

**MEMORANDUM**  
**OFFICE OF DISTRICT CLERK**

**TO: Board of Education**  
**FROM: Kate Emerson**  
**SUBJ: Addendum to Agenda**  
**DATE: April 11, 2019**

Please add the following requests/changes to the Board Agenda for tonight's meeting:

**VIII. New Business:**

**F. ACTION**  
Recommend the Board approve the contract between the Cambridge Central School District and Ambient Environmental, Inc. for Project 2020 Air quality Control and Hazard Materials Control.

**G. ACTION**  
Recommend the Board accept the donation of a used Tenor Sax from Tina and John Imhof.



**Ambient Environmental, Inc.**

Building Science and EHS Solutions

NYS Certified WBE,  
SBA EDWOSB & DBE

## CLIENT SERVICE AGREEMENT

This AGREEMENT is made this 8<sup>th</sup> day of April 2019, by and between Cambridge Central School District its employees, officers, directors, subsidiaries, and agents (Client) of 58 South Park Street, Cambridge, NY 12816 respectively and Ambient Environmental, Inc. (Ambient) its employees, officers, directors, subsidiaries, and agents (Ambient) at 828 Washington Avenue, Albany, NY 12203

The parties mutually agree as follows:

**DESIGNATED REPRESENTATIVES** Except as expressly specified otherwise in writing, the parties designate the following named individuals as their authorized representatives to provide approvals, directives, and permissions, including changes, and to receive notices or other communications under this agreement at the following addresses:

**Ambient:** 828 Washington Avenue, Albany, NY 12203

**CLIENT:** 58 South Park Street, Cambridge, NY 12816

**PROPOSAL NAME/NUMBER:** 2019-03-123

**1. SERVICES TO BE PERFORMED** Ambient shall prepare a proposal and/or a service order for Client. The proposal and/or service order shall describe the work to be performed (Services), the location (Site), fees and/or rates to be charged, certain special conditions of performance including equipment, sampling protocols, and necessary reimbursable expenses. Ambient will be authorized to proceed with the Services (Service Order), when Client indicates its acceptance by signing this Agreement. The Service Order, any attachments pertaining to the Service Order, and this Agreement shall comprise the Contract Document.

**2. ADDITIONAL SERVICES** If any additional or different Services are required to complete an existing Service Order, these additional Services shall be set forth in a new Service Order satisfying all applicable and appropriate requirements including a separate schedule of fees and Services (Change Order).

**3. COMPENSATION** Client will pay Ambient for Services and expenses in accordance with the Service Order. Ambient will submit periodic invoices to Client together with reasonable supporting documentation requested by Client and a final bill upon completion of its services. Unless otherwise agreed in writing, there shall be no retainage. Payment is due within thirty (30) days regardless of whether Client has been reimbursed by any other party. Ambient may suspend work, withhold reports and vacate the site without liability if payment is not received. Client will indemnify Ambient for all claims concerning the suspension of work for nonpayment regardless of whether the claims are by the Client, someone claiming through the client, or by a third party. Client agrees to pay Ambient's attorney's fees, and all other costs incurred in collecting past due amounts. Ambient may from time to time revise its fees and/or rates and advise client either by general notification, or by specific Service Order.

**4. EXPENSES** Unless otherwise stated in the Service Order, Client agrees to pay Ambient for its reimbursable expenses, in

addition to its fees. Reimbursable expenses are expenditures made by Ambient in the interest of the contracted Services. Reimbursable expenses shall be billed, and paid, in accordance with the schedule included with the Service Order. Ambient will submit a Change Order to Client detailing other reimbursable expenses not outlined in the Service Order, for written authorization prior to billing.

**5. INSURANCE** Ambient agrees that it now carries, and will continue to carry during the performance of any Services under this Agreement, Commercial General Liability, Professional Liability and Contractor's Pollution Liability insurance coverage with limits at or above those described below.

<b>a. Commercial General Liability</b>	
▪ Each Occurrence	\$5,000,000
▪ Personal and Advertising Injury	\$5,000,000
▪ General Aggregate	\$5,000,000
▪ Products and Completed Operations Aggregate	\$5,000,000
<b>b. Errors and Omissions / Professional Liability</b>	
▪ Each Claim	\$5,000,000
▪ Annual Aggregate	\$5,000,000
<b>c. Contractor's Pollution Liability</b>	
▪ Each Claim	\$5,000,000
▪ Annual Aggregate	\$5,000,000

**6. OBLIGATIONS OF CLIENT** Client warrants that all information provided to Ambient concerning the required Services, is complete and accurate to the best of Client's knowledge. Client agrees to advise Ambient prior to commencement of the Services, and during the work, of any hazardous conditions on or near the Site known to Client. Client understands that Ambient is relying upon the completeness and accuracy of information supplied to it by Client and

Ambient will not independently verify such information unless otherwise provided in the Service Order. Client shall be solely responsible for and shall indemnify and hold harmless Ambient for any costs, expenses or damages incurred by Ambient due to Client's failure to follow applicable reporting and governmental requirements. Client will not hold Ambient liable if Ambient's recommendations are not followed and waives any claim against Ambient, and agrees to defend, indemnify and hold Ambient harmless from any claim or liability for injury or loss that results from failure to properly implement Ambient's recommendations.

**7. STANDARD OF CARE** Ambient's Services as defined by the Service Order shall be performed in accordance with generally accepted industry principles and practices, consistent with a level of care and skill ordinarily practiced by the consulting profession currently providing similar services under similar circumstances at the time the Services were provided. Client agrees to give Ambient written notice within one (1) year of any breach or default under this section and to provide Ambient a reasonable opportunity to cure such breach or default, without the payment of additional fees to Ambient, as a condition precedent to any claim for damages.

**8. LIMITATIONS OF METHOD RELIABILITY** The Client recognizes and agrees that all testing and remediation methods have inherent reliability limitations; no method or number of sampling locations can guarantee that a condition will be discovered within the performance of a Service Order as authorized by the Client. The Client further acknowledges and agrees that reliability of testing or remediation methods varies according to the sampling frequency and other variables and that these factors, including cost, have been considered in the Client's selection of Services. Ambient's observations only represent conditions observed at the time of the Site visit. Ambient is not responsible for changes that may occur to the Site after Ambient completes the Services.

**9. INTERPRETATION OF DATA** Ambient shall not be responsible for the interpretation of Ambient data by third parties, or the information developed by third parties from such data. Client recognizes that subsurface conditions may vary from those encountered at the locations where the borings, surveys, or explorations are made by Ambient and that the data interpretations and recommendations of Ambient's personnel are based solely on the information available to them.

**10. THIRD PARTY INFORMATION** Ambient is dependent on information available from various governmental agencies and private database firms to aid in evaluating the history of the Site. Ambient shall not be liable for any such agency's or database firm's failure to make relevant files or documents properly available, to properly index files, or otherwise to fail to maintain or produce accurate or complete records.

**11. SITE ACCESS** Client grants or shall obtain for Ambient a right of entry to all parts of the Site necessary to complete the requested Services and unless otherwise specified in the Service Order, it represents that it has obtained the applicable permits and licenses for the proposed Services. If Client does not own the Site, Client represents that it has or will obtain prior to the commencement of the Services, the authority and permission of the owner and/or the occupant of the Site. Client acknowledges that due to the nature of some Services unavoidable damage may occur. Client waives its right of recovery for such unavoidable damage, and if Client is not the owner of the Site, Client agrees to indemnify and defend

Ambient against any claims by the owner and/or occupant for any such damage.

Unless otherwise specified in the Service Order, Ambient is not liable for damages caused by exploratory demolition or investigation to identify, quantify, or evaluate building materials, systems, and/or components not readily accessible to Ambient during Ambient's performance of the Services. Ambient is not responsible for unforeseen conditions that exist on the Site within building systems that prohibit or deter Ambient from gaining access to building materials, systems, and/or components.

**12. SITE CONTROL** Ambient's testing, observation, or inspection of the work of other parties on a project shall not relieve such parties of their responsibility to perform their work in accordance with applicable plans, specifications and safety requirements. Continuous monitoring by Ambient's employees does not mean that Ambient is observing or verifying all Site work or placement of all materials. Client agrees that Ambient will only make on-Site observations appropriate to the Services provided by Ambient and will not relieve others of their responsibilities to perform the work.

**13. TEST AND SAMPLING LOCATIONS** Unless otherwise specified in the Service Order, the accuracy of test or sampling locations and elevations will be commensurate only with pacing and approximate measurements or estimates. The Client should retain the services of a professional surveyor, if greater accuracy is required. Client will furnish a diagram indicating the accurate location of the Site. Sample locations may also be indicated on the diagram. Ambient reserves the right to deviate a reasonable distance from the boring and sampling locations unless this right is specifically revoked by the Client in writing at the time the diagram is supplied.

**14. SAMPLES AND EQUIPMENT** Unless otherwise specified in the Service Order or required by law, Ambient will not retain any samples obtained from the Site. At no time does Ambient assume title to the samples; all samples shall remain the property of the Client. Ambient will, however, sign manifests as agent for Client.

All laboratory and field equipment contaminated during Ambient's Services that cannot readily and adequately be cleansed of its hazardous contaminants shall become the property and responsibility of the Client. The Client shall purchase all such equipment as an expense of the Services, and it shall be turned over to the Client for proper disposal unless otherwise specified in the Service Order.

**15. OPINIONS OF COSTS** Ambient may provide estimates of costs for remediation or construction as appropriate based on available data, designs, or recommendations. However, these opinions are intended primarily to provide information on the range of costs and are not intended for use in firm budgeting or negotiation unless specifically agreed to in writing by Ambient.

**16. SAFETY** Ambient shall not, unless otherwise specified in the Service Order, be responsible for health and safety procedures, construction means, methods, techniques, sequences, or procedures, nor be responsible for the acts or omissions of contractors or other parties on the Site.

**17. UTILITIES** Unless otherwise specified in the Service Order, it is Client's responsibility to mark or furnish the locations of all underground man-made obstructions at all Sites that the Client owns

and/or operates. Client shall indemnify, defend and hold harmless Ambient from and against any claims, losses or damages incurred or asserted against Ambient related to Client's failure to mark, protect or advise Ambient of underground structures or utilities.

**18. ROOF CUTS** Unless otherwise specified in the Service Order, if roof cuts/samples are required by the Services, it is the responsibility of the Client to make appropriate repairs. If a roofing contractor or maintenance personnel selected by Client is not on the roof to make repairs at the time samples are obtained, Ambient may make temporary repairs, which may result in additional charges. Ambient personnel are not certified in roofing repair, therefore under no circumstances, shall Ambient be responsible for any water damage to the roofing system, building, or its contents resulting from Ambient's temporary repairs.

**19. HAZARDOUS CONDITIONS OR SUBSTANCES** The Client acknowledges that Ambient has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, substance or constituent at the Site. All Site generated hazardous and non-hazardous waste, including used disposable protective gear and equipment, are the property of the Client.

Client agrees to indemnify and hold harmless Ambient against all claims for injury or loss sustained by any party, including the United States, from exposure, release, or the presence of any such hazardous, radioactive, toxic, irritant, pollutant, substance or constituent at the Site. This indemnity includes but is not limited to, Ambient acting as Client's agent to sign waste manifests, allegations that Ambient is a handler, generator, operator, treater or storer, transporter or disposer under any federal, state or local, law, regulation or ordinance, and Client's or third party's violation of federal, state or local, law, regulation or ordinance, related to the handling, storage, or disposal of hazardous substances or constituents at/or introduced to the Site, before or after the completion of the Services.

**20. RIGHT TO STOP WORK** If, during the performance of a Service Order, any unforeseen hazardous substance, material, element, constituent, condition, or occurrence is encountered which, in Ambient's reasonable judgment significantly affects or may affect the Services provided, the risk involved in providing the Services, or the recommended scope of Services, Ambient may immediately suspend work.

**21. AMBIENT AND CLIENT INDEMNIFICATION** Ambient shall indemnify and hold harmless Client against claims, demands, and lawsuits, to the extent arising out of or caused by the negligence or willful misconduct of Ambient, in connection with activities conducted in the performance of the Services.

The Client shall indemnify and hold harmless Ambient from and against claims, demands, and lawsuits, to the extent arising out of or caused by the negligence or willful misconduct of the Client or other contractors retained by Client in connection with activities conducted in the performance of the Services.

If a dispute arises between the parties resulting in litigation, the prevailing party shall be entitled to recover all reasonable costs incurred. Client agrees that all indemnifications granted to Ambient shall also be granted to those subcontractors retained by Ambient for the performance of the Services.

**22. LIMIT OF LIABILITY** Ambient's total liability for all claims or causes of action of any kind including but not limited to negligence, bodily injury or property damage, breach of contract or warranty shall not exceed the amounts recoverable from the insurance limits set forth in this Agreement.

**23. CONSEQUENTIAL DAMAGES** In no event shall either party be liable to the other party for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income, loss of profits, loss or restriction of use of property, or any other business losses regardless if such damages are caused by breach of contract, negligent act or omission, other wrongful act, or whether Ambient shall be advised, shall have other reason to know, or in fact shall know of the possibility of such damages.

**24. WARRANTY** Ambient is not a manufacturer. If any equipment is used or purchased by Ambient for a Service Order the manufacturer's warranties if any on the equipment are solely those of the manufacturer. Ambient makes no other representation, guarantee, or warranty, expressed or implied, in fact or by law, whether of merchantability, fitness for any particular purpose or otherwise, concerning any of the goods or Services which may be furnished by Ambient to Client.

**25. DOCUMENTS** Project-specific documents and data produced by Ambient under this Agreement shall, upon completion of the Service Order become the property of Client upon payment of amounts owed Ambient. Ambient shall have the right, but not the obligation, to retain copies of all such materials.

**26. RELIANCE** Documents and data produced by Ambient are not intended or represented by Ambient to be suitable for use or reliance beyond the scope or purpose for which they were originally prepared, or for anyone except the Client. Any such unauthorized use will be at the Client's or third party's sole risk.

**27. THIRD-PARTY CLAIMS** Client agrees to pay Ambient's costs (including reasonable attorney's fees) for defending Ambient against any claims that a third party or a regulatory agency asserts against Ambient related to the Services that were provided to Client. Claims include legal actions by a third party or a regulatory agency that are based upon the discoveries, findings or conclusions disclosed in documents or reports supplied to Client by Ambient.

**28. SUBPOENAS** The Client is responsible for payment of Ambient's time and expenses resulting from Ambient's response to subpoenas issued by any party, involving any legal or administrative proceeding in which Ambient is not named as a party, in connection with any Services performed under this Agreement. Charges are based on fee schedules in effect at the time the subpoena is served. Ambient shall not object on Client's behalf to any subpoena, but will make reasonable efforts to cooperate with Client if Client chooses to object.

**29. TERMINATION OF CONTRACT** This Agreement may be terminated by either party upon seven (7) days written notice provided that any incomplete or unfinished Service Order will remain in effect until completed, unless otherwise agreed to in writing. In the event of termination or suspension, by the Client, Ambient shall be paid for Services performed prior to the termination date plus reasonable termination and suspension expenses.

30. **ASSIGNMENT** Neither the Client nor Ambient may assign, or transfer its benefits, rights, duties, or interest in this Agreement without the written consent of the other party. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties.

31. **FORCE MAJEURE** Neither Client nor Ambient shall hold the other responsible for damages or delays in performance caused by uncontrollable events, which could not reasonably have been anticipated or prevented, including but not limited to, acts of God, the public enemy, acts of the Government of the United States or of the several states, or any foreign country, or any of them acting in their sovereign capacity, materially different Site conditions, wars, riots, terrorism, rebellions, sabotage, fires, explosions, accidents, floods, strikes, or other conceded acts of workers, lockouts, or changes in laws, regulations, or ordinances.

32. **GENERAL PROVISIONS** The captions and headings throughout this Agreement are for convenience only and do not define, limit, modify, or add to the meaning of any provision of this Agreement. If any provision of this Agreement is in conflict with any provision of the Service Order, the terms and conditions of this Agreement shall prevail unless the conflict concerns the scope of Services to be provided. If any provision shall to any extent be deemed invalid, it shall be modified if possible to fulfill the intent of the parties as reflected in the original provision and the remainder of this Agreement shall not be affected.

This Contract Document represents the entire understanding between the parties and supersedes any and all prior contracts whether written or oral. Nothing contained in this Contract Document shall be construed to be for the benefit of any persons not a party to this Agreement. No third party beneficiary rights are created.

The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state in which the Site is located. Any legal action arising out of this Agreement shall be venued in a court of competent jurisdiction within the state and county of the Site.

No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

Ambient is solely responsible for the performance of this Agreement, and no parent, subsidiary or affiliated company, or any of its directors, officers, employees, or agents shall have any legal responsibility whether in contract or tort, including negligence.

Ambient Environmental, Inc.

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

CLIENT: **CAMBRIDGE CENTRAL SCHOOL DISTRICT**  
(Person authorized to execute contracts)

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

PROPOSAL NO. 2019-03-123