

**STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR MONITORING**

**LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (hereinafter referred to as “Agreement”), dated this \_\_\_\_ day of \_\_\_\_\_, 2024, is made and entered into by and between the Newark Board of Education (hereinafter referred to as “Board” or “Licensor”), and the New Jersey Department of Environmental Protection (hereinafter referred to as “NJDEP” or “Licensee”).

**WHEREAS**, Licensor is the owner of certain real property, designated as Block 885, Lots 24 and 30 in the City of Newark, County of Essex, State of New Jersey (hereinafter referred to as the “Site”); and

**WHEREAS**, Licensee desires to locate, access, operate, and maintain a stationary air monitoring shelter, measuring approximately ten (10) feet by twenty (20) feet, with electric service, air monitoring equipment, and a meteorological tower measuring thirty-three (33) feet in height (hereinafter referred to as the “Shelter”) at the Site for the purpose of measuring air contaminants (hereinafter referred to as “Monitoring Activities”); and

**WHEREAS**, Licensee has located, accessed, operated, and maintained a stationary air monitoring shelter in the City of Newark since January 1, 1985; and

**WHEREAS**, Licensor is willing to allow Licensee to locate, access, operate, and maintain a Shelter at the Site for Monitoring Activities, subject to and in accordance with the provisions, covenants, terms, and conditions set forth herein.

**NOW THEREFORE**, for the purposes set forth above and based on the recitals, mutual promises, and consideration set forth herein, which the parties acknowledge constitutes good and valuable consideration, the parties agree as follows:

1. Licensor hereby grants to Licensee a license (hereinafter referred to as this “License”) to locate, access, operate, and maintain a Shelter for Monitoring Activities at the Site.
2. Licensee shall be authorized to locate and operate the Shelter at the Site, specifically at the location identified in Exhibit A, which is attached hereto. Licensee shall further be authorized to replace the Shelter from time to time and, upon the termination or expiration of this Agreement, shall remove the Shelter from the Site. Licensee shall not alter the location of the Shelter from that as identified in Exhibit A without the express written approval of Licensor. Licensee shall follow all applicable federal, state, and local laws when erecting, maintaining, and removing the Shelter from the Site and shall also be responsible for obtaining any and all permits, approvals, and authorizations necessary from any federal, state, or local authority for doing so. Licensee will be responsible for all testing and performing any and all analysis of the Site necessary to determine the conditions of the Site prior to the construction and placement of the Shelter.

3. Pursuant to this License, Licensee and Licensee's officers, agents, servants, successors, employees, assignees, contractors, and invitees may enter upon, occupy, and use the Site to perform any and all tasks necessary to locate, access, operate, maintain, replace, and/or remove the Shelter.
4. This License shall take effect on the date of its execution by Licensor (hereinafter referred to as the "Effective Date"), and shall expire, unless sooner terminated, ten (10) years thereafter. Licensee shall have an option to renew this License by giving at least ninety (90) days' written notice to the Licensor prior to its expiration. Either party may unilaterally terminate this agreement, with or without cause, and/or for convenience upon ninety (90) days' written notice to the other. Upon termination of the License, Licensee shall remove the Shelter from the Site and return the Site to its original state within one hundred twenty (120) days.
5. Licensee's activities at the Site shall be undertaken in such a manner as to avoid interference with and minimize disturbance to the normal business and operations of Licensor, and shall be performed in accordance with all applicable laws, statutes, ordinances, and regulations. Licensee shall apply for and obtain all necessary permits and approvals and shall provide Licensor with copies of such permits and approvals prior to the start of any activities which require such permits and approvals. Licensee shall use all reasonable means to minimize the generation of airborne dust at the Site. Licensee shall be solely responsible for the maintenance and upkeep of the shelter, as well as any conditions or circumstances at the Site resulting from the presence of the Shelter.
6. Licensee agrees to pay all electricity costs related to the operation of the Shelter at the Site. Licensor and Licensee acknowledge that electricity costs related to the operation of the Shelter shall be segregated from other electricity costs at the Site through the use of a separate utility meter registered to an account in Licensee's name. This License is not a commitment of funds from the Board. It is expressly understood by the parties that their respective voluntary participation in this Agreement does not require any monetary payment of any kind to or from the other.
7. Licensor agrees that the Shelter is for the sole use of NJDEP and its officers, agents, servants, successors, employees, assignees, contractors, and invitees. Subject to the provisions of Paragraph 2 and Paragraph 5 herein, the Board agrees that neither it nor its officers, agents, servants, successors, employees, assignees, contractors, or invitees shall enter or interfere with the Shelter or otherwise interfere with Monitoring Activities, including but not limited to interference with NJDEP's officers, agents, servants, successors, employees, assignees, contractors, and invitees, without the express written approval of NJDEP, unless in case of emergency.
8. Subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., Licensee shall be responsible for, at its own expense defend itself against, and hereby releases Licensor for any and all suits, claims, losses, demands, expenses, or damages of whatsoever kind or nature, arising out of



15. This License shall not be construed as any form of tenancy, ownership, easement, or conveyance of any other real property interest in the Site.
16. Nothing in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between the parties. This Agreement shall not be construed as creating a leasehold between the parties, nor to create any form of legal association which would impose liability upon one for the act or failure to act of the other.
17. Licensor hereby warrants that: (1) no person or selling agency has been employed to secure this Agreement in violation of N.J.S.A. 52:34-15; and (2) it has neither made nor knows of any payments or gratuities made in violation of N.J.S.A. 52:34-19.
18. The parties understand and agree that all prior understandings and agreements between them regarding performance of the obligations described herein are merged into this written Agreement, which supersedes all such prior understandings and agreements. Neither party enters into this Agreement in reliance on any statement or representation of the other which is not reiterated herein.
19. If any term or provision of this Agreement shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of the remaining part nor the validity of any other term or provision shall in any way be affected by such holding.
20. This Agreement may not be changed or terminated, nor may its provisions or requirements be waived, unless such modification, termination, or waiver is in writing and signed by both parties. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver is expressed in a writing signed by both parties.
21. This Agreement shall be binding upon and inure to the benefit of the successors and assignees of the Board and NJDEP.
22. This Agreement may be executed in multiple counterparts, each of which shall constitute an original instrument and all of which, taken together, shall constitute one and the same instrument.
23. NJDEP shall ensure that any contractor(s), worker(s), subcontractors(s), agent(s), intern(s) and/or representative(s) assigned to a school location or to a project involving contact with children has had a criminal history background check, and that said check indicates that no criminal history record information exists on file in either the Identification Division of the Federal Bureau of Investigation or the State Bureau of Identification which would disqualify said employee from employment pursuant to N.J.S.A. 18A:6-7.1 et seq. NJDEP must ensure that said background checks are performed no later than thirty (30) days after execution of this Agreement. The services under this Agreement shall not begin or proceed until NJDEP complies with the requirements of this section. Failure to ensure that criminal history background check(s) are performed within said time limitation shall be deemed a

material breach of this agreement by NJDEP, and as such, serves as a basis for the Board to immediately terminate this Agreement.

24. As a State agency, NJDEP does not carry public liability insurance and is self-administered for tort claims through the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. As a State agency, NJDEP is self-insured for Worker's Compensation pursuant to N.J.S.A. 34:15, and all such matters are self-administered. It is acknowledged by the parties that NJDEP employees, workers, representatives, agents, independent contactors, and/or invitees will not be considered employees or agents of the Board under this Agreement for any purposes, including any injuries that may be suffered while on Board property. As such, should any NJDEP employees, workers, representatives, agents, independent contractors and/or invitees become injured while on Board property, the parties agree that said NJDEP employees, workers, representatives, agents, independent contractors, and/or invitees will administer any claims related to such injury through the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., and/or Worker's Compensation pursuant to N.J.S.A. 34:15, as applicable.
25. None of the provisions of the MOU are intended to create nor shall be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other solely for the purposes of effecting the provisions of this Agreement. Neither of the parties, hereto, nor any of their respective officers, directors or employees, shall be construed to be the agent, employee or the representative of the other.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF**, the parties hereto, duly authorized, have executed this License Agreement as of the date of the last signing party, which date shall be entered on the first page of this Agreement (hereinafter referred to as the “Date of Execution”).

**FOR THE NEWARK BOARD OF EDUCATION**

By: \_\_\_\_\_  
Hasani K. Council  
Board President

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

**FOR NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

ATTESTED BY:

By: \_\_\_\_\_  
Paul Baldauf, P.E.  
Assistant Commissioner

\_\_\_\_\_

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

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

Exhibit A: (To be provided after Site is selected.)