

## **ON-SITE MASTER SERVICES AGREEMENT**

The Texas Association of School Boards, Inc. (“TASB”), a Texas nonprofit corporation, 12007 Research Boulevard, Austin, Texas 78759, and Cedar Hill ISD (“Client”), enter into this OnSite Master Services Agreement (“Agreement”) for TASB to provide fee-for-service environmental and facilities services to Client. This Agreement is effective as of \_\_\_\_\_, 2013, (“Effective Date”).

TASB, through its OnSite Services Program (“OnSite”), offers environmental, facilities and other services to TASB’s Active and Associate Members and other entities. TASB provides certain services to TASB members and other entities that become subscribing members of OnSite in exchange for a basic annual membership fee. TASB also provides additional services on a fee-for-service basis (“Service” or “Services”) to OnSite members and other entities.

TASB and Client agree to the following terms and conditions for Client’s engagement of TASB to provide one or more Services:

1. **PURPOSE AND SCOPE.** This Agreement establishes the terms and conditions that apply to Services performed by TASB for Client through OnSite and allows the parties to contract for specific Services through individual Statements of Work in accordance with Paragraph 2. This Agreement does not limit Client’s right to perform the Services itself or to engage others to perform the same or similar Services.
2. **STATEMENT OF WORK.** The specific details of the Services will be set out in writing in a Statement of Work (“SOW”), which will describe the Services to be provided and state the payment terms and any technical requirements, performance timelines, acceptance criteria, and other terms regarding the Services. Each SOW will represent distinct and separate Services.

The SOW must be signed by representatives of both parties (who may be different from the signatories to this Agreement) who are duly authorized to sign on behalf of and bind their respective party. The parties may amend or modify the SOW by change order or other written agreement signed by their duly authorized representatives as may be authorized by their respective policies.

Each SOW is subject to the terms and provisions of this Agreement and is deemed to be incorporated into and attached as an exhibit to this Agreement. If a conflict or difference in terms exists between this Agreement and the SOW, this Agreement will control except as specifically provided in the SOW and then only to the extent necessary to reconcile the conflict or difference.

3. TERM. This Agreement begins on the Effective Date and, subject to Paragraph 4, continues as provided in this section. If Client is an OnSite member, the initial term of this Agreement will continue until the expiration of the Client's annual membership (August 31) and then be automatically renewed for successive one year terms co-extensive with such annual membership (September 1- August 31). If Client is not an On-Site member, the initial term of this Agreement will be for a period of two years and then be automatically renewed for successive one year terms.

4. TERMINATION. Either party may terminate this Agreement at any time by giving the other party 30 days advance written notice, which notice will specify the effective date of the termination. Additionally, if Client is eligible for TASB Active or Associate membership and ceases to be an Active or Associate TASB Member, this Agreement will terminate at the same time as Client's TASB membership. If this Agreement is terminated, Client will pay all amounts due under any outstanding SOW(s) in accordance with the terms of such SOW(s).

5. RELATIONSHIP OF PARTIES; INDEPENDENT CONTRACTOR. In performing the Services, TASB is at all times an independent contractor. Client will have no control over the methods and means of accomplishing the desired result. Under no circumstances will TASB or an employee or agent of TASB be deemed to be an employee or agent of Client. Nothing in this Agreement will be construed to authorize either party to make commitments of any kind for the other without the other party's prior written approval. This Agreement does not constitute or create, and will not in any way be construed, as a joint venture, partnership, or agency between Client and TASB. Further, in performing the Services, TASB does not act and will not be deemed to be acting in a fiduciary capacity and owes no fiduciary duty to Client, and is not and shall not be deemed to be providing legal advice to Client.

6. SUBCONTRACTORS. TASB may use one or more subcontractors (including sub-subcontractors) to perform the Services, provided that such subcontractors have the licenses, permits, and approvals required by applicable law.

7. PAYMENT. Client will pay TASB in accordance with the SOW. Unless provided otherwise in the SOW, TASB will invoice Client for each SOW upon completion of the Services. The invoice will identify the Services performed and fees and other charges due, and include appropriate supporting documentation to the extent applicable. TASB will send the invoice to Client's billing address at:

Cedar Hill ISD  
285 Uptown Blvd, Bldg. 300  
Cedar Hill, TX 75104

Client will pay each invoice in full within forty-five (45) days of the date of the invoice. If Client disputes any portion of an invoice, Client will promptly give written notice to TASB stating the details of the dispute and pay any undisputed amount. TASB's acceptance of any partial payment will not waive TASB's right to receive payment of the disputed amount.

Balances that are more than forty-five (45) days past due will accrue finance charges at the maximum rate authorized by Chapter 2251 of the Government Code (Prompt Payment Act). TASB reserves the right to delay or suspend performing Services under any SOW if Client fails to timely pay the undisputed amount due under one or more SOW(s).

8. **WARRANTIES.** Services will be performed by TASB in a good and workmanlike manner, and will conform to the applicable requirements and specifications in the field of work described in the SOW.

TASB DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCTS OR SERVICES FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. **LIMITATION OF LIABILITY.** TASB's liability to Client, and Client's liability to TASB, under this Agreement is limited to the total dollar amount paid by Client to TASB pursuant to the SOW giving rise to such liability during the immediately preceding twelve (12) months.

IN NO EVENT WILL EITHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO EITHER PARTY OR ANY THIRD PARTY, IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, OR LOST PROFITS, SAVINGS, OR REVENUE, TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

10. **COMPLIANCE WITH LAW AND SAFETY.** Each party will comply with all applicable federal, state and local laws, rules, regulations and orders, including without limitation those that require licensing and permitting and those that apply to the handling, management, transport, treatment and/or disposal of (as applicable) unutilized materials and waste and toxic materials and waste. As part of this obligation, each party agrees that it will not knowingly take any action in connection with performance that would be illegal or that would violate such laws, rules, regulations and orders.

TASB is in the business of providing the Services and generally understands the currently known hazards to persons, property and the environment in working with toxic and hazardous materials that may be present with respect to Services that TASB performs under this Agreement. Regardless of this understanding, Client will notify TASB's employees and agents of any known or suspected hazards on Client's property.

## 11. MISCELLANEOUS

a. **WAIVERS.** Failure by either party to enforce any provision of this Agreement does not waive future enforcement of that or another provision. No right or obligation of a party may be waived without the prior written consent of the other party.

b. **SUCCESSION AND ASSIGNMENT.** This Agreement inures to the benefit of and is binding upon the parties and their respective successors and assigns. Either party may assign or transfer its rights or obligations under this Agreement with the prior written consent of the other party.

c. **MEDIATION.** The parties agree that, before bringing a lawsuit for any dispute arising out of this Agreement, they will first make a good faith effort to resolve the dispute by mediation. Each party's representative in the mediation must have full authority to compromise and settle any dispute that is the cause of the proceeding, subject to approval by the Client's Board of Trustees, and the results of the mediation will be binding only upon agreement of each party to be bound. The mediation will be held in Dallas County, Texas, or at another location mutually agreed upon by the parties. Each party will pay its own expenses for participating in the mediation, including one-half of the mediator's fees.

d. **NOTICES.** Unless otherwise specified in a SOW, all notices, requests, and other communications related to this Agreement will be in writing and be delivered by personal delivery, registered or certified mail (return receipt requested), express courier (with postage prepaid), or electronic facsimile or email (with electronic confirmation of receipt by recipient) addressed to the receiving party at the addresses set out below:

Cedar Hill ISD:	285 Uptown Blvd, Bldg. 300 Cedar Hill, TX 75104
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TASB:	Texas Association of School Boards, Inc. Attention: Mike Brooks PO Box 400 Austin, TX 78767
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Either party may change its notice information by giving the other party written notice of the change.

e. SEVERABILITY. If any part of this Agreement is declared or held unenforceable for any reason, the remaining parts will continue in full force and effect.

f. GOVERNING LAW, RULE OF CONSTRUCTION, AND VENUE. This Agreement is governed by the laws of the State of Texas without regard to its conflict of laws provisions, and without giving effect to any custom or rule of law requiring construction against the drafter. Venue for any action arising out of this Agreement is in Dallas County, Texas.

g. ATTORNEY'S FEES. In the event of a lawsuit relating to this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees that are equitable and just.

h. FORCE MAJEURE. Except for payment obligations, neither party will be liable to the other under this Agreement for any failure or delay in performance resulting from causes beyond the reasonable control of that party, including without limitation acts of God, labor disputes, material shortages, governmental regulations, or communication or utility failures. The party claiming force majeure must inform the other party in writing promptly at the beginning and the end of the period of force majeure.

i. SURVIVAL. Sections 4,5,7, 8, 9 and 11 will survive the expiration or termination, for any reason, of this Agreement.

j. PAYMENT FROM CURRENT REVENUES. Client warrants that all payments required of it under a SOW will be made from current revenues available to Client.

k. ENTIRE AGREEMENT AND AMENDMENT. This Agreement, together with any SOWs and related attachments, constitutes the entire understanding between the parties and supersedes any prior written or oral agreements with respect to the subject matter of this Agreement. This Agreement may be modified or amended only by a written instrument executed by both parties.

l. COUNTERPARTS. This Agreement may be executed by the parties in one or more counterparts, each of which will be an original and all of which will constitute one and the same instrument. A facsimile signature will be deemed an original.

m. AUTHORITY. This Agreement is executed with Client's full knowledge of its terms and meanings. Each individual signing below represents and warrants that he or she is duly authorized to bind his or her respective party to the terms and conditions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this On-Site Master Services Agreement to be executed in their respective names by their duly authorized representatives.

Texas Association of School Boards, Inc.

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

Name: Jeff Clemmons

Title: Division Director, OnSite

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

Cedar Hill ISD  
(Name of Client)

By: \_\_\_\_\_  
(Signature of Authorized Representative)

Name: \_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_  
(Title/Position with Client)

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