

## **TASB FACILITY SERVICES MASTER AGREEMENT**

The Texas Association of School Boards, Inc. (“TASB”), a Texas nonprofit corporation, 12007 Research Boulevard, Austin, Texas 78759, and the undersigned entity (“Client”) enter into this Facility Services Master Agreement (“Agreement”). This Agreement is effective as of the date indicated on the signature page (“Effective Date”).

TASB Facility Services offers basic environmental, facilities, and related services to entities that subscribe to and pay the annual membership fee (“Facility Services Member”). This Agreement is for services beyond the basic Facility Services membership. The services provided under this Agreement are offered on a separate fee basis and shall be referred to as the “Service” or “Services.”

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 as described in individual Statements of Work in accordance with Paragraph 2.
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.

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, the SOW will control 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 a Facility Services Member, the initial term of this Agreement will continue until the expiration of the Client’s annual membership (August 31) and then automatically renew for successive one year terms co-extensive with Client’s Facility Services annual membership (September 1- August 31). If Client is not a Facility Services Member on the Effective Date, the initial term of this Agreement will be for a period of two years and then automatically renew for successive one year terms. If Client is a Facility Services Member on the Effective Date of this Agreement but fails to renew Client’s Facility Services membership, Client will be subject to non-Member pricing for all SOWs subsequent to termination of Client’s Facility Services membership, and this Agreement will continue until the end of the

then current term and automatically renew for successive one year terms unless Client terminates this Agreement in accordance with Paragraph 4.

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 termination. Additionally, if Client is eligible for TASB Active, Associate, or Affiliate membership and ceases to maintain such membership, this Agreement will terminate at the same time as Client's TASB membership. In the event of termination, TASB and Client may mutually agree in writing to have TASB complete work on any SOW outstanding as of the termination date, which work shall be governed by the terms of this Agreement and the SOW. 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. **INDEPENDENT CONTRACTOR RELATIONSHIP/ SUBCONTRACTORS.**

a. 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 shall not be deemed to be acting in a fiduciary capacity and is not and shall not be deemed to be providing legal advice to Client.

b. 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.

6. **PUBLICATION RIGHTS.** Client grants TASB the right to publish Client's name and logo on TASB's website, promotional and marketing materials, or other publication or medium that would identify a TASB Facility Services client. This right also shall extend to pictures of Client's facilities or property, except, however, under no circumstance will an unobscured image or audio recording of a minor or student be permitted without Client's specific written approval. Moreover, Client shall reserve the right to revoke the right granted in this section at any time by providing written notice to TASB as provided in this Agreement.

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.

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 described in the SOW.

TASB DISCLAIMS ANY AND ALL OTHER EXPRESS WARRANTIES AND ANY AND ALL IMPLIED WARRANTIES, 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.** To the fullest extent permitted by applicable law, TASB's liability to Client 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 24 months.

IN NO EVENT WILL TASB OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO CLIENT 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. **CRIMINAL HISTORY RECORD CHECKS.** TASB will comply with and obtain all criminal history information required by applicable law, including without limitation Tex. Educ. Code Chapter 22, Subchapter C, with respect to TASB employees who provide Services on Client premises or other location at which students may be present.

## 12. 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, and the results of the mediation will be binding only upon agreement of each party to be bound. The mediation will be held in Austin, Travis 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 on the signature page. 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 Travis County, Texas.

g. **ATTORNEYS' 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 12 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 or imaged 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]