

Request For Proposal
for
BOND COUNSEL SERVICES

January 30, 2020

Pelham Union Free School District
575 Colonial Ave
Pelham, NY 10803

Proposals must be submitted by:

Date: **February 28, 2020** Time: 1 p.m.

Location: Pelham Union Free School District
Business Office
575 Colonial Ave
Pelham, NY 10803

Pelham Union Free School District

Request for Proposal for BOND COUNSEL SERVICES

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Pelham Union Free School District

PUBLIC NOTICE

REQUEST FOR PROPOSAL FOR BOND COUNSEL SERVICES

Pelham Union Free School District
Business Office
Pelham, New York 10803

The Board of Education of the Pelham Union Free School District invites sealed proposals for providing **BOND COUNSEL SERVICES**. The Request for Proposal ("RFP") including forms for proposal, certifications, General Information and Conditions, and Specifications may be obtained from the District's Business Office at 575 Colonial Ave, Pelham, NY 10803.

In all cases, it must be understood that the General Information and Conditions and Specifications of the Pelham Union Free School District shall apply. Proposals must be in sealed, opaque envelopes marked "RFP – **BOND COUNSEL SERVICES**" and will be received until 1 p.m. on February 28, 2020 at the Business Office. The Board of Education reserves the right to reject all proposals, to request clarifications or corrections to proposals received, to waive what it deems to be an informality in the RFP process, to waive what it deems to be technical defects, irregularities and/or omissions relating to a specific proposal, to negotiate any portion of the proposals received, to re-advertise and solicit additional proposals or to cancel this RFP if it is in the best interest of the District to do so.

Proposals will be evaluated by the District. Any aspects of the service not addressed by the General Information and Conditions or Specifications are left for the proposer to address. Alternatives to the General Information and Conditions, Specifications or additions to the Specifications are to be clearly identified by the proposer.

Pelham Union Free School District
James Hricay
Assistant Superintendent for Business
575 Colonial Ave
Pelham, NY 10803
Telephone: 914-738-9140

Pelham Union Free School District

General Information and Conditions

1. Proposals must be presented in a sealed, opaque envelope addressed as follows:

James Hricay – Assistant Superintendent for Business
Pelham Union Free School District
575 Colonial Ave
Pelham, NY 10803
Request for Proposal
BOND COUNSEL SERVICES

2. Proposals will be received until **1 p.m.** on **February 28, 2020** at the Pelham Union Free School District, Pelham, New York.
3. Notice of Interest form must be filled out and returned to the address above by February 7, 2020.
4. For questions regarding the Specifications, contact **James Hricay, Assistant Superintendent for Business at (914-738-9140)**.
5. The Pelham Union Free School District (the “District”) will not reimburse responding persons or entities for any expenses incurred in preparing, clarifying and/or negotiating proposals submitted in response to this request.
6. During the evaluation process, the Pelham Union Free School District reserves the right, where it may serve the District, to request additional information or clarifications from proposers, or to allow corrections or omissions. At the discretion of the District, proposers may be requested to make oral presentations or to attend a meeting or interview as part of the evaluation process. Proposers will not be paid or reimbursed for any time spent or expenses incurred in making a presentation or attending any meeting or interview as part of the evaluation process.
7. The Pelham Union Free School District reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal was selected. Submission of a proposal indicates acceptance of the conditions contained in this Request for Proposal (“RFP”), unless clearly and specifically noted in the resulting contract between the District and the selected proposer(s).

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8. Proposals must include original copy, and an electronic copy with the subject line stating “RFP – **BOND COUNSEL SERVICES**” of all pages of the RFP with each page initialed by the proposer. All proposals must be submitted on and in accordance with the forms included in this document. The proposal sheets are not to be removed from the document.
9. Where so indicated by the makeup of the Proposal Form, sums shall be expressed in both words and numbers. In a case of discrepancy between the two, the amount written in words will govern. Prices and information required, except signature of the proposer, should be typewritten for legibility. Illegible or vague proposals may be rejected. All signatures must be handwritten in ink. Facsimile, printed, or typewritten signatures are not acceptable.
10. A proposal shall include the legal name of the proposer and a statement whether the proposer is a sole proprietor, a partnership, a corporation or other legal entity, and shall be signed by the person or persons legally authorized to bind the proposer to a contract. All required signatures shall be handwritten in ink with the full name of the person executing same. Initials, stamps, photocopies or other copies, or company names may not be used in lieu of any required signature. A proposal by a corporation shall also give the State of Incorporation and have the corporate seal affixed on the signature pages of each Form of Proposal. A proposal submitted by an agent shall have a current Power of Attorney attached certifying the agent’s authority to bind the proposer.
11. All information received in response to this RFP shall become the property of the District. All proposals may be made available upon request pursuant to the Freedom of Information Law (“FOIL”) for public inspection, except to the extent that certain personally identifiable information may be redacted as an invasion of personal privacy or the proposer has designated and the District concurs that certain information constitutes a trade secret or other proprietary information or data. If a proposer believes that a portion of its proposal contains trade secrets or other proprietary data that should remain confidential and not be disclosed, a statement advising the District of this fact shall accompany the proposal and the information is to be identified wherever it appears. Identifying an entire proposal as proprietary is unacceptable and will result in no part of the proposal being treated as containing a trade secret or other proprietary information or data.
12. Upon selection, the terms of the General Information and Conditions, the Specifications and the selected proposal will become incorporated into and form a part of the contract between the District and the selected proposer(s). The form of contract that the District intends to use is included in Appendix 9 and any exception to any provision in the attached form of contract (See Appendix 9) or requested deviation therefrom (addition, deletion, modification) must be submitted with the

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proposal with the specific language for the proposed revision or addition stated. The final contract form may only be modified by the District in its sole discretion and will be subject to the approval of the Board of Education of the Pelham Union Free School District.

13. This RFP does not commit the District to award a contract, pay any cost incurred in the preparation of a proposal in response to this RFP, or to contract for services. The District intends to award on the basis of the best interest and advantage to the District. **THE DISTRICT'S BOARD OF EDUCATION RESERVES THE RIGHT TO REQUEST CLARIFICATIONS OR CORRECTIONS TO PROPOSALS RECEIVED, TO ACCEPT OR REJECT ANY OR ALL PROPOSALS RECEIVED AS A RESULT OF THIS RFP, TO NEGOTIATE WITH ALL QUALIFIED PROPOSERS, TO WAIVE WHAT IT DEEMS TO BE AN INFORMALITY IN THE RFP PROCESS, TO WAIVE WHAT IT DEEMS TO BE TECHNICAL DEFECTS, IRREGULARITIES AND/OR OMISSIONS RELATING TO A SPECIFIC PROPOSAL, TO RE-ADVERTISE AND SOLICIT ADDITIONAL PROPOSALS, TO ACCEPT THE WHOLE OR A PART OF A PROPOSAL FROM MORE THAN ONE PROPOSER OR TO CANCEL THIS RFP IN PART OR IN ITS ENTIRETY, AS IN THE BOARD OF EDUCATION'S JUDGEMENT IS IN THE BEST INTEREST OF THE DISTRICT.** The District may select the proposal which, in the District's sole discretion and with whatever modifications the District and the proposer may mutually agree upon. No proposer shall have any legal, equitable, or contractual rights of any kind arising out of its submission of a proposal except as and to the extent that the District, in its sole discretion, shall enter into a contract with the proposer(s) that is selected.
14. All proposals received after the time stated in the Notice to Proposers will not be considered. The proposer assumes the risk of any delay in the mail or by means of personal delivery, the proposer assumes responsibility for having his/her proposal deposited on time at the place specified.
15. The submission of a proposal will be construed to mean that the proposer is fully informed as to the extent and character of the services, supplies, materials, or equipment required to satisfactorily comply with the requirements of this RFP, which are included in the General Information and Conditions and the Specifications.
16. The selected proposer(s) must agree to the following Non-Discrimination Clause:
 - a. That in the hiring of employees for the performance of work under the resulting contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, sex, sexual orientation, age, disability, religion, marital status, military status, domestic violence victim status, predisposing genetic characteristics or national origin discriminate against any person who is qualified and available to perform the work to which the employment relates; and

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- b. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the resulting contract on account of race, creed, color, sex, sexual orientation, disability, national origin, religion, marital status, military status, domestic violence victim status, predisposing genetic characteristics or age.
17. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the selected proposer(s) hereby agrees to effectuate the naming of the District as an unrestricted additional insured on the selected proposer(s)'s insurance policies, with the exception of workers' compensation and professional liability. If the policy is written on a claims-made basis, the retroactive date must precede the date of the resulting contract.
18. The policy naming the District as an additional insured shall:
- a. Be issued by an A.M. Best rated "secured" insurer, authorized to conduct business in New York State; and
 - b. State that the proposer's coverage shall be primary coverage for the District, its Board of Education, employees and volunteers.
19. The District shall be listed as an additional insured by using endorsement CG 2026 or equivalent. The decision to accept an alternative endorsement rests solely with the District. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance. The decision to accept an alternative endorsement rests solely with the District.
20. The selected proposer(s) agrees to indemnify the District for any applicable insurance policy deductibles or self-insured retentions.
21. Required Insurance for the selected proposer shall be the following unless otherwise authorized by the Board of Education or Assistant Superintendent for Business for good cause shown:
- a. Commercial General Liability**
\$1,000,000 per occurrence/\$2,000,000 aggregate with no exclusions for athletic participants and with proof of coverage for sexual misconduct.
 - b. Worker's Compensation and N.Y.S. Disability**
Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

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A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). A person claiming an exemption from Workers' Compensation Insurance must file a CE-200 form with the state and provided a copy of such form to the District.

c. Professional Errors and Omissions Insurance

\$2,000,000 per occurrence/\$2,000,000 per aggregate for the professional acts of the selected proposer(s) performed under the resulting contract for the District. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the resulting contract. Coverage shall remain in effect for two years following the completion of the professional acts of the selected proposer(s) performed under the resulting contract.

d. Fidelity Bond

For dishonest acts of the proposer's employees with coverage for computer fraud and fund transfer including client coverage.

e. Excess Insurance

On a "Follow Form" basis, with limits of \$3,000,000 each occurrence and aggregate.

f. Automobile Liability

\$1,000,000 combined single limit for owned, hired, and borrowed and nonowned motor vehicles.

22. The selected proposer(s) acknowledges that the failure to obtain such insurance on behalf of the District constitutes a material breach of the resulting contract. The selected proposer(s) is to provide the District with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the District to object to the contents of the certificate of insurance(s) or the absence of same shall not be deemed a waiver of any rights held by the District. At the District's request, the selected proposer(s) shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. At the District's request, the selected proposer(s) also will provide a copy of the policy endorsements and forms.
23. The District is a member/owner of the NY Schools Insurance Reciprocal (NYSIR). The proposers understand and acknowledge that the procurement of such insurance as

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required herein is intended to benefit not only the District but also the NYSIR, as the District's insurer.

24. The selected proposer(s) may terminate the resulting contract by giving at least sixty (60) days prior written notice to the District, and the District may terminate the resulting contract by giving at least thirty (30) days prior written notice if the other party fails to perform any of the material obligations hereunder. The party so notified shall have fifteen (15) business days from the date of that notice to correct such failure. The District may still opt to terminate the resulting contract. The District may terminate the resulting contract without cause by giving at least sixty (60) days prior written notice to the selected proposer(s).
25. The District is soliciting the services of qualified firms or individuals to perform **BOND COUNSEL SERVICES** for the fiscal year ending **June 30, 2021**, with the option to perform similar services for each of the four subsequent fiscal years. The resulting contract is subject to the annual review and recommendation of the Assistant Superintendent for Business, James Hricay, and final award by the Board of Education. In no case shall the proposal be written to provide or be awarded for fiscal years after **June 30, 2025**. These services are to be performed in accordance with the provisions contained in this RFP.
26. The selected proposer(s) may not engage subcontractors, hire others to perform all or part of the resulting contract, nor otherwise delegate the selected proposer(s)'s obligations to perform under the resulting contract without the express written consent of the District's Administration.
27. Proposals will provide, along with the completed proposal package, evidence demonstrating an ability to provide the requested services, including, a list of at least three (3) school districts, which they have served and a summary of their experience over the past three (3) years of successful completion of the services required herein.
28. No charge will be allowed for federal, state, or municipal sales and excise taxes since the District is exempt from such taxes. Exemption certificates, if required, will be furnished on forms provided by the proposer.
29. The selected proposer(s) acknowledges and agrees that if the selected proposer will have unsupervised direct contact with students and/or will provide services in a District school on more than five (5) days, the selected proposer and its employees will be required to be fingerprinted and have a criminal history record check completed as required by the Education Law of the State of New York. The selected proposer(s) agrees to cooperate with the District to obtain fingerprint and criminal record check clearances from NYSED and to complete any and all necessary forms or procedures, all at no cost or expense to the District.

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30. The proposer certifies that if it is awarded a contract, (a) to extent it needs to purchase or contract with suppliers to fulfil its obligations under the resulting contract, it will make commercially reasonable good faith efforts to utilize suppliers that are certified minority and women-owned business enterprises ("MWBEs"), (b) to the extent subcontracting is needed and permitted by the District, proposer will make commercially reasonable good faith efforts to utilize subcontractors, who are certified MWBEs and (c) proposer will retain documentation of these efforts to be provided upon request to the District and/or New York State. Evidence of good faith efforts shall include, but not be limited to, the following: (a) copies of solicitations to MWBEs and any responses thereto; (b) explanation of the specific reasons each MWBE that responded to such solicitations was not selected; and (c) explanation of the specific steps undertaken for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

SPECIFICATIONS

Pelham Union Free School District is seeking **BOND COUNSEL SERVICES.**

All Financial Statements or other District information can be obtained from accessing The Pelham Union Free School District website, Business and Operations Office at: www.pelhamschools.org

1. SCOPE OF WORK:

With respect to general obligation issues as Bond Counsel, duties include the following:

- The Examination of applicable law
- The preparation of authorizing resolutions
- Participation with the issuer and its financial advisors in structuring financings
- The preparation of the closing documents and notes or bonds
- Ongoing consultation with the various parties to financing transactions, including day-to-day questions from municipal personnel regarding matters relating to existing or proposed issues
- The review of certified proceedings

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- The rendering of legal opinions with respect to the authorization, issuance, and tax-exempt status of notes and bonds
- The preparation and filing of any informational tax returns
- Render advice to the District for projects under consideration, whether or not bonds and/or notes are actually issued

2. GENERAL REQUIREMENTS

- a. Inquiries concerning the RFP and the subject of the request for proposals must be made to:

**James Hricay, Assistant Superintendent for Business,
Pelham Union Free School District
575 Colonial Ave
Pelham, NY 10803**

- b. Firm / Individual Qualifications and Experience

1. Provide affirmative statement that the firm/individual is independent of the District.
2. State the name(s) of the individual(s) to be assigned to the District who would be assigned to represent the District for bond and note issues and other day-to-day legal services for the District and give a brief description of each person's experience with the issuance of general obligation debt and tax issues related to such financings, as well as general municipal law expertise. Provide brief resumes and related project experience and indicate the extent of availability and commitment of each person listed and your policies regarding client accessibility to municipal finance attorneys in your firm.
3. Provide a listing of references for school districts or other entities for which **BOND COUNSEL SERVICES** were rendered within the past five years.
4. Submit one (1) original and six (6) copies of proposal and related materials.

- c. Proposer Information

The following will be required in an overview as part of the proposer's proposal:

1. Proposer name, size, and stability.
2. Provide the name and title of person(s) submitting the proposal, the proposer's main office address, and primary and secondary points of contact and their telephone and fax numbers, including area code.

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3. Brief (one or two paragraphs) description of the proposer's business, its history of its municipal finance practice, including length of time said practice has been in operation in New York State and, if in operation in other states, outside New York State.
 4. A statement as to whether the firm is listed in the directory of municipal bond attorneys in The Bond Buyer's Municipal Marketplace.
 5. A description of the firm's general practice areas other than municipal finance, particularly noting those which have assisted the municipal finance practice area for other clients.
 6. Provide copies of all applicable licenses and/or registrations held by the and/or its owners, directors, officers, and/or employees.
 7. Indicate number of years in business.
- d. General Obligation Practice - Please provide as follows with regard to your firm's general obligation bond and note practice:
1. Based on your records of the number of Forms 8038-G and 8038-GC filed by your firm on behalf of your clients in New York State only, in 2017 and 2018 for issues for which your firm served as bond counsel, please advise the total number of general obligation (i) bond issues and (ii) note issues, in each year, for which your firm served as bond counsel.
 2. Of that number, how many in each year were for a school district in New York State?
 3. How many schools does your firm represent as bond counsel in New York State?
 4. What is the approximate dollar volume of municipal bond and note issues in New York State for which your firm has issued the approving legal opinion for each of the past two years (2018 and 2019)?
 5. Provide a list of school districts and other municipalities in New York State for whom your firm currently serves as bond counsel. If the number exceeds 250, then provide the number of each type municipality your firm currently so represents.
 6. Please describe your firm's experience in drafting legislation for submission to the New York State Legislature dealing with municipal finance matters.
 7. Describe the firm's expertise in federal tax matters relating to the issuance of municipal debt.
 8. Describe an example of any specialized general obligation transaction in which your firm has served as bond counsel in the past two years

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(e.g. discount bonds; variable rate debt; deficit financing; letter-of-credit backed debt).

- e. Legislative Updates - How would your firm furnish the District with information regarding new legislation and regulations which could affect the District and its issuance of tax-exempt indebtedness?
- f. Municipal Law Consultation Fees - Provide your fee structure (hourly or otherwise) for provision of legal advice on municipal law matters not directly related to the issuance of tax-exempt general obligation notes or bonds (for example, questions involving provisions of the School Law, General Municipal Law, Highway Law or Real Property Tax Law).
- g. Bond Counsel Role - Provide a succinct statement of what your firm views its role to be as bond counsel to a municipality.
- h. Appendix – Provide any additional/supplements which you feel would be relevant in the evaluation of your proposal.

3. DESCRIPTION OF THE DISTRICT

a. Contact Persons

The selected proposer(s)'s principal contact with the Pelham Union Free School District will be James Hricay, Assistant Superintendent for Business, 914-738-9140, who will-coordinate the assistance to be provided by the District to the selected proposer(s), if any.

b. Background Information

The Pelham Union Free School District is located in Westchester County, New York. We have an enrollment of more than 2,900 students. The District is comprised of a High School, a Middle School on one campus and 4 elementary schools. Detailed information on the District can be accessed on the District's website www.pelhamschools.org.

4. PROPOSAL TIMELINE

The following is a list of the anticipated dates for the District's actions with respect to this RFP:

Request for proposal issued:	January 30, 2020
Notice of Interest Due:	February 7, 2020
Submission date for proposals:	February 28, 2020
Interview with selection committee	March 9, 2020
Board of Education Approval	April 1, 2020
Contract date:	Upon Appointment

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*All dates are tentative

5. COST OF SERVICES

Include in the proposal the fees to be charged for providing the services that are the subject of this RFP. The proposals in response to this RFP List all proposed fees for the services sought in this RFP. List hourly rate of pay include hourly rates for various personnel of the proposer, which rates will be the basis for costing additional services that may be requested.

General Obligation Fees and Billing - provide your fee and billing arrangements for tax-exempt general obligation note and bond issues.

Identify and estimate reimbursable costs- Include how and what you charge for disbursements and any other incidental expenses, including, but not limited to, telephones, fax transmissions, overnight delivery, e-mail transmissions, and printing.

6. EVALUATION OF PROPOSALS

The District will evaluate the responses based upon the information supplied by the proposer. Criteria for evaluations will include:

	Category	Weight
1	The special knowledge or expertise of the proposer (e.g. experience and qualifications of the proposer, its owners, directors, officers and employees)	20
2	Suitability of the proposer for the District's needs	20
3	Credentials and applicable certifications of the proposer	20
4	Quality of the service provided by the proposer	20
5	Fee Schedule.	10
6	Staffing/time available from the proposer	10

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From the proposals received, the District may select a short list. The short list of proposers will be requested to attend an interview or meeting with the selection committee. Questions will be provided prior to interview. A presentation will be requested covering the questions provided.

The undersigned acknowledges that there will be no cost to the District pertaining to the submission of its proposal or attending any meeting or interview. The District has the right to reject any and all proposals if, in its opinion, the best interest of the District will thereby be promoted.

**Pelham Union Free School District
School Business Office
575 Colonial Ave
Pelham, New York 10803**

RFP Appendices & Forms

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Appendix 1

NOTICE OF INTEREST

Request for Proposal ("RFP") – **BOND COUNSEL SERVICES**

Please complete and return this confirmation by **February 7, 2020** to:

Mr. James Hricay
Assistant Superintendent for Business
Pelham Union Free School District
575 Colonial Ave
Pelham, NY 10803
Telephone: 914-738-9140
Fax: 914-738-2384

Failure to return this form may result in no further communication or addenda distribution regarding this RFP.

Company Name: _____

Address: _____

City, State, Zip: _____

Contact Person: _____

Phone Number: _____ Fax: _____

E-Mail Address: _____

I have received a copy of the above noted proposal.

_____ We will be submitting a proposal.

_____ We will not be submitting a proposal.

If you are responding that you are not submitting a proposal, please explain:

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Appendix 2

AFFIDAVIT

THIS FORM MUST BE SIGNED AND NOTARIZED

_____, being duly sworn, deposes and says, that as an

Owner/operator of: _____:

I hereby represent to the Pelham Union Free School District that (check any that apply)

_____ (A) The criminal history check will reveal that the owners/officers of this corporation have no criminal history.

_____ (B) The criminal history check will indicate that any of the owners/officers have been convicted of a misdemeanor or felony that was not expunged or sealed.

_____ (C) The corporation and or officers/owners have had any lawsuits filed against them

_____ (D) The corporation and or officers/owners have any pending lawsuits filed against them

If B is checked, I hereby provide the following details explaining my answer. Include at the minimum, the date(s) of conviction(s); for what misdemeanor(s) or felony(ies) the owners/officers were convicted; the jurisdiction(s) by which the owners/officers were convicted (attach additional sheets, if needed).

If either or both of C or D are checked, I hereby provide the following details explaining my answer. Include at the minimum, the date(s) the lawsuit(s) was filed; the reason for the lawsuit(s); the jurisdiction(s) where the lawsuit(s) was filed and the outcome(s) of the lawsuit(s) (attach additional sheets if needed).

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I understand that my completion and submission of this Affidavit is just one part of the proposal process. I certify that my statements in this Affidavit and in any explanatory enclosures are, to the best of my knowledge and belief, true and correct, and that any omission and/or misstatement of any material fact(s) may cause the District to: (A) reject the submission of this proposal, (B) revoke any award of contract from the Board of Education; and/or (C) terminate the resulting contract and any fees pending.

Subscribed and sworn to before me

this ____ day of _____, ____

(Person, Firm, or Corporation)

Notary Public

(Authorized Signature)

Pelham Union Free School District

Appendix 3

CONFLICT OF INTEREST CERTIFICATION
THIS FORM MUST BE SIGNED AND NOTARIZED

Name of Proposer _____

Business Address _____

Telephone Number _____ Date of Proposal _____

The proposer above mentioned declares and certifies:

- First That the said proposer is of lawful age and the only one interested in this proposal, and that no one other than said proposer has any interest herein.
- Second That this proposal is made without any previous understanding, agreement or connection with any other person, firm, or corporation making a proposal for the same purpose, and is in all respects fair and without collusion or fraud.
- Third That no member of the Board of Education of the Pelham Union Free School District nor any officer or employee or person whose salary is payable as a whole or in part from the treasury of said Board of Education is directly or indirectly interested in this proposal or in the supplies, materials, equipment, work, or services to which it relates, or in any portion of the profits thereof.
- Fourth That said proposer has carefully examined the instructions, General Information and Conditions, Appendices, and Specifications prepared under the direction of the Board of Education, and will, if successful in this proposal, furnish and deliver at the prices proposed and within the time stated, all materials, supplies, apparatus, goods, wares, merchandise, services, or labor for which this proposal is made.
- Fifth That the prices quoted are net and exclusive of all federal, state, and municipal sales and excise taxes.
- Sixth The following non-collusive proposal certification applies to this proposal.

Subscribed and sworn to before me

this _____ day of _____, _____

(Person, Firm, or Corporation)

Notary Public

(Authorized Signature)

Pelham Union Free School District

Appendix 4

NON-COLLUSIVE PROPOSAL CERTIFICATION

THIS FORM MUST BE SIGNED AND NOTARIZED

Pursuant to Section 103-D of New York State General Municipal Law, every proposal made to a political subdivision of the state or any public department, agency or official thereof where competitive proposals are required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the proposer, and affirmed by such proposer as true under the penalties of perjury:

a) By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

1) The prices in this proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor, or potential competitor.

2) Unless otherwise required by law, the prices which have been quoted on this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor or potential competitor, and

3) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

b) Any proposal made by a corporate proposer shall be deemed to have been authorized by the board of directors of the proposer, and such authorization shall be deemed to include the signing and submission of the proposal and the including therein of the certificate as to non-collusion as the act and deed of the corporation.

Furthermore, that the proposer is legally competent and authorized to submit a proposal; that said proposer has carefully examined the instructions, General Information and Conditions, Appendices and Specifications and if successful will furnish and deliver, at the prices proposed and within the time stipulated, all the materials, supplies, apparatus, goods, service and labor for which this proposal is made; that in the event of the failure of the undersigned proposer to perform the services contained in the proposal the Board

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of Education of the Pelham Union Free School District may terminate the resulting contract as set forth in the General Information and Conditions of the Request for Proposal; that the proposer agrees to comply with applicable New York State labor laws and other applicable state and federal laws.

Subscribed and sworn to before me

this ____ day of _____, ____

(Person, Firm, or Corporation)

Notary Public

(Authorized Signature)

Commission Expires _____

Pelham Union Free School District

Appendix 5

HOLD HARMLESS AGREEMENT

THIS FORM MUST BE SIGNED AND NOTARIZED

It is hereby agreed and understood that the proposer agrees to hold harmless and indemnify the Pelham Union Free School District, its Board of Education, officers, agents, servants, and employees from any lawsuit, action, proceeding, liability, judgment, claim, or demand, which may arise out of:

Any injury to person or property sustained by the proposer, its owners, operators, officers, directors, agents, servants, or employees, or any person, firm, or corporation employed directly or indirectly by the proposer upon or in connection with the performance of the resulting contract.

However caused, any injury to person or property sustained by any person, firm, or corporation, caused by any act, default, error, or omission of the selected proposer, its owners, operators, officers, directors, agents, servants or employees or any person, firm, or corporation, directly or indirectly employed by the proposer upon or in connection with performance under the resulting contract.

The assumption or indemnity, liability, and loss hereunder shall survive proposer's completion of service or other performance hereunder and any termination of the resulting contract.

The proposer at its own expense and risk shall defend any such legal proceedings that may be brought against the District, its Board of Education, officers, agents, servants, and/or employees on any claim or demand, and shall satisfy any judgment that may be rendered against the District, its Board of Education, or any officers, agents, servants, or employees.

This indemnification, defense, and hold harmless agreement shall apply to any lawsuit, action, proceeding, liability, judgment, claim, or demand, of whatever name or nature, notwithstanding that proposer may deem the same to be frivolous or without merit. It is intended that this agreement be interpreted in the broadest manner possible so as to insulate all of the entities, parties, and individuals named above from any liability, cost, or judgment, monetary or otherwise, as the same may relate to the personnel and services provided by the proposer.

Subscribed and sworn to before me

this ____ day of _____, _____
(Person, Firm, or Corporation)

Notary Public

(Authorized Signature)

Pelham Union Free School District

Appendix 6

IRAN DIVESTMENT ACT OF 2012 CERTIFICATION FORM

THIS FORM MUST BE SIGNED AND NOTARIZED

In order to be considered a responsible proposer, entities must certify that they are not on the list created and maintained by the State Office of General Services cataloging significant investment in the Iranian energy sector.

Entities that cannot make this certification may only be awarded the proposal if:

1. The entity's investment activities in Iran were made before April 12, 2012; the investment activities in Iran have not been expanded or renewed after that date; and the entity has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
2. The Pelham Union Free School District makes a determination, in writing, that the goods or services are necessary for the District to perform its functions and that, absent such an exemption, the District would be unable to obtain the goods or services for which the contract is offered.

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the New York State Finance Law.

Subscribed and sworn to before me

this ____ day of _____, _____

(Person, Firm, or Corporation)

Notary Public

(Authorized Signature)

Commission Expires _____

Pelham Union Free School District

Appendix 7

SEXUAL HARASSMENT WRITTEN POLICY & TRAINING CERTIFICATION FORM

THIS FORM MUST BE SIGNED AND NOTARIZED

I, _____, being duly sworn, deposes and says that
(Name of Individual Signing this Certification)

I am the _____ of the _____
(Title/Position of Signer) (Name of Bidder)

and that by submission of this bid, I certify on behalf of the above-named bidder, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the above-named bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy, at a minimum, meets the requirements of Section 201-g of the New York State Labor Law.

Signature

Sworn to before me this

_____ day of _____, 2020

Notary Public

Pelham Union Free School District

Appendix 8

PROPOSER NOT ON EXCLUSION LIST MAINTAINED BY THE FEDERAL GOVERNMENT'S
SYSTEM FOR AWARD MANAGEMENT (SAM) CERTIFICATION FORM

THIS FORM MUST BE SIGNED AND NOTARIZED

I, _____, being duly sworn, deposes and says that
(Name of Individual Signing this Certification)

I am the _____ of the _____
(Title/Position of Signer) (Name of Proposer)

and that by submission of this proposal, I certify on behalf of the above-named proposer,
under penalty of perjury, that the above-named proposer is not on the Exclusion List
maintained by the U.S. Government's System for Award Management (SAM).

Signature

Sworn to before me this
____ day of _____, 2020

Notary Public

Portion of this form below this line is FOR OFFICE USE ONLY. Proposer completes only
portion of the form above this line. The portion of this form below this line will be
completed by Pelham Union Free School District (PUFSD).

Print PUFSD Employee Name and Title: _____

Date reviewed U.S. Government's SAM's Exclusion List: _____

Proposer Name: _____

Check the one that applies:

_____ Proposer was NOT included on U.S. Government's SAM's
Exclusion List

_____ Proposer was included on U.S. Government's SAM's Exclusion List

PUFSD Employee Signature: _____

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Appendix 9

PROPOSER WARRANTIES

- A. Proposer warrants that it is willing and able to comply with all laws and regulations of the State of New York. Proposer warrants that it is willing and able to obtain an error and omissions insurance policy for at least the amount of coverage required in the attached Request for Proposal ("RFP") for the willful or negligent acts, or omissions of any of its owners, operators, directors, officers, employees or agents.
- B. Proposer warrants that it will not delegate or subcontract its responsibilities under the contract resulting from the attached RFP without the express prior written permission of the Pelham Union Free School District.
- C. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.
- D. Proposer warrants he/she/it has read and understands all General Information and Conditions, Appendices, Specifications, terms and conditions and requirements of the attached RFP.

Signature of Official: _____

Name (typed): _____

Title: _____

Firm: _____

Date: _____

Pelham Union Free School District

Appendix 10

Quotation Form

Name of Firm: _____

Authorized Individual: _____

Pricing Information:

1. Proposed fee for your services: \$ _____

2. Hourly rate of pay: \$ _____

3. List hourly rate of pay for various personnel with your firm as a basis for costing additional services, which may be requested:

Additional Services:	Hourly Rate:

General Obligation Fees and Billing:	Rate:
Tax-exempt General Obligation Note	
Bond Issues	

4. Identify and estimate reimbursable costs:

Include how and what you charge for disbursements and any other incidental expenses, including, but not limited to, telephones, fax transmissions, overnight delivery, e-mail transmissions, and printing.

Reimbursable Costs:	Rate:

Appendix 11

Sample Agreement for Professional Services

2020-2021 CONTRACTUAL SERVICES AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2020 by and between Pelham Union Free School District (hereinafter referred to as the "SCHOOL DISTRICT"), as the party of the first part, having its principal place of business located at 575 Colonial Ave, Pelham, NY 10803, and _____ (hereinafter referred to as the "SERVICE PROVIDER"), as the party of the second part, having its principal place of business for purposes of this Agreement at _____

WITNESSETH:

WHEREAS, SCHOOL DISTRICT is in need of _____ services;

WHEREAS, SERVICE PROVIDER is in the business of providing services in the area of _____;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for the period of July 1, 2020 to June 30, 2021 unless terminated earlier, as set forth herein.
2. **SCOPE OF SERVICES:** SERVICE PROVIDER shall provide _____ services. SERVICE PROVIDER shall provide the following services at no additional charge unless otherwise indicated, consisting of, but not limited to, the following:

SERVICE PROVIDER represents that it has the requisite knowledge and skills to provide all such services. SERVICE PROVIDER recognizes that this Agreement does not grant SERVICE PROVIDER the exclusive right to perform the above-described services for SCHOOL DISTRICT and that SCHOOL DISTRICT may enter into agreements with other providers for the same or similar services.

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All services shall be provided in strict compliance with law and in compliance with the terms and conditions of the Request for Quotes ("RFQ") or Request for Proposals ("RFP") issued by SCHOOL DISTRICT, which is attached hereto as Exhibit "A" and in compliance with the description provided in SERVICE PROVIDER's proposal dated _____, which is attached hereto as Exhibit "B". In the event of a conflict or inconsistency between this Agreement, the RFQ/RFP and/or SERVICE PROVIDER's proposal, the terms and conditions of this Agreement shall supersede and control over the RFQ/RFP and proposal and the terms and conditions of the RFQ/RFP shall supersede and control over the proposal.

3. **PAYMENT SCHEDULE:** In full consideration for the services to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the term of this Agreement, SCHOOL DISTRICT agrees to pay SERVICE PROVIDER: _____ up to a sum not to exceed _____.

SCHOOL DISTRICT has not guaranteed, promised or represented that it will utilize any minimum amount of the services to be performed by SERVICE PROVIDER under this Agreement. SERVICE PROVIDER waives any claims to lost or anticipated profits based on SCHOOL DISTRICT's failure to utilize SERVICE PROVIDER's services to the full amount authorized to be expended under this Agreement.

4. **INVOICE DUE ON MONTHLY BASIS:** SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall include types of services rendered and fees payable. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.
5. **INDEPENDENT CONTRACTOR:** SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, its employees and/or agents shall not be considered as having employee status for

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the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.

6. **EXPENSES OF SERVICE PROVIDER:** SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.
7. **PRINCIPAL CONTACT PERSON:** The principal contact person of SCHOOL DISTRICT shall be _____ and all correspondence, reports and inquiries regarding this Agreement shall be directed to that person. SCHOOL DISTRICT will provide SERVICE PROVIDER with an email address to facilitate electronic communication between it and SERVICE PROVIDER. Any information transmitted in this fashion is subject to the Data Security and Privacy Plan provisions set forth in paragraph 14 of this Agreement.
8. **INCOME TAX DESIGNATION AND INDEMNIFICATION:** SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER'S sole responsibility. SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.
9. **SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS:** SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services to be provided pursuant to this Agreement.
10. **COMPLIANCE WITH LAW:** SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes,

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rules, and ordinances including but not limited to the New York State Safe Schools Against Violence in Education (SAVE) legislation, the Federal Family Educational Rights and Privacy Act ("FERPA") and Section 2-d of the New York State Education Law (which concerns privacy and security of students, teacher and principal data). SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York applicable to the services to be provided hereunder.

11. **FINGERPRINTING AND BACKGROUND CHECKS:** If the below box requiring fingerprinting and background checks is checked, SERVICE PROVIDER agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department based upon fingerprint criminal background checks in accordance with the provisions contained in the SAVE Legislation prior to providing services to SCHOOL DISTRICT. Appropriate written proof of such clearance shall be provided to SCHOOL DISTRICT prior to such individuals providing services to SCHOOL DISTRICT and attached to this Agreement as Exhibit D. In the event that SERVICE PROVIDER utilizes an individual who is required to and who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate this Agreement.

Fingerprinting/Background Check Required ☐ Service Provider will have direct contact with students ☐ Service Provider will be providing services on more than 5 days

Fingerprinting/Background Check **NOT** Required ☐ Service Provider will not have direct contact with students ☐ Service Provider will be providing services 5 days or less ☐ Service Provider is exempt

Basis of Exemption: _____

12. **SCHOOL GROUNDS & RULES:** It is understood and agreed that while on school grounds, SERVICE PROVIDER, its employees and/or agents shall obey all SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.

13. **TERMINATION NOTICE:**

- a. This Agreement may be terminated for convenience by either party upon thirty (30) days written notice to the other party. In the event of such termination, the parties will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly

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manner to wind down activities hereunder. In the event of termination, all reports and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.

- b. This Agreement may be terminated by SCHOOL DISTRICT in the event of a material breach by SERVICE PROVIDER, upon three (3) days' written notice from SCHOOL DISTRICT to SERVICE PROVIDER.

14. **DATA SECURITY AND PRIVACY PLAN:** SERVICE PROVIDER agrees that for this Data Security and Privacy Plan ("Plan"), the terms used shall have the same meanings as those found in Education Law Section 2-d(1) and the Regulations of the Commissioner of Education at Section 121.1 of Title 8 of the New York Codes, Rules and Regulations (8 NYCRR § 121.1), unless more broadly defined herein. For purposes of this Plan, SERVICE PROVIDER agrees that all documentary, electronic and oral information and data made known to SERVICE PROVIDER and/or its owners, operators, officers, directors, employees, subcontractors and/or agents through any activity related to this Agreement is deemed Confidential Information. SERVICE PROVIDER understands that any unauthorized disclosure, publication and/or communication of such Confidential Information shall be considered a breach of this Plan and this Agreement. The selected proposer(s) agrees that if he/she/it receives a subpoena to divulge Confidential Information, he/she/it shall notify the SCHOOL DISTRICT prior to divulging the same. The parties further agree that the terms and conditions set forth in this paragraph and all of its subparts shall survive the expiration and/or termination of this Agreement. Without limiting any of the foregoing statements in this paragraph, SERVICE PROVIDER further agrees:

- a. To execute, comply with and incorporate as Exhibit "C" to this Agreement the SCHOOL DISTRICT'S Parents' Bill of Rights;
- b. Not to sell or release a student's personally identifiable information for any marketing or commercial purposes or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another to do so;
- c. Not to use the education records of SCHOOL DISTRICT or any student, teacher and/or principal data of SCHOOL DISTRICT for any purpose other than those explicitly authorized in this Agreement;
- d. To adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework;
- e. To comply with the data security and privacy policy of the SCHOOL DISTRICT, New York State Education Law Section 2-d, and Part 121 of the Regulations of the New York State Commissioner of Education;
- f. To use reasonable administrative, technical and physical safeguards consistent with industry standards and best practices, including but not limited to encryption using Advanced Encryption Standard ("AES") with a

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minimum of 128 bit key encryption, firewalls and password protection, to protect the security, confidentiality and integrity of student, teacher and/or principal data of SCHOOL DISTRICT while in motion or in the custody of SERVICE PROVIDER from unauthorized disclosure;

- g. To limit internal access within SERVICE PROVIDER to the education records of SCHOOL DISTRICT as well as to the student, teacher and/or principal data of SCHOOL DISTRICT to those individuals that are determined to need such records or data to perform the services set forth in this Agreement;
- h. Not to reveal, publish, discuss, disclose or communicate any personally identifiable information, directly or indirectly, to any other party, except for authorized representatives of the selected proposer(s), such as a subcontractor or assignee, to the extent they are carrying out the resulting contract and in compliance with New York State and federal law, regulations, and the resulting contract or as explicitly authorized in writing by an authorized representative of the District, unless:
- i. prior written consent for the disclosure is obtained from the parent or guardian of the applicable student or from the applicable student if he/she is 18 years of age or older; or
 - ii. the disclosure is required by statute or court order and the party provides a notice of the disclosure to the Board of Education of SCHOOL DISTRICT no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
- j. To store any data concerning the students, teachers and/or principals of SCHOOL DISTRICT in databases and servers in a secure datacenter that complies with current ANSI, TIA, ISO, IC industry standards;
- k. To use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using controls as specified by the Secretary of the United States Department of Health and Human Services in guidance issued pursuant to Public Law 111-5, Section 13402(h)(2);
- l. To ensure that all data protection obligations imposed upon the selected proposer(s) by New York State and federal law are made applicable to any subcontractor engaged by the selected proposer(s) to perform any or all of its contractual obligations;
- m. To immediately notify SCHOOL DISTRICT in the event that any personally identifiable information of SCHOOL DISTRICT, its employees, students or administrators is breached and/or released without authorization;
- n. To cooperate with the SCHOOL DISTRICT and other parties to protect the integrity of investigations into the breach or unauthorized release of personally identifiable information;
- o. In the event of a breach or unauthorized release of any personally identifiable information of the SCHOOL DISTRICT, its employees, students or administrators by or otherwise attributable to SERVICE PROVIDER,

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SERVICE PROVIDER must pay for or promptly reimburse the SCHOOL DISTRICT for the full cost of any notifications the SCHOOL DISTRICT is obligated to make as a result of the breach or unauthorized release;

- p. Parents and/or guardians of students attending SCHOOL DISTRICT'S schools have the right to inspect and review the complete contents of their child's education record, which may include records maintained, stored, transmitted, and/or generated by SERVICE PROVIDER;
- q. Parents and/or guardians of students attending SCHOOL DISTRICT'S schools have the right to have complaints about possible breaches of student data as well as challenges concerning the accuracy of the data addressed, and such complaints will be submitted to Superintendent of Schools; and
- r. Upon termination of this Agreement, SERVICE PROVIDER will in consultation with SCHOOL DISTRICT, destroy all databases records, tables, spreadsheets, word processing and any electronic files pertaining to student or staff information, using industry standard methods, including but not limited to: shredding, degauss of hard drives, punch/crush of hard drives, deletion of database primary key databases and certificate of destruction.

15. **CONFIDENTIALITY TRAINING:** SERVICE PROVIDER acknowledges that federal and state laws protect the confidentiality of personally identifiable information of SCHOOL DISTRICT'S students as well as its teachers and principals. SERVICE PROVIDER represents and warrants that any officers, employees or agents of SERVICE PROVIDER, who have access to student, teacher and/or principal data of SCHOOL DISTRICT, has received or will receive training on the federal and state laws governing confidentiality of such data prior to obtaining access to such data

16. **INDEMNIFICATION and HOLD HARMLESS PROVISION:**

SERVICE PROVIDER further agrees that it shall defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents and employees for all loss, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with a terminated, pending or completed action, suit or proceeding arising from any act, error or omission, misstatement, misleading statement, neglect or breach of duties by SERVICE PROVIDER or any of its officers, directors, agents or employees taken or made with respect to this Agreement. In the event of a breach or unauthorized release of any personally identifiable information of SCHOOL DISTRICT, its employees, students or administrators by SERVICE PROVIDER, SERVICE PROVIDER must promptly reimburse SCHOOL DISTRICT for the full cost of any notifications SCHOOL DISTRICT is required to make as a result of the breach or unauthorized release.

17. **INSURANCE PROVISION:** SERVICE PROVIDER shall purchase from and maintain in a company or companies lawfully licensed to do business in the State of New York such insurance as will protect SERVICE PROVIDER and SCHOOL DISTRICT from claims for which SERVICE PROVIDER may be legally liable, whether

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such operations be by SERVICE PROVIDER or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Notwithstanding any terms, conditions or provisions in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as an unrestricted additional insured on SERVICE PROVIDER's insurance policies, with the exception of workers' compensation and professional liability. If the policy is written on a claims-made basis, the retroactive date must precede the date of this Agreement. The policy naming SCHOOL DISTRICT as an additional insured shall:

- a. Be purchased from an A.M. Best rated "secured" insurer, authorized to conduct business in New York State.
- b. Contain a 30-day notice of cancellation.
- c. State that the SERVICE PROVIDER's coverage shall be primary coverage for SCHOOL DISTRICT, its Board of Education, employees and volunteers.
- d. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or broader. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance.
- e. SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles.

Required Insurance to be provided (all below insurance is mandatory for all service providers unless for good cause shown the Board of Education or Assistant Superintendent for Business has authorized in writing a modification that is attached hereto as Exhibit E):

Commercial General Liability

\$1,000,000 per occurrence/\$2,000,000 aggregate with no exclusions for athletic participants and with proof of coverage for sexual misconduct.

Worker's Compensation and N.Y.S. Disability

Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). A person claiming an exemption from Worker' Compensation Insurance must file a CE-200 form with the state and provide a copy of such form to the School District.

Professional Errors and Omissions Insurance

\$2,000,000 per occurrence/\$2,000,000 per aggregate for the professional acts of the

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SERVICE PROVIDER performed under this Agreement for the SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of this Agreement. Coverage shall remain in effect for two years following the completion of the professional acts of the SERVICE PROVIDER performed under this Agreement.

Fidelity Bond

For dishonest acts of the SERVICE PROVIDER'S employees with coverage for computer fraud and fund transfer including client coverage.

Excess Insurance

On a "Follow Form" basis, with limits of \$3,000,000 each occurrence and aggregate.

Automobile Liability \$1,000,000 combined single limit for owned, hired, and borrowed and non-owned motor vehicles.

In the event that any of the insurance coverage to be provided by SERVICE PROVIDER contains a deductible, SERVICE PROVIDER shall indemnify and hold SCHOOL DISTRICT harmless from the payment of such deductible, which deductible shall in all circumstances remain the sole obligation and expense of SERVICE PROVIDER.

SERVICE PROVIDER shall provide SCHOOL DISTRICT with evidence of the above insurance requirements upon execution of the within Agreement. SERVICE PROVIDER further acknowledges that its failure to obtain or keep current the insurance coverage required by this Agreement shall constitute a material breach of this Agreement and subjects SERVICE PROVIDER to liability for damages including, but not limited to, direct, indirect, consequential, special and any other damages SCHOOL DISTRICT sustains as a result of this breach. In addition, SERVICE PROVIDER shall be responsible for the indemnification to SCHOOL DISTRICT of any and all costs associated with such lapse in coverage including, but not limited to, reasonable attorneys' fees. At the SCHOOL DISTRICT's request, the SERVICE PROVIDER shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. At the SCHOOL DISTRICT's request, the SERVICE PROVIDER also will provide a copy of the policy endorsements and forms. The failure of the SCHOOL DISTRICT to object to the contents of the evidence of insurance(s) or the absence of same shall not be deemed a waiver of any and all rights held by the SCHOOL DISTRICT. Prior to commencement of its services, SERVICE PROVIDER shall obtain and pay for insurance as may be required to comply with the indemnification and hold harmless provisions outlined under this Agreement.

The SCHOOL DISTRICT is a member/owner of the NY Schools Insurance Reciprocal (NYSIR). The SERVICE PROVIDER understands and acknowledges that the

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procurement of the insurance as required herein is intended to benefit not only the SCHOOL DISTRICT but also the NYSIR, as the SCHOOL DISTRICT's insurer.

18. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of three (3) after mailing. Notice shall be delivered or mailed to:

**NAME OF PROVIDER
ADDRESS
CITY/STATE/ZIP CODE**

**Pelham Union Free School District
575 Colonial Ave
Pelham, New York 10803
Attention: Superintendent of Schools**

19. **ASSIGNMENT OF AGREEMENT:** SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.
20. **DISCRIMINATION:** Services provided pursuant to this Agreement shall be provided without regard to a student's actual or perceived race, creed, color, weight, gender, sex, sexual orientation, national origin, ethnic group, religion, religious practice, age or disability. In hiring of employees for the performance of the services required by this Agreement, SERVICE PROVIDER shall not discriminate against any person who is qualified and available to perform such services by reason of such person's race, creed, color, sex, sexual orientation, age, disability, religion, marital status, military status domestic violence victim status, predisposing genetic characteristics or national origin. SERVICE PROVIDER shall not in any manner discriminate against or intimidate any employee hired for the performance of services required by this Agreement on account of such employee's race, creed, color, sex, sexual orientation, age, disability, religion, marital status, military status domestic violence victim status, predisposing genetic characteristics or national origin. SERVICE PROVIDER also shall prohibit any subcontractor or person acting on its behalf from so discriminating or intimidating.
21. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:** To the extent SERVICE PROVIDER needs to purchase supplies or contract with suppliers to fulfil its obligations under this Agreement, it will make commercially reasonable good faith efforts to utilize suppliers that are certified minority and women-owned business enterprises ("MWBES"). To the extent subcontracting is needed and permitted by the

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SCHOOL DISTRICT, SERVICE PROVIDER will make commercially reasonable good faith efforts to utilize subcontractors, who are certified MWBEs. SERVICE PROVIDER shall retain documentation of these good faith efforts to be provided upon request to the SCHOOL DISTRICT and/or New York State. Documentation of good faith efforts shall include, but not be limited to, the following: (a) copies of solicitations to MWBEs and any responses thereto; (b) written explanation of the specific reasons each MWBE that responded to such solicitations was not selected; and (c) written explanation of the specific steps undertaken for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

22. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of New York. Any litigation between the parties shall be venued in a court of competent jurisdiction in the County of Westchester in the State of New York.
23. **SEXUAL HARASSMENT:** Federal and state laws and the policies of the SCHOOL DISTRICT prohibit sexual harassment of employees and students. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that create a hostile or offensive working environment for SCHOOL DISTRICT employees or students. SERVICE PROVIDER shall exercise control over its employees, agents, and consultants so as to prohibit acts of sexual harassment of SCHOOL DISTRICT employees or students. In the event the SCHOOL DISTRICT, in its reasonable judgment, determines that SERVICE PROVIDER, its employees, agents and/or consultants have committed an act of sexual harassment, upon notice from the SCHOOL DISTRICT, SERVICE PROVIDER shall cause such person to be removed and shall take such other action as may be reasonably necessary to cause such sexual harassment to cease.
24. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
25. **NO PRIOR AGREEMENTS:** This Agreement constitutes the full and complete agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.
26. **AGREEMENT CONSTRUCTION:** This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
27. **REPRESENTATIONS AND WARRANTIES:** SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services

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to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that SERVICE PROVIDER has not entered into or will not enter into any agreement (whether oral or written) in conflict with this Agreement.

28. **AMENDMENT:** This Agreement may be amended only in a writing that is signed by both parties.
29. **NONWAIVER:** No action or failure to act by SERVICE PROVIDER or SCHOOL DISTRICT shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
30. **COOPERATION IN THE EVENT OF LITIGATION:** In the event that any claim, demand, suit or other legal proceeding arising out of any matter relating to this Agreement is made or instituted by any person against the SCHOOL DISTRICT, at its own cost and expense, SERVICE PROVIDER shall provide the SCHOOL DISTRICT with all reasonable information and assistance in the defense or other disposition thereof.
31. **AUTHORITY TO ENTER AGREEMENT:** The undersigned representative of SERVICE PROVIDER hereby represents and warrants that the undersigned is the owner or an officer, director, or agent of SERVICE PROVIDER with full legal rights, power and authority to enter into this Agreement on behalf of SERVICE PROVIDER and to bind SERVICE PROVIDER with respect to the obligations enforceable against SERVICE PROVIDER in accordance with its terms.
32. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. An executed counterpart transmitted by facsimile or scanned and transmitted by email, when so delivered, shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

PELHAM UNION FREE SCHOOL DISTRICT

Date:

By: _____

SUPERINTENDENT OF
SCHOOLS/PRESIDENT OF THE BOARD
OF EDUCATION/
ASSISTANT SUPERINTENDENT FOR
BUSINESS

Pelham Union Free School District

[INSERT NAME OF SERVICE PROVIDER]

Date:

By: _____

Print Name: _____

Title:

Employer Identification # or SS:

BUDGET CODE:

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EXHIBIT A

ATTACH RFP/RFQ ISSUED FOR THIS CONTRACT

SAMPLE

EXHIBIT B

ATTACH CONTRACTOR'S QUOTE/PROPOSAL

**SUBMITTED IN RESPONSE TO THE
RFP/RFQ ISSUED FOR THIS CONTRACT**

SAMPLE

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EXHIBIT C

**PELHAM UNION FREE SCHOOL DISTRICT'S PARENT BILL
OF RIGHTS FOR DATA PRIVACY AND SECURITY**

Parents' Bill of Rights Pursuant to Education Law §2-d

In accordance with Section 2-d of the New York State Education Law, the Pelham Union Free School District hereby sets forth the following Parents' Bill of Rights for Data Privacy and Security, which is applicable to all students and their parents and legal guardians.

- (1) Section 2-d of the New York State Education Law and the Family Educational Rights and Privacy Act ("FERPA") protect the confidentiality of personally identifiable information. Section 2-d and FERPA assures the confidentiality of records with respect to "third parties," and provides parents with the right to consent to disclosures of personally identifiable information contained in the students' education records. Exceptions to this include school employees, officials and certain State and Federal officials who have a legitimate educational need to access such records. In addition, the district will, upon request of parents, or adult students, or if otherwise required by law, disclose student records to officials of another school district in which a student seeks to enroll.
- (2) A student's personally identifiable information cannot be sold or released for any commercial purposes;
- (3) Personally identifiable information includes, but is not limited to:
 - i. The student's name; ii. The name of the student's parent or other family members; iii. The address of the student or student's family;
 - iv. A personal identifier, such as the student's social security number, student number, or biometric record;
 - v. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; vi. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a

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reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or vii. Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

- (4) In accordance with FERPA, Section 2-d and the District's Student Record Policy, parents have the right to inspect and review the complete contents of their child's education record;
- (5) The District has the following safeguards in place to protect student data, including personally identifiable information stored or transferred by the District: Centralized databases utilizing the Advanced Encryption Standard (AES) with minimums of 128 bit key encryption; computer servers are centralized in the district datacenter, which is locked and alarmed; utilizing a variety of intrusion detection software and policies, including firewall protection services of BOCES, antivirus software, network monitoring via WhatsUpGold software; strong/complex password policy with a change in effect every 90 or 180 days depending on the exact software system; constant training and reminders of users to not share usernames or passwords on any database system; annual audit of the safety systems by district's internal auditor.
- (6) New York State, through the New York State Education Department, collects a number of student data elements for authorized uses. A complete list of all student data elements collected by the State is available for public review, at NYS Education Department, Office of Information and Reporting Services at <http://www.p12.nysed.gov/irs/sirs/>
- (7) Parents have the right to submit complaints about possible breaches of student data addressed. Any such complaint must be submitted, in writing, to: Dr. Cheryl Champ, Superintendent of Schools, 575 Colonial Ave, Pelham, NY 10803.

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SUPPLEMENTAL INFORMATION FOR THIRD PARTY CONTRACTORS

The Pelham Union Free School District provides certain student data to the following third party contractors:

Name of Vendor/Contractor/Company: _____

Address: _____

Phone #: _____

Name of person completing this form: _____

Title of person completing this form: _____

Signature of person completing this form: _____

Date: _____

Student, teacher or principal data received by this Contractor will be used exclusively for the following purpose(s): _____

a) This contractor is prohibited from further sharing any student data to subcontractors, research institutions, persons or entities that are not directly an employee or department/office within this contractor's organization, unless written consent is included with any contract. This includes sharing of any database, spreadsheet, word processing, csv, html or text files or providing credentials to access the data via the contracted software. This doesn't pertain to the actual storage of the data on physical hard drives or solid state drives of a data center.

b) Absent renewal, this agreement expires annually on June 30. If the District doesn't renew the contract past June 30th of the contractual year, all student data shall be deleted (within 90 days) in accordance with the National Institute of Standards and Technology (NIST) standard 800-88.

c) A parent or eligible student has the right to submit concerns or challenges to the accuracy of student data by submitting in writing, to: Dr. Cheryl Champ, Superintendent of Schools, 575 Colonial Ave, Pelham, NY 10803.

d) Student data shall be stored in a secure data center using monitoring of the access doors, fire and security monitoring, system health and intrusion monitoring, data backups and retentions. Data storage and access shall comply with the Advanced Encryption Standard (AES) with minimums of 128 bit key encryption or better. This contractor confirms that it will use encryption technology to protect data while in motion or in its custody from

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unauthorized disclosure using a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services in guidance issued pursuant to Public Law 111-5, § 13402(h)(2).

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EXHIBIT D

**ATTACH PROOF OF
FINGERPRINTING AND BACKGROUND CHECK
CLEARANCE BY NYSED
OF SERVICE PROVIDER'S EMPLOYEES PROVIDING
SERVICES TO THE SCHOOL DISTRICT**

SAMPLE

EXHIBIT E

**ATTACH WRITTEN APPROVAL OF ASSISTANT
SUPERINTENDENT FOR BUSINESS FOR MODIFIED
INSURANCE REQUIREMENTS**

SAMPLE

EXHIBIT F

**ATTACH VERIFIED PROPOSER/BIDDER NOT ON EXCLUSION
LIST MAINTAINED BY THE FEDERAL GOVERNMENT'S
SYSTEM FOR AWARD MANAGEMENT (SAM)
CERTIFICATION FORM**