



SANTA MONICA - MALIBU UNIFIED SCHOOL DISTRICT

**Malibu Middle High School and Juan Cabrillo Elementary School  
RFQ/P PCB Environmental Support  
Services Consultant  
October 31, 2019**

## **ADDENDUM #1**

### **Attachment 1 – Draft Agreement**

*The District will not consider any substantive changes to the form of Agreement attached hereto if they are not submitted at or before the time the SOQ/P is due*

**SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT**  
**INDEPENDENT CONSULTANT AGREEMENT**  
**FOR**  
**PROFESSIONAL ENVIRONMENTAL SUPPORT SERVICES**  
**PCB ENVIRONMENTAL SERVICES**  
**FOR MALIBU MIDDLE HIGH SCHOOL AND**  
**JUAN CABRILLO ELEMENTARY SCHOOL**

This Independent Consultant Agreement for Professional Environmental Support Services (“Agreement”) is dated December 12, 2019 for reference purposes only and is made by and between the Santa Monica-Malibu Unified School District (“District”) and \_\_\_\_\_ (“Consultant”), (individually a “Party” or collectively the “Parties”).

**RECITALS**

**WHEREAS**, District is authorized by California Government Code sections 4525, et seq. and 4529.10, et seq. to contract with and employ any persons for the furnishing of architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services through a fair, competitive selection process (e.g., by using a request for qualification/proposal process), which the District utilized.

**WHEREAS**, polychlorinated biphenyls (“PCBs”) have been found in concentrations exceeding the Toxic Substances Control Act (“TSCA”) threshold of 50 parts per million (“ppm”) in some of the window, vent and door caulking, shellac, and flooring mastic at the District’s Malibu Middle High School (“MHS”) and Juan Cabrillo Elementary School (“JCES”).

**WHEREAS**, the District has retained the services of ENVIRON International (“ENVIRON”, now known as Ramboll) to perform evaluations and assessment of environmental issues related to PCBs at MHS and JCES.

**WHEREAS**, in order to address the potential presence of PCBs in building materials at MHS and JCES, ENVIRON prepared a Comprehensive PCB-Related Building Materials Inspection, Management, and Removal Plan for submittal to USEPA, with an overall approach to conduct comprehensive building inspections and implement best management practices (“BMPs”) to manage materials in place until a scheduled demolition or renovation when PCB-containing building materials would be removed.

**WHEREAS**, the US Environmental Protection Agency (“USEPA”) requires the removal of any PCB-containing materials with measured PCBs at or over 50 ppm.

**WHEREAS**, on September 1, 2016, the United States District Court, Central District of California, in an action entitled America Unites for Kids, et al. v. Sandra Lyon, et al., Case No. CV 15-2124 PA (AJWx), permanently enjoined the District from using any office, classroom, or other structure at MHS or JCES constructed prior to 1979 in which students, teachers, administrators, or staff are regularly present after December 31, 2019, unless all window and door systems and surrounding caulk at any such location has been replaced (“Judgment”).

**WHEREAS**, under USEPA oversight and approval, the District has implemented an ongoing USEPA-reviewed air and wipe sampling BMP program designed to minimize and ensure any exposure to

PCBs does not pose an unreasonable risk of injury to health or the environment.

**WHEREAS**, on December 20, 2018, the Court amended the Judgment to prohibit the District from using any office, classroom, or other structure at MHS or JCES constructed prior to 1979 in which students, teachers, administrators, or staff are regularly present after December 31, 2024, and requiring certain interim measures to be implemented and completed by the District or its contractors, in some cases by December 31, 2019, and in some cases in an ongoing manner as long as the buildings are in use (“Amended Judgment”).

**WHEREAS**, all testing and work plans to implement the interim measures will be developed and performed by others.

**WHEREAS**, the Amended Judgment, in part, requires that the District retain an environmental professional to review compliance and results to ensure the interim safeguards specified in the Amended Judgment are being maintained.

**WHEREAS**, Consultant is specially trained, experienced, competent and duly licensed under the laws of the State of California to perform the services pursuant to this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

1. **Services.** The Consultant shall provide the services described in **Exhibit "A"** attached hereto (“Services”). Consultant shall furnish all labor, materials, equipment, supplies and other items necessary to perform and complete the Services.
2. **Term.** Unless terminated or otherwise cancelled as permitted herein, the “Term” of this Agreement shall commence on January 1, 2020 and shall terminate on December 31, 2024, or such earlier date when compliance with the Amended Judgment has been fully satisfied. District shall give Consultant thirty (30) days’ prior written notice of such earlier termination.
3. **Submittal of Documents.** The Consultant shall not commence the Services until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), endorsement(s) of insurance, and W-9 Form required as indicated below:

<u>    </u> X	Signed Agreement
<u>    </u> X	Workers' Compensation Certification
<u>    </u> X	Fingerprinting/Criminal Background Investigation Certification
<u>    </u> X	Insurance Certificates and Endorsements
<u>    </u> X	W-9 Form

4. **Compensation.** Consultant’s compensation for the performance of Services shall be on a time and material basis at the rates and prices set forth in the attached **Exhibit “B”**. District shall pay Consultant monthly for all undisputed amounts within thirty (30) days after the Consultant submits an itemized invoice to the District for Services performed and after the District’s written approval of the Services satisfactorily performed. Consultant’s invoices shall reflect the hours spent by the Consultant in performing its Services, itemized by activities and hours for all personnel, and, if applicable, the expenses and costs for materials at the rates and prices set forth in **Exhibit “B”**.

5. **Personnel.** During the Term of this Agreement, should assigned personnel be absent for a brief duration due to illness or other reasonable scheduling constraints, Consultant shall provide and schedule qualified replacement personnel approved by the District.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partners, or joint ventures of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to Consultant's employees. In the performance of the Services, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Consultant's work, District being interested only in the results obtained.
7. **Coordination of Services.** District personnel and/or its authorized representatives, and other professionals employed by the District, shall coordinate with Consultant as may be requested and desirable for the coordination of performance of the Services. Consultant shall not take direction or action concerning performance of the Services or any matters relating to this Agreement from any person or entity other than authorized representatives of the District. Should Consultant be in doubt as to whether a person or entity is an authorized representative of the District, Consultant shall contact the District's representative identified in paragraph 27 of this Agreement.
8. **Performance of Services/Standard of Care.**
- 8.1. Consultant represents that Consultant and its subconsultants, if any, have the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and other public and private owners of buildings containing residual quantities of PCBs in construction materials. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
- 8.2. Consultant hereby represents that it and its subconsultants, if any, possess the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of this Agreement.
- 8.3. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
- 8.4. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

**9. Information Furnished by District.** Upon request by Consultant, District shall furnish Consultant any information and documents readily available to District that the Consultant determines may be of use to the Consultant in the performance of the Services. District shall rely upon Consultant to determine which information and documents may be of use to the Consultant in performance of the Services. Consultant shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.

**10. Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.

## **11. Termination.**

**11.1. Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the day the notice is mailed, whichever is sooner. Within thirty (30) days of notice of termination, Consultant shall deliver to the District all of Consultant's work product, whether in the form of notes or draft/working documents or otherwise. Such delivery of Consultant's work product shall be a condition precedent to final payment owed to Consultant for Services satisfactorily rendered through the date of termination.

**11.2. Without Cause by Consultant.** Consultant cannot terminate this Agreement without cause.

**11.3. With Cause by District.** District may terminate this Agreement upon giving written notice of intention to terminate for cause. Cause shall include:

11.3.1. Material violation of this Agreement by the Consultant; or

11.3.2. Any act by Consultant exposing the District to liability to others for personal injury or property damage; or

11.3.3. Consultant is adjudged a bankrupt; Consultant makes a general assignment for the benefit of creditors; or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon

the expiration of the three (3) calendar days cease and terminate. Within thirty (30) days of notice of termination, Consultant shall deliver to the District all of Consultant's work product, whether in the form of notes or draft/working documents or otherwise. Such delivery of Consultant's work product shall be a condition precedent to final payment owed to Consultant for Services satisfactorily rendered through the date of termination. In the event of such termination, the District may secure the Services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the Services, Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs to the extent that such amounts exceed the final payment amount. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

11.4. **With Cause by Consultant.** Consultant may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

11.4.1. Material violation of this Agreement by the District, or

11.4.2. Failure of the District to timely pay undisputed Consultant invoices.

Written notice by Consultant shall contain the reasons for such intention to terminate and unless within seven (7) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the seven (7) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Consultant.

**12. Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, volunteers, and attorneys ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, arising out of, pertaining to or relating to, in whole or in part, the negligence (in any form), recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subconsultants, suppliers, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services.

### **13. Insurance.**

13.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

13.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant and the District from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising out of the performance of any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or

employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

**13.1.3. Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Services furnished by the Consultant.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b>	\$ 1,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

**13.2. Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

13.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

13.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

13.2.3. An endorsement stating that the District and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

13.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

**13.3. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

**14. Interaction with the Media and Public.** Consultant shall promptly refer all inquiries from the news media or members of the public to District and shall not make any statements to the media or the public relating to the Services. If Consultant receives a complaint or inquiry from a citizen or

the community, Consultant shall promptly inform the District about the complaint or inquiry. Consultant shall refer all communications from members of the public or the media to the District and shall not respond in any fashion to any such communications.

- 15. Taxes.** Consultant shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Consultant agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Consultant may be reported to the Internal Revenue Service.
- 16. Assignment.** The obligations and liabilities of the Consultant pursuant to this Agreement shall not be assigned voluntarily by the Consultant nor assigned by operation of law.
- 17. Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.
- 18. Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule, and regulation bearing on the Services indicated or specified.
- 19. Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Consultant shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
- 20. Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
- 21. Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing any portion of the Services on any school site.
- 22. Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%) per year of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If such funds are used, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.



**23. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

**24. Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

**25. Disputes.** In the event of a dispute between the Parties as to performance of the Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind or terminate the Agreement nor stop or delay performance of Services.

**26. Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**27. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

**District:**  
Santa Monica-Malibu Unified School  
District  
2828 4<sup>th</sup> Street  
Santa Monica, CA 90403  
ATTN: Carey Upton

**Consultant:**  
\_\_\_\_\_  
\_\_\_\_\_, CA 9\_\_\_\_  
ATTN: \_\_\_\_\_

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to the overnight delivery service.

**28. Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties for the Services and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

**29. California Law.** This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Los Angeles County. Consultant waives any claim or right to remove an action on this Agreement to federal court.

**30. Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein

contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

- 31. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 32. Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 33. Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, expert fees, court costs and attorneys' fees.
- 34. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 35. Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 36. Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party represents and warrants s(he) has been properly authorized and empowered to enter into this Agreement.
- 37. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 38. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
- 39. Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: December \_\_\_\_, 2019

Dated: December \_\_\_\_, 2019

**Santa Monica-Malibu Unified School District**

\_\_\_\_\_ **Consultant**

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

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

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

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

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

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**Information regarding Consultant:**

Consultant: \_\_\_\_\_

License No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:

Individual

Sole Proprietorship

Partnership

Limited Partnership

Corporation, State: \_\_\_\_\_

Limited Liability Company

Other: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or Social Security Number

**NOTE: Title 26, United States Code sections 6041 and IRS reporting rules require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. These rules also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

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**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Agreement.

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

Name of Consultant or Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Agreement.)

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

**[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2. District shall ensure the safety of the pupils by at least one of the following as marked:

\_\_\_\_\_ The installation of a physical barrier at the worksite to limit contact with pupils.

\_\_\_\_\_ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

\_\_\_\_\_ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

**[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.]** I am a \_\_\_\_\_

Consultant Agreement – SMMUSD & \_\_\_\_\_

representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: \_\_\_\_\_  
Name of Consultant or Company: \_\_\_\_\_  
\_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name and Title: \_\_\_\_\_

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## Exhibit "A"

### Description of Services to be Performed by Consultant

Consultant shall provide the environmental support services described herein. The scope of work is related to PCBs in building materials that is regulated by the USEPA; thus, Consultant's services shall be in accordance with applicable TSCA regulations, unless a more specific stringent standard has been agreed upon by the District or ordered by the Court. All testing and work plans will be developed and performed by others. Consultant's role is to review and verify with reasonable assurance<sup>1</sup> that certain interim measures ("Interim Measures") are being implemented and completed.

Specifically, Consultant shall verify with reasonable assurance that the District and/or its contractors have properly completed the following Interim Measures by December 31, 2019:

1. A different color caulk is applied over caulking around windows, doors, and vents with known or assumed levels of PCBs over 50 ppm where visible (28 rooms);
2. All shellac plywood walls with PCBs (regardless of PCB content) are painted (15 rooms); and
3. Flooring in all rooms with known or assumed tiling/mastic with PCBs are inspected (46 rooms), and broken or missing tiles are patched, encapsulated, or replaced.

The three (3) foregoing Interim Measures are referred to herein as "Work Activities".

Consultant shall also verify with reasonable assurance the completion of the following in-progress and forthcoming ongoing Interim Measures:

1. High use rooms (occupied by students or staff more than 4 hours per day) with known or assumed PCB concentrations exceeding 50 ppm will have air testing conducted by District contractors at least once per year, at 3-4 separate intervals, using methods in accordance with the current USEPA-approved methodologies (30 rooms). Further, air samples in all other pre-1979 high use rooms will be tested for PCBs every two years (54 rooms). For these high use rooms, testing will take place at a minimum of two seasons (around July-August and November-December). Air samples will be tested to a detection level of 15ng/m<sup>3</sup>. The District's actionable level will be 200 ng/m<sup>3</sup>. Testing will occur after 24 hours of closure of the area to be tested.
2. Dust/wipe samples on porous surfaces in all high use rooms with known or assumed PCBs over 50 ppm will be conducted at least once per year, at 3-4 separate intervals during holiday periods, using methods in accordance with the current USEPA-approved methodologies (30 rooms, typically 4 wipes per room). Wipe samples in all other pre-1979 high use rooms will be tested for PCBs every two years (45 rooms, typically 4 wipes per room).

The two (2) foregoing Interim Measures are referred to herein as "Testing/Sampling".

Consultant shall also verify with reasonable assurance the completion of the following in-progress and forthcoming ongoing Interim Measure:

Best Management Practices ("BMP") Cleanings: Daily and weekly wipe down of all surfaces; once per month deeper cleaning (all surfaces wiped down); and annually, everything wiped

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<sup>1</sup> "Reasonable assurance" as used in this scope of services means a high degree of confidence that submitted documents, reports, data and statements related to the implementation of the Interim Measures are valid and satisfy the scope of the Interim Measures.

down including walls and ceilings (wet wiping). Since there are only eight (8) working days during winter break, the District will use best efforts to achieve BMPs during this time period. This foregoing Interim Measure is referred to herein as “BMP Cleanings”.

Consultant shall review and confirm the implementation and completion of the Interim Measures. All written reports from the Consultant shall be provided simultaneously to both the District and AU.

Specific tasks to be performed by Consultant include the following:

1. Review/Verification of Compliance with Work Activities Interim Measures. The District has completed the Work Activities. The District will provide the District’s records to Consultant regarding the completion of these Work Activities. Consultant will review and verify with reasonable assurance that the Work Activities have been completed in accordance with the requirements of the applicable Interim Measure. Within thirty (30) calendar days after the commencement of services under the contract, Consultant shall review the Work Activities to verify with reasonable assurance that they have been completed in accordance with the Interim Measure requirements. Within fifteen (15) calendar days of such review, Consultant shall provide a written report to the District, with a copy to AU, which: (a) verifies with reasonable assurance compliance of the Work Activity with the applicable Interim Measure; and (b) in the event of noncompliance, identifies the area(s) of noncompliance for further action by the District and/or its contractors.
2. Review/Verification of Compliance with Testing/Sampling Interim Measures. Consultant will review the air and wipe sampling reports to verify with reasonable assurance compliance with the applicable Testing/Sampling Interim Measures requirements as each such report is issued. Within thirty (30) calendar days of receipt of a report documenting completion of an Interim Measure Testing/Sampling activity, Consultant shall provide a written report to the District, with a copy to AU, which: (a) verifies with reasonable assurance compliance of the Testing/Sampling activity with the applicable Interim Measure; and (b) in the event of noncompliance, identifies the area(s) of noncompliance for further action by the District and/or its contractors.
3. Review/Verification of Compliance with BMP Cleanings Interim Measure. The District has implemented BMP Cleanings and will continue to do so during the period of the Amended Judgment, until December 31, 2024, unless all building materials containing PCBs above 50 ppm are removed. The District will provide the District’s records to Consultant regarding the performance of BMP Cleanings and provide a monthly and annual schedule of future BMP Cleanings. Consultant will review and verify with reasonable assurance that BMP Cleanings have been performed in accordance with the requirements of the Interim Measure. Within ninety (90) calendar days after the commencement of services under the contract, Consultant shall provide a written report to the District, with a copy to AU, which: (a) verifies with reasonable assurance performance of BMP Cleanings performed by the District; and (b) in the event of noncompliance, identifies the area(s) of noncompliance for further action by the District and/or its contractors. Consultant shall thereafter provide a quarterly written report to the District, with a copy to AU, which: (a) verifies with reasonable assurance performance of the BMP Cleanings performed by the District; and (b) in the event of noncompliance, identifies the area(s) of noncompliance for further action by the District and/or its contractors.
4. Annual Site Visit; Report. Consultant will conduct annual site visits to visually inspect facilities and Interim Measures and to verify that all Interim Measures are being met. In addition to the reports described above, Consultant shall provide an annual written report to the District, with a copy to AU, which: (a) verifies with reasonable assurance compliance with the Interim Measures; and (b) in the event of noncompliance, identifies the area(s) of



noncompliance for further action by the District and/or its contractors. Consultant shall submit the first annual report on or before August 15, 2020 and on or before each August 15 thereafter through August 15, 2024.

Consultant will also participate at annual public meetings concerning the District's compliance with the Interim Measures requirements.

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**Exhibit "B"**

**Hourly Rates/Prices for Services**

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