

SETTLEMENT AGREEMENT

Plaintiff the School District of Philadelphia, a body corporate and political subdivision formed and existing under the laws of the Commonwealth of Pennsylvania (the “District”), located at the Education Center, 440 North Broad Street, Philadelphia, Pennsylvania 19130-4015, on the one hand, and Defendants the City of Philadelphia, a body politic formed and existing under the laws of the Commonwealth of Pennsylvania, and the Managing Director of the City of Philadelphia in his official capacity only (collectively, the “City”), on the other hand (each individually a “Party” and collectively the “Parties”), hereby agree to the terms of this SETTLEMENT AGREEMENT (the “Agreement”) to resolve the litigation to which they are all parties, captioned as *The School District of Philadelphia v. The City of Philadelphia et al.* and docketed as Civil Action No. 23-238-WB in the United States District Court for the Eastern District of Pennsylvania (the “Litigation”).

WHEREAS, the City adopted City of Philadelphia Bill No. 210685-AA in May 2022, and the Bill amended Section A-703 of the Philadelphia Code (“Section A-703”) to include additional requirements with respect to the District’s ongoing asbestos-related work and work related to other environmental conditions, with the goal of enhancing building safety for educational occupancies;

WHEREAS, in January 2023, the District initiated the Litigation challenging the Bill and alleging, among other things, that its standards and obligations are vague and could lead to the unnecessary closure of school buildings for in-person learning in the coming 2023-2024 school year or thereafter;

WHEREAS, the City opposes the District’s lawsuit while also recognizing and sharing the District’s goals for enhancing building safety and in-person learning;

WHEREAS, the District and the City recognize the benefits of improved transparency and collaboration and cooperation between the City and the District in addressing the environmental issues facing the District, and the City and the District recognize the need for additional resources to achieve that end; and

WHEREAS, the City and the District now desire to resolve the Litigation in accordance with the terms of this Agreement.

AND NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the District and the City hereby agree as follows:

1. **Term of Agreement**. Unless otherwise stated in a provision contained herein, the term of this Agreement shall be for at least three (3) years beginning August 1, 2023 and shall automatically renew for an unlimited number of additional three-year terms on August 1st of every third year. Either Party may terminate this Agreement on or before February 1st of the year in which the Agreement is to renew by providing written notice to the other Party with a copy to the then-current mediator, if any.

2. **Dismissal without Prejudice.** The District and the City agree that following the execution of this Agreement, the Litigation will be dismissed without prejudice. Should the District in the future commence litigation against the City related to Section A-703 bringing claims that are the same as, or substantially similar to, the claims set forth in the Litigation, the City agrees not to raise in such future litigation, and hereby waives, any defenses of statutes of limitation or repose, laches, or any other time-related defenses.

3. **The District's Commitment to Improved Transparency.** In the past year, the District has accelerated its schedule of asbestos inspections performed pursuant to the federal Asbestos Hazard Emergency Response Act ("AHERA"), completing more than 300 inspections of District school buildings since August 2022. The District acknowledges and recognizes the importance of adherence to an AHERA-compliant inspection schedule and of effective communication of its inspection program and its results to the public. Therefore, the District and/or the City, as relevant, agree as follows:

a. The District completed in July 2023 its cycle of three-year inspections of each and every District building required pursuant to AHERA to be inspected. The District is accelerating its inspection program and will revisit all such buildings within a seven-to-eight-month time frame of the last inspection, with the goal of further accelerating the program such that by August 26, 2024, all such buildings will be re-inspected on a six-month time frame moving forward. The District has worked with the City's Department of Health to normalize the schedule for three-year re-inspections in all such buildings over the three-year AHERA time frame, so that all schools receive timely three-year AHERA inspections, with the goal of performing three-year inspections of roughly 100 of such buildings per year, in addition to timely six-month surveillance inspections. The District will continue to inform the City regarding the status of such inspections.

b. The City acknowledges that since June 2022 the District has begun to post current AHERA-required asbestos inspection reports to its public website. The District commits that it will continue to post AHERA-required asbestos inspection reports as expeditiously as possible. The District will use best efforts to finalize and publish inspection reports within ninety days following the last day of physical inspection of a school building to which a given report applies. The District will work, as its resources allow, to shorten the period between final inspection and posting of the report, such that, by June 30, 2024, reports typically will be published within two months of the date of the last physical inspection. The reports shall include all information required by AHERA and specifically shall include the classification category or degree of damage to asbestos-containing materials and a description of preventive measures as described at 40 C.F.R. § 763.88(b), 763.93(e)(3)(v), if any. This information may be included within the reports themselves or attached through supplemental documentation such as the Design Data Collection ("DDC") sheets that the District currently uses or a substantial equivalent.

c. As time goes on, the District will strive to maintain this pace and further improve on the promptness of publicly posting reports following inspection.

d. After execution of this Agreement, but before dismissal of the Litigation, the Parties will notify the proposed intervenors in the Litigation of the execution of this Agreement. After dismissal of the Litigation, the Parties will coordinate public notification of the material commitments in this Agreement.

4. **Regular Meetings with the City's Health Department.** During the term of this Agreement, the District agrees to continue quarterly meetings with the City's Health Department related to the progress and direction of the District's asbestos inspection, abatement, and reporting program, and the District's additional needs. These quarterly meetings shall be scheduled during the months of November, February, May, and August. Additional meetings may be scheduled, based upon identification of needs; after the first year, fewer meetings may be scheduled upon consensus of the Parties.

5. **Building the Asbestos Investigator Work Force.** Upon the execution of this Agreement, the City agrees to use best efforts to assist the District in training and assisting with certification requirements for a work force of available and qualified asbestos investigators and asbestos project inspectors needed for the District to meet its intense inspection demands.

6. **"Best Practices" for Management of Environmental Hazards.**

a. The City represents and warrants that the phrase found in Section A-703.2(E) of the Philadelphia Code, "substantial compliance with the best practices for testing, remediation, abatement, cleaning, and management of asbestos, and other property-related hazards," means, with respect to asbestos, substantial compliance with AHERA and the City's Asbestos Control Regulation ("ACR"), as those laws and accompanying regulations may be materially amended in the future.

b. Any new best practices for asbestos or for any other property-related hazards as may be encompassed by Section A-703 shall follow the regulatory process required for the adoption of new regulations as set forth in Section 8-407 of the Philadelphia Home Rule Charter. The City will provide the District with a reasonable opportunity to review and comment on any new proposed best practices. For any new best practices encompassed by Section A-703.2(E) to be "identified" in accordance with that section, the new best practices must be adopted pursuant to Section 8-407 of the Charter and all related challenges, hearings and final appeals must have been finally resolved by February 1st of the year in which the new best practices are to take effect.

7. **Building Occupancy.**

a. The City and its Health Department agree that the District's substantial compliance with AHERA shall satisfy the requirements of Section A-703.2(4)(E).

b. The City agrees that it will not seek to close any District building on the basis of non-compliance with the provisions of Section A-703.2 relating to asbestos. Notwithstanding the foregoing, the City retains the authority to close any District building immediately, subject to the provisions of the Philadelphia Code, including but not limited to Section 6-502 providing for compliance with Philadelphia Department of Public Health orders while an appeal is pending, if there is an imminent threat to health and safety such that the "Department finds, and certifies in writing in such order, that immediate compliance is necessary to protect the public health."

8. FY2024 Environmental Funding.

a. The District is undertaking a significant investment in technology that is intended, in part, to improve management, storage, tracking, and use of data related to asbestos, as well as to improve the transparency of the asbestos inspection program, including by reducing the amount of time needed to prepare final reports for public posting. This technology will be a substantial, multi-year, multi-million-dollar investment. The City, by this Agreement, commits two million, five-hundred thousand dollars (\$2,500,000) during the City's Fiscal Year 2024 to support this initiative. The District's progress in developing this technology and future funding needs for its continued development may be addressed at the quarterly meetings described in paragraph 4 above.

b. The additional funding described in this provision shall be in addition to, and shall not supplant, other funding proposed for allocation to the District and shall not be reallocated from other portions of the budget, *i.e.*, the additional funding shall supplement, not supplant, other City funding for the District. The additional funding in this provision is intended to assist the District in building its environmental compliance program in Fiscal Year 2024. The additional funding in this provision is a one-time payment and does not create any legal obligation on the City to provide ongoing funding as described in this provision, notwithstanding any provision of law or other agreement to the contrary. The District and the City agree to cooperate in good faith in future years so that funding is provided on an annual and longer-term basis to sustain a robust environmental compliance program. Because of the scope of the District's asbestos issues, the potential for environmental conditions to change, and the continuous nature of the cycle of inspections, data review, and abatement, it is acknowledged that funding in future years is important. The District and the City acknowledge that the additional funding envisioned in this Agreement and the significant increase in funding of the District by the City over the last eight years are not enough in Fiscal Year 2024 or in future years to resolve the much broader resource needs of the District to address environmental needs or all other capital improvements to the District's aging building infrastructure, which have been estimated in the billions-of-dollars. The District and the City will continue to work together to pursue additional funding from federal, state, and institutional sources to help close the gap between the existing funding and the District's short- and long-term needs.

9. Governing Law. This Agreement shall be interpreted, governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to any principles of conflict of law.

10. Severability. In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal, void, or unenforceable, then such provision shall be re-written in such a way as to be enforceable to the fullest extent of the law. Moreover, the illegality, voiding, or unenforceability of such provision shall neither affect nor impair the legality and enforceability of any other provisions of this Agreement unless such unenforceability results in the failure to materially carry out the Parties' intent.

11. **Authority.** The signatories hereto covenant, represent and warrant that they are of legal age, are under no disability and have the mental capacity and authority to legally bind the respective Party, and are duly authorized to execute this Agreement.


12. **Costs and Expenses.** The District and the City shall each bear their own costs and expenses related to the Litigation including, but not limited to, attorneys' fees and any other costs and expenses incurred.

13. **Enforcement.** The District and the City agree that substantial compliance with the provisions herein constitutes compliance with this Agreement. The Parties further agree to provide written notice of any alleged breach or other dispute regarding this Agreement or asbestos-related issues under Section A-703.2(4)(E) or (F) to the other at least thirty days prior to any mediation or suit. If any such dispute cannot be resolved through meeting and conferring, the Parties may proceed to mediation before Mark A. Aronchick or another mutually agreed upon mediator. If any dispute cannot be resolved through good faith efforts in mediation, the Parties only then may proceed to litigation in any court of competent jurisdiction in Philadelphia.


14. **No Admission of Liability.** This Agreement shall not constitute an admission of liability or wrongdoing under any law or common law by any of the Parties hereto or their respective officers, directors, partners, members, employees, sureties, insurers, architects, engineers, consultants, construction managers, independent contractors, agents, representatives, and assigns.

AGREED & ACCEPTED BY:


The School District of Philadelphia


Name: Tony B. Watlington, Sr.
Title: Superintendent
Date: 7/31/2023

The City of Philadelphia


Name: Cheryl Bettigole
Title: Health Commissioner
Date: 7/21/2023

**The Managing Director of the
City of Philadelphia**


Name: Tumar Alexander
Title: Managing Director
Date: 7/21/2023