Basic Services for which compensation will be paid under Section 4, *Compensation*, pages 2-3 of the Agreement for Services.

2.2 The School District is required to comply with the City of Philadelphia’s Bill No.160618 (the Ordinance), Amending Section A-703.1 of Title 4 of The Philadelphia Code, entitled “Special Certificate of Inspection,” to require certification of water quality as a condition of occupancy for certain buildings used for education.

2.3 The Water Consultant shall provide the following services for over 300 facilities to assist the School District in complying with the City of Philadelphia’s Bill No.160618 (the Ordinance), Amending Section A-703.1 of Title 4 of The Philadelphia Code, entitled “Special Certificate of Inspection:

2.3.1 Develop a written water testing management program containing the following minimum components:

- a. critical milestones outline with timelines;
- b. water sample collection and laboratory analysis/testing methodologies;
- c. sample schedule for all 300 facilities (which are listed in the Water Fountain Data attachment issued with the RFP);
- d. root cause analysis protocol and communication for each outlet that is found to produce water above the action level of 10 ppb;
- e. outlet shut-off confirmation status and tracking plan;
- f. Ordinance compliance status verification for all schools;
- g. communications plan and other reporting deliverables as deemed appropriate by firm and the School District.

2.3.2 Operationalization plan to include the following minimum components:

- a. inspect water outlets for physical operability and aesthetic condition;
- b. audit and inventory the number of operable water outlets at every school for compliance with the Ordinance (1 outlet per 100 students per floor) and make recommendations for outlets that should be taken out of service permanently;
- c. test the water of over 3,000 outlets School District wide on a 5 year cycle using the 10 ppb action level and using the approved EPA method and as per the Ordinance. Provide a logic model for where the testing will start, e.g., geographic, Learning Network, high schools, middle schools, size of school, etc.;
- d. transport samples to approved laboratory with chain of custody protocol;
- e. communicate results and generate and track action plans.

2.3.3 Reporting:

- a. Provide **weekly status** reports to the School District containing the following information at a minimum:
 - i. water testing results sorted by school's ULCS number, school's name, Learning Network, alphabetically, outlet category, priority level, etc.
 - ii. water testing schedules and completion rates in relation to prescribed milestones;
 - iii. percentage of outlets/schools above/below action level;
 - iv. number of outlets/schools above/below action level;
 - v. visual statistical analysis of data including outlets that pass, fail, need action plan, remediation status of complete or outstanding, etc.;
 - vi. tracking of specific outlet troubleshooting actions and root cause analysis results;
 - vii. description of action plan for each outlet tested above action level;
 - viii. description of remediation status for each outlet tested above action level;
- b. Provide **quarterly progress** reports to the School District containing the following information:
 - i. progress of prescribed milestones;
 - ii. progress and adherence to schedule;
 - iii. progress of supplying prescribed reports to School District;
 - iv. progress of website updates with letters/results as per Ordinance requirements;
 - v. progress of compliance with City Ordinance in general;
 - vi. progress of overall water testing program.
- c. **Annual report:**
 - i. progress of prescribed milestones;

- ii. progress and adherence to schedule;
 - iii. progress of supplying prescribed reports to School District;
 - iv. progress of website updates with letters/results as per Ordinance requirements;
 - v. progress of compliance with City Ordinance in general;
 - vi. progress of overall water testing program.
- d. **5-year Cycle Report:**
- i. progress of prescribed milestones;
 - ii. progress and adherence to schedule;
 - iii. progress of supplying prescribed reports to School District;
 - iv. progress of website updates with letters/results as per Ordinance requirements;
 - v. progress of compliance with City Ordinance in general;
 - vi. final progress report for five year cycle.

2.3.4 Data management:

- a. Manage all data with an innovative and efficient Information technology data management tool that is compatible with *Archibus* (the School District’s work order system). The data management tool must include, at a minimum, the ability to report out on the following parameters:
- i. outlet inventory logs with unique identifiers for each outlet;
 - ii. outlet locations and descriptions of outlets;
 - iii. type and category of outlets;
 - iv. outlet physical conditions;
 - v. school-by-school reporting on compliance with the Ordinance;
 - v. outlet test results;
 - vi. outlet action plan description;
 - vii. outlet on/off status;
 - viii. testing schedule;
 - ix. outlet remediation status;
 - x. outlet action plan status;
 - xi. outlet remediation and work orders for plumbing repairs, remediation, removal from service and labelling.

2.3.5 Coordination and Communication:

- a. Monitor posting of data on School District website to ensure compliance with Ordinance;
- b. Notify the appropriate School District departments of required remedial actions;
- c. Assist with troubleshooting and root cause analysis for outlets that exceed 10 ppb;

- d. Conduct a periodic review of water testing program for trends, challenges, milestones, successes and needs for improvements;
- e. Prepare Certificates of Completion and assist with obtaining approvals as required from the City of Philadelphia Department of Public Health, including a final report for each school and for the School District as a whole;
- f. Prepare information in an efficient and compatible format to post for public view to School District's website as required by Ordinance;
- g. Provide executive level presentations to Superintendent's Executive Leadership Team, School Reform Commission, at public meetings and as needed.

2.3.6 Other Tasks:

- a. Provide recommendations for routine maintenance activities on all water fountains and all hydration stations currently installed throughout the School District and provide recommendations for future installation as necessary;
- b. Conduct hydration station inspections and report out on digital bottle counter readings, filter change out records, and any other information deemed appropriate by the School District and Water Consultant.

2.4 The Water Consultant shall be responsible for Work as assigned by the School District Office of Environmental Management and Services ("OEMS"). A quarterly evaluation of the Water Consultant's work will be provided by OEMS using the parameters listed in the Contract.

2.5 The Water Consultant shall ensure that the School District's interests are protected throughout all phases of the water testing program management services process.

2.6 The Water Consultant shall designate an individual as the Project Manager in charge of the Project.

2.7 The Water Consultant shall use the Key Personnel identified in its Proposal to perform the Work required under the Contract.

2.8 The Water Consultant shall use the laboratory firm identified in its Proposal to perform the water testing and analytical services required under the Contract.

2.9 Project Plan. The Water Consultant shall perform its Work in accordance with the Project Plan identified in its Proposal and agreed to by the School District.

3. **Water Consultant's Responsibilities.**

3.1 Reporting. The Water Consultant shall report directly to the School District's Director of Environmental Services or her designee. The School District's Office of Environmental Management and Services will evaluate and monitor the work of the Water Consultant, emphasizing on-time and on-budget performance.

3.2 Schedule. The Water Consultant shall commence its Work promptly upon receipt of a Notice to Proceed from the School District. The Water Consultant shall perform and complete its Work, on-time and on-budget, in accordance with the time deadlines set forth in the agreed-upon Project Schedule for the Work.

3.3 Deliverables. The Water Consultant shall provide the Deliverables identified in the RFP and the Contract on-time and on-budget, in strict conformity with the Contract requirements. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the School District. Such partial or incomplete Deliverables may not be considered as satisfying the specific submittal requirements as set forth in the Contract. Partial or incomplete Deliverables shall in no way relieve the Water Consultant of its schedule or cost commitments under the Contract.

3.4 Electronic Media Copies. The Water Consultant shall promptly provide to the School District all necessary and required Deliverables as referenced within the RFP for all Work requested as part of the Contract. The Water Consultant shall submit all required Deliverables on electronic media on a CD-ROM computer disk, and as a scanned copy on electronic media in "PDF" format, to the School District, at the completion of the Work.

4. **Water Consultant's Additional Services.**

4.1. The Water Consultant may be required to perform services in addition to the Basic Services described in the RFP and the Contract ("Additional Services").

4.2 Minor changes or necessary corrections to the Water Consultant's Work or Deliverables shall not constitute Additional Services. Changes or corrections to the Water Consultant's Work or Deliverables, requested by the School District and made after the School District's previous final approval of such Work or Deliverables, shall constitute Additional Services.

4.3 All Additional Services of the Water Consultant must be approved in advance by the School District's designated representative.

4.4 Compensation for Additional Services shall be an equitable amount mutually negotiated by the School District and the Water Consultant, taking into consideration all the facts and circumstances.

5. **School District Rights, Services and Responsibilities.**

5.1. Inspection. The School District has the right to inspect the Work of the Water Consultant and its Subconsultants in progress at any reasonable location and at any reasonable time.

5.2. Review and Changes to Documents and Information. The School District shall

review all Work and Deliverables prepared and submitted by the Water Consultant to the School District under the Contract, and shall advise the Water Consultant of any suggested changes, comments or recommendations thereto in a timely manner so as to cause no delay to the Water Consultant. Neither the School District's review, approval or acceptance of, nor payment for, any of the Work required under the Contract shall be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the performance of the Contract. Notwithstanding anything to the contrary contained in the Contract, the School District's review and approval of any and all Work or Deliverable or other matters required under the Contract shall be for the purpose of providing the Water Consultant with information as to the School District's objectives, goals and educational requirements with respect to the Work or the Project and not for the purpose of determining the accuracy and completeness of such Work or Deliverables.

6. **Changes.**

6.1. At any time during the term of this Contract, the School District or the Water Consultant may, without invalidating this Contract, make changes in any of the services required under this Contract, within the general scope of this Contract. including, without limitation, requiring additional or different services, and changes in the time of performance; provided, however, as follows:

(1) All such changes shall be made in accordance with the terms and conditions of this Contract, and shall be by Contract Modification, which shall be a written order or request that is accepted and agreed to be both the School District and the Water Consultant, as evidenced by the signatures of both the School District's Contract Administrator and the Water Consultant's Contract Administrator.

(2) If any such change causes an increase or decrease in the prices of services or the time required for the performance of this Contract, the Water Consultant shall notify the School District at the earliest reasonable opportunity, and an equitable adjustment of this Contract amount or time of performance will be made, and will be incorporated as part of the Contract Modification, subject to the following condition: In no event shall the School District be liable to the Water Consultant for additional compensation for any alleged change to the Services for which the School District has not agreed to and signed a Contract Modification. A Contract Modification shall set forth this Contract of the Water Consultant and the School District on all of the following: (i) a change in the services; (ii) the amount of adjustment in the Compensation, if any; and (iii) any adjustment in the time of performance. Any Contract Modification that increases the Compensation of the Water Consultant must be approved in writing by the School District's Director of Environmental Services to become effective.

6.2. All changes in the services of the Water Consultant shall be performed, on-time and on-budget, under applicable provisions of this Contract, and the Water Consultant shall proceed to perform the change in accordance with the time of performance provided in the Contract Modification, or if none is provided, shall proceed promptly to avoid adverse impact to the services.

7. **Force Majeure.**

7.1 In the event that either party is unable to perform any of its obligations under this Contract because of reasons beyond its reasonable control, including but not limited to natural disaster, any act of God, war, civil disturbance, court order, labor dispute, change in governmental regulations, delay or failure by third parties to provide critical goods or services, delay in obtaining project site access due to problems or delays in the land acquisition process that are not caused by the School District, delay in obtaining project site access due to failure or refusal of adjoining property owner to give necessary permission for required work or necessary entry onto adjoining property to perform required work, or delay or failure of governmental or regulatory authorities having jurisdiction over the project to give necessary or required approvals or documents for site access, work, or remediation of known, unknown, differing, or unforeseen project site conditions or environmental hazards or conditions (hereinafter referred to as a “Force Majeure Condition”), the party that has been so affected shall immediately give notice to the other party; and shall exercise every commercially reasonable effort to resume performance as quickly as possible. Neither party shall be in default of this Contract, if any event of default as provided therein is the result of a Force Majeure Condition and its occurrence is without the fault or negligence of that party. Neither party shall be liable to the other party for any failure to perform any of its obligations under this Contract if such failure is the result of a Force Majeure Condition. Neither party shall be entitled to compensation for the other party’s delays or nonperformance resulting from Force Majeure Conditions.

8. **M/WBE Participation.**

8.1. **M/WBE Participation.** The Water Consultant shall ensure that minority-owned business enterprises (“MBEs”), and women-owned business enterprises (“WBEs”) have the maximum opportunity to participate in the performance of this engagement, and shall make a good-faith effort to achieve the goals. The Water Consultant represents and certifies that it will include a minimum of 15% to 20% participation with either a minority-owned business enterprise(s) (MBE) and/or a woman-owned business enterprise(s) (WBE) based on the total contract award in the performance of this School District Contract. The Water Consultant further represents and certifies that it will use the following MBE and/or WBE firms as Subconsultants under this Contract in the percentages listed as set forth in the Proposal, M/WBE Participation Plan: (1) _____ (MBE) – ___%; (2) _____ (WBE). The Water Consultant’s Proposal, M/W/BE Participation Plan, is attached as Exhibit E and incorporated by reference into this Contract. The Water Consultant’s Proposal, M/WBE Participation Plan, shall be enforceable as any other contractual term or condition of this Contract. Sanction for breach of the Roofing Designer’s Proposal, M/WBE Participation Plan, may include suspension, cancellation of this Contract and/or debarment from future contracting opportunities with the School District. The Water Consultant shall **not** replace or substitute the MBE/WBE firms; or increase or decrease the contract MBE/WBE percentages or dollar amounts, or change the scopes of work for the MBE/WBE firms identified in this Paragraph and the Water Consultant’s Proposal, M/WBE Participation Plan, without the prior written notice to and approval of the

School District. The Water Consultant shall promptly submit a revised M/WBE Participation Plan, for School District approval, **before** the Water Consultant replaces or substitutes the MBE/WBE firms; or increases or decreases the contract MBE/WBE percentages or dollar amounts, or changes the scopes of work for the MBE/WBE firms identified in this Paragraph and the Water Consultant's Proposal, M/WBE Participation Plan.

Exhibit "A-2"

*School District
Request for Proposal
Water Testing Program Management Services*

Exhibit "A-3"

The Water Consultant's

Proposal

(redacted)

Exhibit "B"

The Water Consultant's Budget