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CONTRACT FOR PROFESSIONAL ENVIRONMENTAL CONSULTING SERVICES

FOR GEOTECHNICAL AND ENVIRONMENTAL SITE ASSESSMENTS

BETWEEN

THE SCHOOL DISTRICT OF PHILADELPHIA

AND

TABLE OF CONTENTS

	PAGE
Section 1. Incorporation of Background; Definitions; General Rules of Construction	3
1.1 Incorporation of Background	3
1.2 Definitions	3
1.3 General Rules of Construction	9
Section 2. Term of Contract	9
2.1 Initial Term	9
2.2 Option to Renew	9
Section 3. Environmental Consultant’s Services and Responsibilities	9
3.1 Status of Environmental Consultant.....	9
3.2 Assignment of Tasks and Issuance of Task Orders to Environmental Consultants	10
3.3 Environmental Consultant’s Representations, Warranties and Commitments	10
3.4 Basic Services and Additional Services	13
3.5 Standard of Performance	13
3.6 Labor, Materials, Supplies and Equipment	14
3.7 Revisions to Work and Documents	14
3.8 Cooperation with the Supplemental Construction Manager	15
3.9 Coordination and Safety of Onsite Activities	15
3.10 Subletting and Assignment	15
3.11 Legal Costs	17
3.12 Claims Services and Cooperation with Litigation	17
3.13 Changes	17
3.14 Force Majeure	19
3.15 Electronic Media Copies	20
3.16 Ownership and Use of Documents	20
3.17 Findings Confidential	20
3.18 Deliverables	21
3.19 Safety Responsibilities	21
Section 4. Scope of Services	22
4.1 Schedule	22
4.2 Statement of Services	22
Section 5. School District’s Services and Responsibilities	41
5.1 Review and Changes to Documents and Information	41
5.2 No Waiver by Review, Approval, Acceptance or Payment	42
5.3 Purpose of Review and Approval	42

	PAGE
Section 6. Compensation and Payment	42
6.1 Compensation	42
6.2 Payment	44
6.3 Applications for Payment and Subconsultant Payment Confirmation	45
6.4 Withholding of Payments	46
6.5 Final Payment	46
6.6 Basic Services	46
6.7 Additional Services	46
6.8 Reimbursable Expenses	47
6.9 Release	47
6.10 Non-Authorization of Funds	47
6.11 Unavailability of Funds	48
6.12 Crossing Fiscal Years	48
6.13 Audits; Records and Payments	49
Section 7. Contract Management	50
7.1 Contract Administrators	50
Section 8. Employment Practices	51
8.1 Key Personnel	51
8.2 Subconsultants	51
8.3 Equal Opportunity	52
8.4 Non-Discrimination	53
Section 9. Indemnification	55
9.1 Indemnification	55
Section 10. Insurance	57
10.1 Insurance Requirements	57
10.2 Evidence of Insurance Coverage	59
10.3 Notice of Claim or Lawsuit	60
10.4 Self-Insurance	60
Section 11. Confidentiality	61
11.1 Confidential and Proprietary Information	61
11.2 Non-Disclosure	61
11.3 School District Data	62
11.4 Exclusions	62
11.5 Remedy for Breach	63

	PAGE
Section 12. Disputes	63
12.1 Escalation	63
12.2 Tolling	63
Section 13. Project Stoppage, Suspension or Abandonment	63
13.1 Stoppage or Abandonment	63
13.2 Suspension for Convenience	63
Section 14. Termination	64
14.1 Termination for Convenience	64
14.2 Termination for Default	65
14.3 Termination Duties	66
14.4 Consent to Use of Another Environmental Consultant upon Termination for Default	67
14.5 Additional Remedies of the School District	67
14.6 Concurrent Pursuit of Remedies; No Waiver or Duty to Exercise	68
Section 15. Certification Regarding Debarment, Suspension and Ineligibility	68
15.1 Certification	68
15.2 Explanation	69
15.3 Notice	69
15.4 Remedies	69
15.5 Compensation	69
15.6 Survival	69
Section 16. Miscellaneous Provisions	69
16.1 Notices	69
16.2 Governing Law	70
16.3 Forum; Consent to Jurisdiction	70
16.4 Contract Documents; Order of Precedence	70
16.5 School District Liability; Responsibility or Risk of Loss	70
16.6 Compliance with Laws and Regulations	71
16.7 Publicity	71
16.8 General Publication Rights	71
16.9 Conflict of Interest	72
16.10 School District Officers and Employees Not to Benefit	72
16.11 Non-Solicitation	72
16.12 Assignment of Environmental Consultant’s Employees	73
16.13 Background Checks (Criminal, Child Abuse and FBI)	73
16.14 Successors and Assigns	74
16.15 Examination of Records	74
16.16 Survival	74
16.17 Taxes	74
16.18 Tax Compliance	75

	PAGE
16.19 Authority to Execute Contract	79
16.20 No Third Party Beneficiaries	79
16.21 No Waiver	79
16.22 Counterparts	79
16.23 Contract Drafted by All Parties	80
16.24 Severability and Partial Invalidity	80
16.25 Entire Contract	80

Exhibits:

Exhibit A	School Reform Commission Resolution A- _ dated _____, 2018
Exhibit B	Request for Proposal/Qualifications (“RFP/RFQ”) to Provide Professional Environmental Consulting Services for Geotechnical and Environmental Site Assessments
Exhibit C	Environmental Consultant Proposal (as modified hereby) to Provide Professional Environmental Consulting Services for Geotechnical and Environmental Site Assessments dated _____, 201_ (incorporated by reference in this Contract)
Exhibit D	RFP/RFQ, Addendum (if any) or RFP/RFQ, Questions and Answers (if any)
Exhibit E	Environmental Consultant Fee Proposal
Exhibit F	Environmental Consultant Proposal, M/WBE Participation Plan

SCHOOL DISTRICT OF PHILADELPHIA
SCHOOL REFORM COMMISSION

This Contract for Professional Environmental Consulting Services for Geotechnical and Environmental Site Assessments (the “Contract”) is made as of _____ day of _____, 2018, by and between THE SCHOOL DISTRICT OF PHILADELPHIA (hereinafter called “the School District”), acting through its School Reform Commission, located at 440 North Broad Street, Philadelphia, Pennsylvania 19130-4015 and _____ (hereinafter called “Environmental Consultant” or “_____”) located at _____

BACKGROUND

The School District currently serves about 142,300 students enrolled in School District schools, which include pre-kindergarten, elementary, middle, high school and alternative schools. The School District was designated a distressed school district on December 21, 2001 pursuant to the Pennsylvania Public School Code (“PSC”), 24 P.S. §6-691(c). The School Reform Commission (“SRC”) has been established pursuant to PSC, 24 P.S. §6-696, and is responsible for the operation and management and educational program of the School District pursuant to PSC, 24 P.S. §6-696(e)(1). Various management structures are used to manage the education program in School District schools, including for-profit and non-profit organizations in addition to School District staff.

On June 30, 2015, the SRC adopted a six (6)-year amended Capital Improvement Program (“CIP”) for FY16 through FY21 totaling almost \$982 million. Subsequently, the SRC approved the following changes to the CIP on the following dates: (1) 6-year amended CIP (FY16 through FY21) totaling over \$1.05 billion on May 26, 2016; (2) 6-year amended CIP (FY17 through FY22) totaling almost \$1.13 billion on May 26, 2016; (3) 6-year amended CIP (FY17 through FY22) totaling over \$1.26 billion on May 25, 2017; and (4) 6-year amended CIP (FY18 through FY23) totaling over \$1.28 billion on May 25, 2017. The CIP priorities include maintaining the physical integrity at existing facilities, upgrading existing facilities to meet code requirements and educational programming needs, replacing systems that have exceeded their lifecycle, and constructing new facilities and additions.

On May 25, 2017, the SRC also adopted the Capital Budget for FY 2018 totaling almost \$231 million. The basis for the budget is the sale of bonds, usually repayable with interest over 30 years. The Capital Budget is the basis for the multi-year Capital Improvement Program (CIP). Projects are selected for inclusion in the CIP using building condition assessment reports, work order and deferred maintenance data, input from field maintenance employees and school administrators, and the priorities identified in the School District Superintendent’s Strategic Action Plan.

The School District's Office of Capital Programs ("OCP") is responsible for identifying and prioritizing capital work within the School District. The OCP shares responsibility for the long term upkeep and replacement of critical building systems over 25.6 million square feet, including nearly 500 buildings, annexes, administrative buildings and athletic fields. The OCP works closely to coordinate its OCP work with staff from the Office of Facilities and Maintenance, the Office of Environmental Management and Services ("OEMS"), the Office of Real Property Management and the Office of General Counsel.

The OEMS is a unit of the OCP and provides environmental regulatory compliance services for all School District departments, including asbestos monitoring and abatement, mold assessment and remediation services, water quality (lead) management, lead paint management, indoor environmental quality program management, hazardous material management, and geotechnical and geo-environmental services (soil). The OEMS conducts environmental site assessments (Phase I and II), designs and monitors environmental abatement and remediation projects, administers the School District's asbestos management program in compliance with the US Environmental Protection Agency's Asbestos Hazard Emergency Response Act, conducts lead in water testing for all schools on a five year cycle, manages the School District's universal waste program, conducts indoor environmental quality assessments, manages permits, inspections and compliance requirements for all School District regulated above and underground storage tanks, responds to hazardous material releases according to federal, state and local regulations, and administers the School District's sustainability management program.

In its Request for Proposal/Qualifications ("RFP/RFQ") to Provide Professional Environmental Consulting Services for Geotechnical and Environmental Site Assessments (hereafter referred to as "RFP/RFQ for Geotechnical and Environmental Site Assessments"), the School District requested proposals from professional environmental consultant services firms to perform professional geotechnical consulting services and environmental site assessments consulting services ("geotechnical and environmental site assessments") on an as-needed basis.

_____ responded to the RFP/RFQ for Geotechnical and Environmental Site Assessments with a Proposal.

On _____, 2018, the SRC, by Resolution No. A-_, authorized the School District to execute, deliver and perform professional geotechnical and environmental site assessments services contracts for the Capital Improvement Program, on an as-needed basis, with a pool of ____ () professional environmental consultant services firms performing environmental consulting services (hereinafter referred to as the "Environmental Consultant"), including _____, on individual projects and on projects in the Capital Improvement Program.

The School District and the Environmental Consultant desire that the Environmental Consultant perform, on-time and on-budget, professional environmental consulting services for geotechnical consulting services and environmental site assessments consulting services for the school facilities projects under the direction and management of the School District. The Environmental Consultant will perform, on-time and on-budget, the professional environmental consulting services work assignments for geotechnical consulting services and environmental site assessments consulting services that are assigned by the School District Director of Environmental

Services, and will assume the responsibilities, duties and liabilities provided herein, and will work in concert with the School District and others in strict accordance with the SRC Resolution #A-_, dated _____, 2018, attached as Exhibit A and incorporated by reference into this Contract, with the School District's Request for Proposal/Qualifications ("RFP/RFQ") to Provide Professional Environmental Consulting Services for Geotechnical and Environmental Site Assessments, attached as Exhibit B and incorporated by reference into this Contract, with the Environmental Consultant's Proposal (as modified hereby) to Provide Professional Environmental Consulting Services for Geotechnical and Environmental Site Assessments dated _____, 201_ (only the cover page of the Environmental Consultant's Proposal is attached as Exhibit C; however, the entire Environmental Consultant's Proposal is incorporated by reference into this Contract), and with the RFP/RFQ, Addendum (if any) or RFP/RFQ, Questions and Answers (if any), attached as Exhibit D and incorporated by reference into this Contract, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION of the foregoing Background and the mutual covenants, promises, and agreements set forth herein, the School District and the Environmental Consultant, intending to be legally bound, agree as follows:

Section 1. Incorporation of Background; Definitions; General Rules of Construction.

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 or in Exhibits A-F, 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) **Aboveground storage tank** – means any one or combination of stationary tanks with a capacity in excess of 250 gallons, including underground pipes and dispensing systems connected thereto within the emergency containment area, which is or was used to contain an accumulation of regulated substances, and the volume of which, including the volume of all piping within the storage tank facility, is greater than 90% above the surface of the ground. The term includes any tank which can be visually inspected, from the exterior, in an underground area. The term shall not include, among other things, any tank used for storing heating oil for consumptive use on the premises where stored and any pipes connected thereto.

(b) **Additional Services** – has the meaning attributed thereto in Paragraph 6.7, *Additional Services*.

(c) **Additional Term** – means one (1) of the four (4) optional additional one (1)-year or twelve (12)-months term described in Paragraph 2.2, *Option to Renew*.

(d) **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 Environmental Consultant and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

(e) **Basic Services** – has the meaning attributed thereto in Paragraph 6.6, *Basic Services*.

(f) **Capital Improvement Program or CIP or Capital Program** – means the amended 6-year Capital Improvement Program (FY18 through FY23) approved by the SRC on May 25, 2017, and any additions, deletions, changes, adjustments, and annual updates approved by the SRC.

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

(h) **Commencement FY** – has the meaning attributed thereto in Paragraph 6.12, *Crossing Fiscal Years*.

(i) **Contaminant or Pollutant** – includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(j) **Contract or Contract for Environmental Consulting Services for Geotechnical and Environmental Site Assessments** – means this professional services contract for professional environmental consulting services for geotechnical consulting services and environmental site assessments consulting 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.

(k) **Contract Administrator** – means a Contract Administrator designated by a party pursuant to Paragraph 7.1, *Contract Administrators*.

(l) **Contract Documents** – has the meaning attributed thereto in Paragraph 16.4, *Contract Documents; Order of Precedence*.

(m) **Contract Modification** – has the meaning attributed thereto in Paragraph 3.14, *Changes*.

(n) **Contractor or Prime Contractor or Construction Contractor** – means the construction contractor performing construction work, including general construction work, heating, ventilating and air conditioning (HVAC) work, plumbing work, and electrical work, for capital projects, smaller scope facility improvement projects (including maintenance and repair), and Facilities Master Plan (FMP) projects, that are included under the School District's Capital

Improvement Program (CIP), pursuant to a single construction contract or separate multiple construction contracts with the School District, under the bidding and contracts requirements of the Public School Code, 24 P.S. §7-751(a.2).

(o) **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 Environmental Consultant at regular review points and at the completion of the work as expressly noted herein or as may be required by the Environmental Consultant.

(p) **Design Consultant** – means the Architect or Engineer assigned to an individual project.

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

(r) **Environmental Consultant or Contractor** – means the professional environmental engineering firm or environmental firm performing professional environmental consulting services for the School District pursuant to this Contract.

(s) **Environmental Tasks** – means the tasks as identified in the RFP/RFQ.

(t) **EPA or US EPA** – means the United States (“U.S.”) Environmental Protection Agency.

(u) **Event of Default** – means those events defined and identified in Paragraph 14.2.1 of this Contract.

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

(w) **Force Majeure Condition** – means a force majeure event or condition described in Paragraph 3.15, *Force Majeure*.

(x) **Groundwater** – means water occurring in a saturated zone or stratum or percolating beneath the surface of land.

(y) **Hazardous substance** – means any element, compound or material which is:

(1) Designated as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) and Solid Waste Management Act (SWMA), and the regulations promulgated thereto;

(2) Defined or designated as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA);

(3) Contaminated with a hazardous substance to the degree that its release or threatened release poses a substantial threat to the public health and safety or the environment; and

(4) Determined to be substantially harmful to public health and safety or the environment.

(z) **Hazardous Waste** – means any waste defined as hazardous under the Resource Conservation and Recovery Act (RCRA) or the Solid Waste Management Act (SWMA), and any regulations promulgated thereunder, and any garbage, refuse, or discarded material including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial or institutional operations, and from community activities, or any combination thereof.

(aa) **Initial Term** – means the Initial Term specified in Paragraph 2.1, *Initial Term*.

(bb) **Key Personnel** – means those job titles and the persons assigned to those positions in accordance with the provisions of Paragraph 3.2.12 and Paragraph 8.1, *Key Personnel* of this Contract.

(cc) **MBE/WBE or MBE or WBE** – means minority-owned business enterprise or women-owned business enterprise as certified or qualified by the School District Office of Small Business Development or certified by the City of Philadelphia’s current Office of Economic Opportunity or former Minority Business Enterprise Council, or certified by the Southeastern Pennsylvania Transportation Authority’s DBE Program Office, or certified by any other certifying agency designated by the School District in its discretion.

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

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

(ff) **PADEP or PA DEP** – means the Department of Environmental Protection of the Commonwealth of Pennsylvania or the Pennsylvania (“PA”) Department of Environmental Protection.

(gg) **PDE** – means the Department of Education of the Commonwealth of Pennsylvania or the Pennsylvania Department of Education.

(hh) **Person** – means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company, or other form of entity or association recognized by law.

(ii) **Proposal** – means the Proposal dated _____, 201_ submitted by the Environmental Consultant in response to the RFP/RFQ, together with all subsequent modifications and supporting materials submitted by the Environmental Consultant to the School District in response to the RFP/RFQ.

(jj) **Regulated Substance** – means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public

health, welfare or the environment which is:

(1) any substance defined as a hazardous substance in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), but not including any substance regulated as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) of 1976 (42 U.S.C. § 6901 et seq.);

(2) petroleum, including crude oil or any fraction thereof and hydrocarbons which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other non-hazardous wastes and crude oils, gasoline and kerosene; or

(3) any other substance whose containment, storage, use or dispensing may present a hazard to the public health and safety or the environment, but not including gaseous substances used exclusively for the administration of medical care.

(kk) **Release** – means any spilling, leaking, pumping, pouring, emptying, injecting, dumping, emitting, discharging, escaping, leaching or disposing into the environment or soils or subsurface soils in an amount equal to or greater than the reportable release quantity determined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and regulations promulgated thereunder, or an amount equal to or greater than a discharge as defined in the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. § 1321) and regulations promulgated thereunder. The term shall also include spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into surface water, groundwater, soils, subsurface soils or a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater. The term also includes the abandonment or discarding of barrels, containers, vessels and other receptacles containing a hazardous substance or contaminant.

(ll) **Request for Information or RFI** – means Request for Information.

(mm) **Request for Proposal/Qualifications or RFP/RFQ** – means the Request for Proposal/Qualifications issued by the School District, including all Addenda thereto issued, if any, attached hereto at Exhibit B.

(nn) **School District** – means the School District of Philadelphia.

(oo) **Services** – means, collectively, those necessary to complete the Work, including without limitation those services, and such additional services as may be directed by the School District, to be provided by the Environmental Consultant in accordance with the terms and conditions of this Contract, including all exhibits, and as set forth in any Project Schedule, Work Schedule, Deliverables, supplements, modifications, or amendments hereto, and any work functions necessary in order to complete such Services.

(pp) **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.

(qq) **State** – means the Commonwealth of Pennsylvania and its legislative,

executive, and administrative branches of government.

(rr) **Subcontractor or Subconsultant** – 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 Environmental Consultant to perform any Services covered by this Contract.

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

(tt) **Supplemental Construction Manager** – means the professional consulting services firm performing professional supplemental construction management services for the School District’s Capital Improvement Program pursuant to a professional supplemental construction management services contract with the School District. The School District may assign the Supplemental Construction Manager on an individual Project. The Supplemental Construction Manager may act as the assigned School District representative on an individual Project. The Supplemental Construction Manager may act as one of the representatives of the School District’s Office of Capital Programs on an individual Project.

(uu) **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 Section 14, *Termination*.

(vv) **Underground storage tank or UST** – means any one or combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. The term shall not include, among other things: (i) tanks used for storing heating oil for consumptive use on the premises where stored unless specifically required to be regulated by federal law; (ii) storage tanks situated in an underground area (such as a basement, cellar, shaft or tunnel) if the tank is situated upon or above the surface of the floor; (iii) any underground storage tank system whose capacity is 110 gallons or less; and (iv) any other tank excluded by policy or regulations promulgated pursuant to the Storage Tank and Spill Prevention Act.

(ww) **U.S.** – means United States of America.

(xx) **Work** – means the Scope of Services set forth in Section 4 of this Contract.

(yy) **Work Order** – means the Work Order for Environmental Consulting Services or Environmental Services issued by the School District, including all Addenda thereto.

(zz) **Work 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.

(aaa) _____ – means _____

_____, a corporation duly organized and existing under the laws of the [State/Commonwealth] of _____, and licensed and authorized to do business under the laws of the Commonwealth of Pennsylvania, with offices at _____.*[Since definition list is alphabetical, clause must be moved and put in alphabetical order.]*

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.

Section 2. Term of Contract.

2.1 **Initial Term.** The Initial Term of this Contract shall commence on July 1, 2018, and, unless sooner terminated by the School District pursuant to the terms of this Contract, shall continue in full force and effect for a contract period of four (4) year(s) through June 30, 2022.

2.2 **Option to Renew.** The School District may, at its sole discretion, renew this Contract for up to one (1) additional successive one (1)-year (12 months) period (individually, an “Additional Term”, and collectively, “Additional Terms”). Pricing shall be subject to renegotiation between the parties at the time the School District exercises its option to renew, as set forth in the Request for Proposal for Environmental Consultant Services. The Environmental 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 applicable 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 Environmental Consultant, in writing, of its intention to recommend renewal of this Contract for up to an additional one (1)-year (12 months) period to the SRC. Within ten (10) days of the Environmental Consultant’s receipt of the School District’s notice of its intention to recommend renewal of this Contract, the Environmental 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 five (5) year(s) up to June 30, 2023, unless the SRC or a successor entity authorizes a further renewal or extension by Resolution.

Section 3. Environmental Consultant’s Services and Responsibilities.

3.1 Status of Environmental Consultant.

3.1.1 The School District has engaged the Environmental Consultant as an independent contractor to carry out the Work, and neither the Environmental Consultant nor any

of the Environmental Consultant's agents, employees or Subconsultants shall in any way or for any purpose whatsoever be deemed an agent or employee of the School District. Neither the Environmental Consultant nor any of its agents, employees or Subconsultants constitute employees of the School District, and these persons shall have no right to receive any School District employee benefits, or any other privileges available to School District employees. Neither the Environmental Consultant nor its agents, employees or Subconsultants shall represent themselves in any way as agents or employees of the School District, and none of the Environmental Consultant, its agents, employees or Subconsultants has any power to bind legally the School District to any third party.

3.1.2 The Environmental Consultant is an authorized representative of the School District on the assigned Project(s), and shall have the powers, duties and responsibilities that are delegated by the School District to the Environmental Consultant under this Contract.

3.2 **Assignment of Tasks and Issuance of Task Orders to Environmental Consultants.** The School District will, during the Term of the Contract, assign Environmental Tasks, by Environmental Task Order, to the Environmental Consultants which have been selected to perform Environmental Consulting Services. The School District reserves the right to pass over an Environmental Consultant and issue an Environmental Task Order to another Environmental Consultant, similarly engaged by the School District to perform Environmental Consulting Services. The School District reserves the right to remove an Environmental Consultant from performing Environmental Consulting Services pursuant to an Environmental Task Order issued by the School District and to replace that Environmental Consultant with a new Environmental Consultant at the convenience of the School District in accordance with Section 14.1.

3.3 **Environmental Consultant's Representations, Warranties and Commitments.** The Environmental Consultant hereby represents, warrants and commits to the School District, which representations, warranties and commitments shall survive the execution and delivery of this Contract, that:

3.3.1 The Environmental Consultant has the power and authority to enter into and perform this Contract.

3.3.2 This Contract, when executed and delivered, shall be a valid and binding obligation of the Environmental Consultant enforceable in accordance with its terms.

3.3.3 The Environmental Consultant is financially solvent and possesses sufficient working capital to perform the services set forth in this Contract, on-time and on-budget, and is current in the payment of taxes and other indebtedness to the City of Philadelphia and the Commonwealth of Pennsylvania.

3.3.4 The Environmental Consultant is ready, willing and able and has sufficient experience and competence to perform all of the responsibilities and duties set forth in this Contract, on-time and on-budget.

3.3.5 The Environmental Consultant is authorized to do business in the Commonwealth of Pennsylvania and is properly licensed by all necessary governmental and public

and quasi-public authorities having jurisdiction over it and the services required hereunder.

3.3.6 The Environmental Consultant is a firm experienced and skilled in performing environmental consulting services for school projects of comparable size and complexity to the School District's projects and utilizing a variety of different types of Environmental methods.

3.3.7 The Environmental Consultant has the necessary skills, experience, expertise and ability to deliver multiple projects, and to utilize various delivery methods in a fast paced urban school construction environment, and to deliver projects on time and within the budget, and to meet schedules and budgets in a fast paced environment.

3.3.8 The Environmental Consultant will visit the site(s) of the assigned Project(s) and familiarized itself with the local conditions under which the services required hereunder are to be performed.

3.3.9 All Environmental Tasks and other disciplines and features of the Environmental Consultant's work shall be performed, reviewed, approved and sealed, where required, by qualified, licensed, accredited or certified professionals registered to perform the services under this Contract in the City of Philadelphia and the Commonwealth of Pennsylvania.

3.3.10 The Environmental Consultant shall provide and maintain sufficient organization, personnel and management to carry out the requirements of this Contract, on-time and on-budget. The Environmental Consultant shall assign to this Contract personnel having the necessary competency, qualifications, experience, skill and knowledge required to perform the respective services. The School District reserves the right to direct the Environmental Consultant to remove any personnel from the Services provided under this Contract upon material reason therefore given in writing. If removal of personnel is for cause, any costs of such removal shall be borne by the Environmental Consultant.

3.3.11 The Environmental Consultant shall provide teams of qualified environmental personnel with experience on educational institutional projects of similar scope and size as the assigned Project(s), and the qualifications of the environmental personnel shall include the appropriate education, training and licenses required in order to provide comprehensive environmental consulting services. All of the Environmental Consultant's environmental personnel are licensed in the City of Philadelphia and the Commonwealth of Pennsylvania to perform the Services under this Contract.

3.3.12 **Environmental Consultant's Key Personnel.** The Environmental Consultant shall provide the School District with the names and resumes of the Key Personnel for each environmental discipline who will be performing environmental consulting services on School District projects, for its review and approval. The resumes of the Key Personnel shall include education, experience, certifications and assigned responsibilities for School District projects. Written certifications of the Key Personnel shall be included with the resumes. The Key Personnel of the Environmental Consultant for each environmental discipline are identified as line item costs in the personnel section(s) of the Environmental Consultant's Fee Proposal attached hereto at Exhibit E. These persons shall devote their time as necessary to the assigned Project(s) to ensure the Environmental Consultant's full and timely performance of this Contract, on-time and on-budget.

The Environmental Consultant shall not remove, reassign, replace, or substitute any listed Key Personnel, without the prior written notice to and consent of the School District, which consent shall not be unreasonably withheld. Written notice must be submitted to the School District Office of Environmental Management and Services. In the event that these persons become unavailable to serve on the assigned Project(s), the Environmental Consultant shall obtain the School District's prior approval of any selected substitute personnel, which approval shall not be unreasonably withheld.

3.3.13 Environmental Consultant's Subconsultants. The Environmental Consultant may engage Subconsultants, if required, which have been approved by the School District, to perform environmental consulting and other services required of the Environmental Consultant under this Contract, on-time and on-budget, and shall require each of its Subconsultants to place his or her name, seal, and signature on any surveys or drawings prepared by him or her. The Environmental Consultant shall not employ, contract with, or use the services of any person or firm, as a subconsultant or otherwise, without the prior written approval of the School District, which approval shall not be unreasonably withheld.

3.3.14 The Environmental Consultant shall coordinate the activities of all its consultants and all other members of its team. The Environmental Consultant shall be responsible for all actions of its Subconsultants and other team members in accordance with Paragraphs 3.5, *Standard of Performance*, 3.6, *Labor, Materials, Supplies and Equipment*, and 3.12, *Subletting and Assignment*, of this Contract.

3.3.15 Any written commitment, warranty or representation by the Environmental Consultant within the scope of this Contract shall be binding upon the Environmental Consultant, whether or not incorporated into this Contract. Failure of the Environmental Consultant to fulfill any such commitment, warranty or representation, or if any commitment, warranty or representation was untrue in any material respect when made, shall constitute a default under Section 14 (*Termination*). The commitments, warranties and representations of the Environmental Consultant within the meaning of this Paragraph 3.3.15 shall include, without limitation, the following:

(a) fees, costs and rates committed to remain in force over specified period(s) of time;

(b) any representation or warranty made by the Environmental Consultant in a proposal as to the Services to be performed under this Contract, the qualifications, licenses, certifications, credentials, training, experience, and capabilities of the Environmental Consultant and its personnel, and the licenses, certifications, capabilities, and experience of its Subconsultants;

(c) any representation or warranty made by the Environmental Consultant concerning the characteristics of items of services described in this Paragraph 3.3.15 made in any literature, descriptions, or documents accompanying or referred to in a proposal;

(d) any modification of, or affirmation, or representation as to the characteristics of items of services described in this Paragraph 3.3.15 which is made by the Environmental Consultant in writing during the course of discussions whether or not incorporated

into a formal amendment to the proposal in question; and

(e) any commitment, warranty or representation by the Environmental Consultant in a proposal, supporting documents, or other writing issued during the course of the proposal review as to services to be performed, or any other similar matter, regardless of the fact that the duration of such commitment, warranty or representation may exceed the term of this Contract.

3.4 **Basic Services and Additional Services.** The Scope of Services and other requirements of this Contract constitute Basic Services, for which compensation will be paid under Section 6.1 herein, but are not intended to have the effect of excluding services which are not specifically mentioned, but which are normally basic services required for performance of the obligations of the Environmental Consultant under this Contract. The Environmental Consultant shall furnish all other services that are necessary or required to fulfill the objectives of this Contract, for which Additional Services the Environmental Consultant will be compensated under Section 6.7 of this Contract. The services and responsibilities delineated in this Contract are intended to substantively define the role of the Environmental Consultant, but may not include all of the services required of the Environmental Consultant under this Contract.

3.5 **Standard of Performance.** The Environmental Consultant shall exercise a high degree of professional skill, care, diligence and competence in the rendition of its Services under this Contract in accordance with the professional standards prevailing in the metropolitan Philadelphia area for the provision of environmental consultant services such as those provided in this Contract. The Environmental Consultant's attention is directed to the fact that the Services are urgently needed by the School District. The Environmental Consultant's Services under this Contract shall be performed as expeditiously as is consistent with said professional standards and sound professional practices. The Environmental Consultant shall use its best efforts to assure timely and satisfactory completion of its Services in accordance with the Project Schedule and Project Budget. The Environmental Consultant 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 Environmental Consultant shall perform all Services under this Contract in accordance with the terms and conditions of this Contract and to the reasonable satisfaction of the School District.

3.5.1 All Services to be performed by the Environmental Consultant that require 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. The Environmental Consultant shall remain responsible for the professional and technical accuracy of all Services or Deliverables furnished under this Contract.

3.5.2 All Environmental work of the Environmental Consultant and its Subconsultants shall be done in consultation with, or under the direction of, the School District's Director of Environmental Services.

3.5.3 When the Scope of Services of this Contract requires the Environmental Consultant to prepare surveys, drawings, documents, reports, procedures, manuals or other assigned Project-related items of a similar nature, the Environmental Consultant understands that such items must receive the School District's review and approval prior to their use in the assigned

Project(s). All Deliverables shall be prepared in a form and content satisfactory to the School District, and shall be delivered in a timely manner consistent with the established Work Order, Work Schedule, Project Schedule, and Cost Guidelines.

3.5.4 In the event the Environmental Consultant fails to comply with the standards specified in Paragraph 3.5 of this Contract, the Environmental Consultant shall perform again, at its own expense, any and all of the Services or Work that is required to be re-performed as a direct or indirect result of such failure. Notwithstanding any review, approval, acceptance, or payment for any and all of the Services by the School District, the Environmental Consultant shall remain responsible for the professional and technical accuracy of all of the Services and Deliverables, as defined herein and furnished under this Contract. This provision shall in no way be considered as limiting the rights of the School District against the Environmental Consultant either under this Contract, in law or in equity.

3.5.5 With the exception of information, data, test results and other materials provided to the Environmental Consultant by others, upon which the Environmental Consultant is entitled to rely for accuracy and completeness under this Contract, the Environmental Consultant shall be responsible for the professional quality, technical accuracy, completeness and coordination of all surveys, drawings, documents, and other services furnished by the Environmental Consultant and its Subconsultants under this Contract. Any surveys, drawings and documents furnished by the Environmental Consultant or its Subconsultants found to be defective, solely as a result of the errors, omissions or negligence of the Environmental Consultant or its Subconsultants, shall be promptly corrected by the Environmental Consultant or its Subconsultants, at no cost to the School District.

3.6 **Labor, Materials, Supplies and Equipment.** The Environmental Consultant shall furnish all personnel, labor, materials, supplies, equipment, tools, and instruments necessary for the proper provision of the Services described in this Contract, on-time and on-budget, including but not limited to, telephone, fax machine, and similar items, at its facility. The Environmental Consultant shall furnish the personnel and a sufficient amount of materials, supplies, equipment, tools, and instruments to perform the required Services, on-time and on-budget, in a complete, accurate, and timely manner consistent with the School District's interests or the requests of the School District and the requirements of this Contract. The Environmental Consultant shall be responsible for the means, methods, techniques, sequences, and procedures to perform the Services required under this Contract. The Environmental Consultant shall perform the required Services in such a manner as to not create a risk of harm to the School District, its agents, representatives, and employees, the general public, and the environment. The Environmental Consultant shall perform the Services required under this Contract using qualified, licensed, or certified personnel at all times.

3.7 **Revisions to Work and Documents.** The Environmental Consultant shall make revisions to all surveys, reports and documents produced for assigned Project(s), at no additional cost to the School District at the following milestones identified within the Work Order. The Environmental Consultant shall also make revisions to all surveys, reports and documents produced for assigned Project(s), at no additional cost to the School District, whenever such revisions are required by reason of the documents for the assigned Project(s) 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 Environmental Consultant. The School District has the right to inspect the

Work of the Environmental Consultant and its Subconsultants in progress at any reasonable location and at any reasonable time. The Environmental Consultant shall revise its Work, at no cost to the School District, in accordance with the written directives of the School District's representatives, provided such directives are not inconsistent with previous approvals or instructions.

3.8 **Cooperation with the Supplemental Construction Manager.** The Environmental Consultant shall perform its Services on the assigned Project(s) in full cooperation with the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)). The School District shall require the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)) to perform its respective services in full cooperation with the Environmental Consultant. The Environmental Consultant shall send to the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)) copies of all notices and communications sent to the School District or received by the Environmental Consultant from parties other than the School District and the Supplemental Construction Manager relating to the assigned Project(s). The School District shall require the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project(s)) to send to the Environmental Consultant copies of all notices and communications sent to the School District or received by the Supplemental Construction Manager from parties other than the School District and the Environmental Consultant relating to the assigned Project(s).

3.9 **Coordination and Safety of Onsite Activities.** The Environmental Consultant shall cooperate and coordinate with all other School District consultants, contractors, and vendors and with School District personnel and consultants whose services for the School District relate to the Environmental Consultant's Services, or requires them to perform activities in support of or in conjunction with the Environmental Consultant's Services; and the Environmental Consultant shall conduct its operations so that it does not interfere with such other School District consultants, contractors, and vendors, School District personnel and consultants, and the ongoing operations of the educational facility and student body. Any difference or conflict that may arise between the Environmental Consultant and other School District consultants, contractors, or vendors, or between the Environmental Consultant and School District personnel or consultants, or between the Environmental Consultant and the educational facility and student body, shall be decided solely by the School District. If requested by the School District in writing, the Environmental Consultant shall suspend any part of its Services, or modify its Services, if necessary to facilitate the services of other School District consultants, contractors, or vendors, School District personnel or consultants, or the ongoing operations of the educational facility and student body. In the event of such suspension or modification, the Environmental Consultant shall have the right to submit a claim for an extension of time equivalent to the period of any delay caused by compliance with the School District's request. Any such claim(s) of the Environmental Consultant shall be submitted and resolved in accordance with Paragraph 3.13 (*Changes*). While on the premises of the School District or of any governmental or other entity other than the School District, the Environmental Consultant shall comply with all rules and regulations of the School District or such other entity, including all safety and security requirements.

3.10 **Subletting and Assignment.**

3.10.1 The Environmental Consultant shall not subcontract any Services hereunder without the School District's prior written consent, other than to the Subconsultants which have

been approved by the School District under Paragraph 3.10.2 herein, nor permit any of its Subconsultants to do so. If the Environmental Consultant subcontracts any Services hereunder without the School District's prior written consent, said subcontracting shall be deemed a material breach of this Contract, thereby giving the School District the right to immediately terminate this Contract with no further obligation whatsoever on the part of the School District.

3.10.2 All Subcontracts between the Environmental Consultant and its Subconsultants must be in writing, and shall include at least a detailed description of the Services to be performed, and the agreed upon compensation schedule. All Subcontracts must contain all contract provisions and certificates as are required by the School District and any State funding agency. In the event of non-performance by a Subconsultant under this Contract, the Environmental Consultant shall be responsible to perform these Services, on-time and on-budget. All terms and conditions under this Contract applying to the Environmental Consultant shall apply equally to its Subconsultants. The Environmental Consultant agrees that all Subcontracts made pursuant to this Contract shall be made expressly subject to all of the terms and conditions of this Contract. The Environmental Consultant shall ensure that it legally binds all Subconsultants to the same terms and conditions as the Environmental Consultant under this Contract.

3.10.3 The Environmental Consultant shall submit to the School District copies of all Subcontracts prior to execution by the Environmental Consultant with the Environmental Consultant's written request for the School District's consent. The Environmental Consultant shall not enter into any Subcontract without first obtaining the School District's written consent to the proposed subconsultant and the proposed subcontract. In the event the School District does not consent to a proposed subconsultant, the Environmental Consultant shall immediately replace the proposed subconsultant with one to which the School District does consent; and if the School District does not consent to a proposed subcontract, the Environmental Consultant shall revise the subcontract as required by the School District. In no event shall the Compensation or time of performance be increased on account of the School District's exercise of any of its rights under this Paragraph 3.10.3. The School District's consent to or approval of any Subcontract or Subconsultant shall not create any obligation of the School District to any Subconsultant or in any way relieve the Environmental Consultant of its responsibility for the performance of Subconsultants and their consultants.

3.10.4 The Environmental Consultant shall be fully responsible and liable for the performance of all Services, on-time and on-budget, required under this Contract in accordance with the Contract Documents, whether performed by the Environmental Consultant's own personnel, by Subconsultants of the Environmental Consultant, or by consultants of the Subconsultants.

3.10.5 The School District shall have no obligation to any Subconsultant. The Subconsultants shall have no recourse to the School District for any payment or for performance under their Subcontracts. No Environmental Consultant, nor its Subconsultants, or any other person or entity employed by any of them, shall have any right or claim against the School District for any costs or damages arising from their performance of any of the Services, or for any monies due and owing to the Environmental Consultant for the performance of any of the Services. The Environmental Consultant shall incorporate this requirement in all Subcontracts with Subconsultants.

3.10.6 The Environmental Consultant shall not assign or otherwise transfer all or any part of its rights, duties or obligations under this Contract, in whole or in part, except with the prior written consent of the School District; any assignment or transfer (including, but not limited to, assignment of any Subcontract) without such written consent shall be null and void. The absence of such provision or written consent shall void the attempted assignment or transfer, and the attempted assignment or transfer shall be of no effect as to the Services, the Work, or this Contract.

3.10.7 In no event shall the School District's consent to any assignment or transfer by the Environmental Consultant of any rights, duties or obligations under this Contract relieve the Environmental Consultant from its obligations hereunder or change the terms of this Contract. The Environmental Consultant accepts full responsibility for and guarantees the performance of any and all assignees and transferees (including Subconsultants) of the Environmental Consultant. The Environmental Consultant shall not transfer or assign any contract funds or monies or claims due or to become due hereunder, in whole or in part, without the School District's prior written approval. The attempted transfer or assignment of any contract funds or monies which are due or which become due to the Environmental Consultant, in whole or in part, or any interest therein, without such prior written approval, shall have no effect upon the School District.

3.10.8 Any assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. For purposes of this Paragraph 3.10 (*Subletting and Assignment*), an assignment includes the acquisition of the Environmental Consultant, or a controlling interest therein, through an asset sale or a corporate or other merger, the appointment of a receiver or bankruptcy trustee for the Environmental Consultant, and the transfer of this Contract or the Environmental Consultant in any bankruptcy or other insolvency-related proceeding. A receiver or trustee of or for the Environmental Consultant in any federal or state bankruptcy, insolvency or other proceeding concerning the Environmental Consultant shall comply with the requirements set forth in this Contract, including but not limited to this Paragraph 3.10 (*Subletting and Assignment*).

3.11 **Legal Costs.** The Environmental Consultant shall be responsible for all legal costs that must be incurred for it to properly perform the requirements of this Contract, on-time and on-budget, including but not limited to, legal costs necessitated to obtain all its own governmental approvals (City, State and Federal) and all its own zoning approvals, and legal costs that must be incurred to defend, indemnify, and hold the School District harmless from and against any claims, causes of action, lawsuits, or actions which are brought against the School District or the Environmental Consultant by any governmental entity or any third party as a result of any act, failure to act, error, or omission by the Environmental Consultant or its Subconsultants in connection with this Contract according to the indemnity in Section 9.1, *Indemnification*, of this Contract.

3.12 **Claims Services and Cooperation With Litigation.**

3.12.1 During the duration of the Project, the Environmental Consultant shall provide any services which may be required to review and evaluate claims relating to the execution or progress environmental consultant services, so long as the Environmental Consultant is qualified to provide

such interpretation and it relates to aspects of the Project for which the Environmental Consultant is responsible. Such services shall be rendered by the Environmental Consultant, on-time and on-budget, without additional fee or compensation, unless they require participation or involvement in litigation or arbitration to which the Environmental Consultant is not a party. The Environmental Consultant shall provide any services that may be required to review and evaluate claims (whether submitted pre-litigation or during litigation) relating to the provision of the Services, without additional fee or compensation, unless they require participation or involvement in litigation or arbitration to which the Environmental Consultant is not a party. During the duration of the Project, at no additional cost to the School District, except where the Environmental Consultant is not a party, the Environmental Consultant shall assist the School District in the investigation and defense of any claims which arise from the surveys, drawings, reports, or other documents prepared by the Environmental Consultant or its Subconsultants or which result solely from the breach of contract, errors, omissions or negligence of the Environmental Consultant or its Subconsultants. At no additional cost to the School District, except where the Environmental Consultant is not a party, the Environmental Consultant shall assist the School District in the investigation and defense of any claims (whether submitted pre-litigation or during litigation) which arise from the provision of the Services, or which result solely from the Environmental Consultant's breach of contract, errors, omissions or negligence.

3.12.2 **Notice of Claims.** If the Environmental Consultant receives notice of a legal claim against it in connection with or in any way related to this Contract, the Environmental Consultant shall (a) submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy, and (b) within five (5) business days of receipt of notice of the claim, give notice of such claim to the School District.

3.13 **Changes.**

3.13.1 At any time during the term of this Contract, the School District or the Environmental Consultant may, without invalidating this Contract, make changes in any of the Services required under this Contract, within the general scope of this Contract as set forth in Section 3 (*Environmental Consultant's Services and Responsibilities*), including, without limitation, requiring additional or different services, and changes in the time of performance; provided, however, as follows: (i) All such changes shall be made in accordance with the terms and conditions of this Paragraph 3.13 and the other provisions of this Contract, and shall be by Contract Modification, which shall be a written order or request that is accepted and agreed to by both the School District and the Environmental Consultant, as evidenced by the signatures of both the School District's Contract Administrator and the Environmental Consultant's Contract Administrator. (ii) 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 Environmental 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 Environmental 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 Environmental 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 set forth in Paragraph 6.1.1 must be approved in writing by the School District's Director of Environmental Services to become effective.

3.13.2 All changes in the Services pursuant to this Paragraph 3.13 shall be performed, on-time and on-budget, under applicable provisions of this Contract, and the Environmental 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.

3.13.3 Assignment of School District's Right to File Direct Claims against the Prime Contractor for Environmental Consultant's Damages. The Environmental Consultant agrees that in no event shall the School District be liable to the Environmental Consultant for payment of additional compensation for any direct, indirect or impact damages, including but not limited to costs of acceleration or for loss of revenue, overhead or profit, or for any delay damages, costs or expenses, including but not limited to attorneys' fees, court costs and legal expenses of whatever kind or nature, arising from any changes in any of the Environmental Consultant's Services required under this Contract, including, without limitation, additional or different services, or changes in the time of performance, that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the Project, or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the Project. Instead, as its sole right and remedy with respect to such fault, negligence, breach of contract, willful act or omission, or such delay, disruption, interference or hindrance, of the Prime Contractor or any of its subcontractors or consultants, the Environmental Consultant shall be entitled to make, assert, file or bring a direct claim, action, cause of action or lawsuit against the Prime Contractor or any of its subcontractors or consultants, as an assignee of the School District, pursuant to this Paragraph 3.13.3. For **the sole and only purposes** of making, asserting, filing or bringing direct claims, actions, causes of actions or lawsuits against the Prime Contractor or any of its subcontractors or consultants, the School District hereby assigns to the Environmental Consultant the School District's right under the Prime Contract to make, assert, file or bring direct claims, actions, causes of action or lawsuits against the Prime Contractor or any of its subcontractors or consultants for any additional compensation, damages, losses, costs and expenses of the Environmental Consultant that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the Project, or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the Project.

3.14 **Force Majeure.** 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 construction work or necessary entry onto adjoining property to perform required construction work, or delay or failure of governmental or regulatory authorities having jurisdiction over the Project to give necessary or

required approvals or documents for Project site access, construction 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. The Environmental Consultant shall not be in default under Paragraph 14.2, *Termination for Default*, 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 the Environmental Consultant. The School District shall not be liable to the Environmental Consultant 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.

3.15 **Electronic Media Copies.** The Environmental Consultant shall promptly provide to the School District all necessary and required deliverables as referenced within RFP/RFQ to Provide Professional Environmental Consulting Services, Section 5.0 Project Scope, for all Environmental Consulting Services requested as part of this contract. The Environmental 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 assigned Project(s).

3.16 **Ownership and Use of Documents.**

3.16.1 Ownership of Documents, Data and Files. All documents in any form, data studies, computer files of any type, database records, and reports that are produced by the Environmental Consultant under this Contract are to be the property of the School District and shall remain the property of the School District.

3.16.2 Risk of Loss. During the performance of the Services herein provided for, the Environmental Consultant shall be responsible for any loss or damage to the documents, data, records, reports, and files that are produced by the Environmental Consultant 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 Environmental Consultant.

3.16.3 Review and Access. Full access to the Work during the Environmental Consultant’s preparation of the documents, data, records, reports, and files shall be available to the School District and other public agencies interested in this Work during normal business upon reasonable notice. For additional requirements pertaining to review and access to records, reports, and documents, see Paragraph 6.13, *School District’s Right to Audit Records*, Paragraph 16.8, *General Publication Rights*, and Paragraph 16.15, *Examination of Records*.

3.16.4 Termination or Expiration. Upon termination or expiration of this Contract, the Environmental Consultant 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.

3.17 **Findings Confidential.** Information developed and obtained by the Environmental Consultant is considered confidential by the School District. The Environmental Consultant agrees

to refer all inquiries by outside parties to the School District. The Environmental Consultant further agrees that it will not publish any articles, newsletters, marketing materials or other informational materials for public release or its own benefit regarding the assigned Project(s), or any information developed or obtained during the performance of Services for the assigned Project(s), without the express written approval by the School District. Employee newsletters and professional experience statements are not subject to this Paragraph 3.17. For additional requirements pertaining to confidentiality, publicity, and publication, see Section 11, *Confidentiality*, Paragraph 16.7, *Publicity*, and Paragraph 16.8, *General Publication Rights*.

3.18 **Deliverables.** The Environmental Consultant shall provide the Deliverables identified in Section 4, *Scope of Services*, of this Contract, on-time and on-budget, in strict conformity with the Scope of Services. 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 herein. Partial or incomplete Deliverables shall in no way relieve the Environmental Consultant of its schedule or cost commitments hereunder.

3.19 **Safety Responsibilities.** Although the Environmental Consultant does not have direct safety responsibilities on the Project, it is expressly understood that the requirements of safety in conduct of the work to be performed hereunder shall be fundamental to the execution of the Environmental Consultant's work. The Environmental Consultant shall perform its work with due regard to the safety of persons and property. It is a condition of this Contract, and the Environmental Consultant agrees, that the Environmental Consultant shall not require its employees employed in the performance of this Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to personal health and safety, as determined under any applicable OSHA regulations. It is the responsibility of the Environmental Consultant to ensure that the work of its employees and Subconsultants required hereunder is performed in a safe and workmanlike manner and in compliance with general safety standards for the performance of such work. The Environmental Consultant must ensure that all its personnel are able to adhere to the School District of Philadelphia safety regulations. Safety deficiencies shall be brought to the attention of the School District.

3.19.1 The Environmental Consultant's personnel shall wear a hard-hat, long pants, shirts, and proper footwear while on the Project site. Appropriate eye protection is required when there is a potential for a foreign object to enter an employee's eye. All School District Projects shall have a 100% physical fall protection requirement for working at heights of six feet or more above a lower level. The Environmental Consultant is expected to fully comply with the Project physical fall protection requirement. The Environmental Consultant's personnel shall complete a Project Safety Orientation. The Environmental Consultant's personnel shall comply with identification badge requirements. The Environmental Consultant's personnel are prohibited from use and possession of alcoholic beverages, drugs (other than prescription), carrying weapons or ammunition onto the Project jobsite. The School District Project Manager(s) and the Supplemental Construction Manager (if the Supplemental Construction Manager is assigned to the Project) shall be notified in writing within 24 hours of occurrence if any Environmental Consultant personnel are injured on the Project.

Section 4. Scope of Services.

4.1 Schedule.

4.1.1 **Mobilization.** The Environmental Consultant shall commence its Services immediately upon receipt of the written Notice to Proceed issued by the School District.

4.1.2 **Work Schedule.** Schedule information for the Environmental Consultant's Services will be described in the Work Schedule and the Work Order for environmental services for each assigned Project as appropriate. The Environmental Consultant's Services must be provided within the time schedule provided in the Work Order for environmental services for each assigned Project.

4.1.3 **Time is of the Essence.** Time is of the essence on the assigned Project(s). The Environmental Consultant shall commence its Services immediately upon Notice to Proceed and shall diligently prosecute the Work to completion. The Environmental Consultant shall use its best efforts to complete the Work on or ahead of the Work Schedule and the schedule described in the Work or Task Order for environmental services for each assigned Project.

4.2 **Statement of Services.** The Environmental Consultant shall perform various environmental consulting services, and work assignments that are assigned by the School District Director of Environmental Services or her designee and the Proposal, and on the terms and conditions set forth in this Contract, within the time deadlines set forth in Paragraph 4.1, *Schedule*, of this Contract and within budget requirements. The Environmental Consultant shall place strict emphasis on quality, schedule, and budget. The Environmental Consultant shall employ competent personnel as required to properly perform these environmental consulting services in a timely and professionally competent manner as per the Work Order for environmental services and in accordance with Paragraph 3.5, *Standard of Performance*. The Environmental Consultant shall be responsible for ensuring that all certification and licensing requirements are met and shall provide evidence of applicable current certifications and licenses to the School District Office of Environmental Management and Services. The Environmental Consultant is required to be licensed in the Commonwealth of Pennsylvania since requirements may exceed reciprocity standards.

4.2.1 The Environmental Consultant shall report directly to the School District's Director of Environmental Services. School District's Environmental Services shall directly supervise the work of the Environmental Consultant, emphasizing on-time and on-budget performance.

4.2.2 The Environmental Consultant shall perform the services and responsibilities described in this Contract that are set forth in Paragraphs 4.2.3 and Exhibit B and Exhibit D, on-time and on-budget.

4.2.3 **Environmental Consulting Services.** Detailed summary provisions of the environmental consulting services for geotechnical consulting services and environmental site assessments consulting services covered under this Contract are outlined in Section 5.0 of the RFP/RFQ entitled "Project Scope", attached hereto as Exhibit B and incorporated by reference

into this Contract.

I. Background/Operations.

The School District may assign a Supplemental Construction Manager on an individual Project. The Supplemental Construction Manager may act as the assigned School District representative on an individual Project. The Supplemental Construction Manager may act as one of the representatives of the School District's Office of Capital Programs on an individual Project. The following describes the Supplemental Construction Manager's services and responsibilities on an individual Project.

1. The Supplemental Construction Manager's services, duties and responsibilities during the Pre-Construction Phases of the Project will include, but not be limited to, the following: (a) performing and preparing detailed constructability reviews at completion of Schematic Design Phase drawings, completion of the Design Development Phase drawings, and Construction Documents Phase drawings; (b) preparing construction cost (pre-bid) estimates at completion of Design Development Phase drawings, and Construction Documents Phase drawings; (c) reviewing and providing a final construction cost (pre-bid) estimate at the completion of Construction Documents Phase drawings; (d) supporting the Design Consultant's efforts in obtaining required approvals; (e) determining required permits and ensuring the Contractor obtains appropriate permits; (f) developing the Project specific front end construction specifications to be included with the School District standard front end construction specifications; and (g) providing procurement support services including assisting in the issuance of addenda, and assisting the School District Project Manager in contractor bid evaluations.

2. The School District may provide site inspection, coordination and contract administration services for the Project during the Construction Period through the Supplemental Construction Manager. The Supplemental Construction Manager's services, duties and responsibilities during the Construction Period of the Project will include, but not be limited to, the following: (a) performing field oversight and coordination services on the Project; (b) safety monitoring services; and (c) building commissioning services, all as set forth in the Supplemental Construction Manager's contract with the School District.

II. Environmental Consulting Services.

A. Environmental Consultant's Services Upon Receipt of the Work Order.

1. The Environmental Consultant shall meet and consult with the School District on a regular basis as needed upon receipt of the Work Order.

2. The Environmental Consultant shall visit the Project site and shall review the Work Order with the School District. Upon Notice to Proceed, the School District shall conduct a project "kick-off" meeting where the Environmental Consultant will be offered the opportunity to discuss perceived issues pertaining to the Project site.

3. The Environmental Consultant shall review in detail the Work Order and environmental requirements incorporated into the RFP/RFQ and this Contract, School District

standards and Department of Education of the Commonwealth of Pennsylvania (PDE) standards.

4. The Environmental Consultant shall insure that all of the Environmental Tasks performed pursuant to this Contract conform to all applicable standards, codes and best practices in the City of Philadelphia.

5. The Environmental Consultant shall insure that all documents prepared by Environmental Consultant and its subconsultants meet the requirements as enumerated within the RFP/RFQ and the Work Order and this Contract.

6. The Environmental Consultant shall be responsible for work as assigned by the School District Office of Environmental Management and Services.

B. Environmental Consultant's Services and Responsibilities for Geotechnical Consulting Services and Environmental Site Assessments Consulting Services.

1. The Environmental Consultant shall perform all of the services outlined in Exhibit B for geotechnical consulting services and environmental site assessments consulting services, including preparation of UST/Soil Remediation specifications, oversight of implementation of specifications at jobsites, and environmental testing and consulting services.

(A) **GEOTECHNICAL CONSULTING SERVICES.**

2. The Environmental Consultant shall perform the following activities at various sites and properties utilized by the School District:

(a) Comprehensive underground storage tank management services including, but not limited to, all necessary activities required during underground storage tank installs and removals.

(b) Tank testing.

(c) Tank management program.

(d) Subsurface soil and groundwater investigations.

(e) Design and implementation of remediation projects for soil and/or groundwater.

(f) Comprehensive geologic and environmental consulting services on an as requested basis.

(g) Comprehensive soil management services on an as needed basis.

3. The Environmental Consultant shall do any and all work and shall furnish all the management, supervision, labor, components, materials, tools, instructions, equipment, transportation, and delivery of reports necessary or proper for the performance and completion of

geotechnical consulting services.

4. The Environmental Consultant shall provide immediate response to the School District's request for field supervision of clean-up activities in the event of a regulated substance release at a School District facility. The Environmental Consultant shall serve as the liaison and shall prepare spill reporting documents on behalf of the School District with regulatory agencies. The Environmental Consultant's team shall have demonstrated experience collaborating with regulatory agencies.

5. In the event of a release or spill, the Environmental Consultant shall meet with the designated School District representative to review the potential environmental impact of the leakage and/or spill. All feasible alternatives for remediation/mitigation of the spill shall be presented, as well as plans to delineate the extent of potential contamination. A suggested course of action to immediately mitigate the spill shall be presented, as well as a preliminary plan for the clean-up.

6. The Environmental Consultant shall advise and assist the designated School District contact as to required spill reporting requirements to Local, State and Federal agencies. The Environmental Consultant shall serve as the liaison and shall prepare spill reporting documents on behalf of the School District with regulatory agencies.

7. The Environmental Consultant shall be capable of evaluating previous reports, records, construction drawings and soil borings provided by the School District. The Environmental Consultant shall obtain, review and/or prepare general soil maps, hydrogeologic maps, and other reports or information pertaining to the subsurface environmental conditions relative to the contaminant locations.

8. The Environmental Consultant shall meet with the School District representatives to discuss available options, the financial implications of each alternative, and the time frame required to investigate the extent of contamination and implementation of a remedial strategy.

9. Sampling of soil and groundwater, if necessary, is included in this Contract. The Environmental Consultant shall develop sampling plans, in accordance with PADEP guidelines, select the appropriate laboratory analytical tests, supply all necessary sample containers, collect and preserve all samples as prescribed by the PADEP and US EPA protocols, and arrange for transportation to a PA certified laboratory.

10. The Environmental Consultant shall be highly experienced in the design of innovative groundwater remediation and treatment systems. This experience shall include recent experience in methods utilizing bioremediation techniques and chemical oxidation, stabilization and zero valent iron.

11. The Environmental Consultant shall provide the School District with design support services for the removal and closure of underground and aboveground storage tanks. All such services shall be performed in accordance with all requirements of the City of Philadelphia and PADEP's Storage Tank Program, PADEP Act 2, and solid waste regulations and requirements.

12. The Environmental Consultant shall prepare design specifications, on behalf of the School District, suitable for obtaining competitive bids for tank testing, excavation, tank cleaning, well installation, dewatering or recovery system construction, and other remedial options.

13. The Environmental Consultant shall assist the School District in obtaining and evaluating bids from contractors for the removal of tanks and the remediation of contaminated soils and groundwater.

14. The Environmental Consultant shall meet with the School District and the successful bidders after contracts are awarded, but prior to initiation of work in the field, in order to review project schedule, work scope and procedures. The Environmental Consultant shall also meet with the School District and the successful contractors at completion of the project to confirm all work was performed in accordance with provided bid/contract specifications.

15. The Environmental Consultant shall be the School District's On-site Representative during project installation, providing monitoring and surveillance services, to ensure that the work is conducted in accordance with the bid/contract specifications.

16. The Environmental Consultant shall prepare professional reports that delineate and summarize all pertinent information in a clear, concise, and well organized format. These reports shall include engineering drawings, maps and drawings that are necessary for regulatory submittals or required for project files in the event of future concerns at the project site.

17. The Environmental Consultant shall assist the School District in obtaining all required state, local and federal permits and approvals, as needed.

18. The Environmental Consultant shall provide the School District with design support during the removal of aboveground and underground storage tanks.

19. The Environmental Consultant shall provide the School District with design support services for remediation projects for contaminated soils and groundwater. This support shall include remedy selection, preparation of specifications and bid documents, assistance in the bidding process, bid evaluation, assistance with community outreach activities, and public meetings in accordance with PADEP and City of Philadelphia notification requirements, supervision of field and construction activities, and reporting to State and Local regulatory agencies.

20. The Environmental Consultant shall provide services related to storage tank regulations, health and safety, right-to-know requirements, public relations and other issues related to the management of storage tanks and the remediation of soil and groundwater. The Environmental Consultant shall have demonstrated knowledge of the policies and procedures promulgated by the Commonwealth of Pennsylvania's Land Recycling and Environmental Remediation Standards Act ("ACT 2") of 1995 and The Storage Tank and Spill Prevention Act ("ACT 21"), the Uniform Environmental Covenant Act ("UECA"), PADEP Waste Management and PADEP and City of Philadelphia Water Department Stormwater Regulations and requirements

and LEED compliance.

21. The Environmental Consultant shall provide expert witness testimony on the School District's behalf, if necessary.

22. The Environmental Consultant shall utilize PADEP approved methods for UST system integrity testing. The testing methodology shall also be approved by the School District Office of Environmental Management and Services prior to initiation of the testing. All testing shall conform to safety standards established by the Occupational Safety and Health Administration ("OSHA"), the National Fire Protection Association, and the City of Philadelphia Fire Marshall.

23. The Environmental Consultant shall have demonstrated expertise in the methodology and equipment utilized for monitoring well installation and construction, soil boring installation, soil and groundwater sampling, non-intrusive subsurface investigation, soil vapor surveys, and all appropriate and relevant laboratory analytical capabilities.

24. The Environmental Consultant shall have total responsibility for analyzing the soils and chemical testing of soil and groundwater to the extent required by the projects. For the purpose of standardization, all testing shall be governed by, but not limited to, ASTM and/or EPA methods.

25. The School District reserves the right to inspect and monitor the soil testing and analysis of the samples collected for testing services under the RFP/RFQ and this Contract. The School District reserves the right to visit the laboratory to verify certification credentials and to verify the certification of the laboratory. The School District must approve the laboratory as qualified to perform analysis of samples per the individual test methods.

26. The Environmental Consultant shall represent the School District in meetings with all governmental regulatory agencies. The Environmental Consultant shall assist the School District in making required notifications to governmental regulatory agencies and the public.

27. The Environmental Consultant shall also perform the following geotechnical consulting services:

27.1. Tank Testing

(a) Prior to its tank testing, the Environmental Consultant shall determine the groundwater elevation at the site of the particular underground storage tank. The Environmental Consultant shall investigate the groundwater elevation to determine the groundwater depth, groundwater flow patterns, and if applicable, the magnitude of contamination. The Environmental Consultant shall conduct this investigation to supply the baseline information needed for future groundwater monitoring during the life of the particular school facility involved. Groundwater well points are normally required as part of this investigation. However, other methods for determining groundwater elevation may be substituted based on the specific site location. The School District Office of Environmental Management and Services shall make the

determination on the need for groundwater well points and the use of alternate methods for determining the groundwater elevations.

(b) Prior to its performance of the actual underground storage tank system integrity test on the particular underground storage tank, the Environmental Consultant shall review available drawings and observe conditions at the site of the underground storage tank to determine the following: (1) tank size and configuration; (2) tank charge availability; (3) tank age; (4) tank composition, *i.e.*, steel, fiberglass; (5) type of product; (6) any sediment, sludge or water in bottom of tank; (7) accessibility to tank(s), lines and dispensers; (8) fill lines directly over tank or at remote location; (9) tank set in cradle, and if so, stone or concrete; (10) observation well close by, and if not, groundwater elevation in vicinity of tank(s); (11) if multiple tanks exist, are they manifold together; (12) vent location and height above tanks; (13) vapor recovery systems in use; (14) check valves used on discharge and return lines; and (15) AC power supply availability.

(c) The Environmental Consultant shall observe all safety procedures while testing underground storage tank systems at the School District sites. The Environmental Consultant shall strictly enforce safety standards established by the Occupational Safety Health Administration (OSHA). If a tank system test is being performed with combustible liquids in an underground storage tank or with water in an underground storage tank previously containing combustible liquids, then there shall be no smoking or the use of any open flame around the work area. The Environmental Consultant's technicians shall post "NO SMOKING" signs around the work area for non-testing personnel to observe.

(d) The Environmental Consultant shall assist the School District Office of Environmental Management and Services with the resolution of any field problems occurring during tank testing of underground storage tanks at the School District sites.

(e) The School District Office of Environmental Management and Services shall determine the tank testing schedules for the Environmental Consultant to follow. The Environmental Consultant shall perform and complete its tank testing services within the time periods designated by the School District Office of Environmental Management and Services.

27.2 Tank Management Program

(a) The Environmental Consultant shall supervise tank removal work during the removal of aboveground or underground storage tanks at designated School District facilities to ensure that such work is being conducted in accordance with the contract bid specifications for the particular tank removal projects and all applicable federal, state and local laws, ordinances, codes, rules and regulations, including but not limited to the Storage Tank and Spill Prevention Act, 35 P.S. §6021.101, *et seq.*, and Regulations, 25 Pa. Code §245.1, *et seq.* The Environmental Consultant shall immediately notify the School District of any defects or deficiencies in tank removal work at the School District facilities.

(b) The Environmental Consultant shall perform and complete its tank management program services within the time periods designated by the School District Office of Environmental Management and Services.

(c) The Environmental Consultant shall perform compliance monitoring regarding regulated underground storage tanks in accordance with the Storage Tank and Spill Prevention Regulations (“STSP Regulations”), 25 Pa. Code §245.436. The Environmental Consultant shall have, manage and provide trained Class A, B or C Operators in compliance with the STSP Regulations, 25 Pa. Code §245.436, on behalf of the School District, who can carry out the responsibilities of the designated Class (A, B or C) under the STSP Regulations. The Class A and Class B Operator shall be available for immediate telephone consultation when the facilities are in operation and shall be on-site at the storage tank facility within 24 hours to ensure regulatory compliance with 25 Pa. Code §245.436(a)(3)(i). The Class C Operator shall be available for immediate telephone consultation when the facilities are in operation and shall be on-site at the storage tank facility within 2 hours of being contacted to ensure regulatory compliance with 25 Pa. Code §245.436(a)(3)(iii). In the event a designated Class (A or B) is replaced, it is the responsibility of the School District that a new Operator is trained within 30 days of assuming duties for that Class of Operator.

27.3 Subsurface and Groundwater Investigation

(a) The Environmental Consultant shall conduct tests and shall take and analyze samples from soil and groundwater at designated School District project sites to determine the magnitude and extent of contamination of soil and groundwater at such project sites.

(b) The Environmental Consultant shall conduct subsurface and groundwater investigation tests and analyses and shall submit reports on its findings, analyses and recommendations to the School District within the time periods designated by the School District Office of Environmental Management and Services.

27.4 Remediation Projects

(a) The Environmental Consultant shall identify whether the sources of the contamination are toxic substances, pollutants or contaminants, hazardous substances, hazardous waste, regulated substances or some other materials or substances.

(b) The Environmental Consultant shall provide project management during the remediation projects to ensure compliance with applicable environmental laws, ordinances, codes, rules, regulations, actions, orders, permits, standards and guidelines. The Environmental Consultant shall immediately advise the School District of any potential or actual violations of environmental laws, ordinances, codes, rules, regulations, actions, orders, permits, standards and guidelines or any deficiencies or defects in the work of the remediation contractors.

27.5 Analytical Services

(a) The Environmental Consultant shall maintain a complete chain of custody documentation for all samples, and shall provide the School District with all data pertaining to the sample analyses, including but not limited to chain of custody forms, sample work sheets and sample count sheets.

(b) The Environmental Consultant shall submit its reports to the School District within the time periods designated by the School District Office of Environmental Management and Services.

(B) **ENVIRONMENTAL SITE ASSESSMENTS CONSULTING SERVICES.**

1. The Environmental Consultant shall submit its environmental site assessments to the School District within the time periods designated by the School District Office of Environmental Management and Services.

2. The Environmental Consultant's Phase I Environmental Site Assessment Report must be conducted in accordance with the American Society for Testing and Materials ("ASTM") Guidance 1527.00, and must include the following items: (a) Purpose and Scope of Work, (b) Site Location and Description, (c) Site History, (d) Site Visit and Investigation, (f) Interviews, (g) Regulatory Agency Review, (h) Assessment Report, and (i) Submission of Report.

(B.1) **STATEMENT OF WORK - PHASE I - ENVIRONMENTAL SITE ASSESSMENTS.**

2. **Introduction.** The School District Office of Environmental Management and Services will require the Environmental Consultant to conduct Phase I Environmental Site Assessments ("ESAs") of properties it is considering purchasing or selling. At existing sites where there is no real estate transaction, the School District may assign the Environmental Consultant to conduct a subsurface investigation if there is an indication that there was a suspected release of petroleum product and other regulated substances. The Phase I ESAs shall conform to the procedures described in ASTM 1527-05, at a minimum. If the findings indicate that there are potential recognized environmental conditions ("RECs") and other conditions that may impact the cost of re-using the site, then the Environmental Consultant shall conduct a Phase II ESA in accordance with ASTM 1903.

3. **Summary of Work.** Phase I Environmental Site Assessment shall consist of the following items of work: (a) Purpose and Scope of Work; (b) Site Location and Description; (c) Site History; (d) Site Visit and Investigation; (e) Interviews; (f) Regulatory Agency Review; (g) Assessment Report; and (h) Submission of Report.

4. **Purpose and Scope of Work.** The Environmental Consultant shall include a statement of assumptions used in conducting the environmental assessment and determining its scope, and a review of any procedures which were not utilized in its site work and investigation, with a rationale for their omission.

5. **Site Location and Description.** The Environmental Consultant shall include information about the particular property site, and adjacent areas if necessary, including legal description and street address; type of property; property owner(s); improvement(s) on property; and operator(s), manager(s), tenants(s) or lessee(s) on property.

6. **Site History.** The Environmental Consultant shall perform the following

tasks:

(1) Site Review and Research. The Environmental Consultant shall review:

(i) past and current land use of the site for indications of the manufacture, generation, use, storage, transportation, and/or disposal of hazardous substances and hazardous wastes at the site;

(ii) past and current land use of properties in the vicinity of the site, including adjacent properties, for indications of the manufacture, generation, use, storage, transportation, and/or disposal of hazardous substances and hazardous wastes;

(iii) all environmental documents in the possession of the seller of the real estate or its agents, including but not limited to permits, approvals, correspondence with governmental agencies, applications, operating and other records, environmental reports and investigations;

(iv) all governmental records about the real estate and all public sources of information about the business of the seller of the real estate, the real estate, and the surrounding areas, including but not limited to the following: (1) lists of sites known to governmental agencies because of regulatory, contamination or compliance issues; (2) permits, licenses, authorizations, registrations, approvals and notifications required under or issued pursuant to any environmental laws, ordinances, codes, rules, regulations, actions, orders and permits, and all documents pertaining thereto, without limitation, applications, notices of deficiency, discharge monitoring reports, emissions inventories, and chemicals inventories; (3) correspondence from or with federal, state and local environmental regulatory authorities; (4) notices to and from federal, state and local environmental regulatory authorities, including, without limitation, notices of violation and notices of non-compliance; (5) documents related to past, pending or threatened enforcement actions, including requests for information, citations and summons, subpoenas, administrative orders, civil penalty assessments, bond forfeitures, penalty actions adjudicated by state governments, criminal proceedings and convictions, consent orders, consent adjudications, decrees and settlements, and demands for payment or remedial action; (6) documents related to past, pending or threatened litigation, including notices of citizen suits; and (7) documents related to involvement at federal or state Superfund sites, including requests for information or notices of claims concerning potential responsibility for cleanup;

(v) all environmental audits, reports, investigations, analyses or studies of environmental conditions and compliance of the real estate, regardless of whether such documents were required to be prepared pursuant to environmental laws, ordinances, codes, rules, regulations, actions, orders and permits;

(vi) all documents related in any way to the release, spillage, leakage, discharge, disposal, emission, injection or dumping of hazardous substances (i.e., any hazardous or toxic or polluting substance or waste, petroleum products, used and waste fuel, and radioactive waste) at, on, about or under the real estate, and any response or remedial action taken;

(vii) all reports, test results, studies, analyses or data regarding possible contamination (a) on, at, in, around or above the real estate, (b) in the groundwater beneath the real estate, (c) in the surface water adjacent to or on the real estate, and (d) in the air above the real estate;

(viii) all documents with respect to: (1) any aboveground and underground storage tanks, whether active or abandoned, at the real estate; (2) the recycling, treatment, storage, transportation, management and disposal of hazardous substances by or for the seller of the real estate on the real estate; (3) any and all equipment owned or located on the real estate that contained or contains PCBs or related chemicals and the management of such equipment and PCB material; (4) the presence of asbestos-containing material in any building or structure on the real estate; and (5) environmental liens or notices or restrictions in deeds relating to the presence of hazardous substances at the real estate; and

(ix) all applicable environmental federal, state and local laws, ordinances, codes, rules, regulations, actions, orders and permits and pending changes thereto.

The Environmental Consultant shall research the identity of all past and present operations of the business of the seller of the real estate and all locations at which such seller conducted its business.

(2) Site Evaluation. The Environmental Consultant shall evaluate:

(i) the potential for site soil and/or groundwater contamination due to the presence or potential presence of hazardous substances and/or hazardous wastes resulting from (a) any past and/or present site land use activities, and (b) any past and/or present land use activities of properties in the vicinity of the site, including adjacent properties; and

(ii) the potential for the existence of environmentally-sensitive areas on the site;

The Environmental Consultant shall render findings and professional opinions regarding both the potential for environmental contamination due to the presence or potential presence of hazardous substances and/or hazardous wastes at the site and/or at properties in the vicinity of the site, and the existence of environmentally-sensitive areas.

The Environmental Consultant shall recommend:

(i) what further investigations, if any, are necessary to evaluate whether contamination due to the presence or potential presence of hazardous substances and/or hazardous wastes may exist at the site or at properties in the vicinity of the site, and whether environmentally-sensitive areas may exist at the site; and

(ii) how to reduce the risk to the health and safety of School District employees, students and contractors and the general public at the site by identifying serious or potential serious threats to human health or safety or the environment.

(3) Title Search. The Environmental Consultant shall obtain a fifty (50)

year title search of the site; review for past and present ownership and use of the site; and report on any documents which may indicate a basis for inferring potential contamination of the site by hazardous substances and/or hazardous wastes.

(4) Aerial Photographs. The Environmental Consultant shall secure, review and report on historic aerial photographs of the site and property in the vicinity of the site to determine historical site development and the historical development of property in the vicinity of the site; and take and present at least four (4) sets of aerial photographs, including earliest available and current.

(5) Maps and Dates. The Environmental Consultant shall secure, review and report on pertinent documents and maps regarding geologic and hydrogeologic conditions at the site and at properties in the vicinity of the site. In particular, but in no way limiting the generality of the foregoing, (a) review and interpret archival topographic, floodplain, and land use maps (such as U.S.G.S. and Sanborn Fire Insurance maps) of the site and properties within a one fourth (1/4) mile radius of the site for information regarding historical site land use and historical land use of properties in the vicinity of the site that could have involved the manufacture, generation, use, storage, transportation, and/or disposal of hazardous substances and/or hazardous wastes; and (b) review data regarding past and/or current site development of the site and the property in the vicinity of the site, including but not limited to, title reports, site maps, building blueprints, utility maps, tenant lists with addresses and nature of businesses, geotechnical reports, prior environmental reports, and agency correspondence pertaining to the site.

(6) Public Records. The Environmental Consultant shall secure, review and report on federal, state and local public records to assess the background and history of site land use activities and the land use activities of properties in the vicinity of the site, including but not limited to, any records that show any use that could have involved the manufacture, generation, use, storage, transportation and/or disposal of hazardous substances and/or hazardous wastes.

7. Site Visit and Investigation. The Environmental Consultant shall perform the following tasks:

(1) Site Tour. The Environmental Consultant shall conduct a site tour of the real estate, including a thorough walk-through of the entire real estate and a drive around the area of the real estate.

(2) Present Use and Improvement of the Site. The Environmental Consultant shall identify the age and present use of the site, including improvements and facilities thereon; and report in detail any activities that may use or generate hazardous substances and/or hazardous wastes.

(3) Permits. The Environmental Consultant shall determine the current status of any existing federal, state or local permits associated with the site, including but not limited to National Pollutant Discharge Elimination System (NPDES), UST, Resource Conservation and Recovery Act (RCRA), local sewer discharge, floodplain, shoreland, wetlands, or coastal management regulations applicable to the site; and indicate whether additional permitting is required under applicable laws, codes, ordinances, rules and regulations.

(4) Site Inspection and Surrounding Property. The Environmental Consultant shall make observations of existing site conditions, activities, and types of land use of property within a one-fourth (¼) mile radius of the site, including but not limited to, (a) the presence of natural waterways, (b) the presence and conditions of surface water discharges, (c) areas of stressed vegetation, (d) indications of liquid or solid waste dumping or disposal, (e) discolored flowing or ponded waters, (f) evidence of groundwater wells, cisterns or septic tanks, (g) abnormal odors associated with the site, and (h) the presence of recent soil grading or other soil reconfiguration; and take representative photographs of these conditions.

(5) Hazardous Wastes. The Environmental Consultant shall review appropriate records for hazardous waste activities at the site, including the identification of any existing site EPA ID number, manifests, contractors and methods used to dispose of solid waste, residual or waste materials and sanitary and process waste waters; identify the locations used for the disposal of hazardous wastes and non-hazardous wastes; observe the storage areas for waste materials to determine whether any adverse environmental conditions exist as a result of improper storage facilities or practices; evaluate the site for evidence of on-site disposal or treatment of waste materials; and include a determination as to the adequacy and appropriateness of such disposal and treatment methods, and whether such methods meet applicable standards.

(6) Storage Tanks. The Environmental Consultant shall identify possible aboveground and underground storage tanks; note any fill ports, vents, pumps, concrete pads, saw cuts in paved areas or other customary apparatus or indicia of storage tanks; for each existing tank, determine size, material of construction, age of material stored, corrosion protection method, containment facility, and current status; indicate whether and when the tank has been registered with the appropriate regulatory agency; obtain copies of leak test reports and inventory reports, if available, and include time in the report; if tanks have been removed or abandoned in place, also include available information describing the removal procedure or abandonment and soil analytical data, as well as date of removal or abandonment; if possible, determine through interviews or reviews of regulatory records the date when any removed or abandoned tanks were last operated, the name of the last operator, and when they were removed or otherwise abandoned or made inoperable; and include a map of all known locations of existing and former tanks in the report;

(7) Other Environmental Issues or Concerns. The Environmental Consultant shall review records and documents and conduct investigations to identify any other environmental issues or concerns related to the site.

8. **Interviews.** The Environmental Consultant shall conduct the following interviews about the site and property in the vicinity of the site:

(1) Seller/Interviews. The Environmental Consultant shall interview the seller of the real estate, including its environmental personnel, and governmental officials to obtain all information about the real estate's environmental conditions and compliance.

(2) Employee Interviews. The Environmental Consultant shall interview individuals familiar with the site to determine the historical land use activities at the site,

including but not limited to, present and former employees, on-site managers and tenants; and identify possible hazardous substances and/or hazardous wastes used or released, waste streams, prior use and ownership of the site and any facilities thereon.

(3) Surrounding Properties. The Environmental Consultant shall interview knowledgeable persons, e.g., real estate salespersons and appraisers, county assessors, county land office personnel, and the zoning commission, to identify operations conducted on properties in the vicinity of the site; and interview adjacent or hydrogeological upgradient property owners or other persons, e.g., tenants or property managers, having knowledge of the properties in question to obtain information about historic land use activities and conditions and to determine whether any environmental incidents, including but not limited to, leaking tanks or chemical spills, are known to have occurred on such properties in the past.

9. Regulatory Agency Review. The Environmental Consultant shall contact applicable federal, state, county and municipal regulatory agencies for information regarding building and environmental permits, environmental violations or incidents and/or status or enforcement actions at the site and at property in the vicinity of the site that may pose an environmental threat to the site, including but not limited to, the local fire department, local health agency, county health and/or environmental agencies, state health and environmental agencies, and the appropriate EPA regional office. The Environmental Consultant shall also check the site and property in the vicinity of the site for inclusion on the US EPA National Priorities List, the CERCLA List, the RCRA List and any similar state and local lists. The Environmental Consultant shall include information learned from contacts in its written report, as well as a map reflecting the information. If written responses have not been received on a timely basis, the Environmental Consultant shall memorialize the telephone contact with a confirmation letter to the person interviewed and shall include a copy of the letter in the report.

10. Assessment Report. The Environmental Consultant's written assessment report shall contain separate sections for findings relating to the work required under this Contract and for any recommendations or opinions of the Environmental Consultant with regard to the need to perform further studies, measures or actions with regard to the site. The Environmental Consultant's findings and opinions must be kept separate from each other in its assessment report.

(1) Summary. This separate section shall include, but not be limited to, the following: (a) resources checked and persons interviewed (listing each individually), as well as the names of the Environmental Consultant's employee(s) who conducted the investigation, and the date(s) of the investigation; (b) evaluations and procedures followed, and results obtained; and (c) actual or potential noncompliance issues with environmental laws, regulations or rules;

(2) Recommendations. This separate section shall include any professional opinions of the Environmental Consultant regarding the existence of environmentally-sensitive areas at the site, and the potential for environmental contamination due to the presence of hazardous substances or hazardous wastes at the site. In addition, further investigation shall be recommended, if necessary, to evaluate whether contaminated or environmentally-sensitive areas may exist at the site. In the summary section of the report, the Environmental Consultant shall include recommendations for regulatory reporting which may be required by the results of this investigation, including (a) name of agency, contact individual,

phone number, facsimile number (if available), street and mailing addresses; (b) laws or regulations which require such reporting; (c) time periods during which such reports must be made; and (d) copy of reporting forms, if any;

(3) Appendix. This separate section shall include but not be limited to, (a) abstract of title or other written title search material; (b) aerial and other photographs; and (c) all maps and data requested.

11. Submission of Report. The Environmental Consultant shall submit its written report to the School District within the time periods designated by the School District Office of Environmental Management and Services.

(B.2) **STATEMENT OF WORK - PHASE II - ENVIRONMENTAL SITE ASSESSMENTS.**

12. Definitions of Phase II. The School District Office of Environmental Management and Services has defined a “Phase II” as follows: sampling and testing to identify the types of contaminants, analyze the priority pollutants, and determine the horizontal and vertical extent of the contamination. There are generally three (3) levels/types of Phase II: (a) Phase II ESA and Initial Subsurface Investigation; (b) Expanded Subsurface Investigation; and (c) Site Characterization.

13. Phase II ESA and Initial Subsurface Investigation. The objective of the Phase II ESA and Initial Subsurface Investigation is to assess and evaluate a potential recognized environmental condition (“REC”) as a result of the finding of the Phase I Environmental Site Assessment. Subsurface Investigation is to confirm or deny the potential presence of contaminant due to a release of a petroleum product and/or regulated substance. In both Phase II ESA and Initial Subsurface Investigation, the Environmental Consultant shall design and implement a limited program of collection and analysis of appropriate site samples. The key objective of the Phase II ESA and Initial Subsurface Investigation is to confirm the presence of contaminants, which would require action under current state or federal regulations and guidelines. There are four (4) principle components to the Initial Phase II that must be addressed prior to its implementation: (a) Development of a Sampling Plan; (b) Preparing for the site visit; (c) Conducting the sampling visit; and (d) Making recommendations for further action or no action.

14. Limited Phase II. The components of the Limited Phase II are identical to the principle components for the Initial Phase II in Paragraph 13 above. However, the objective of the Limited Phase II is to identify hazardous contaminants in addition to those suggested in the Initial Phase I and evaluated in the Initial Phase II.

15. Expanded Phase II. The components of the Site Characterization are to define the horizontal and vertical extent of the contamination confirmed from an Initial and Expanded Subsurface Investigation. Characterization refers to specifying the type of contamination present, assessing three-dimensional occurrence of the contamination, assessing migration rates, directions and possible human and environmental response receptors and the risks posed to them, and establishing a database to facilitate documentation of changes in the occurrences of the contamination.

(C) **REMEDIAL INVESTIGATION/REMEDIAL ACTION WORK PLAN.**

16. The School District Office of Environmental Management and Services has defined “Remedial Investigation/Remedial Action Work Plan” as follows: evaluating, discussing, and presenting recommendations regarding all data gathered in the Phase II, as well as environmental public health risks and costs associated with a variety of proposed remedial alternatives in order to develop the recommended course of remediation consistent with the regulatory guidelines having jurisdiction for the environmental conditions of the property with minimal risk to the environment and public health.

17. The Environmental Consultant shall review the environmental studies available. Based on the observations, conclusions and recommendations noted in the available environmental studies and the requirements of the RFP/RFQ and this Contract, the Environmental Consultant shall determine the potential presence of environmental contaminants within the objectives outlined in the Scope of Work (“SOW”).

(D) **SAMPLING AND TESTING METHODS.**

18. The Environmental Consultant shall prepare a work plan identifying the initial sampling procedures, layouts, and testing procedures for each of the requirements, including costs, associated with completing the requirements of the RFP/RFQ and this Contract. All sampling and testing methods conducted shall be performed in compliance with and consistent with all EPA Methods applicable to the discovered contamination that impacts the property under investigation, but not limited to: (a) EPA SW 846 8260 for VOC, (b) EPA SW 846 8270B for Semi-VOCs, (c) SW 846 8081 for PCBs/Pesticides, (d) EPA SW 846 6000 and 7000 series for ICAP and furnace metals, (e) SW 846 1312 for SPLP Leachate, and (f) SW 846 1311 for TCLP or any other methods found in EPA Manual SW 846; and to determine the characteristics of “waste” under 40 CFR 261, Subpart C and Subpart D, AHERA and NESHAPS guidelines, and any applicable State statutes and regulatory testing requirement pertaining to environmental hazards as they are amended from time to time.

(E) **LABORATORIES.**

19. All laboratories must be EPA accredited to perform EPA Testing Methods and EPA Certified in the case of CERCLA sites or groundwater testing.

(F) **DATA EVALUATION AND REPORT.**

20. Data interpretation must be discussed in the report. Three (3) copies (2 hard copies and 1 PDF electronic copy on a CD) of the final report shall be submitted for the review and approval of the School District Director of Environmental Management and Services.

21. The Environmental Consultant shall provide a written report, with respect to the services rendered under this Contract, within the specified time provided by the School District Office of Environmental Management and Services upon award, according to the Scope

of Work (“SOW”) and all the respective attachments thereof.

22. The report shall describe the SOW defined herein and outline the methods used to sample and investigate for contamination, and shall present sample analyses results as indicated in the Sampling Plan. The report shall also include maps, tables, and other graphic presentations of data and sampling locations.

23. Pursuant to the approval of the School District Office of Environmental Management and Services, the Environmental Consultant shall submit copies of the reports to the PADEP and the City of Philadelphia as required.

(G) PROPERTY DAMAGE.

24. The property shall be restored to the condition in which it was found, subject to cuttings, sampling and other materials removed for the purpose of investigations. In addition, weekly and monthly follow up inspections are required to verify conditions (Digital Photo Documentation) as a result of potential settlement related issues.

III. Environmental Consulting Services Responsibilities for Geotechnical Consulting Services and Environmental Site Assessments.

A. Environmental Consultant Responsibilities.

1. The Environmental Consultant shall have the following responsibilities under this Contract:

(A) GEOTECHNICAL CONSULTING SERVICES.

1.1 Personnel of the Environmental Consultant shall have the following responsibilities under this Contract:

(a) The Project Manager shall take the lead role in all field and office work, sign all written documents as the preparer of these documents, and directly supervise the other members of the Environmental Consultant team. With assistance from the School District, the Project Manager shall conduct field visits to verify conditions prior to performance of services, and shall review, approve and sign all written documents.

(b) The Project Geologist/Hydrogeologist shall perform the geotechnical services, except the underground storage tank services, with assistance from the Staff Geologist.

(c) The Professional Engineer shall perform the underground storage tank services.

(d) The Staff Geologist shall assist the Project Geologist/Hydrogeologist with the performance of the geotechnical services, except the underground storage tank services.

(e) The Environmental Technician shall perform the field sampling and assist the Professional Engineer with the underground storage tank services.

(f) The PA DEP UMR Certified Tank Inspector shall perform removal activities for underground storage tank systems and facilities.

(g) The PA DEP IUM Certified Tank Inspector shall inspect underground storage tank systems and facilities.

(h) The PA DEP IAM Certified Tank Inspector shall inspect aboveground manufactured storage tank systems and facilities.

(i) The PA DEP IAF Certified Tank Inspector shall inspect aboveground field constructed and manufactured storage tank systems and facilities.

(j) The Equipment Operator shall operate the heavy equipment for required geotechnical services.

(k) The CAD Operator shall assist the Project Manager in completing and assembling written reports and documentation.

(l) The Class A Operator, Class B Operator, and Class C Operator shall perform the compliance monitoring responsibilities for regulated underground storage tanks for the designated Class set forth in the Storage Tank and Spill Prevention Regulations, 25 Pa. Code §245.436(a)(3)(i) and (iii).

(B) ENVIRONMENTAL SITE ASSESSMENTS CONSULTING SERVICES.

2.1 Personnel of the Environmental Consultant shall have the following responsibilities under this Contract:

(a) The Environmental Site Assessor shall conduct the Phase I and Phase II Environmental Site Assessments.

B. School District Responsibilities.

1. The School District shall have the following responsibilities under this Contract:

1.1 The School District Office of Environmental Management and Services shall determine the projects on which geotechnical services will be performed.

1.2 Prior to the start of each project, the School District shall allow the Environmental Consultant access to the proposed area(s), with the School District Office of Environmental Management and Services' representative, for the purpose of inspecting the project

site.

1.3 The School District shall be responsible for the following: (a) giving all required notifications under applicable environmental laws, rules and regulations; (b) HVAC system and/or boiler shutdown; (c) electrical lockout activities; and (d) removal or remediation of material and equipment stored in proposed hazardous waste or hazardous substances areas, whenever practical and unless otherwise indicated.

1.4 A representative of the School District Office of Environmental Management and Services shall accompany the Environmental Consultant's representatives on site visits.

1.5 The School District shall give the Environmental Consultant the School District's 24 hour/day radio dispatcher telephone number for any emergency or in case of the absence of a School District representative.

1.6 The School District Office of Environmental Management and Services, in consultation with personnel from the Offices of Capital Programs or Facilities and Operations or Chief Business Office, shall determine the property sites for which environmental site assessments will be required.

IV. **Timetrak.** All on-site activities of the Environmental Consultant require the use of the School District's biometric time tracking system (TIMETRAK) whenever entering or exiting a School District facility. In addition, upon arriving on site of a School District facility, the Environmental Consultant must call into the Office of Environmental Management and Services, as stated in the written policy of the Office of Environmental Management and Services.

V. **Sample Results.** All sample results must be quoted verbally and/or handwritten or faxed, unless the School District Office of Environmental Management and Services requests a different format.

VI. **Final Project Reports.** Final project reports must be typed and submitted to the School District Office of Environmental Management and Services within seven (7) calendar days of assigned project completion, unless the School District Office of Environmental Management and Services and the Environmental Consultant note and agree otherwise to a different time deadline. All Final Completion Reports must include the following sections: (a) Table of Contents; (b) Executive Summary or Background/Introduction; (c) Discussion and General Information; (d) Inspection, Findings and Data Collection; (e) Conclusions; (f) Final Clearance Documents; (g) Recommendations; and (h) Signature Page(s).

VII. **Compliance with Environmental Laws.** During the performance of its Services under this Contract, the Environmental Consultant must have extensive knowledge of, and shall comply with, all federal, state and local environmental laws, ordinances, codes, rules, regulations, actions, orders and permits pertaining to geotechnical services and environmental site assessments, including but not limited to, the following:

- (a) the Storage Tank and Spill Prevention Act ("STSPA") or Act 21, 35 P.S. §

6021.101 et seq., and Regulations, 25 Pa. Code § 245.1 et seq.;

(b) the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.;

(c) the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq., and Regulations, 40 CFR Parts 260, 270 & 280;

(d) the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq., and Regulations on Polychlorinated Biphenyls (“PCBs”) 40 CFR Part 761;

(e) the Solid Waste Management Act (“SWMA”), 35 P.S. § 6018.101 et seq., and Regulations, 25 Pa. Code § 75.1 et seq.;

(f) the Hazardous Sites Cleanup Act (“HSCA”), 35 P.S. § 6020.101 et seq.;

(g) the Hazardous Waste Management Regulations or PADEP Waste Management Regulations, 25 Pa. Code § 260.1 et seq.;

(h) the City of Philadelphia laws, ordinance, rules and regulations relating to removal and closure of aboveground and underground storage tanks;

(i) the Commonwealth of Pennsylvania’s Land Recycling and Environmental Remediation Standards Act (“LRERSA”) or Act 2 of 1995, 35 P.S. § 6026.101, et seq.;

(j) the Uniform Environmental Covenants Act (“UECA”), 27 Pa.C.S. § 6501, et seq.;

(k) the PADEP Storm Water Management Act (“SWMA”), 32 P.S. § 680.1, et seq.;

(l) the City of Philadelphia Water Department Stormwater Regulations and requirements;

(m) the Asbestos Hazard Emergency Response Act (“AHERA”) (15 U.S.C. §§ 2641 - 2654), and Environmental Protection Agency (“EPA”) Regulations on Asbestos-Containing Materials in the Schools (“AHERA Regulations”) Final Rule and Notice: 10/30/87 (40 CFR, Part 763); and

(n) the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) (40 CFR, Part 61) and Asbestos NESHAP Revisions.

Section 5. School District’s Services and Responsibilities.

5.1 **Review and Changes to Documents and Information.** The School District shall review all surveys, drawings, reports, metes and bounds descriptions and other information prepared

and submitted by the Environmental Consultant to the School District under this Contract, and shall advise the Environmental Consultant of any suggested changes, comments or recommendations thereto in a timely manner so as to cause no delay to the Environmental Consultant.

5.2 **No Waiver by Review, Approval, Acceptance or Payment.** Neither the School District's review, approval or acceptance of, nor payment for, any of the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.

5.3 **Purpose of Review and Approval.** Notwithstanding anything to the contrary contained in this Contract, the School District's review and approval of any and all documents or other matters required herein shall be for the purpose of providing the Environmental Consultant with information as to the School District's objectives, goals and educational requirements with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents.

Section 6. Compensation and Payment.

6.1 **Compensation.** The School District's SRC, by Resolution # A-_, dated _____, 2018, has authorized an expenditure of funds not to exceed the total amount of

_____ Dollars (\$ _____) as the Compensation in total for the performance of professional environmental consulting services for geotechnical consulting services and environmental site assessments consulting services. Pursuant to the attached Request for Proposals/Qualifications to Provide Professional Environmental Consulting Services for Geotechnical and Environmental Site Assessments, the School District reserves its option to award a Contract for Professional Environmental Consulting Services for Geotechnical and Environmental Site Assessments to more than one (1) Environmental consulting firm. It is the intent of the School District to make work assignments as the needs of the School District and the availability and capability of specified firms dictate, without guarantee of any particular number or dollar value of work assignments to any specific environmental consulting services firm, and to pay up to \$ _____ for Environmental Consulting Services for geotechnical consulting services and environmental site assessments consulting services. The Environmental Consultant acknowledges and agrees that the School District does not promise the Environmental Consultant \$ _____ worth of work assignments, and that the School District reserves the right to limit the number of work assignments to the Environmental Consultant under this Contract.

6.1.1 **Estimated Basic Services Fee Breakdown.** The estimated breakdown of the Basic Services fee, stated above and as previously agreed to hourly rates or daily rate (Exhibit E) is as follows:

(1) The Environmental Consultant's compensation will be equal to (1) the hourly rate or daily rate, as provided in Exhibit E, for each Task listed in the Work Order multiplied by the approved time amount as listed in the approved Schedule for each Task listed in the Task Order plus (2) the cost for single unit, cost per foot, cost for single test pit and/or the cost per each sample lab analysis, if applicable.

(2) Fee Schedules. Rates and costs of the Environmental Consultant shall cover all related overhead, profit, supplies, materials, travel, etc. for performance of Work required under this Contract. The School District shall reject requests by the Environmental Consultant for compensation beyond that stated in its Fee Proposal and Fee Schedules for each Environmental Consulting Services (Exhibit E). **Costs shown in the Environmental Consultant's Fee Proposal and Fee Schedules for each Environmental Consulting Services (Exhibit E) shall remain firm and fixed for the duration of the Contract, except that costs shown may increase or decrease in accordance with the CPI-U Index. Prices for each of the option years will be adjusted (increased or decreased) according to the corresponding increase or decrease in the CPI-U Index "All Urban Consumers, All Items, Philadelphia, Wilmington, Atlantic City, PA-DE-NJ-MD" for the previous twelve month period from April to April. Fee Schedules must reflect firm fixed prices for the entire first year term of the Contract. Rates may increase or decrease in each successive Contract year beginning on July 1st in accordance with the CPI-U Index.**

(3) **No changes, deletions or exceptions to the Fee Schedules for each Environmental Consulting Services shall be accepted by the School District. Only one (1) price per line item in the Fee Schedules for each Environmental Consulting Services shall be permitted.**

(4) **All fees shall be based on each unit identified as Per Hour, Per Day, Per Week and/or Per Sample, Per Foot, Per Gallon, Per Ton, Per Load, Per Kit, Per Bailer, Per Roll, Per Box, Per Drum, Per Bundle, or Per Bag as listed in the Environmental Consultant's Fee Schedule for each Environmental Consulting Services.**

(5) **The Environmental Consultant shall not place minimum or maximum values to any line item listed in the Fee Schedules for each Environmental Consulting Services.**

(6) **No overtime rates shall be applicable to services covered under this Contract. No payments shall be made for overhead costs, including, but not limited to, copying and assembly fees of any reports, preparation of the final report, faxing fees, travel time, mileage, tolls, cassette filters and incidental expenses. The Environmental Consultant's cost for these services and materials must be included in the hourly rate and/or the fee schedule for each personnel classification, subsurface investigations category, excavation and disposal activities category, and/or equipment category, and/or the Geotechnical Services Sample Fee Schedules, and/or the total fixed fees for Phase I Environmental Site Assessment and UST System Integrity Testing, and/or the total hourly rate for Class A Operator, Class B Operator and/or Class C Operator for Compliance Monitoring with Storage Tank and Spill Prevention Regulations, Section 245.436, regarding Regulated Underground Storage Tanks.**

(7) The total fixed fee for the Phase I Environmental Site Assessment Report shall be inclusive of all labor and associated cost. The UST System Integrity Testing total fixed fee shall be inclusive of all labor and cost associated with reporting and testing requirements and all Tank Testing Equipment (including Operator). The hourly rate for the Class A Operator, Class B Operator and/or Class C Operator for compliance monitoring regarding regulated underground storage tanks shall include all cost associated with any required submission of

monthly reports and/or any other reporting requirements to the School District and/or PADEP.

(8) The on-site Environmental Consultant activities may require the use of the School District of Philadelphia's biometric time tracking system (TIMETRAK) whenever entering or exiting a facility. In addition, upon arrival on-site, the Environmental Consultant and its Subconsultants must call into the School District Office of Environmental Management and Services, as stated in the written policy of the Office of Environmental Management and Services.

(9) The start of compensation shall commence with the performance by the Environmental Consultant of its Services pursuant to this Contract and shall terminate at the end of the Term, except as otherwise set forth in Section 14.

(10) In addition to any requirements provided for in this Contract, the Environmental Consultant shall follow the procedures and policies regarding the submission of invoices as set forth in Section 6.2 below, as may be amended from time to time by the School District, with notice to the Environmental Consultant.

(11) In the event that the School District requests the performance by the Environmental Consultant of Additional Services, such Additional Services will be paid on a monthly basis in accordance with the Fee Proposal for Additional Services. Any Additional Services must be approved pursuant to an Amendment.

(12) Acceptance or approval of, or payment for, any of the Services performed by the Environmental Consultant under the Contract shall not constitute a release or waiver of any Claim the School District has or may have for latent defects, errors, breaches, or negligence.

(13) All payments for Services under the Contract will be made only to the Environmental Consultant. The Environmental Consultant shall assume sole and full responsibility for payments due any of its Subconsultants and/or Subcontractors.

(14) Unless otherwise set forth in writing by the School District, all prices quoted shall be firm and not subject to increase during the Term.

(15) The School District assumes no responsibility and no liability for costs incurred by the Environmental Consultant prior to execution of this Contract and thereafter only as explicitly set forth in the Contract.

6.2 **Payment.**

6.2.1 Payments for Basic Services shall be submitted on an invoice form provided by School District and shall be accompanied by supporting documentation as required by the School District. Copies of all bills for reimbursable expenses allowed by the Contract must be attached to the invoice form.

6.2.2 Payment shall **not** be made by the School District to the Environmental Consultant until completion of individual project services. Invoices must be accompanied by the final

project report. **Partial payments shall not be made by the School District.** The School District will provide detailed information for billing to the Environmental Consultant prior to the commencement of this Contract.

6.2.3 The Environmental Consultant shall submit an end-of-the-month statement, which details the following: payments received, invoices outstanding, and a cost estimate of work in progress. The Environmental Consultant shall be responsible for tracking the bottom line costs for its Contract. Cost overruns by the Environmental Consultant could result in School District non-payment for Work under this Contract.

6.3 Applications for Payment and Subconsultant Payment Confirmation.

6.3.1 The Environmental Consultant shall submit monthly Applications for Payment for payment of Services actually performed and approved Reimbursable Expenses actually incurred during the previous calendar month to the School District administrator named in Paragraph 7.1 of this Contract.

6.3.2 All Applications for Payment must be submitted in a form acceptable to the School District, and shall, at a minimum, include the following: (1) amount of payment applied for; (2) description of all Services actually performed during the previous calendar month for which payment is sought and their associated costs and total charges; (3) Project phase or period to which payment is applicable; (4) the percentage complete of said Period or Phase; (5) whether the Services performed were Basic or Additional Services; and (6) School District SCS number (where applicable) and Contract number, and shall attach such supporting evidentiary documents as the School District may require.

6.3.3 Applications for Payment shall be exclusive of state or local sales, use or gross receipts taxes, and federal excise taxes. The School District's Pennsylvania Sales Tax Blanket Exemption Number is 76-51500-1; its Federal I.D. Number is 23-600-4102; and its Federal Excise Tax Number is 23-63-0021-K.

6.3.4 Payment shall be made by the School District within thirty (30) working days after its receipt and approval of the Environmental Consultant's Application for Payment.

6.3.5 No payment shall be due to the Environmental Consultant before the School District's receipt of a properly itemized Application for Payment from the Environmental Consultant.

6.3.6 The Environmental Consultant's Federal Tax Identification Number is ____-____.

6.3.7 All amounts paid shall be subject to audit by the School District pursuant to Paragraph 6.13, *Audits, Records and Payments*, and all Applications for Payment must be approved by the School District's Accounting Services/Accounts Payable Department or Auditing Services Office as a condition of payment.

6.3.8 Subconsultant Payment Confirmation. The Environmental Consultant shall

pay each Subconsultant performing Services promptly, after receipt of payment from the School District, out of the amount paid to the Environmental Consultant on account of the Services of such Environmental Consultant the amount to which such Subconsultant is entitled. Together with each monthly Application for Payment, exclusive of the first monthly Application for Payment, the Environmental Consultant shall submit, to the School District administrator named in Paragraph 7.1 of this Contract, a written release or affidavit or payment confirmation from each Subconsultant that such Subconsultant has received from the Environmental Consultant full payment of the amount to which such Subconsultant was entitled to receive from the Environmental Consultant the previous calendar month. No payment shall be due to the Environmental Consultant by the School District before the School District's receipt of all required Subconsultant Payment Confirmations from the Environmental Consultant.

6.4 **Withholding of Payments.** Notwithstanding any other payment terms or conditions to the contrary, the School District reserves the right to withhold promised payments for the Environmental Consultant's substantial failure to perform as agreed. However, before withholding payment under this Contract, the School District shall notify the Environmental Consultant in writing of such failure and grant the Environmental Consultant the opportunity to remedy same within fourteen (14) working days of said written notice. The School District may extend such remedial period, at its sole discretion, if there is evidence of the Environmental Consultant's good faith effort to remedy the failure. The School District will pay pro rata for the Environmental Consultant's partial performance, provided such performance is acceptable to the School District and is rendered satisfactorily.

6.5 **Final Payment.** Final payment, including any unpaid balances and unpaid Reimbursable Expenses to date, shall be due and payable upon completion of the requested tasks of the assigned Project(s).

6.6 **Basic Services.** All services that the Environmental Consultant is required to perform under this Contract pursuant to a Work Order for Environmental Services, shall constitute Basic Services for which compensation will be paid under Section 6.1 herein.

6.7 **Additional Services.** The Environmental Consultant may be retained by the School District to provide services of an emergency nature in addition to the Services performed pursuant to the Work Order for Environmental Services ("Additional Services").

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

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

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

6.7.4 The hourly rates and daily rates, and as provided in Exhibit E, for applicable categories of labor of the Environmental Consultant shall apply to Additional Services during the Term.

6.7.5 Assignment of School District's Right to File Direct Claims against the Prime Contractor for the Environmental Consultant's Additional Services. The Environmental Consultant agrees that in no event shall the School District be liable to the Environmental Consultant for payment of compensation for Additional Services for any of the Environmental Consultant's Services that are caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the assigned Project(s), or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the assigned Project(s). Instead, as its sole right and remedy with respect to such fault, negligence, breach of contract, willful act or omission, or such delay, disruption, interference or hindrance, of the Prime Contractor or any of its subcontractors or consultants, the Environmental Consultant shall be entitled to make, assert, file or bring a direct claim, action, cause of action or lawsuit against the Prime Contractor or any of its subcontractors or consultants, as an assignee of the School District, pursuant to this Paragraph 6.7.5. For **the sole and only purposes** of making, asserting, filing or bringing direct claims, actions, causes of actions or lawsuits against the Prime Contractor or any of its subcontractors or consultants, the School District hereby assigns to the Environmental Consultant the School District's right under the Prime Contract to make, assert, file or bring direct claims, actions, causes of action or lawsuits against the Prime Contractor or any of its subcontractors or consultants for additional compensation due to the Environmental Consultant for the Environmental Consultant's Services that is caused by or attributed to the fault, negligence, breach of contract, or willful act or omission of the Prime Contractor or any of its subcontractors or consultants on the assigned Project(s), or the delay, disruption, interference or hindrance of the Prime Contractor or any of its subcontractors or consultants in construction on the assigned Project(s).

6.8 **Reimbursable Expenses.** The Environmental Consultant shall not be entitled to any Reimbursable Expenses, except with the prior written consent of the School District. The cost of normal reports and documentation requested by the School District for its review or record shall not be considered a Reimbursable Expense.

6.9 **Release.** Prior to final payment, the Environmental Consultant shall furnish to the School District a release of all claims against the School District.

6.10 **Non-Authorization of Funds.** The Environmental Consultant acknowledges that payments under this Contract may not exceed the amount that the School District's Auditing Services Office certifies as available for this Contract. During the Initial Term and an Additional Term of this Contract, the School District reserves the right to fund the balance of the Compensation in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. The Environmental Consultant agrees that the School District shall not be obligated to fund this Contract except out of funds certified by the School District's Auditing Services Office as currently available, even if those funds are less than the maximum amount stated in this Contract. If at any time sufficient funds are not certified as available, the School District may, at its sole discretion, exercise its options described in Paragraph 6.11, *Unavailability of Funds*.

6.11 **Unavailability of Funds.** In the event the School District, in its sole discretion, does not or cannot obtain or continue the funding for this Contract from any source or sources at an aggregate level sufficient to allow for payment for the Services required under this Contract, the School District may, in its sole discretion, exercise one of the following alternatives:

(a) Terminate this Contract effective upon a date specified in a Termination Notice pursuant to Section 14, *Termination*; or

(b) Continue this Contract by reducing, through written notice to the Environmental Consultant, the scope of the Services required under this Contract and the amount of the Compensation, consistent with the nature, amount, and circumstances of the loss of funding; or

(c) Suspend the Services until such time as sufficient funds are available; provided, that in the event of such suspension, but only upon the availability of sufficient funds, the Environmental Consultant shall resume the Services within thirty (30) calendar days following the School District's written notice to resume.

Any reduction of this Contract pursuant to this Paragraph shall not affect any obligations or liabilities of either party accruing prior to such reduction. The School District shall not face any liability or penalty as a result of such reduction of this Contract. In the event of termination or suspension pursuant to this Paragraph, the Environmental Consultant shall have the rights and obligations set forth in Paragraph 13.2, *Suspension for Convenience* and Paragraph 14.1, *Termination for Convenience*.

6.12 **Crossing Fiscal Years.** If the School District will pay any portion of the compensation set forth in this Section 6 in any School District fiscal year (the School District's fiscal year runs July 1 - June 30) subsequent to the fiscal year in which the Initial Term or an Additional Term of this Contract commences (in either case, "Commencement FY"), the Environmental Consultant understands and agrees that the portion of the compensation under this Contract payable with School District funds that may accrue hereunder in a subsequent fiscal year remains subject to legally mandated budget authorization by the SRC of the School District under Applicable Law. If for any reason funds for that portion of the compensation that may accrue hereunder in a subsequent fiscal year are not continued in any subsequent School District fiscal year, this Contract and the School District's liability under this Contract shall automatically terminate at the end of the fiscal year of the then current Commencement FY; provided, however, that the Environmental Consultant shall be compensated in accordance with the terms of this Contract for Services that have been provided and accepted by the School District prior to the end of the fiscal year of the then current Commencement FY. Payments to the Environmental Consultant pursuant to this Contract shall not exceed the amount authorized for this Contract plus any other amounts properly available for obligation for this Contract. If such funding is not available in a timely manner, the School District shall have the right to terminate this Contract. In the event of termination or suspension pursuant to this Paragraph, the Environmental Consultant shall have the rights and obligations set forth in Paragraph 13.2, *Suspension for Convenience* and Paragraph 14.1, *Termination for Convenience*.

6.13 **Audits; Records and Payments.**

6.13.1 **Audits.** From time to time during the term of this Contract and for a period of six (6) years after the expiration or termination of this Contract (*see* 24 P.S. §5-518), the School District (including, without limitation, the Auditing Services Office), the Controller of the City, the Commonwealth of Pennsylvania (including, without limitation, its Auditor General and the Pennsylvania Department of Education), or a department, agency or instrumentality of the United States of America if the School District funds this Contract with federal funds, or any of their authorized representatives (each, for the purposes of this Paragraph, an “Auditor”) may audit any and all aspects of the Environmental Consultant’s performance under this Contract, including but not limited to its billings and applications for payment or invoices and payments received. If requested by an Auditor or the School District, the Environmental Consultant shall submit to the Auditor and the School District, for review or inspection, all vouchers and applications or invoices presented for payment pursuant to this Contract, all cancelled checks, Materials, invoices, vouchers, reports, work product, work papers, books, records and accounts (whether in electronic, paper, or other form or medium) upon which the vouchers or applications or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract.

6.13.2 **Inspection.** The Environmental Consultant acknowledges and agrees that any Auditor may inspect or review all of its Work and all of its sites, locations and facilities related to its performance under this Contract. Inspection and review of Work and Materials shall take place at the offices of the Environmental Consultant in the City, or in another location with the Auditor’s consent. The Environmental Consultant shall cooperate with all School District, City, Commonwealth of Pennsylvania and federal inspections and reviews conducted in accordance with the provisions of this Contract. The scope of such inspection and review of the Work and Materials, sites, locations and facilities, including, without limitation, programs, lies in the sole discretion of the Auditor. Such inspection or review may include, without limitation, meetings with persons receiving services under this Contract, review of staffing ratios and job descriptions, and meetings with any of the Environmental Consultant’s staff members who either directly or indirectly participate or participated in carrying out any of the Work, including preparing, delivering or installing any Materials.

6.13.3 **Availability of Records.** The Environmental Consultant shall make available, within the School District or in the City or at the Environmental Consultant’s offices during regular business hours, at reasonable times during the term of this Contract and for the period set forth above in this Paragraph 6.13, all records (whether in electronic, paper, or other form or medium) pertaining to this Contract for the purpose of inspection, audit or reproduction by any Auditor. The Environmental Consultant shall provide such records without unreasonable delay when requested by an Auditor.

6.13.4. **Retention of Records.** The Environmental Consultant shall retain all records, books of account and documentation pertaining to this Contract, including applications for payment, invoices, payments, or the documentation thereof under this Contract, for the greater of the period required by Applicable Law or six (6) years following expiration or termination of this Contract; however, if any litigation, claim or audit commences prior to expiration of said six (6) year period, then the Environmental Consultant shall retain the records until all litigation,

claims or audit findings have been completely terminated or resolved, without right of further appeal. The Environmental Consultant shall include this Paragraph 6.13 in all Subcontracts for Services required by this Contract.

6.13.5 **Definition of Materials.** For purposes of this Paragraph, Materials means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics and other data, computer tapes, computer software, and other tangible work product, materials or goods prepared, supplied or developed by the Environmental Consultant as part of or in connection with the Work, or for the Environmental Consultant by a Subconsultant in connection with the Work, and deliverable or delivered to the School District by the Environmental Consultant or its Subconsultants pursuant to this Contract.

Section 7. Contract Management.

7.1 **Contract Administrators.** The Environmental Consultant and the School District shall each designate a qualified Contract Administrator prior to the Environmental Consultant's commencement of the Services. The Contract Administrators shall be in charge of the work covered by this Contract and the principal points of contact with respect to administration of this Contract and the parties' overall relationship, and resolution of disputes arising hereunder. Either party may designate a successor Contract Administrator at any time by giving notice to the other party.

7.1.1 The Environmental Consultant's initial Contract Administrator shall be:

_____, _____

Telephone number: _____
Facsimile number: _____
Email address: _____

7.1.2 The School District's initial Contract Administrator shall be:

Francine Locke, Director of Environmental Services
The School District of Philadelphia
Office of Environmental Management and Services
440 North Broad Street, 3rd Floor Portal C
Philadelphia, PA 19130-4015
Telephone number: (215) 400-5213
Facsimile number: (215) 400-4751
Email address: flocke@philasd.org

Section 8. Employment Practices.

8.1 **Key Personnel.** Upon Contract award, the Environmental Consultant shall assign the Key Personnel of the Environmental Consultant for each environmental discipline as identified and submitted to the School District, for its review and approval, and as identified as line item costs in the personnel section of the Environmental Consultant's Fee Proposal attached hereto at Exhibit E. The Environmental Consultant shall not reassign or replace any Key Personnel listed above, without the School District's prior written consent, which shall not be unreasonably withheld. All Key Personnel must participate in the assigned Project(s) in their respective roles, and failure of any Key Personnel to do so may be grounds for termination of this Contract pursuant to Section 14, *Termination*. The School District reserves the right to direct the Environmental Consultant to remove any personnel from the Services provided under this Contract upon material reason therefore given in writing, and to review and approve the replacement of Key Personnel. If removal is for cause, any cost of such removal shall be borne by the Environmental Consultant.

8.2 **Subconsultants.** Subconsultants of the Environmental Consultant shall look only to the Environmental Consultant for payment, satisfaction, or legal redress in the event of any dispute arising out of this Contract, and hereby waive any claim or cause of action against the School District arising out of a Subcontract or other transaction with the Environmental Consultant. The School District shall have no obligation to pay nor to see to the payment of any monies to any Subconsultant of the Environmental Consultant, except as may otherwise be required by law. Nothing contained in Paragraph 6.3, *Invoices and Subconsultant Payment Confirmation*, shall give rise to any duty on the part of the School District to pay or to see to the payment of any monies to any Subconsultant of the Environmental Consultant. The School District of Philadelphia 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 Regulations, Act of May 15, 1998, P.L. 358, No. 57 (62 Pa.C.S.A. §3938(b)(2)), do not apply to the School District of Philadelphia and its contracts for construction, reconstruction, alteration, repair, improvement, or demolition of its buildings or improvements of any kind to its real properties. Neither the Environmental Consultant nor its Subconsultants can make, assert or file a claim, cause of action or lawsuit against the School District of Philadelphia 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 Regulations. The School District of Philadelphia 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 of Philadelphia and its contracts for work or improvements on its real properties. Neither the Environmental Consultant nor its Subconsultants can make, assert or file a claim, cause of action or lawsuit against the School District of Philadelphia for violation of the Contractor and Subcontractor Payment Act.

8.3 Equal Opportunity.

8.3.1 The School District is an Equal Opportunity Employer and demands no less of companies with which it does business. The School District will not do business with companies or persons who unlawfully discriminate on the basis of age, race, color, sex, sexual orientation, disability, creed, ancestry, national origin, or any other impermissible ground in their hiring, promotion, subcontracting, or procurement practices. By submitting any proposal to contract or entering into any contract with the School District, the Environmental Consultant represents and certifies that it is an Equal Opportunity Employer; conducts its business affairs without improper regard to age, race, color, sex, sexual orientation, disability, creed, ancestry, national origin, or other impermissible ground; and has not been debarred, suspended, or declared ineligible to contract by any public or private agency or entity because of its discriminatory practices. The certifications in Paragraph 8.3 herein are material representations of fact upon which reliance was placed when this transaction was entered into. If it is later discovered or determined that the Environmental Consultant knowingly rendered an erroneous certification, the School District may pursue available remedies, including termination of this contract, suspension or debarment.

8.3.2 All parties hereto agree that in the performance of this contract there shall be no discrimination against any employee or other person on account of age, race, color, sex, sexual orientation, creed, ancestry or national origin, disabled or Vietnam era veteran status. The School District, upon receipt of evidence of such discrimination by the Environmental Consultant or its agents, employees, representatives, or Subconsultants, shall have the right, at its sole discretion, to terminate this Contract. The Environmental Consultant agrees to include this Paragraph 8.3, with appropriate adjustments for the identity of the parties, in any Subcontracts that are entered into for Services to be performed under this Contract.

8.3.3 The Environmental Consultant shall not discriminate nor permit discrimination against any person because of race, color, religion, age, national origin, ancestry, creed, handicap, sexual orientation, union membership, disabled or Vietnam era veteran status, or limited English proficiency in the performance of this Contract, including, but not limited to, preparation, manufacture, fabrication, installation, erection and delivery of all supplies and equipment. In the event of receipt of such evidence of such discrimination by the Environmental Consultant or its agents, employees or representatives, the School District shall have the right to terminate this Contract. In the event of the continued refusal on the part of the Environmental Consultant to comply with this anti-discrimination provision, the Environmental Consultant may be removed from the list of approved bidders of the School District. The Environmental Consultant agrees to include this Paragraph 8.3, with appropriate adjustments for the identity of the parties, in all Subcontracts, which are entered into for work to be performed pursuant to this Contract.

8.3.4 The Environmental 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 Environmental Consultant represents and certifies that it is a minority-owned business enterprise (MBE) firm and a woman-owned business enterprise (WBE) firm.] The Environmental Consultant [further] represents and certifies that it will include a combined range of 15% to 20% participation with a minority-owned business enterprise(s)

(MBE) firm and a woman-owned business enterprise(s) (WBE) firm based on the total Contract award. The Environmental Consultant [further] represents and certifies that it will use the following MBE and WBE firms as Subcontractors under this Contract in the percentages listed as set forth in the Proposal, M/WBE Participation Plan: (1) _____ (___ BE) – ___%; (2) _____ (___ BE) – ___%; and (3) _____ (___ BE) – ___%. The Environmental Consultant [further] represents and certifies that it will use the MBE/WBE firms identified in this Paragraph for the scopes of work and in the dollars amounts, if applicable, as set forth in the Proposal, M/WBE Participation Plan. The Environmental Consultant’s Proposal, M/WBE Participation Plan, is attached as Exhibit F and incorporated by reference into this Contract. The Environmental 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 Environmental Consultant’s Proposal, M/WBE Participation Plan, may include suspension, cancellation of this Contract and/or debarment from future contracting opportunities with the School District.

8.3.5 The Environmental Consultant shall **not** replace or substitute the MBE/WBE firms identified in Paragraph 8.3.4 and the Environmental Consultant’s Proposal, M/WBE Participation Plan, without the prior written notice to and approval of the School District. The Environmental Consultant shall **not** increase or decrease the contract MBE/WBE percentages, or change the scopes of work, or increase or decrease the dollars amounts, if applicable, for the MBE/WBE firms identified in Paragraph 8.3.4 and the Environmental Consultant’s Proposal, M/WBE Participation Plan, without the prior written notice to and approval of the School District. The Environmental Consultant shall promptly submit a revised M/WBE Participation Plan, for School District approval, **before** the Environmental Consultant: (a) replaces or substitutes the MBE/WBE firms identified in Paragraph 8.3.4 and the Environmental Consultant’s Proposal, M/WBE Participation Plan; or (b) increases or decreases the contract MBE/WBE percentages for the MBE/WBE firms identified in Paragraph 8.3.4 and the Environmental Consultant’s Proposal, M/WBE Participation Plan; or (c) changes the scopes of work for the MBE/WBE firms identified in Paragraph 8.3.4 and the Environmental Consultant’s Proposal, M/WBE Participation Plan; or (d) increases or decreases the dollars amounts, if applicable, for the MBE/WBE firms identified in Paragraph 8.3.4 and the Environmental Consultant’s Proposal, M/WBE Participation Plan.

8.4 **Non-Discrimination.**

8.4.1 **Non-Discrimination in Hiring.** The Environmental Consultant agrees that it will comply with provisions of the Philadelphia Fair Practices Ordinance administered by the Human Relations Commission of the City of Philadelphia, the Pennsylvania Human Relations Act, No. 222, October 27, 1955, as amended, 43 P.S. Section 951 et seq.; Title 7 of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 et seq., and all pertinent regulations adopted pursuant to the foregoing in providing equal employment opportunities in connection with all work performed by it pursuant to this Contract. The Environmental Consultant, therefore, agrees:

(1) That it will not discriminate nor permit discrimination by its agents, servants or employees against any employee or applicant for employment with regard to hiring, tenure or employment, promotion, or any other terms, conditions or privileges of employment because of race, color, religion, age, national origin, sex, ancestry, handicap or disability and will move aggressively as is hereinafter set forth to prevent same.

(i) In all publications or advertisements for employees to work at the job site covered by this Contract placed by or on behalf of the Environmental Consultant, the Environmental Consultant will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, national origin, sex, ancestry, handicap or disability.

(ii) The Environmental Consultant will notify each labor union or workers' representative from whom it seeks workers of the Environmental Consultant's commitment as set forth in its proposal, and request that each union or workers' representative include minority group members and women among its referrals.

(iii) The Environmental Consultant will hire minority and female workers for the skilled and unskilled jobs required to perform this Contract in proportion to their availability in the relevant labor pools in the Philadelphia Metropolitan Statistical Area, or to their availability in its qualified applicant pool, whichever is greater.

(iv) The Environmental Consultant will post in conspicuous places available to its employees and to applicants for employment, a notice of fair practices to be provided by the Philadelphia Human Relations Commission.

(v) The Environmental Consultant will maintain a work environment free of harassment, intimidation and coercion, and will ensure that all on-site supervisory personnel are aware of and carry out the Environmental Consultant's obligation to maintain such a working environment.

(2) That it will identify on each certified payroll form submitted to the School District those of its employees who are minority group members and those who are female. As used here, "minority" means African American, Hispanic, Asian, or Native American. The School District shall at all times have access to work site and to the Environmental Consultant's employment records to assure compliance with this subsection.

(3) That it will maintain on forms to be supplied by the School District, the name, race, sex, national origin, skill or craft, address, telephone number, and source of referral of each applicant for employment, which record shall show which applicants were hired.

(4) That in the event apprentices are hired in any skilled craft area, the Environmental Consultant will endeavor to hire equal numbers of culturally diverse male and female trainees in each skill area.

8.4.2 Non-Discrimination in Contracting. It is the policy of the School District that business concerns owned and controlled by minority group members and women shall have full and fair opportunity to participate in performance of contracts let by the School District.

Participation of minority-owned and women-owned business enterprises must be meaningful and substantial in all phases of this Contract. The Environmental Consultant represents and agrees that it will use the minority-owned and women-owned business enterprises for the services and in the percentages listed in Paragraph 8.3.4 herein. The representations and agreements in Paragraph 8.4 herein are material representations of fact upon which reliance was placed when this transaction was entered into. If it is later discovered or determined that the Environmental Consultant has not made a good faith effort to comply with the listed M/WBE percentages, within the School District's sole judgment, the School District may pursue available remedies, including suspension or debarment of the Environmental Consultant from future School District work as non-responsible.

8.4.3 Liability of Subcontractors. Any Subconsultant of the Environmental Consultant shall have the same responsibilities and obligations as the Environmental Consultant to comply with the provisions of this Paragraph 8.4 and shall be subject to the same penalties for failure to comply as set forth in Paragraph 8.4.4.

8.4.4 Penalties for Failure to Comply.

(1) It is hereby agreed that failure to comply and demonstrate a good faith effort to comply with the foregoing requirements shall constitute a substantial breach of this Contract.

(2) In the event that the School District determines, after investigation, that the Environmental Consultant or any Subconsultant has failed to comply with any provision of this Paragraph 8.4 and to demonstrate a good faith effort to comply, the School District may in its sole discretion invoke the termination provisions of this Contract or move to disqualify, suspend, or debar the Environmental Consultant or any Subconsultant pursuant to Board Policy No. 621.

(3) The Environmental Consultant or any Subconsultant, as the case may be, shall be given written notice of any determination of non-compliance and opportunity to achieve compliance within a time period to be specified in the notice.

(4) In the event the School District, after a hearing, determines to terminate the Contract, entered into under this Contract, for non-compliance with and failure to demonstrate a good faith effort to comply with the requirements of this Paragraph 8.4, all obligation on the School District's part to perform this Contract shall cease except for the obligation to pay the Environmental Consultant the sums due.

Section 9. Indemnification.

9.1 Indemnification.

(a) The Environmental Consultant 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 or resulting from the Environmental Consultant'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 Environmental Consultant, its officers, agents, employees, servants, or Subconsultants 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 Subconsultant of the Environmental Consultant 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 Environmental Consultant is or may become responsible. The Environmental Consultant agrees that in the event that any employee of the Environmental Consultant 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 Environmental Consultant under this Contract that the Environmental Consultant 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 Environmental Consultant 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 Environmental Consultant in the event that the School District is sued by an employee of the Environmental Consultant. 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).

(b) This indemnity provision is intended, *inter alia*, to protect the School District, its commission members, board directors, officers, agents, representatives and employees from all claims that are asserted by employees, agents, or workers of any contractors or consultants who are injured on or by School District real property, on, by or as a result of School District personal property, or who assert an employment claim of any kind (including claims relating to the termination of employment) regardless of when the claim is made, from the commencement to the completion of this Contract, whether the death, injury, damage or loss to persons and/or property, or the economic loss, damage or expense, or employment discrimination, is due to School District negligence, in whole or in part, and is not limited to death, injury, damage or loss to persons or property, or economic loss, damage or expense, or employment discrimination, which occur in actual performance of this Contract, nor is this indemnity provision limited by the Pennsylvania Workers' Compensation Act. This indemnity provision shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this Contract, and is independent of whether or not the Environmental Consultant has insurance.

(c) In the event the School District receives notice of a claim based upon the Environmental Consultant's services, omission or breach, the School District will promptly notify the Environmental Consultant in writing of such claim and will require and permit the Environmental Consultant to assume the defense of the School District, its commission members, board directors, officers, agents, and employees, whenever and wherever under the circumstances indicated in Paragraph 9.1 herein, claims, suits or actions are brought against the School District, its

commission members, board directors, officers, agents, and employees. The Environmental Consultant shall require all insurance policies in any way related to the work and secured and maintained by the Environmental Consultant and all tiers of its Subconsultants to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against the School District.

(d) This Paragraph 9.1 (*Indemnification*) shall apply, particularly, but not exclusively, to the claims of the Environmental Consultant and its officers, agents, representatives and employees against the School District. Any violation of any of the provisions of this Paragraph 9.1 (*Indemnification*) by the Environmental Consultant shall be deemed a material breach of this Contract. The Environmental Consultant and its officers, agents, representatives and employees, shall have no claim against the School District, its officers, agents, representatives and employees for the acts, failures to act or negligence of the School District, directly or indirectly, or its officers and employees; and should this exculpatory clause be declared invalid by law, such invalidity shall in no manner affect or invalidate any or all other foregoing provisions in this Paragraph 9.1 (*Indemnification*).

Section 10. Insurance.

10.1 **Insurance Requirements.** The Environmental Consultant 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 Environmental Consultant 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 Environmental Consultant.

(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).
- (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: \$2,000,000 with a deductible not to exceed \$100,000.
- (2) Coverage: Environmental contractors 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 \$10,000,000.00 combined single limit and at least \$10,000,000.00 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: \$2,000,000 with a deductible not to exceed \$100,000.
- (2) Coverage: Pollution Liability.
 - (i) Remediation: 5 Years Completed Operations.
 - (ii) Pay on behalf of in lieu of indemnity.
 - (iii) Occurrence form – Gradual and Sudden/Accidental Pollution. (At its sole discretion, the School District may accept a claims made policy with a “tail” of 3 years after the date of final payment by the School District. If the School District decides to accept such a claims made policy, this decision will be indicated in the RFP/RFQ, Addendum or the RFP/RFQ, Questions and Answers.)
 - (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 Environmental Consultant shall maintain Property Coverage for their owned, leased, rented or borrowed equipment, tools, trailers, etc.

(i) **Property Coverage:** The Environmental Consultant 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.

10.2 **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 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.: 215-400-4751)

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 Risk Management, benefit the School District. Under no circumstances shall the Environmental Consultant 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 Environmental Consultant 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 Environmental Consultant.

10.3 **Notice of Claim or Lawsuit.** The Environmental Consultant shall advise the School District in writing, within ten (10) calendar days upon notification of a claim or lawsuit based upon the Environmental Consultant's services, omission or breach, that it will abide fully by Paragraph 9.1 (*Indemnification*) and Section 10 (*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 Paragraph 9.1 (*Indemnification*) and Section 10 (*Insurance*) of this Contract. The Environmental Consultant shall not decline to provide the School District with full protection and coverage under Paragraph 9.1 (*Indemnification*) and Section 10 (*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 Environmental Consultant agrees that any violation of this Paragraph 10.3 of Section 10 (*Insurance*) shall be deemed a material breach of this Contract.

10.4 **Self-Insurance.** The Environmental Consultant may not self-insure any of the coverages required under this Contract without the prior written approval of the School District Director of Risk Management. In the event that the Environmental Consultant desires to self-insure any of the coverages listed above, it shall submit to the School District's Director of Risk Management, prior to the commencement of Services hereunder, a certified copy of the Environmental Consultant'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 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 Environmental Consultant'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 Risk Management. If at the time of commencement of the Initial Term of this Contract, the Environmental Consultant self-insures its professional liability or workers' compensation and employers' liability coverage, the Environmental Consultant may, in lieu of the foregoing, furnish to the School District Director of 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 Environmental Consultant to the School District, or to limit the Environmental Consultant's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by the Environmental Consultant hereunder.

Section 11. Confidentiality.

11.1 **Confidential and Proprietary Information.** The Environmental Consultant acknowledges that it will be exposed to confidential and proprietary information of the School District and that such confidential and proprietary information will be contained in papers, records, documents and materials belonging to the School District or stored on equipment owned and operated by the School District. The Environmental Consultant shall keep in strictest confidence all information relating to this Contract and all information that may be acquired in connection with or as a result of this Contract, that is not generally known to others, or which the School District designates as confidential or proprietary. The School District hereby designates the School District Data listed in Paragraph 11.3 as "Confidential and Proprietary Information". During the term of this Contract and at any time thereafter, without the prior written consent of the School District, the Environmental Consultant shall not publish, disclose or use to its advantage, profit or gain any information which has been designated by the School District as proprietary or confidential, or which from the surrounding circumstances in good conscience ought to be treated by the Environmental Consultant as proprietary or confidential, or any other information subject to a third party's proprietary right, such as a copyrighted or trademarked work. The term "Confidential or Proprietary Information" is not meant to include any information that is in the public domain. Notwithstanding any other terms or conditions to the contrary, the Environmental Consultant shall return to the School District all of the Confidential and Proprietary Information designated by the School District in Paragraphs 11.1 and 11.3 at the termination or expiration of this Contract.

11.2 **Non-Disclosure.** The Environmental Consultant and its employees, agents, Subconsultants, and any person or entity acting on its behalf (i) will maintain in strict confidentiality all of the "School District Data," as defined and set forth in Paragraph 11.3; (ii) will not, without the School District's written permission, divulge, disclose, communicate, or distribute any of the School District Data to any person or entity except as may be strictly necessary to perform this Contract; (iii) will not, without the School District's written permission, in any way use any of the School District Data for their businesses or other advantage or gain (except as may be necessary to perform this Contract), including, without limitation, any use of the School District

Data in any presentation, demonstration, or proposal to perform services, to the School District or to others, that may be conducted or created as part of their business activities or otherwise; (iv) will use the School District Data solely and exclusively in accordance with the terms of this Contract in order to carry out its obligations and exercise its rights under this Contract; (v) will afford the School District Data at least the same level of protection against unauthorized disclosure or use as the Environmental Consultant uses to protect its own trade secrets, proprietary information, and other confidential information (but will in no event exercise less than reasonable care and protection); and (vi) will, immediately upon termination or expiration of this Contract, return all School District Data to the School District, destroy any and all copies of any School District Data that are in their possession, whether on paper or in electronic or other form, and if requested by the School District in writing, will certify in writing that there has been full compliance with this Paragraph 11.2.

11.3 **School District Data.** Except as provided otherwise in Paragraph 11.4, the School District Data shall include any and all of the following, whether in electronic, microfilm, microfiche, video, paper, or other form, and any copies or reproductions thereof:

(a) financial data, records, and information related to the assigned Project(s);
and

(b) any Data provided by the School District to the Environmental Consultant in connection with the Services provided by the Environmental Consultant; and

(c) any and all other records, documents, computer software (whether owned by the School District or licensed or otherwise furnished to the School District by third parties), and data furnished by the School District to the Environmental Consultant in relation to the Services required under this Contract; and

(d) all records, documents, data, information, programs, and items of Services created by the Environmental Consultant for the School District as part of the Services required under this Contract.

11.4 **Exclusions.** School District Data shall not include any information or data which:

(a) was known to the Environmental Consultant prior to the commencement of its performance of this Contract, free of any obligation to keep it confidential, or is proprietary to the Environmental Consultant; or

(b) was generally known to the public at the time of receipt by the Environmental Consultant, or becomes generally known to the public through no act or omission of the School District; or

(c) was independently developed by the Environmental Consultant without knowledge or use of any Data of the School District; or

(d) is required to be disclosed by law or judicial process.

11.5 **Remedy for Breach.** In the event of any actual or threatened breach of any of the provisions of this Section 11 by the Environmental Consultant, and in addition to any other remedies that may be available to the School District in law or equity, the School District shall be entitled to a restraining order, preliminary injunction, permanent injunction, or other appropriate relief to specifically enforce the terms of this Section 11. The parties agree that a breach of the terms of this Section 11 by the Environmental Consultant would cause the School District injury not compensable in monetary damages alone, and that the remedies provided herein are appropriate and reasonable.

Section 12. Disputes.

12.1 **Escalation.** 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 dispute 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	Environmental Consultant	Time After Dispute Notice
Director, Environmental Services or Environmental Manager	Project Manager	15 days
Director or Acting Director, Capital Programs, or Chief Operating Officer	Principal in Charge	15 days

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

Section 13. Project Stoppage, Suspension or Abandonment

13.1 **Stoppage or Abandonment.** The School District may order the Environmental Consultant, in writing, to stop or abandon all or any part of its Services for the assigned Project(s), for the convenience of the School District, or for work stoppages beyond the control of the School District or the Environmental Consultant. Any increased costs incurred as a result of the stoppage or abandonment of the assigned Project(s) shall be an equitable amount determined by the School District and the Environmental Consultant in view of all the facts and circumstances. If, however, the assigned Project(s) is(are) abandoned, the School District shall pay the Environmental Consultant for all Services performed and Reimbursable Expenses incurred to the date of abandonment in accordance with Section 14.1, *Termination for Convenience*, of this Contract.

13.2 **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 Services, 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 thirty (30) days' prior written notice to the Environmental Consultant (except that in the event of a public emergency, as determined by the School District, no such period of notice shall be required.)

13.2.1 If a suspension of the Services pursuant to this Paragraph 13.2 is for greater than thirty (30) days, the Environmental Consultant shall have the right to submit a claim to the School District for the payment of costs for all Services performed and Reimbursable Expenses incurred in accordance with the provisions of this Contract prior to the effective date of the suspension.

13.2.2 The Environmental Consultant 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 Paragraph 13.2.

13.3.3 The School District shall have the right, during the period of any suspension pursuant to this Paragraph 13.2, to terminate this Contract as provided in this Section 14, in Section 6, and elsewhere in this Contract.

Section 14. Termination.

14.1 Termination for Convenience.

14.1.1 Termination for Convenience. The School District shall have the right to terminate this Contract, in whole or in part, for the convenience of the School District, at any time, upon thirty (30) calendar days' prior written notice to the Environmental Consultant. Such termination for convenience shall be, at the School District's sole discretion, and without penalty, cost, or liability to the School District.

14.1.2 Effect of Termination for Convenience or Similar Grounds.

(a) The Environmental Consultant shall be entitled to payment from the School District for any Services satisfactorily performed and Reimbursable Expenses incurred in accordance with the provisions of this Contract prior to the effective date of termination.

(b) Whether the termination occurs in the Initial Term or an Additional Term, the Environmental Consultant shall continue to perform this Contract in accordance with its terms through the effective date of the termination, and shall make diligent efforts to mitigate all costs and losses associated with the termination.

(c) The School District shall incur no liability beyond such stated amount for any Services that are terminated under Paragraph 14.1, *Termination for Convenience*, Paragraph 6.11, *Unavailability of Funds*, or Paragraph 6.12, *Crossing Fiscal Years*. Without limiting the generality of the foregoing, in no event shall the Environmental Consultant be entitled to receive, or to submit any claim for, any of the following costs directly or indirectly caused by

the termination: (i) field or home office overhead; or (ii) costs caused by or related to loss of productivity or loss of profit related to the Services and this Contract, or to any other Contract or services that the Environmental Consultant performed or could have performed but was prevented from performing because of the termination or its commitment to the Services.

(d) In the event the School District partially terminates this Contract pursuant to this Paragraph 14.1.1, the Environmental Consultant shall continue to perform this Contract in accordance with its terms with respect to all Services not terminated. The School District shall pay the Environmental Consultant in accordance with this Contract for Services that are not terminated.

14.2 **Termination for Default.**

14.2.1 **Event of Default.** Each of the following constitutes an Event of Default by the Environmental Consultant under this Contract.

(a) The Environmental Consultant's failure to comply with any material provision, term, or condition of this Contract;

(b) the appointment of a receiver, trustee or custodian to take possession of all or substantially all the assets of the Environmental Consultant for the benefit of creditors, or any action taken or suffered by the Environmental Consultant under any federal or state insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, including the Environmental Consultant's filing for bankruptcy, and the filing of an involuntary petition against the Environmental Consultant under the federal bankruptcy code or any similar state or federal law which remains undismissed for a period of forty-five (45) days;

(c) material misrepresentation or material falseness or inaccuracy of any representation or commitment of the Environmental Consultant contained in this Contract, or in any other document submitted to the School District by the Environmental Consultant in relation to the Services, the RFP/RFQ, or the Proposal, or otherwise by the Environmental Consultant directly or indirectly to the School District in connection with the School District's decision to execute, deliver and perform this Contract;

(d) failure of the Environmental Consultant to provide, within five (5) business days, assurance reasonably acceptable to the School District that it can perform the Work in conformity with the terms of the Contract if (1) the School District has a reasonable basis to believe at any time during the term of the Contract that the Environmental Consultant will not be able to perform the Work, and (2) the School District demands in writing assurance of the Environmental Consultant's performance;

(e) misappropriation by the Environmental Consultant of any funds provided under this Contract or failure by the Environmental Consultant to notify the School District upon discovery of any misappropriation;

(f) indictment of or other issuance of formal criminal charges against the Environmental Consultant or any of its directors, employees or agents or any of the directors,

employees or agents of a Subcontractor or any criminal offense or any other violation of Applicable Law directly or indirectly relating to this Contract or the Work or Services required under this Contract, or which adversely affects the Environmental Consultant's performance of this Contract in accordance with its terms, whether or not a court of law or other tribunal ultimately accepts a verdict or plea of guilty or no contest regarding the charged offense;

(g) disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the capital project(s) or the Services;

(h) debarment or suspension of the Environmental Consultant or any director, agent, or employee or any person controlling, under common control with, or controlled by, the Environmental Consultant under a federal, state or local law, rule or regulation;

(i) failure by the Environmental Consultant to comply with any term, covenant or condition set forth in Paragraph 16.18, *Tax Compliance*, or the breach of any of the Environmental Consultant's representations and warranties set forth in Paragraph 3.3, *Environmental Consultant's Representations, Warranties and Commitments*.

14.2.2 **Notice and Cure.** If the Environmental Consultant commits or permits an Event of Default, the School District shall notify the Environmental Consultant in writing of its determination that an Event of Default has occurred, and shall specify in reasonable detail the nature of the Default. Except for the breaches set forth in subparagraphs (b) through (i) of this Paragraph 14.2, the Environmental Consultant shall have ten (10) business days from receipt of that notice to correct the Event of Default. If the Event of Default is not cured within that time period, the School District may terminate this Contract by providing the Environmental Consultant with written notice of Termination for Default. The School District may extend such time period, at its sole discretion, if there is evidence of the Environmental Consultant's good faith effort to cure the Event of Default within such time period. No notice from the School District or period of cure shall be required before invoking the remedies described in Paragraph 14.4, *Additional Remedies of the School District*, of this Contract if: (1) the Environmental Consultant has temporarily or permanently ceased performing the Work; (2) an emergency has occurred relating to the Work, and that emergency requires immediate exercise of the School District's rights or remedies, as determined by the School District in its sole discretion; (3) the School District has previously notified the Environmental Consultant more than once in the preceding twelve (12) month period of any Event of Default under this Contract; (4) an Event of Default occurs as described in Paragraphs 14.2.1(e), (f), or (h); or (5) the Environmental Consultant breaches any of its obligations under Paragraph 16.13, *Background Checks (Criminal, Child Abuse and FBI)*, or Paragraph 8.4, *Non-Discrimination*. Nothing set forth in this Paragraph shall limit the School District's rights under Paragraph 14.5, *Additional Remedies of the School District*.

14.3 **Termination Duties.** Upon receipt of a Termination Notice from the School District, the Environmental Consultant shall take immediate action toward the orderly discontinuation of Services under this Contract. The Environmental Consultant shall exercise due care and caution to protect and secure completed Work. Upon expiration or termination of this Contract, the Environmental Consultant shall be responsible for taking all actions necessary to accomplish an orderly discontinuation of performance of Services, and for collecting, assembling, and transmitting to the School District, at the Environmental Consultant's sole expense, all

surveys, metes and bounds descriptions, materials, reports, data, and other documentation which were obtained, prepared or developed as part of the Services required under this Contract. Surveys, metes and bounds descriptions, materials, reports, data and documentation shall be clearly labeled and indexed, to the satisfaction of the School District, and delivered to the School District by the Environmental Consultant, within thirty (30) calendar days after receipt of a Termination Notice from the School District, or in such shorter period as the School District may specify in its Termination Notice.

14.4 Consent to Use of Another Environmental Consultant upon Termination for Default. In the event of termination under this Contract due to the default of the Environmental Consultant, the Environmental Consultant consents to the School District's selection of another Environmental Consultant of the School District's choice to assist the School District in any way in completing the Work under this Contract. The Environmental Consultant further agrees to cooperate and provide any information requested by the School District in connection with the completion of the Work. The Environmental Consultant authorizes the making of any reasonable changes to the surveys, reports or other documentation related to the Work by the School District and such other Environmental Consultant as the School District may desire. In the event that another Environmental Consultant is selected or changes are made to the Environmental Consultant's surveys, reports or other documentation of the assigned Project(s), the School District agrees to indemnify and hold harmless the Environmental Consultant and its officers and employees from any liability arising from use and changes to the Environmental Consultant's surveys, reports and other documents, including costs of litigation, reasonable attorneys' fees and time spent by the Environmental Consultant and its Subconsultants attending depositions and court proceedings.

14.5 Additional Remedies of the School District. In the event the Environmental Consultant commits or permits an event of default, the School District may, in its sole discretion, exercise one or more of the following remedies in addition to or in lieu of the termination remedy provided in Paragraph 14.1:

(a) terminate this Contract in part only, in which case the Environmental Consultant shall be obligated to perform this Contract to the extent not terminated; or

(b) perform (or cause a third party to perform) the Services and this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the School District. The Environmental Consultant shall be liable to the School District for all sums paid by the School District and all expenses incurred by the School District (or a third party) pursuant to this Paragraph 14.5, together with interest at the prime rate of interest as published from time to time by the Wall Street Journal, plus five percentage points (5.0%), from the date of the School District's incurring of such costs. The School District shall not in any event be liable for inconvenience, expense, loss of profits, or other damage incurred by the Environmental Consultant by reason of such performance or paying such costs or expenses, and the obligations of the Environmental Consultant under this Contract shall not be altered or affected in any manner by the School District's exercise of its rights under this Section 14; or

(c) withhold, or offset against, any funds payable to or for the benefit of the Environmental Consultant; or

(d) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of the Environmental Consultant; or

(e) exercise any other right or remedy it has or may have at law, in equity, or under this Contract; and,

(f) in addition to, and not in lieu of, the foregoing remedies, the School District shall have the right to stop the Services or any portion thereof in the event the Environmental Consultant fails to remedy any defects in any of the Services, or commits or permits any other event of default, following written notice by the School District, or fails to carry out any portion of the Services in accordance with this Contract, by issuing its written Stop Work Order, which shall be signed by the Director of Environmental Services. Any Stop Work Order shall state in reasonable detail the cause(s) for its issuance. Upon receiving a stop work order, the Environmental Consultant shall immediately cease working on that portion of the Services specified in the Stop Work Order until the School District notifies the Environmental Consultant in writing that the cause for the Stop Work Order has been eliminated, and directs the Environmental Consultant in writing to resume the Services. The Environmental Consultant shall resume the Services immediately upon receipt of such written notice from the School District.

14.5.1 **Specific Performance.** The Environmental Consultant's Work represents unique services not otherwise readily available to the School District. Accordingly, the Environmental Consultant acknowledges that, in addition to all other remedies, the School District shall have the right to enforce the terms of this Contract by a decree of specific performance or an injunction, or both, restraining a violation, or attempted or threatened violation, of any term, covenant or condition set forth in this Contract.

14.6 **Concurrent Pursuit of Remedies; No Waiver or Duty to Exercise.** The School District may exercise any or all of the remedies set forth in this Section 14, each of which may be pursued separately or in connection with such other remedies as the School District, in its sole discretion, shall determine. No extension or indulgence granted to the Environmental Consultant shall operate as a waiver of any of the School District's rights in connection with this Contract. The rights and remedies of the School District as described in this Section 14 and elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the School District under this Contract, at law, or in equity. Nothing contained in this Section 14 shall create a duty on the part of the School District to exercise any rights granted to it hereby for the benefit of the School District, or for the benefit of the Environmental Consultant, or any person or entity other than the School District.

Section 15. Certification Regarding Debarment, Suspension and Ineligibility.

15.1 **Certification.** By signing this Contract, in addition to binding itself to the terms and conditions of this Contract, the Environmental Consultant hereby certifies for itself, its principals and including, without limitation, its Subcontractors, if any, that none of them, nor any other person controlling, controlled by, or under common control with, the Environmental Consultant, are presently debarred, suspended, proposed for debarment, declared ineligible for

contracts, bids, requests for proposals or contract awards, or voluntarily excluded from performing the services under this Contract by any Federal government or Commonwealth of Pennsylvania or City department or agency or any school district.

15.2 **Explanation.** In the event the Environmental Consultant is unable to certify to any of the statements in the above certification, the Environmental Consultant shall provide **an immediate written explanation** to the School District administrator named in Paragraph 7.1 of this Contract.

15.3 **Notice.** The Environmental Consultant shall provide **immediate written notice** to the School District administrator named in Paragraph 7.1 of this Contract if at any time, during the term of this Contract, the Environmental Consultant learns that the above certification was erroneous when the Environmental Consultant signed this Contractor subsequently became erroneous by reason of changed circumstances.

15.4 **Remedies.** If the Environmental Consultant is unable to certify to any statements in the above certification, or has falsely certified, then in that event the School District, at its sole discretion, may immediately terminate this Contract without any liability or obligation of the School District to the Environmental Consultant, and the Environmental Consultant shall reimburse the School District for any and all reasonable costs incurred by the School District as a result of any investigation by the Federal government or the Commonwealth of Pennsylvania concerning the Environmental Consultant's compliance with the terms and conditions of this Contract that results in the debarment or suspension of the Environmental Consultant.

15.5 **Compensation.** If the compensation paid to the Environmental Consultant is derived from Federal government or Commonwealth of Pennsylvania grant funds, the Environmental Consultant must bill the School District for any outstanding compensation owed to the Environmental Consultant within thirty (30) days after the ending date of this Contract, as set forth in Section 2 (*Term of Contract*). In the event the Environmental Consultant does not bill the School District for the balance of any compensation within said 30-day time period, the School District, in its sole discretion, reserves the right to withhold payment of the balance of the compensation to the Environmental Consultant because of the unavailability of federal government or Commonwealth of Pennsylvania funds, in which event the School District shall not be liable to the Environmental Consultant for the balance of the compensation.

15.6 **Survival.** This Section 15 shall survive termination of this Contract.

Section 16. Miscellaneous Provisions.

16.1 **Notices.** Any notice or communication required or permitted to be given under this Contract shall be given in writing, and shall be personally delivered by hand with receipt obtained, by a national overnight express carrier (e.g., Federal Express, Express Mail), by facsimile (with copy by registered or certified United States mail, return receipt requested, postage prepaid), or by registered or certified United States mail, return receipt requested, postage prepaid, addressed as follows:

IF TO SCHOOL DISTRICT:

Francine Locke, Director of Environmental Services
The School District of Philadelphia
Office of Environmental Management and Services
440 North Broad Street, 3rd Floor Portal C
Philadelphia, PA 19130
Telephone number: (215) 400-5213
Facsimile number: (215) 400-4751

IF TO ENVIRONMENTAL CONSULTANT:

_____, _____

Telephone number: _____
Facsimile number: _____
Email address: _____

If mailed, such notice or communication shall be deemed to have been given on actual receipt by the intended recipient.

16.2 **Governing Law.** This Contract and all disputes arising under this Contract shall be governed, construed, and decided in accordance with the substantive laws of the Commonwealth of Pennsylvania.

16.3 **Forum; Consent to Jurisdiction.** The parties agree that when any dispute between the parties cannot be amicably resolved and resort is made to legal action, any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in a federal or state court of competent jurisdiction in and only in Philadelphia County, Pennsylvania. It is the express intent of the parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in this forum. The parties further agree not to raise any objection, as to forum or venue, to any lawsuit, action, claim, or legal proceeding which is brought in this forum, and the parties expressly consent to the jurisdiction and venue of this forum.

16.4 **Contract Documents; Order of Precedence.** The Contract Documents shall consist of the following: this Contract, Exhibits A, B, D, E, and F to this Contract, and the Proposal (as modified hereby). In the event of conflict or variance between the body of this Contract (Sections 1-16) and any other document comprising the Contract Documents, this Contract shall govern. Conflicts and variances among the documents comprising the Contract Documents shall be resolved by giving precedence in the following order: (i) this Contract, (ii) Exhibits A, B, D, E, and F, and (iii) the Proposal.

16.5 **School District Liability, Responsibility or Risk of Loss.** Notwithstanding any

other provisions of this Contract or any Addenda or Exhibits to the contrary, the School District, its officers, employees and agents and the members of the School Reform Commission and the Board of Education retains their statutory governmental, official and any other immunity as provided pursuant to the Applicable Law, including 42 Pa C.S.A. §§8501 and 8541 et seq., and do not waive the defenses of governmental and official immunity derived from such laws. The Environmental Consultant acknowledges that the School District:

- (a) Is a local agency, as defined in 42 Pa. C.S.A. §8501, §8541, and,
- (b) Does not waive, for itself or for its officers, employees, or agents, or for the members of the School Reform Commission and Board of Education, the defenses of statutory governmental or official immunity or any other defenses or immunities available to it or any of them.

The School District does not waive for itself or for its officers, employees, agents, or for the members of the School Reform Commission and Board of Education, any other defenses or immunities available to it or any of them.

16.6 **Compliance with Laws and Regulations.** All services performed and documents prepared by the Environmental Consultant shall strictly conform to all federal, state, and local laws, statutes, codes, and ordinances and the applicable rules, regulations, policies, methods and procedures of the School District and all governmental bodies, boards, bureaus, offices, commissions, and other agencies.

16.7 **Publicity.** Neither the School District nor the Environmental Consultant shall publicize this Contract or the Services, or attribute any comments or views about this Contract or the Services 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 Paragraph 16.7 shall be construed to prohibit either party from making any disclosure relating to this Contract or Services 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 Environmental Consultant, the Environmental Consultant shall refer all press and public inquiries regarding the assigned Project(s) to the School District's designated representative during the term of this Contract. At any time thereafter, the Environmental Consultant may respond to press and public inquiries regarding the concept and survey, metes and bounds descriptions or other documents under this Contract following notice to the School District's designated representative. During the term of this Contract, the Environmental Consultant 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 assigned Project(s).

16.8 **General Publication Rights.** The Environmental Consultant agrees with regard to publication of reports, studies, or other works developed in the course of this Contract as a result thereof, that the publication will not contain information supplied to the Environmental Consultant

by the School District which is confidential, or which identifies students, employees, or officers of the School District by name without first obtaining their written consent. The School District shall be allowed to review and suggest revisions to any proposed publication in which it is named for thirty (30) calendar days prior to submission for publication. Title to and the right to determine the disposition of any copyrights and copyrightable materials first produced by the Environmental Consultant as a result of performance of this Contract shall remain with the Environmental Consultant.

16.9 **Conflict of Interest.**

16.9.1 **Disclosure of Conflict of Interest.** The Environmental Consultant represents, warrants and covenants that it has no public or private interest which does or may conflict in any manner with the performance of the Work and that neither it, nor any of its directors, officers, members, partners, employees or Subconsultants, has or shall during the Term acquire, directly or indirectly, any such interest. The Environmental Consultant shall promptly and fully disclose to the School District's Contract Administrator all interests which may constitute such a conflict.

16.9.2 **Improper Gift; Improper Relationship.** The Environmental Consultant represents, warrants and covenants that it has not directly or indirectly offered or given and shall not directly or indirectly offer or give any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any School District employee who participated in the decision to authorize or enter into this Contract. The Environmental Consultant warrants that, to its knowledge, neither a School District employee or officer who participated in the decision to enter into this Contract, nor any member of the employee's immediate family, receives more than \$1,000 per year from the Environmental Consultant, has a direct or indirect investment worth \$1,000 or more in the Environmental Consultant or is a director, officer, partner, trustee or employee of the Environmental Consultant.

16.10 **School District Officers and Employees Not to Benefit.** The Environmental Consultant shall not make any payment or give anything of more than nominal value to any School District official or employee except in accordance with Applicable Law and School District policy. The Environmental Consultant shall comply with the School District Vendor Code of Ethics, and also, to the extent applicable, with the School District's Code of Ethics for School District officers and employees. The Environmental Consultant shall disclose to the School District, with each invoice submitted, the name(s) of each School District official(s) or employee(s) who receive payment from the Environmental Consultant, the amount such official or employee receives and the services rendered by the official or employee in consideration of the payment. Any fees or compensation paid by the Environmental Consultant to the School District officials or employees in violation of School District policy and Applicable Law shall be recoverable from the Environmental Consultant as damages.

16.11 **Non-Solicitation.** Neither party shall solicit the employment of any employee of the other party who has been assigned responsibilities under this Contract for the period of twelve (12) months following termination of responsibilities of each such employee. The School District agrees that it will not, directly or indirectly, for any reason, either during the term of this Contract or for a period of twelve (12) months after the termination of this Contract, without regard to the

reason for termination, engage, utilize, or employ any employee or subconsultant of the Environmental Consultant.

16.12 **Assignment of Environmental Consultant's Employees.** The Environmental Consultant agrees not to assign any person dismissed from School District employment to perform services under this Contract. The Environmental Consultant further agrees to reassign immediately any person the School District finds unacceptable or incapable of performing contractual requirements.

16.13 **Background Checks (Criminal, Child Abuse and FBI).**

16.13.1 In accordance with 24 P.S. §1-111, as amended, and 23 Pa. C.S.A. §§6303, 6344 and 6354-6358, as amended, before starting any Services under this Contract, the Environmental Consultant shall submit to the School District, for inspection and copying, the originals of a current (*i.e.*, processed by the Commonwealth of Pennsylvania within one (1) year prior to the Environmental Consultant's starting Services) criminal history record information report and child abuse history official clearance statement for the Environmental Consultant, if the Environmental Consultant is an individual, and for each of the Environmental Consultant's and any of its Subconsultant's employees, officers, agents, servants, or Subconsultants who will have direct contact with children while performing any of the Services under this Contract. In accordance with 24 P.S. §1-111, as amended, before starting any Services under this Contract, the Environmental Consultant shall also submit to the School District, for inspection and copying, the original of a current report of the Federal Bureau of Investigation federal criminal history record information for the Environmental Consultant, if the Environmental Consultant is an individual, and for each of the Environmental Consultant's and any of its Subconsultant's employees, officers, agents, servants, or Subconsultants who will have direct contact with children while performing any of the Services under this Contract. Commonwealth Board of Education regulations define "direct contact"; *see* 22 Pa. Code § 8.1.

16.13.2 **Arrests; Convictions.** The Environmental Consultant shall comply and shall ensure that its officers, employees, agents and Subconsultants comply with the requirements of 24 P.S. §1-111(j), which mandates, among other things, reporting within seventy-two (72) hours by any officer, employee or agent of the Environmental Consultant or of any Subconsultant of an arrest or conviction for an offense listed in 24 P.S. §1-111(e). The Environmental Consultant shall report to the School District, in a prompt and timely manner, all notices and reports required, and all checks conducted, under 24 P.S. §1-111(j).

16.13.3 **Report of Child Abuse.** The Environmental Consultant shall comply and shall ensure that its officers, employees, agents and Subconsultants comply with the requirements of 62 Pa. C.S.A. §6344.3(g), which mandates, among other things, written notice by any officer, employee or agent of the Environmental Consultant or of any Subconsultant within seventy-two (72) hours after having received notification of being named as a perpetrator in a founded or indicated report of child abuse. The Environmental Consultant shall report to the School District, in a prompt and timely manner, all notices required under 62 Pa. C.S.A. §6344.3(g).

16.13.4 The Environmental Consultant's failure to comply with any

requirement of 24 P.S. §1-111, as amended, and 23 Pa. C.S.A. §§6344 and 6354 through 6358 shall be deemed a material breach of this Contract, thereby giving the School District the right, at its sole discretion, to immediately terminate this Contract with no further obligation or responsibility on the part of the School District.

16.14 **Successors and Assigns.** The School District and the Environmental Consultant, respectively, bind themselves, their heirs, executors, administrators, successors, permitted assigns and legal representatives to the other party to this Contract, and to the heirs, executors, administrators, successors, permitted assigns and legal representatives of such other party with respect to all covenants of this Contract. The parties hereto bind themselves, their heirs, executors, administrators, successors, permitted assigns and legal representatives for the faithful performance of this Contract.

16.15 **Examination of Records.** The Environmental Consultant agrees, upon request and without expense to the School District, to make available its books and records concerning charges, fees and costs under this Contract, in the administrative offices of the School District, for inspection by appropriate School District agents. The Environmental Consultant agrees that the School District shall, until the expiration of three (3) years after final payment under this Contract or six (6) years after termination of this Contract, whichever is later, have access to and the right to examine and copy directly pertinent books, documents, papers and records of the Environmental Consultant directly related to this Contract which have not been previously delivered to the School District. The period of access and examination for records shall continue during any litigation and until the settlement of claims arising out of the performance of this Contract.

16.16 **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination, including, without limitation, the following:

- (a) Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract;
- (b) The Environmental Consultant's representations and covenants set forth herein;
- (c) Section 6, *Compensation and Payment*;
- (d) Section 9, *Indemnification*;
- (e) Section 11, *Confidentiality*;
- (f) Section 12, *Disputes*;
- (g) Section 14, *Termination*;
- (h) Section 15, *Certification regarding Debarment, Suspension and Ineligibility*;
- (i) Paragraph 16.2, *Governing Law*;
- (j) Paragraph 16.3, *Forum; Consent To Jurisdiction*; and
- (k) Paragraph 16.4, *Contract Documents; Order of Precedence*.

16.17 **Taxes.**

16.17.1 **City of Philadelphia Taxes.** The Environmental Consultant may incur liability for payment of one or more of the following taxes levied by the City of Philadelphia;

(a) Mercantile License Tax; (b) Net Profits Tax; (c) City Wage Tax; and (d) Business Privilege Tax. The Environmental Consultant, if not already paying any such taxes, shall promptly apply to the City of Philadelphia, Department of Revenue, for a tax account number and shall file the appropriate business tax returns as provided by law.

16.17.2 Sales and Use Tax. The Environmental Consultant agrees to execute all documents requested by the School District or its representative, and to provide prompt access to the School District or its representative, to all documents of the Environmental Consultant and its Subconsultants related to the Services performed on the Project, to assist the School District in making a claim or filing a petition for a refund of sales and/or use tax. The Environmental Consultant hereby assigns to the School District all of its right, title and interest in any sales or use tax paid or reimbursed by the School District that may be refunded as a result of any documentation, services, labor, supplies, tools, materials, or equipment purchased in connection with this Contract. The Environmental Consultant authorizes the School District, in its own name or the name of the Environmental Consultant, to file a claim for a refund of any sales or use tax subject to this assignment. Likewise, the School District hereby assigns to the Environmental Consultant all of its right, title and interest in any sales or use tax paid by the Environmental Consultant and not reimbursed by the School District that may be refunded as a result of any documentation, services, labor, supplies, tools, materials, or equipment purchased in connection with this Contract, and agrees to file, or at the School District's option, cooperate in the Environmental Consultant's filing of, a claim for a refund of any sales or use tax subject to this assignment.

16.17.3 School District Tax Exemption. Notwithstanding any other provision of this Contract or the Exhibits to the contrary, the School District represents that it is a tax-exempt organization and is therefore not subject to taxes arising out of this Contract or the Environmental Consultant's performance under this Contract. In the event, however, that the Environmental Consultant is assessed or levied any taxes, fees, or similar charges related to this Contract or the Environmental Consultant's performance hereunder (except income or corporate taxes assessed against or levied on the Environmental Consultant), the School District agrees to cooperate fully with the Environmental Consultant, at School District expense, in any administrative actions or legal proceedings with the appropriate taxing authorities. If a final judgment is entered against the Environmental Consultant relating to the payment of such taxes, fees, or charges, the School District agrees to indemnify the Environmental Consultant for the amount thereof, including any penalties incurred in such review or contest. In no event shall the Environmental Consultant be exposed to any liability for the payment or nonpayment of any such taxes, charges, or fees.

16.18 Tax Compliance. It is the policy of the School District to ensure that firms, businesses and other legal entities receiving School District contracts are current in their payment of City of Philadelphia ("City") taxes and School District taxes or other indebtedness owed to the City or the School District, including but not limited to taxes collected by the City on behalf of the School District, at the time of contract award. Pursuant to SRC Resolution SRC-2 dated February 21, 2013, the School District's SRC has adopted a Tax Compliance of Vendors Policy which provides that generally, the SRC will not authorize the award of a School District contract to a firm, business or other legal entity that is delinquent in its payment of City or School District taxes or other indebtedness owed to the City and/or the School District at the time of contract award.

16.18.1 All firms, businesses and other legal entities (hereafter called “Contractor”) receiving a School District contract shall comply with all of the terms and conditions of the Tax Compliance of Vendors Policy.

16.18.2 Tax Indebtedness Representation, Warranty and Covenant.

(A) The Contractor represents, warrants and covenants to the School District that the Contractor and any other person controlling, controlled by, or under common control with the Contractor are not currently indebted to the City or the Commonwealth of Pennsylvania for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District) for which no written settlement agreement or payment plan with the City, or the Commonwealth of Pennsylvania, as the case may be, has been executed and delivered.

(B) The Contractor further represents, warrants and covenants to the School District that the Contractor and any other person controlling, controlled by, or under common control with the Contractor will not at any time during the term of this Contract (including any extensions or renewals thereof) be indebted to the City or the Commonwealth of Pennsylvania for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District), liens, judgments, fees or other debts for which no written settlement agreement or payment plan with the City of Philadelphia, or the Commonwealth of Pennsylvania, as the case may be, has been executed and delivered.

16.18.3 Proof of Tax Compliance.

(A) During the duration of any School District contract, the Contractor shall provide proof of its tax compliance in the form of a “Certificate of Tax Clearance” to the School District, at the School District’s written request, in the sole discretion of the School District.

16.18.4 Satisfactory Arrangement, Settlement Agreement or Payment Plan with City.

(A) The Contractor agrees to provide written proof to the School District of any satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District taxes or other indebtedness owed to the City or the School District.

(B) The Contractor shall continue to comply with said City satisfactory arrangement, settlement agreement or payment plan during the duration of any School District contract.

16.18.5 Agreement to Set off or Offset for Delinquent Tax or other Indebtedness.

(A) The Contractor agrees that the School District may set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or

the School District against any School District payment or payments due under any School District contract.

(B) In addition to any other rights or remedies available to the School District at law or in equity, the Contractor acknowledges and agrees that the School District may set off or offset the amount of any City or School District tax or taxes or other indebtedness owed to the City or the School District against any School District payment or payments due under any School District contract if the Contractor breaches the tax indebtedness representation, warranty and covenant, and such breach is not resolved, to the School District's satisfaction, within a reasonable time frame specified by the School District in writing.

16.18.6 Agreement to Withholding of Contract Payment.

(A) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is delinquent in its payment of City or School District tax or taxes or other indebtedness owed to the City or the School District.

(B) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is delinquent in its payment of City or School District tax or taxes or other indebtedness owed to the City or the School District, and the Contractor has not entered into a satisfactory arrangement, settlement agreement or payment plan with the City to become compliant in the payment of City or School District tax or taxes or other indebtedness owed to the City or the School District.

(C) The Contractor agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor is in default of any satisfactory arrangement, settlement agreement or payment plan with the City.

(D) In addition to any other rights or remedies available to the School District at law or in equity, the Contractor acknowledges and agrees that the School District may withhold payment or payments due to the Contractor under any School District contract if the Contractor breaches the tax indebtedness representation, warranty and covenant, and such breach is not resolved, to the School District's satisfaction, within a reasonable time frame specified by the School District in writing.

(E) The Contractor agrees that the School District may continue withholding payment or payments due to the Contractor under any School District contract until the City Revenue Department notifies the School District that the Contractor is tax compliant.

16.18.7 Good Faith Contest.

(A) The Contractor shall be permitted to, in good faith, contest the amount of any Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District.

(B) The Contractor shall diligently and expeditiously proceed to resolve

the matter with the City, or the Commonwealth of Pennsylvania, as the case may be, in order to reach a satisfactory settlement agreement or payment plan with the City, or the Commonwealth of Pennsylvania, as the case may be.

(C) The Contractor shall expeditiously pay all uncontested obligations.

16.18.8 Termination of Contract.

(A) Termination for Convenience. The School District, at its sole discretion, may terminate any School District contract for its convenience, at any time, upon fourteen (14) days prior written notice to the Contractor of the School District's intention to terminate said contract ("Termination Notice"), and without penalty, cost or liability to the School District, provided the Contractor is:

(i) delinquent in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(ii) the Contractor has not contested the amount of the Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(iii) the Contractor has not entered into or executed any satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Philadelphia or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District; or

(iv) the Contractor is in default of any satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Philadelphia or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District.

(B) Termination for Default. The School District may terminate any School District contract for default by giving the Contractor a Termination Notice provided:

(i) the Contractor is delinquent in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(ii) the Contractor has not contested the amount of the Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, the City or the School District; and

(iii) the School District has requested in writing that the Contractor enter into or execute a satisfactory arrangement, settlement agreement or payment plan

with the Commonwealth of Philadelphia or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District, and the Contractor has willfully or in bad faith refused or declined to comply with said School District request; or

(iv) the School District has requested in writing that the Contractor cure its default of any satisfactory arrangement, settlement agreement or payment plan with the Commonwealth of Philadelphia or the City, as the case may be, to become compliant in the payment of Commonwealth of Pennsylvania, City or School District tax or taxes or other indebtedness owed to the Commonwealth of Pennsylvania, City or the School District, and the Contractor has willfully or in bad faith refused or declined to comply with said School District request.

The Contractor shall be liable for all excess costs and other damages resulting from said termination for default.

16.19 **Authority to Execute Contract.** The Environmental Consultant and the School District each represents and warrants that it has caused this Contract to be duly authorized, executed, and delivered by and through persons authorized to execute this Contract on its behalf.

16.20 **No Third Party Beneficiaries.** Nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the Environmental Consultant and the School District, any rights, remedies, or other benefits under or by reason of this Contract. Nothing contained in this Contract shall be deemed to create any contractual relationship with, or to give a cause of action in favor of, any third party against either the School District or the Environmental Consultant. Nothing contained in this Contract is intended to benefit any third party. The Environmental Consultant's Subconsultants, the Supplemental Construction Manager, and the Prime Contractor and its subcontractors and consultants are not intended third-party beneficiaries of this Contract.

16.21 **No Waiver.**

16.21.1 No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be observed by the other shall not be construed to be a waiver of any succeeding breach thereof, or of any other covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Contract shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity, or otherwise.

16.21.2 No term or provision hereof shall be deemed waived by the parties, unless such waiver or consent shall be in writing signed by both parties. No breach shall be excused, unless the agreement to excuse that breach is in writing signed by the non-breaching party.

16.22 **Counterparts.** This Contract may be executed in counterparts, each of which shall

be deemed an original, and all of which shall constitute one instrument; provided, that this Contract shall be effective and binding on the parties upon, but only upon, the execution by each party of one copy hereof.

16.23 **Contract Drafted by All Parties.** This Contract is the result of arms-length negotiations between the parties, and shall be deemed to have been drafted by both parties, and any ambiguities in this Contract shall accordingly not be construed against either party.

16.24 **Severability and Partial Invalidity.**

16.24.1 The provisions of this Contract shall be severable. If any provision of this Contract, or the application thereof, for any reason or circumstance, is to any extent held to be invalid or unenforceable, the remaining provisions of this Contract (as well as the application of all provision(s) that were held to be invalid or unenforceable to persons or entities other than those as to which they were held invalid or unenforceable) shall not be affected or impaired thereby; and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

16.24.2 If any of the provisions of this Contract are determined to be invalid, then such invalidity shall not affect or impair the validity of the other remaining provisions, which shall be considered severable, and shall remain in full force and effect.

16.25 **Entire Contract.** This Contract, which includes all Exhibits referred to herein, contains the entire and integrated contract between the parties with respect to the subject matter hereof; supersedes all prior negotiations, representations, contracts, and undertakings, either written or oral, between the parties with respect to such subject matter; and cannot be changed, modified or amended except by contract in writing signed by both parties. No amendment or modification changing its scope or terms shall have any force or effect, unless it is in writing and signed by both parties. This Contract shall not be superseded by any provision of the documents for construction.

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Contract as of the Effective Date.

SCHOOL DISTRICT OF PHILADELPHIA

By: _____
Name: _____
Title: _____

By: _____
Name: WILLIAM R. HITE, JR., Ed.D.
Title: Superintendent

Examined and Approved:

Dawn Renee Chism
Attorney for
SCHOOL DISTRICT OF PHILADELPHIA