

# *Board of Education*

## REGULAR MEETING

Thursday, December 18, 2014 – 6:30 p.m.

Waterbury Arts Magnet School, 16 South Elm Street, Waterbury, CT

## A G E N D A

**1. *Silent Prayer***

**2. *Pledge of Allegiance to the Flag***

**3. *Roll Call***

**4. *Communications***

**5. *Public Addresses the Board:*** All speakers are encouraged to submit prepared written statements to the Commissioners. Comments shall be limited to a maximum of five minutes. The Chairman will disallow a speaker from continuing to speak if slanderous or defamatory remarks are made. There will be no responses this evening to any questions or concerns raised; they will be referred to the Administration for review and response.

**6. *Superintendent's Announcements***

**7. *President's Comments***

**8. *Committee on School Personnel***

8.1 Crosby High School Principal appointment.

8.2 Kingsbury School Principal appointment.

**9. *Consent Calendar***

9.1 *Committee on Finance:* Request approval for Maloney Magnet School to apply for the Japanese Language Education Assistants Program Grant (J-LEAP).

9.2 *Committee on Finance:* Request approval Amendment #2 to the Professional Services Agreement with The Connecticut Center for School Change for District Transformation for Teaching and Learning Improvement/Professional Development.

9.3 *Committee on Building:* Request approval of an Agreement with Richards Corporation for Crosby High School Science Room Improvements, funded by the State's Low Performing Schools Bond for Crosby.

9.4 *Committee on Policy:* Request approval of inconsequential revisions to the Discipline/Student Conduct Policy #5114.

9.5 *Committee on Curriculum:* Request permission be granted to Carla Cruess, RMS, and 13 chaperones to take 96 kids to New York, NY on April 1, 2015 to visit Planet Hollywood and New Amsterdam Theatre.

- 9.6 *Committee on Curriculum:* Request permission be granted to Meredith White-Clark, KHS, to take five students to Washington, DC from January 30 through February 1, 2015 to attend the Leadership Experience and Development Conference for National Honor Society.
- 9.7 *Committee on School Facilities & Grounds:* Use of school facilities by school organizations and/or City departments.
- 9.8 *Committee on School Facilities & Grounds:* Use of school facilities by outside organizations and/or waiver requests.

## **10. *Items Removed from Consent Calendar***

## **11. *Committee of the Whole***

- 11.1 Request approval of a Memorandum of Understanding with Our Piece of the Pie to perform an independent analysis of student information at Crosby High School, as revised by Corporation Counsel as to form (previously approved on 9/4/14).

## **12. *Superintendent's Notification to the Board***

- 12.1. Appointments effective immediately:  
Shocki, Charlotte - Impartial Expulsion Hearing Officer.
- 12.2 Temporary appointments:  
Biolo, Dawn – Acting SVP, Walsh School, effective 12/1/14.
- 12.3 Grant funded appointments:  
Lewis, Emroy – Behavior Technician, CHS, \$27.74 p/hour, non-union with benefits governed by the UPSEU Agreement, funded by the Alliance Grant.  
Martinez, Mardelin – ELA Instructional Tutor, 15.75 hours p/week, 28 weeks, \$25.00 p/hour, non-union and without benefits, funded by Alliance Grant.
- 12.4 Extended School Hours (ESH) Program Appointments, salary according to individual's contract:

School	Last name	First name	Assignment
<b>Driggs</b>	Abarzua	Lauren	Teacher/split
	Atkinson	Jennifer	Clerical/split
	Blake	Zita	Substitute
	Card	Katie	Teacher/split
	DiGioia	Sue	Para/split
	Dopp	Karen	Para/split
	Dwyer	Jennifer	Administrator/split
	Gonzalez	Lourdes	Para/split

	Griffin	Karen	Substitute
	Healy	Heather	Teacher/split
	McDonald	Barbra	Para
	Morytko	Jess	Clerical/split
	Pastore-Quezada	Paula	Teacher/split
	Pearson	Robin	Para/split
	Ruffin	Mardelle	Substitute
	Sheetz	Lucia	Substitute
	Theriault	Michael	Administrator/split
	Wright	Valerie	Substitute

**12.5 Teacher hires:**

Name		Location	Position	Effective	Step
Giammatteo	Timothy P.	Sprague	Kindergarten	11/21/14	MA/6
Kovach	Rachel A.	Bucks Hill	Pre-k	11/10/14	BA/2
O'Donnell	Patricia M.	Rotella	Grade 2	11/10/14	6 <sup>th</sup> /2

**12.6 Adult Education appointments:**

Dest, Edward – Health Instructor, 25 hrs p/wk @ \$32.00 p/hr

Koehler, Richard – ABE Instructor, 20 hrs p/wk @ \$32.00 p/hr

Manjani, Halil – Substitute, as needed @ \$32.00 p/hr

**12.7 Retirements:**

Hollister-Sotolano, Lauren – WAMS Speech/LP, effective 01/01/15.

Rossi, Stephen – CHS English, effective 07/01/15.

**12.8 Resignations:**

Brown, Yvonne – Enlightenment/Excel Special Ed, effective 12/04/14.

Radner, Feigie – Kingsbury Literacy Facilitator, effective 12/05/14.

Vargas, Alicia – Bucks Hill Grade 3 Bilingual, effective 12/9/14.

**12.9 Leave of absence requests:**

Mancini, Jacqueline – Maloney Magnet School grade 1, requesting an unpaid childrearing leave of absence from 01/05/15 through the end of the 2014/15 school year.

**12.10 21<sup>st</sup> Century After-school Program Grant appointments, salary according to individual's contract, effective immediately:**

Angelo, Eileen	Substitute	Driggs
Blake, Zita	Teacher	Driggs
Griffin, Karen	Substitute	Driggs
Ruffin, Mardelle	Teacher	Driggs
Wright, Valerie	Substitute	Driggs
Ciuffo, Anthony	Teacher	Tinker/Duggan @ Chase Park House

Hanas, Karen	Teacher	Tinker/Duggan @ Chase Park House
Cocuzzi, Matt	Substitute	Wilson
Quesnel, Nina	Teacher	Wilson
Shaffer, Andrea	Substitute	Wilson
Vega, Betzaida	Teacher	Wilson
Esposito, Mark	Teacher	Hopeville
Williams, Sarah	Teacher	Hopeville
Coughlin, Timothy	Substitute	Program-wide

***13. Unfinished Business of Preceding Meeting Only***

***14. Other Unfinished, New, and Miscellaneous Business***

***15. Adjournment***





# WATERBURY Public Schools

*Today's Students, Tomorrow's Leaders*

*Dr. Kathleen M. Ouellette  
Superintendent  
Waterbury Public Schools*

## **Superintendent's Announcements for December 18, 2014**

On Saturday, December 6<sup>th</sup>, I attended the Fellowship Breakfast sponsored by Grace Baptist Church's Men's Group. The event was well attended by approximately 200 guests. The breakfast and the music were spectacular.

Congresswoman Elizabeth Esty visited Carrington School this morning to observe firsthand the local implementation of the Pilot Project for Procurement of Unprocessed Fruits and Vegetables. It was announced last week on December 8<sup>th</sup> that eight states will participate in this pilot project, including Connecticut, as well as California, Michigan, New York, Oregon, Virginia, Washington and Wisconsin. This program will allow us to purchase fresh fruits and vegetables directly from local sources rather than the USDA Foods program.

Also today, Governor Dannel Malloy and State Department of Education Commissioner, Stefan Pryor announced the awardees of a new Arts in Education grant program designed to strengthen arts instruction by facilitating partnerships between schools and artists and arts organizations. Waterbury Public Schools, in collaboration with the Mattatuck Museum was awarded \$50,000 to provide an arts integration program that will take shape as an afterschool "Art Club" for approximately 120 students, two days per week, at four of our schools: Bunker Hill, Carrington, Washington, and Wilson.

On December 4<sup>th</sup>, Crosby High Schools' Mock Trial Team, coached by Donna Mancuso, a teacher in Crosby's Talented and Gifted Program, won their first argument against Ellington High School in Waterbury Superior Court. Crosby was one of 12 teams competing in Waterbury. Through other preliminary competitions across the state, the field of more than 70 teams will be whittled to 16 for the January 26<sup>th</sup> quarterfinals at Trumbull High School.

Crosby basketball coach Nick Augelli has been named the recipient of the CIAC's Boys Basketball Coaches Merit Award Winner. The award recognizes individuals who have "greatly contributed" to a high school basketball program over the years and "who have established a distinguished record of supporting CIAC athletics as a coach, administrator, athletic director, official or corporate sponsor." The award will be presented at a recognition ceremony beginning at 9:00 a.m. on March 21, 2015 at the Mohegan Sun Cabaret Theater.

Our students have been celebrating the winter season with concerts and other holiday activities. A few more concerts are scheduled for next week, including Wilson School at 1:30 p.m. on Monday, Bucks Hill School at 5:30 p.m. on Monday, and Wendell Cross School's Holiday Spectacular, at 9:30 a.m. on Tuesday. Wilby High School's student theater is offering a production of "A Family Reunion to Die For" on Saturday, December 20<sup>th</sup> at 7:00 p.m.

The deadline for students to apply for the Waterbury Hospital Summer Bridge Program has been extended to January 16, 2015.

The newest members of the PEP class (People Empowering People) will be graduating this Friday, December 19<sup>th</sup>, at 5:30 p.m. in the Bizzozero Conference Room at Waterbury Hospital.

Our schools will be closed next week, beginning on Wednesday, December 24<sup>th</sup>, as the start of the Winter Recess. Classes will resume January 7<sup>th</sup>. A Professional Development Day for staff is scheduled for Monday, January 5<sup>th</sup>. All schools will be closed on Tuesday, January 6<sup>th</sup> to celebrate the Three Kings Day holiday.

We are honoring several students this evening. These Waterbury Public School students have been accepted as 2014-2016 Global Leadership Institute (GLI) scholars. Our scholars will be joining ten GLI scholars from Taft, and together these students will collaboratively explore global issues. The mission of the GLI is to develop a generation of global leaders with a genuine concern for world problems, multiple perspectives on global issues and skills to contribute towards the solutions of these issues.

Our Waterbury Scholars are:

Muhammed Mashoor-Crosby  
Christian Milian- Kennedy  
Jade Roman- Kennedy  
Justyn Welch-Kennedy  
Brennan Engelhard-WAMS  
Gina Divito -WAMS  
Fizza Alam-Waterbury Career Academy  
Selena Soto-Waterbury Career Academy  
Julia Nguyen- Wilby  
Vod Vilfort - Wilby

Congratulations!

Finally, I would like to take a moment to wish you and those you love a wonderful holiday and a peaceful and happy 2015. As I reflect on 2014, I realize that we have welcomed many newcomers to our school community and we have said good-bye to many dear friends. I believe that we can all file away our memories of 2014 acknowledging that we made a difference in the lives of our students and strengthened our community connections. As we move into 2015, I believe that, following the initiatives we have in place, we have the ability to continue to transform our students' educational experience. I know that we are positioned to enhance the landscape of knowledge and living for our students and to make an even brighter future for all of us. Together, we have established a collaborative environment that is responsive, relevant and ready to move our students forward. I want to thank each of you for your devotion to the students and for your tireless efforts. My hope is that you have the happiest holiday season ever and time to reflect on all that you have done for others. I hope that you have time to relax and renew as we prepare to begin a new year.

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON SCHOOL PERSONNEL**

Item #8.1

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on School Personnel, the Superintendent of Schools recommends approval of the appointment of \_\_\_\_\_ as High School Principal, Crosby High School, effective immediately.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

\_\_\_\_\_  
Karen E. Harvey

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON SCHOOL PERSONNEL**

Item #8.2

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on School Personnel, the Superintendent of Schools recommends approval of the appointment of \_\_\_\_\_ as Elementary School Principal, Kingsbury School, effective immediately.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

\_\_\_\_\_  
Karen E. Harvey

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON FINANCE**

Item #9.1

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on Finance, the Superintendent of Schools recommends approval for Maloney Magnet School to apply for the 2015-2017 Japanese Language Education Assistants Program Grant (J-LEAP).

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

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Jason Van Stone

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON FINANCE**

Item #9.2

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on Finance, the Superintendent of Schools recommends approval of Amendment Number 2 to the Professional Services Agreement with The Connecticut Center for School Change, at no additional cost, for District Transformation for Teaching and Learning Improvement/Professional Development.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

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Jason Van Stone





# WATERBURY Public Schools

Today's Students, Tomorrow's Leaders

Anne Marie Cullinan  
Chief Academic Officer

## MEMORANDUM

**DATE:** December 15, 2014

**TO:** Board of Education Commissioners

**FROM:** Anne Marie Cullinan, Chief Academic Officer *AMC/mc*

**SUBJECT:** Agreement Extension for the District Transformation for Teaching and Learning Improvement/Professional Development between City of Waterbury and Connecticut Center for School Change

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Per Brian McEntee's request, attached is the original contract for professional development services with the Center for School Change. The original contract was extended (amendment #1) at no cost increase for 2013-2014. The current request to extend the services, again at no cost increase through FY2015, is to utilize the approximate \$19,000 left under the original agreement to provide needed training to our principals, and other administrative staff for Focus/walk throughs critical to our evolving evaluation process.

As you know, last year was extremely demanding on the time and resources of our administration with the development of our evaluation process. We spent the professional development time available to us to instruct our administrative staff in all of the components of the teacher and administrator evaluation process. All other professional development planned was put on hold (Focus Walk training) during the 2013-2014 school year. This year we are using the remainder of this contract to provide training to our administrators in the calibration of teacher observation through the Focus Walk protocol.

This training was necessarily delayed. This modest extension will allow the completion of this important undertaking. Funds are budgeted in the Alliance grant for this purpose and the training is identified in our Blueprint for Change.

AMC/pg

cc: Dr. Kathleen M. Ouellette, Superintendent of Schools  
Paul F. Guidone, Chief Operating Officer & Chief of Staff  
File

**OTHER PROFESSIONAL SERVICES AGREEMENT**

**RFP No. 4596**

**for**

**District Transformation for Teaching and Learning  
Improvement/Professional Development**

**between**

**The City of Waterbury, Connecticut**

**and**

**The Connecticut Center for School Change**

**THIS AGREEMENT**, effective on the date signed by the Mayor, is by and between the CITY OF WATERBURY, City Hall, 235 Grand Street, Waterbury, Connecticut (the "City") and The Connecticut Center for School Change, located at 151 New Park Avenue, Suite 203, Hartford, CT 06106, a State of Connecticut duly registered domestic corporation (the "Consultant/Vendor").

**WHEREAS**, the Consultant/Vendor submitted a proposal to the City responding to RFP No. 4596 for District Transformation for Teaching and Learning Improvement/Professional Development; and

**WHEREAS**, the City accepted the Consultant/Vendor's proposal for RFP No. 4596; and

**WHEREAS**, the City desires to obtain the Consultant/Vendor's services pursuant to the terms, conditions and provisions set forth in this agreement (the "Project").

**NOW THEREFORE, THE PARTIES AGREE AND COVENANT AS FOLLOWS:**

**1. Scope of Services.** The Consultant/Vendor shall furnish all of the labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc necessary to complete the Project as specified in this agreement (also referred to herein as "Contract") and such shall be completed in a satisfactory manner, as reasonably determined by the City. All labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc., shall comply with any and all applicable Local, State and Federal laws, statutes, ordinances and regulations and with generally accepted professional standards. The Consultant/Vendor shall make such revisions or modifications to its work, at its own cost and expense, as the City may require in order to be deemed complete.

The Project consists of professional services to provide the district with a research-based approach to improving teacher and leadership effectiveness, as more particularly shown on **Attachment A** attached hereto and hereby made material provisions of this Contract. **Attachment A** shall consist of the following:

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1. Scope of Services consisting of 6 pages;
2. RFP No. 4596 for District Transformation for Teaching and Learning Improvement/Professional Development, consisting of 53 pages;
3. Response to RFP No. 4596 submitted by The Connecticut Center for School Change, consisting of 70 pages.

The entirety of **Attachment A** plus this executed instrument are together deemed the Contract Documents (hereinafter collectively referred to as "Contract Documents"). The City's record copy of the Contract Documents shall control and shall be effective and binding on the Contractor. In the event that any provision in the Contract Documents conflict with any other provision therein, the provision in the component part of the Contract Document first enumerated below shall govern over any other component part which follows it numerically:

1. This Agreement consisting of 28 pages;
2. Scope of Services consisting of 6 pages;
3. RFP No. 4596 for District Transformation for Teaching and Learning Improvement/Professional Development, consisting of 53 pages;
4. Response to RFP No. 4596 submitted by The Connecticut Center for School Change, consisting of 70 pages.

**2. Consultant/Vendor Representations Regarding Qualification and Accreditation.** The Consultant/Vendor represents that, to the extent required by law, its employees are licensed to perform the scope of work set forth in this agreement. The Consultant/Vendor further represents that its employees have the requisite skill, expertise and knowledge necessary to perform the scope of work required under the terms of this agreement, including any supplementary work and the City relies upon these.

**A. Representations regarding Personnel.** The Consultant/Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services under this agreement. Such personnel shall not be employees of or have any contractual relationship with the City, unless use of City employees or of personnel having a contractual relationship with the City is approved by the City in writing. As set forth above, all the services required hereunder shall be performed by the Consultant/Vendor under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

**B. Representations regarding Qualifications.** The Consultant/Vendor hereby represents that, to the extent required by Federal, State and Local statutes, regulations, codes, ordinances, and policies, that the Consultant/Vendor and/or its employees be licensed, certified, registered, or otherwise qualified, the Consultant/Vendor and all employees providing services under this agreement, are in full compliance with those statutes, regulations and ordinances. Upon City request, the Consultant/Vendor shall

provide to the City a copy of the Consultant/Vendor's licenses, certifications, registrations, etc.

**3. Responsibilities of the Consultant/Vendor.** All data, information, etc. given by the City to the Consultant/Vendor and/or created by the Consultant/Vendor shall be treated by the Consultant/Vendor as proprietary to the City and confidential unless the City agrees in writing to the contrary and shall be used solely for the purposes of providing services under this agreement. The Consultant/Vendor agrees to forever hold in confidence all files, records, documents and other information which may come into the Contractor's possession during the term of this agreement, except where a disclosure is expressly stated as a requirement of this agreement. Notwithstanding the foregoing, where a Consultant/Vendor disclosure is required to comply with statute, regulation, or court order, the Consultant/Vendor shall provide prior advance written notice to the City of the need for such disclosure. The Consultant/Vendor agrees to properly implement the services required in the manner herein provided.

**A. Use of City Property.** To the extent the Consultant/Vendor is required to be on City property to render its services hereunder, the Consultant/Vendor shall have access to such areas of City property as the City and the Consultant/Vendor agree are necessary for the performance of the Consultant/Vendor's services under this agreement (the "Site" or the "Premises") and at such times as the City and the Consultant/Vendor may mutually agree. Consultant/Vendor shall perform all work in full compliance with Local, State and Federal health and safety regulations. All work hereunder shall be performed in a safe manner. Consultant/Vendor shall immediately correct any dangerous condition caused by or resulting from its work. If it fails to correct, or to act diligently to correct, any condition which City reasonably believes to be a hazard to persons or property, then immediately upon oral or written notice to any supervisory or similar personnel of Consultant/Vendor, City may, but shall not be required to, correct same at Consultant/Vendor's expense. City shall confirm in writing any oral notice given within five (5) days thereafter.

**B. Working Hours.** To the extent the Consultant/Vendor is required to be on City property to render its services hereunder, the Consultant/Vendor shall coordinate its schedule so that work on the Premises is performed during those hours the City sets forth in a written notice to the Consultant/Vendor, unless written permission is obtained from the City to work during other times. This condition shall not excuse Consultant/Vendor from timely performance under the Contract. The work schedule must be agreed upon by the City and the Consultant/Vendor.

**C. Cleaning Up.** To the extent the Consultant/Vendor is required to be on City property to render its services hereunder, the Consultant/Vendor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by Consultant/Vendor, its employees or subcontractors, and at the completion of the work shall remove all rubbish from and about the project and all tools, scaffolding and surplus materials and shall leave the Premises "broom clean" or its equivalent, unless

more exactly specified. In case of dispute, the City may remove the rubbish and charge the cost to the Consultant/Vendor.

**D. Publicity.** Consultant/Vendor agrees not to deliberately disclose the fact that the City has entered into or terminated this agreement or disclose any of the terms of the agreement or use City's name in connection with any publicity, unless City gives prior written consent to such use of City's name in each instance.

**E. Standard of Performance.** All workmanship, services, materials or equipment, either at the Premises or intended for it, shall conform in all respects with the requirements of all this agreement, and shall be the best obtainable from the crafts and trades. In all cases, the services, materials, equipment, reports, plans, specifications, deliverables, workmanship, etc. shall be equal to or better than the grade specified, and the best of their kind that is obtainable for the purpose for which they are intended. The standard of care and skill for all services performed by the Consultant/Vendor shall be that standard of care and skill ordinarily used by other members of the Consultant/Vendor's profession practicing under the same or similar conditions at the same time and in the same locality. The Consultant/Vendor's services rendered hereunder shall be rendered completely and by qualified personnel in accordance with standard industry practice.

**F. Consultant/Vendor's Employees.** The Consultant/Vendor shall at all times enforce strict discipline and good order among its employees, and shall not employ any unfit person or anyone not skilled in the work assigned.

**G. Due Diligence Obligation.** The Consultant/Vendor acknowledges its responsibilities to examine and to be thoroughly familiar with the City's proposal document, including, but not limited to the specifications, and any addenda thereto. The Consultant/Vendor hereby warrants and represents that prior to the submission of its proposal during the proposal process it reviewed or was afforded opportunity, by the City, to review all physical items, facilities, services or functions essential to the satisfactory performance of the services required ("Due Diligence") and thereby certifies that all such items facilities, services or functions are included in this agreement and thereby warrants that:

(1) it conducted or had opportunity to conduct all Due Diligence prior to the submission of its proposal and, accordingly, any additional costs, services or products resulting from the failure of the Consultant/Vendor to complete Due Diligence prior to submission of its proposal shall be borne by the Consultant/Vendor. Furthermore the Consultant/Vendor had the opportunity during the proposal process to ask questions it saw fit and to review the responses from the City;

(2) its failure or omission to make investigation and verification of data shall, in no way, be cause for future claim of ignorance of such data or

conditions nor shall such failure to investigate and verify be the basis for any claim whatsoever, monetary or otherwise;

(3) it is solely responsible for resolving any issues resulting from the failure to conduct Due Diligence and shall assume any costs that may result during the implementation of the Project, including, but not limited to, adherence to specifications and pricing for the Project.

(4) it was responsible for specifying any changes and disclosing any new costs prior to the submittal of its proposal. Thus, in the event any changes or costs are disclosed by the Consultant/Vendor, or otherwise required, during the performance of its services, the sole responsibility for any modification, delay and cost of such changes shall reside with the Consultant/Vendor.

(5) has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, State and Local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work;

(6) has given the City written notice of any conflict, error or discrepancy that the Consultant/Vendor has discovered in the Proposal Documents; and

(7) agrees that the Proposal Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

**H. Reporting Requirement.** The Consultant/Vendor shall deliver periodic, monthly written reports to the City's Using Agency setting forth (i) the issue date of the report, (ii) the time period covered by the report, (iii) a brief description of the work and services completed by the Consultant/Vendor and/or delivered by the Consultant/Vendor during the time period covered by the report, (iv) expressed as a percentage of the total work and services required under this contract, the percentage of the total work represented by the work and services described in subsection iii above, (v) expressed as a percentage of this contract's Section 6 total compensation, the percentage of the total compensation represented by the work and services described in subsection iii above, (vi) the Consultant/Vendor's declaration as to whether the entirety of the Consultant/Vendor's work and services required in this contract will be, or will not be, completed within the contract's Section 6 total compensation amount, and (vii) any and all additional useful and/or relevant information.

NOTE, the Consultant/Vendor's failure to deliver any report required herein shall be deemed a material breach of this contract, the City hereby reserving the right to exercise all available legal remedy(ies) to address said breach.

4. **Responsibilities of the City.** Upon the City's receipt of Consultant/Vendor's written request, the City will provide the Consultant/Vendor with all documents, data and other materials the City agrees are necessary and appropriate to the service to be performed by the Consultant/Vendor hereunder and the City will endeavor to secure, where feasible and where the City agrees it is necessary and appropriate, materials or information from other sources requested by the Consultant/Vendor for the purpose of carrying out the services under this agreement.

5. **Contract Time.** The Consultant/Vendor shall complete all work and services required under this agreement commencing on November 26, 2012, and terminating on June 30, 2013.

Time is and shall be of the essence for all Project milestones and completion dates for the Project. The Consultant/Vendor further agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time stated above. It is expressly understood and agreed, by and between the Consultant/Vendor and City, that the Contract Time is reasonable for the completion of the Work. The Consultant/Vendor shall be subject to City imposed fines and/or penalties in the event the Consultant/Vendor breaches the foregoing dates.

6. **Compensation.** The City shall compensate the Consultant/Vendor for satisfactory provision of all of the goods and services set forth in this agreement as follows in this Section 6.

A. **Fee Schedule.** The fee payable to the Consultant/Vendor shall not exceed ONE HUNDRED SEVENTY-SEVEN THOUSAND FIVE HUNDRED TWENTY-THREE and NO/100 DOLLARS (\$177,523.00), for the entire term of this agreement (hereinafter referred to as "Total Compensation"), with the basis of payment as set forth in Attachment B attached hereto and made a part of this agreement.

B. **Limitation of Payment.** Compensation payable to the Consultant/Vendor is limited to those fees set forth in Section 6.A. above. Such compensation shall be paid by the City upon review and approval of the Consultant/Vendor's invoices for payment and review of the work, services, deliverables, etc. required in this agreement and review as may be further required by the Charter and Ordinances of the City. Consultant/Vendor's invoices shall describe the work, services, reports, plans, specifications, deliverables, etc. rendered and the compensation sought therefore in a form and with detail and clarity acceptable to the City.

The Consultant/Vendor and its affiliates are hereby provided with notice that the City reserves the right, in the City's sole discretion, to offset, withhold, or otherwise reduce City payment(s) to the Consultant/Vendor in an amount equaling the sum or sums of money the Consultant/Vendor and/or its affiliates is/are, or becomes

delinquent or in arrears on, regarding the Consultant/Vendor's and/or its affiliate's real and personal tax obligations to the City.

**C. Review of Work.** The Consultant/Vendor shall permit the City to review, at any time, all work performed under the terms of this agreement at any stage of the work. The Consultant/Vendor shall maintain or cause to be maintained all records, books or other documents relative to charges, costs, expenses, fees, alleged breaches of the agreement, settlement of claims or any other matter pertaining to the Consultant/Vendor's demand for payment. The City shall not certify fees for payment to the Consultant/Vendor until the City has determined that the Consultant/Vendor has completed the work in accordance with the requirements of this agreement.

**D. Proposal Costs.** All costs of the Consultant/Vendor in preparing its proposal for RFP No. 4596 shall be solely borne by the Consultant/Vendor and are not included in the compensation to be paid by the City to the Consultant/Vendor under this agreement or any other agreement.

**E. Payment for Services, Materials, Employees.** The Consultant/Vendor shall be fully and solely responsible for the suitability, and compliance with the agreement, of all labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc. furnished to the City under this agreement. The Consultant/Vendor shall promptly pay all employees as their pay falls due, shall pay promptly as they fall due all bills for labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc., going into the work, and all bills for insurance, bonds, Worker's Compensation coverage, Federal and State Unemployment Compensation, and Social Security charges applicable to this project. Consultant/Vendor Before final payment is made, the Consultant/Vendor shall furnish a legal statement to the City that all payments required under this subparagraph have been made.

**F. Liens.** Neither the final payment nor any part of the retained percentage, if any, shall become due until the Consultant/Vendor, if requested by the City, shall deliver to the City a complete release of all liens arising out of this agreement, or receipts in full in lieu thereof, and, if required, in either case, an affidavit that so far as the Consultant/Vendor has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed; but the Consultant/Vendor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the City, to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the Consultant/Vendor shall refund to the City all moneys that the City may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

7. This Section Intentionally Blank.

8. This Section Intentionally Blank.

**9. Passing of Title and Risk of Loss.** Title to each item of equipment, material, reports, plans, specifications, supplies, services, etc. required to be delivered to the City hereunder shall pass to City upon City payment to the Consultant/Vendor for that item. Consultant/Vendor and its insurer shall assume the risk of loss or damage up to and including the date title passes, except that City shall be responsible for loss or damage caused by City's negligence.

**10. Indemnification.**

A. The Consultant/Vendor shall indemnify, defend, and hold harmless the City and its boards, the City's Board of Education (if applicable), commissions, agents, officials and employees from and against all claims, suits, damages, losses, judgments, costs and expenses including attorney's fees arising out of or resulting from the delivery of the labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc. provided that any such claims, suits, damages, losses, judgments, costs or expenses (a) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the services itself) including the loss of use resulting there from, and (b) is caused in whole or in part by any willful or negligent act or omission of the Consultant/Vendor, its employees, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

B. In any and all claims against the City or any of its boards, agents, employees or officers by the Consultant/Vendor or any employee of the Consultant/Vendor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph A, above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant/Vendor or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

C. The Consultant/Vendor understands and agrees that any insurance required by this agreement, or otherwise provided by the Consultant/Vendor, shall in no way limit the responsibility to indemnify, defend, keep and hold harmless the City as provided in this agreement.

**11. This Section Intentionally Blank.**

**12. Consultant/Vendor's Insurance.** The Consultant/Vendor shall not commence work under this agreement until all insurance required under this Section 12 has been obtained by the Consultant/Vendor and such insurance has been approved by the City. The Consultant/Vendor shall not allow any subcontractor to commence work on any subcontract until all insurance required of any such subcontractor has been so obtained and approved by the City. Insurance shall be provided by insurers that are satisfactory to the City, authorized to

do business in the State of Connecticut, that have at least an "A-" Best's Rating, and are in an A.M. Best financial size category of VII or higher. The A.M. Best classifications are based on the most current A.M. Best Company ratings or an equivalent City approved rating system.

At no additional cost to the City, the Consultant/Vendor shall purchase and maintain the insurance coverages set forth below which shall protect the City from claims which may arise out of or result from the Consultant/Vendor's obligation under this agreement, whether such obligations are the Consultant/Vendor's or subcontractor or person or entity directly or indirectly employed by said Consultant/Vendor or subcontractor, or by any person or entity for whose acts said Consultant/Vendor or subcontractor may be liable.

The Consultant/Vendor's General, Automobile and Excess Liability Insurance policies shall be endorsed to add the City as an additional insured. The insurance afforded the additional insured shall be primary insurance and the coverage and limits provided under the Consultant/Vendor's policies shall not be reduced or prorated by the existence of any other insurance applicable to any loss the additional insured may have suffered. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless. If any insurance required herein is to be issued or renewed on a claims made form as opposed to an occurrence form, the retroactive date for coverage shall be no later than the commencement date of this agreement and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims ("Tail Coverage") shall be available for at least 60 months.

The following policies with stated limits shall be maintained, in full force and effect, at all times during which the services are to be performed by the Consultant/Vendor:

- 
- A. General Liability Insurance: \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate
  - B. Automobile Liability Insurance: \$1,000,000.00 combined single limit (CSL)
  - C. Workers' Compensation: Statutory Limits within the State of Connecticut
  - D. Excess Liability Insurance: \$3,000,000.00 aggregate limit
  - E. Professional Liability Insurance: \$1,000,000.00 aggregate limit
- 

- A. General Liability Insurance: Providing coverage to protect the City for all damages arising out of bodily injuries, sickness to or death of all persons in any one accident or occurrence and for all damages arising out of destruction of property in any one accident or occurrence.
- B. Automobile Liability Insurance: Providing coverage to protect the City with respect to claims for damage for bodily injury and or property damage arising out of ownership,



maintenance, operation, use or loading and unloading of any owned or non-owned vehicle

C. Workers' Compensation: Consultant/Vendor shall comply with all State of Connecticut statutes as it relates to workers' compensation.

D. Excess General Liability Insurance: Comprehensive general liability umbrella insurance coverage.

E. Professional Liability Insurance: Professional liability (also know as, errors and omissions) insurance providing coverage to the Consultant/Vendor.

Failure to Maintain Insurance: In the event the Consultant/Vendor fails to maintain the minimum required coverage as set forth herein, the City may at its option purchase same, and offset the Consultant/Vendor's invoices for the cost of said insurance.

Cancellation: THE CITY OF WATERBURY SHALL RECEIVE WRITTEN NOTICE OF CANCELLATION FROM THE INSURER AT LEAST 30 CALENDAR DAYS PRIOR TO THE DATE OF ACTUAL CANCELLATION, REGARDLESS OF THE REASON FOR SUCH CANCELLATION.

Certificates of Insurance: At the time the Consultant/Vendor executes this agreement, it shall furnish to the City, subject to City approval, certificate(s) of insurance verifying the above coverages, including the naming of the City of Waterbury, as follows: **"The City of Waterbury and its Board of Education (if applicable) are listed as additional insured as their interests may appear"**. The City's request for proposal number must be shown on the certificate of insurance. The Consultant/Vendor must supply replacement/renewal certificates at least 30 days prior to the expiration of the policy(ies). Said certificates shall contain a provision that coverage afforded under the policies shall not be cancelled or reduced for any reasons unless notice of not less than thirty (30) calendar days has been mailed to the Office of Corporation Counsel, 235 Grand Street, Waterbury, CT. 06702.

Upon request the Consultant/Vendor shall deliver to the City a copy of the Consultant/Vendor's insurance policies, endorsements, and riders.

### **13. Conformance with Federal, State and Other Jurisdictional Requirements.**

By executing this agreement, the Consultant/Vendor represents and warrants that, at all pertinent and relevant times to the agreement, it has been, is and will continue to be in full compliance with all applicable statutes, acts, ordinances, guidelines, resolutions, orders, judgments, decrees, injunctions, rules, and regulations of all government authorities applicable to performance by the Consultant/Vendor of services hereunder, including those having jurisdiction over its registration and licensing to perform services hereunder; including, but not limited to, the following: *EQUAL EMPLOYMENT OPPORTUNITY ACT*; *COPELAND ANTI-KICKBACK ACT*, as supplemented in the Department of Labor Regulations (29 CFR Part 3); *DAVIS-BACON ACT* as supplemented by Department of Labor Regulations (29 CFR Part 5);

Section 103 and 107 of the Contract Work Hours and Safety Standards Act, as supplemented by the Department of Labor Regulations (29 CFR Part 5); and the *HOUSING and COMMUNITY DEVELOPMENT ACT of 1974*, as amended; Title 31 of the State of Connecticut General Statutes. All applicable sections of the City Charter and Code of Ordinances are incorporated by reference and made a part hereof.

**A. Permits, Laws, Taxes and Regulations.** Permits and licenses necessary for the delivery and completion of the Consultant/Vendor's work and services shall be secured in advance and paid by the Consultant/Vendor. The Consultant/Vendor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work and services as specified.

**B. Taxes - Federal, State and Local.** The City is exempt from Federal Excise and Transportation, State and Local Sales and Use Taxes, including without limitation, taxes that would otherwise be imposed upon the Contractor for transactions required or necessitated hereunder between it and its subcontractors, suppliers, etc. The Consultant/Vendor remains liable, however, for any applicable tax obligations it incurs. Moreover, the Consultant/Vendor represents that the proposal and pricing contained in this agreement do not include the amount payable for said taxes.

**C. Labor and Wages.** The Consultant/Vendor and its subcontractors shall conform to the labor laws of the State of Connecticut, and all other laws, ordinances, and legal requirements affecting the work in Connecticut.

The Consultant/Vendor is aware of the provisions of Title 31, §53 of the Connecticut General Statutes, latest revision (the "Act"), concerning the payment of minimum wages and other payments or contributions established by the State of Connecticut Labor Commissioner for work on public facilities. The provisions of the Act are incorporated by reference and made a part of this agreement. The Act provides that the Connecticut prevailing wage law applies to certain remodeling, refurbishing, alteration, repair and new construction. The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in Conn. Gen. Statute 31-53(i), shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

The Contractor is aware of, and shall comply with, the provisions of both the Federal Davis-Bacon Act and the Federal American Recovery and

Reinvestment Act of 2009, the provisions of both acts hereby incorporated by reference and made a part of this Contract. The Federal Davis-Bacon Act provides that Federal wage rate laws apply to certain federally funded contracts. The American Recovery and Reinvestment Act ("ARRA") provides that Federal wage rate laws apply to all ARRA funded contracts regardless of the contract's dollar value.

**14. Discriminatory Practices.** In performing this agreement, the Consultant/Vendor shall not discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, sex, age, religious creed, disability, national origin or ancestry, marital status, family status, prior psychiatric treatment, health care, military status or source of income or because of a handicap that is unrelated to the employee's or the applicant's ability to perform the duties of a particular job or position. Subcontracts with each subcontractor shall contain a provision requiring non-discrimination in employment as herein specified. This covenant is required pursuant to §93.04 of the Code of Ordinances of the City and any breach thereof may be regarded as a material breach of this agreement. Said provisions with subcontractors shall require conformity and compliance with all Local, State and Federal laws, rules and regulations and Executive orders pertaining to discrimination and equal opportunity requirements.

**A. Discrimination Because of Certain Labor Matters.** No person employed on the work covered by this agreement shall be discharged or in any way discriminated against because such person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or related to the labor standards applicable hereunder to its employer.

**B. Equal Opportunity.** In its execution of the performance of this agreement, the Consultant/Vendor shall not discriminate and shall comply with applicable laws prohibiting discrimination on the grounds of race, color, religion, sex, national origin or citizenship status, age or handicap. The Consultant/Vendor agrees to comply with all Local, State and Federal laws, rules and regulations and Executive orders pertaining to discrimination and equal opportunity requirements, and will require the same of all subcontractors.

**15.1 Conformance With An Ordinance Concerning The Hiring Of Waterbury Residents On Certain Publicly- Funded Construction Projects.**

(A) The Contractors and its Subcontractors shall comply with the specific requirements of "An Ordinance Concerning the Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects" (the "Good Jobs Ordinance"), as may be amended from time to time and as set forth in Chapter 34 of the Code of Ordinances of the City. While the principal provisions of the ordinance are summarized as set forth in paragraphs C-H below, the Contractor does hereby acknowledge that it has reviewed a copy of the Good Jobs

Ordinance and that it has read the Ordinance and that Contractor is familiar with the obligations imposed on the Contractor by the Good Jobs Ordinance.

(B) Failure of the Contractor or its Subcontractors to comply with the Good Jobs Ordinance shall be a material breach of this Agreement.

(C) This paragraph shall apply to a Covered Project, as that term is defined in the Good Jobs Ordinance, in the City with a value of \$500,000.00 or greater and only to the extent permitted by federal and state law.

(D) **Definitions.** For purposes of this paragraph:

(1) "Apprentice" shall be defined as it is in the Good Jobs Ordinance.

(2) "Construction work" shall be defined as it is in the Good Jobs Ordinance.

(3) "Subcontractor" shall include the Contractor's direct subcontractor providing construction work and all lower tiered (level) providers of construction work.

(4) "Resident" shall be defined as it is in the Good Jobs Ordinance.

(E) **Hiring Goals.** If this Agreement requires the Contractor to perform construction work, the Contractor shall have as its hiring goals:

(1) at least thirty percent (30%) of its total worker hours performed by City Residents, and

(2) at least twenty-five percent (25%) of construction trade jobs shall go to Apprentices, and

(3) at least seventy percent (70%) of all "new hires" (as that term is defined in the Good Jobs Ordinance) shall be "economically disadvantaged" individuals (as that term is defined in the Good Jobs Ordinance), and

(4) a minimum of five percent (5%) of the construction workforce labor hours will be local resident, minority artisans, and

(5) a minimum of five percent (5%) of the construction workforce labor hours will be women, and

(6) a minimum of ten percent (10%) of the total work hours shall be

allocated for minorities, or

(7) as may otherwise be required by any superseding Federal or State employment discrimination prohibition laws.

Moreover, each subcontractor shall each comply with the foregoing Hiring Goals.

(F) **Good Faith Efforts.** The Contractor shall engage in a Good Faith Efforts to comply with the Hiring Goals. For the purposes of this paragraph, the term "Good Faith Efforts" shall have the same meaning as it does in the Good Jobs Ordinance.

The Contractor and each subcontractor shall individually implement Good Faith efforts to satisfy the Hiring Goals.

(G) **Action Plan and Pre-Construction Meeting.** Not later than fourteen (14) business days prior to the scheduled commencement date for construction, the Contractor shall submit a written plan-of-action to the City and to the Administrator of the Good Jobs Ordinance defining how the Contractor, and each Subcontractor, shall implement Good Faith Efforts to fulfill the Hiring Goals. Each plan-of-action shall include the anticipated number of job positions required for the Work. Not later than five (5) business day prior to the commencement date of construction, the Contractor must attend a mandatory "pre-construction" meeting with the City to review all plans-of-action and other relevant materials. No construction work shall proceed absent this pre-construction meeting.

(H) **Other Contractor Obligations.** In addition to the foregoing, the Contractor shall ensure that all Subcontractor contracts and agreements expressly set forth and state as binding obligations therein, subject to appropriate party name change, the above Hiring Goals and Good Faith Efforts. The Contractor shall be accountable for and liable to the City for Contractor and Subcontractor compliance with Hiring Goals and Good Faith efforts.

(1) The Contractor shall be required to produce Contractor and Subcontractor documentation that may be required under the provisions of Good Jobs or that the City or the Administrator of the Good Jobs Ordinance reasonably believes will assist the City or the Administrator of the Good Jobs Ordinance with their evaluation of Hiring Goals and Good Faith Efforts.

(2) The Contractor shall deliver weekly certified payroll records to the City within five (5) working days of the end of each payroll period. Moreover, the Contractor shall require each Subcontractor to create

weekly certified payroll records.

(3) The Contractor's and Subcontractors' payroll records shall include the person-hours, the residential address, race, gender, hiring date, and apprentice (job) classification of all personnel employed under this Agreement and all Contracts and Sub-Contracts thereunder. The Contractor and Subcontractors shall mark their respective final payroll period records as being final and be signed by an authorized officer or employee.

## **15.2 Liquidated Damages Applicable To Paragraph 15.1**

1) If the City finds the Contractor, or a Subcontractor, has failed to achieve Hiring Goals during any five (5) day work period (Monday through Friday), the City shall:

(a) issue a written notice to the Contractor specifying the matters constituting such failure and the time period within which Good Faith Efforts documentation must be delivered to the City for its evaluation.

(b) if the Good Faith documentation is not provided or, if provided, it fails to demonstrate compliance with Good Faith Efforts, for each full five (5) day work period of the Contractor or Subcontractor's failure to achieve Hiring Goals, the City shall as liquidated damages withhold from payment to the Contractor:

(i) if the contact is for an amount between \$500,000.00 and \$1,000,000.00, inclusive, the lesser of \$1,000.00 or one (1%) percent of the Value of the payment then payable to the Contractor;

(ii) if the contact is for an amount between \$1,000,000.01 and \$5,000,000.00, inclusive, the lesser of \$2,000.00 or one (1%) percent of the Value of the payment then payable to the Contractor;

(iii) if the contact is for an amount greater than \$5,000,000.00, the lesser of \$2,500.00 or one (1%) percent of the Value of the payment then payable to the Contractor.

2) The foregoing liquidated damages provisions shall be expressly set forth, subject to appropriate party name adjustments, as material provisions in all Contracts that the Contractor has with Subcontractors

and the Contractor is obligated hereunder to enforce compliance in such Contracts with Subcontractors.

3) Any payment of liquidated damages hereunder shall not preclude a later claim, nor any later finding of a breach, or any payment of additional damages related to such later claim.

**16. Housing and Urban Development Section 3 Clause.** In the event this agreement is funded, in whole or in part, through Housing and Urban Development assistance, 24 C.F.R. §135.38 may apply and the Contractor shall then be required to comply with the following (referred to as the "Section 3 clause"):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

#### **17. Termination.**

A. **Termination of Agreement for Cause.** If, through any cause, in part or in full, not the fault of the Consultant/Vendor, the Consultant/Vendor shall fail to fulfill in a timely and proper manner its obligations under this agreement, or if the Consultant/Vendor shall violate any of the covenants, agreements, or stipulations of this agreement, the City shall thereupon have the right to terminate this agreement by giving written notice to the Consultant/Vendor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In the event of such termination, all finished or unfinished documents, data, studies, reports, specifications, deliverables, etc. prepared by the Consultant/Vendor under this agreement shall, at the option of the City, become the City's property, and the Consultant/Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed for such.

Notwithstanding the above, the Consultant/Vendor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this agreement by the Consultant/Vendor, and the City may withhold any payments to the Consultant/Vendor for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant/Vendor is determined.

B. **Termination for Convenience of the City.** The City may terminate this agreement at any time for the convenience of the City, by a notice in writing from the City to the Consultant/Vendor. If this agreement is terminated by the City as provided herein, the Consultant/Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the



Consultant/Vendor covered by this agreement, less payments of compensation previously made.

**C. Termination for Non-Appropriation or Lack of Funding.** The Consultant/Vendor acknowledges that the City is a municipal corporation and that this agreement is subject to the appropriation of funds by the City sufficient for this agreement for each budget year in which this agreement is in effect. The Consultant/Vendor therefore agrees that the City shall have the right to terminate this agreement in whole or in part without penalty in the event sufficient funds to provide for City payment(s) under this agreement is not appropriated, not authorized or not made available pursuant to law, or such funding has been reduced pursuant to law.

(1) **Effects of Nonappropriation.** If funds to enable the City to effect continued payment under this agreement are not appropriated, authorized or otherwise made available by law, the City shall have the right to terminate this agreement without penalty at the end of the last period for which funds have been appropriated, authorized or otherwise made available by law by giving written notice of termination to the Consultant/Vendor.

(2) **Effects of Reduced Levels of Funding.** If funding is reduced by law, or funds to pay the Consultant/Vendor for the agreed to level of the products, services and functions to be provided by the Consultant/Vendor under this agreement are not appropriated, authorized or otherwise made available by law, the City may, upon seven (7) business days written notice to the Consultant/Vendor, reduce the level of the products, services or functions in such manner and for such periods of time as the City may elect. The charges payable under this agreement shall be equitably adjusted to reflect such reduced level of products, services or functions and the parties shall be afforded the rights set forth in this agreement.

(3) **No Payment for Lost Profits.** In no event shall the City be obligated to pay or otherwise compensate the Consultant/Vendor for any lost or expected future profits.

**D. Rights Upon Cancellation of Termination.**

(1) **Termination for Cause.** In the event the City terminates this agreement, for cause, the Consultant/Vendor shall relinquish to the City any applicable interest, title and ownership including, but not limited to, perpetual use of any proprietary rights in and to the documents, data, studies, reports, specifications, deliverables, etc. provided to, in possession of, and properly invoiced and paid for by (except to the extent such invoiced amount is disputed) the City. With regard to third party products, the Consultant/Vendor shall transfer all licenses to the City which the Consultant/Vendor is permitted to transfer in accordance with the applicable third party license. The City shall have no financial obligation to compensate the Consultant/Vendor for such

terminated documents, data, studies, reports, specifications, deliverables, etc. unless payment is otherwise approved by the City prior to such termination. The Consultant/Vendor shall be liable for costs incurred by the City, including but not limited to reasonable attorney fees and all court awarded fees and costs incurred in terminating this agreement in whole or in part.

**(2) Termination for Lack of Funding or Convenience.** In the event of termination by the City for lack of funding or convenience, the City shall pay the Consultant/Vendor for all documents, data, studies, reports, specifications, deliverables, etc. (including any holdbacks), installed and delivered to the City as of the Termination Date and the Consultant/Vendor shall relinquish to the City any applicable interest, title and ownership including, but not limited to perpetual use of any proprietary rights in and to said documents, data, studies, reports, specifications, deliverables, etc. in possession of and paid for by the City (except to the extent any invoiced amount is disputed). The Consultant/Vendor shall be required to exercise commercially reasonable efforts to mitigate damages. In the event of a termination for Lack of Funding or Convenience the City and the Consultant/Vendor may negotiate a mutually acceptable payment to the Consultant/Vendor for reasonable demobilization expenses. Said demobilization expenses, if any, shall be handled in accordance with the provision of this agreement pertaining to Changes in the Work.

**(3) Termination by the Consultant/Vendor.** The Consultant/Vendor may, by written notice to the City, terminate this agreement if the City materially breaches, provided that the Consultant/Vendor shall give the City thirty (30) calendar days prior written notice and an opportunity to cure by the end of said thirty day period. In the event of such termination, the Consultant/Vendor will be compensated by the City for work performed prior to such termination date and the Consultant/Vendor shall deliver to the City all deliverables as otherwise set forth in this agreement.

**(4) Assumption of Subcontracts.** In the event of termination, the City shall have the right to assume, at its option, any and all subcontracts for products, services and functions provided exclusively under this agreement, including but not limited to any contracts and may further pursue completion of the work under this agreement by replacement contract or otherwise as the City may in its sole judgment deem expedient.

**(5) Delivery of Documents.** In the event of termination, (i) the Consultant/Vendor shall promptly deliver to the City, in a manner reasonably specified by the City, all labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc and other tangible items furnished by, or owned, leased, or licensed by, the City, and (ii) the City shall pay the Consultant/Vendor for all services performed and deliverables completed and

accepted (pro-rated for deliverables partially completed) prior to the effective date of the termination (except to the extent any invoice amount is disputed).

**E. Ownership of Instruments of Professional Services.** The City acknowledges the Consultant/Vendor's documents, data, studies, reports, specifications, deliverables, etc. created and to be created pursuant to this agreement, including electronic files, are Instruments of Professional Services. Nevertheless, the final Instruments of Professional Services, including, but not limited to documents, data, studies, reports, specifications, deliverables, etc. prepared for the City under this agreement shall become the property of the City upon City payment for that Instrument of Professional Services and the City reserves the right to use the Instruments of Professional Services.

**18. Force Majeure.** Consultant/Vendor shall not be held responsible for delays nor be subject to liquidated damages when such delays are caused by conditions beyond its control, including without limitation:

A. Acts of God, fire, explosion, epidemic, cyclone, flood, war, strikes, revolution, civil commotion, or acts of public enemies.

B. Change of law and order, proclamation, regulation, ordinance, or governmental requirement.

C. Delays caused by the Consultant/Vendor's vendors, except where such delays are the result of lack of adequate coordination by the Consultant/Vendor.

Upon cessation of work for reason of force majeure delays, Consultant/Vendor shall use its best efforts to meet the schedule set forth in Section 5 of this agreement.

**19. Subcontracting.** The Consultant/Vendor shall not, without the prior written approval of the City, subcontract, in whole or in part, any of the Consultant/Vendor's services. Any subcontractor so approved shall be required to secure and maintain insurance coverage equal to or better than that required of the Consultant/Vendor and shall name the City as an additional insured party and said subcontractors shall deliver to the City a certificate of insurance evidencing such coverages. All subcontractors shall comply with all Federal, State and Local, laws, regulations and ordinances but such requirement shall not relieve the Consultant/Vendor from its requirement that all work and services provided or required hereunder shall comply with all Federal, State and Local, laws, regulations and ordinances.

The Consultant/Vendor shall be as fully responsible to the City for the acts and omissions of the Consultant/Vendor's subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Consultant/Vendor.

**20. Assignability.** The Consultant/Vendor shall not assign any interest in this agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City; provided, however, that claims for money due or

to become due the Consultant/Vendor from the City under this agreement may be assigned to a bank, trust, company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

**21. Audit.** The City reserves the right to audit the Consultant/Vendor's books of account in relation to this agreement any time during the period of this agreement or at any time during the twelve month period immediately following the closing or termination of this agreement. In the event the City elects to make such an audit, the Consultant/Vendor shall immediately make available to the City all records pertaining to this agreement, including, but not limited to, payroll records, bank statements and canceled checks.

**22. Risk of Damage and Loss.** The Consultant/Vendor shall be solely responsible for causing the timely repair to and/or replacement of, City property or item(s) intended to become City property hereunder, where the need for repair or replacement was caused by the Consultant/Vendor, by someone under the care and/or control of the Consultant/Vendor, by any subcontractor of the Consultant/Vendor, or by any shipper or delivery service. The Consultant/Vendor shall be solely responsible for all costs and expenses, including but not limited to shipping, delivery, insurance, etc, associated with the foregoing repair and replacement obligation. Further, the Consultant/Vendor shall be solely responsible for securing the City's written acceptance of all completed repairs and replacements required hereunder. The City hereby retains sole discretion to determine whether a repair or a replacement is the proper remedy.

**23. Interest of Consultant/Vendor.** The Consultant/Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the project or any parcel of land therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Consultant/Vendor further covenants that in the performance of this agreement no person having any such interest shall be employed.

**24. Entire Agreement.** This agreement shall constitute the complete and exclusive statement of the Contract between the parties as it relates to this transaction and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter. Any amendment to this agreement must be in writing and agreed to and executed by the City and the Consultant/Vendor.

**25. Independent Contractor Relationship.** The relationship between the City and the Consultant/Vendor is that of client and independent contractor. No agent, employee, or servant of the Consultant/Vendor shall be deemed to be an employee, agent or servant of the City. The Consultant/Vendor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this agreement. It is the express intention of the parties hereto, and the Consultant/Vendor hereby agrees and covenants, that it and any and all third party(ies) and subcontractor(s) retained by the Consultant/Vendor hereunder is/are not and shall not be deemed an employee of the City of Waterbury, but is/are and shall remain an independent contractor relative to the City and that nothing herein shall be interpreted or construed as creating or establishing the relationship of

employer-employee between the City of Waterbury and the Consultant/Vendor or between the City of Waterbury and any third party(ies) or subcontractor(s). Thus, the Consultant/Vendor hereby covenants that it, its subcontractor(s) and third party(ies) shall not be entitled to the usual characteristics of employment, such as income tax withholding, F.I.C.A. deductions, pension or retirement privileges, Workers Compensation coverage, health benefits, etc. and that the Consultant/Vendor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants, representatives, subcontractors and third party(ies).

**26. Severability.** Whenever possible, each provision of this agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this agreement, however, is held to be prohibited or invalid under applicable law, such provision shall be deemed restated to reflect the original intentions of the parties, as nearly as possible in accordance with applicable law, and if capable of substantial performance, the remaining provisions of this agreement shall be enforced as if this agreement was entered into without an invalid provision. If the ruling and/or controlling principle of law or equity leading to the ruling is subsequently overruled, modified or amended by legislation, judicial or administrative action, then the provision(s) in question as originally set forth in this agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

**27. Survival.** Any provisions of this agreement that impose continuing obligations on the parties shall survive the expiration or termination of this agreement for any reason.

**28. Contract Change Orders.** At the sole discretion of the City, a Change Order may be issued solely by the City to modify an existing party obligation set forth in this agreement where the scope of the Change Order is:

(i) within the scope of the original agreement OR is made pursuant to a provision in the original agreement, AND

(ii) the Change Order monetary cost is charged solely against those funds encumbered for and at the time the contract was originally executed by the City, that is those funds set forth in the original contract as a not to exceed payment amount OR within the original contract's contingency / allowance / reserve amount (if any is stated therein).

Notwithstanding the foregoing, a Change Order shall not include (iii) an upward adjustment to a Consultant/Vendor's payment claim, or (iv) a payment increase under any escalation clause set forth in the original contract, or any Change Order, or any amendment. That the work and/or services contemplated are necessary does not, in itself, permit a Change Order. Should the need for a Change Order arise, the request shall be reviewed and approved by the City's Using Agency and any City designated representative(s). To be binding and enforceable, a Change Order shall thereafter be signed by both the Consultant/Vendor, any City designated representative(s), and a duly authorized representative of the City's Using Agency prior to the Consultant/Vendor's delivery of the services, etc. contemplated in said Change Order. All Change Orders are governed by the provisions of this agreement. Any contract change NOT fully complying with this Section 28 shall be effectuated solely by an

amendment to this agreement complying with Section 38.073 of the City's "Centralized Procurement System" ordinance.

**29. Conflicts or Disputes.** This agreement represents the full and complete concurrence between the City and the Consultant/Vendor and governs all disputes between them. In the instance of a conflict or dispute over issues not specifically referenced within the agreement, the following documents shall be used as historical documents. Without regard to the order of precedence, to resolve such conflicts or disputes, the historical documents are (a) the City's aforementioned RFP and (b) the Consultant/Vendor's proposal responding to the aforementioned RFP and are hereby fully incorporated by the foregoing reference.

**A. Procedure.** This procedure supersedes all statements to the contrary occurring either in proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

**B. Presumption.** This agreement or any section thereof shall not be construed against any party due to the fact that the agreement or any section thereof was drafted by such party.

**30. Disputes; Legal Proceedings; Waiver of Trial by Jury and Continued Performance.** The Consultant/Vendor agrees that it waives a trial by jury as to any and all claims, causes of action or disputes arising out of this agreement or services to be provided pursuant to this agreement. Notwithstanding any such claim, dispute or legal action, the Consultant/Vendor shall continue to perform services under this agreement in a timely manner, unless otherwise directed by the City.

**31. Binding Agreement.** The City and the Consultant/Vendor each bind themselves, and their successors, assigns and legal representatives to the other party to this agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this agreement.

**32. Waiver.** Any waiver of the terms and conditions of this agreement by either of the parties hereto shall not be construed to be a waiver of any other term or condition of this agreement.

**33. Governing Laws.** This agreement, its terms and conditions and any claims arising there from shall be governed by the laws of the State of Connecticut.

**34. Notice.** Except as otherwise specifically prohibited in this agreement, whenever under this agreement approvals, authorizations, determinations, notices, satisfactions or waivers are required or permitted, such items shall be effective and valid only when given in writing signed by a duly authorized officer of the City's Using Agency or the Consultant/Vendor, and delivered in hand or sent by mail, postage prepaid, to the party to whom it is directed, which until changed by written notice, are as follows:

Consultant/Vendor: The Connecticut Center for School Change  
151 New Park Avenue, Suite 103  
Hartford, CT 06106

City: City of Waterbury  
c/o Mr. Paul F. Guidone  
Chief Operating Officer and Chief of Staff  
Department of Education  
236 Grand Street  
Waterbury, CT 06702

**35. City Code of Ordinances, Ethics and Conflict of Interest Code, Provisions.**

The Person (the term "Person" shall herein be as defined in Section 38 of the City's Code of Ordinances) supplying the documents, data, studies, reports, specifications, deliverables, etc. under this Contract shall comply with all applicable Federal, State and Municipal statutes, regulations, charters, ordinances, rules, etc, whether or not they are expressly stated in this Contract, including but not limited to the following:

A. It shall be a material breach of this Contract, and, except as may be permitted by regulations or rulings of the City of Waterbury Board of Ethics it shall be a violation of the City's Code of Ordinances, for any Public Official, City Employee or Member of a Board or Commission who is participating directly or indirectly in the procurement process as set forth in the City's Code of Ordinances, including those participating in exempt transactions, to become or be the employee of any person contracting with the governmental body by whom the Official, Employee, or Board or Commission member is employed or is a member.

B. It shall be a material breach of this Contract, and it shall be a violation of the City's Code of Ordinances for any Person to offer, give, or agree to give any current or former Public Official, Employee or Member of a Board or Commission, or for such current or former Public Official, Employee or Member of a Board or Commission to solicit, demand, accept or agree to accept from another Person, a gratuity or an offer of employment in connection with any: decision; approval; disapproval; recommendation; preparation of any part of a program requirement or a requisition; influencing the content of any specification or procurement standard; or rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a Contract or Purchase Order, or to any solicitation or proposal therefore.

C. It shall be a material breach of this Contract and it shall be a violation of the City's Code of Ordinances for any payment, Gratuity, or offer of employment to be made as an inducement for the award of a subcontract or order, by or on behalf of a subcontractor, the prime Consultant/Vendor or higher tier subcontractor or any Person associated therewith, under a Contract or Purchase Order to the City.

D. The value of anything transferred or received in violation of the City's Charter, Code of Ordinances, and/or regulations promulgated there under, by any Person subject to said Charter and/or Ordinances may be recovered by the City.

E. Upon a showing that a subcontractor made a kickback to the City, a prime Consultant/Vendor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

F. It shall be a material breach of this Contract and it shall be a violation of the City's Code of Ordinances for a Person to be retained, or to retain a Person, to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and every Person, before being awarded a City Contract, shall deliver to the City, on a City authored form, a representation that such Person has not retained anyone in violation of this subsection F, the failure to deliver said form being a material breach of this Contract and a violation of the City's Code of Ordinances. Note, however, this subsection f shall not apply to full-time Employees who, as a condition of their employment, may be entitled to bonuses or other fees in accordance with their employment relationship.

G. The Person hereby expressly represents that he/she/it has complied with those sections of the City's Code of Ordinances requiring that said Person has (1) delivered to the City an affidavit, on a City authored form, stating that the Person and its affiliates have no delinquent taxes or other financial obligations owned to the City; (2) filed the City authored financial disclosure statement form as set forth in the City's Code of Ordinances regarding disclosure of financial interests; (3) delivered to the City a written acknowledgement, on a City authored form, evidencing receipt of a copy of the "Ethics and Conflict of Interest" ordinance for the City of Waterbury and hereby expressly represents that said Person is in full compliance with the entirety of said Code of Ordinances; and (4) filed a current list of all taxable personal and real property as required by the State of Connecticut General Statutes. Any violation of this subsection G shall be deemed a material breach of this Contract and shall be a violation of the City's Code of Ordinances.

H. The definitions set forth in the City's Code of Ordinances shall be the primary source for interpretation of the forgoing subsections A-G.

I. The Contractor is hereby charged with the requirement that it shall have knowledge of, and shall fully comply with, all relevant provisions of the City's Charter and all relevant provisions of the City's Code of Ordinances, including without limitation Chapters 93, titled "Discriminatory Practices", Chapter 38 titled "Centralized Procurement System", and Chapter 39 titled "Ethics and Conflict of Interest", of said Code as may be amended from time to time.

J. The Contractor hereby acknowledges receipt of a copy of the Chapters 38 and 39 of



City's Ordinance regarding Procurement, Ethics, and Conflicts of Interest and has familiarized itself with said Code and hereby agrees to adhere to said Code. The text of Chapters 38 and 39 of said Code may be obtained from the Office of the City Clerk of the City and on the internet at the City Clerk's web site: <http://www.waterburyct.org/content/458/539/default.aspx> [click link titled "The City of Waterbury Code of Ordinances Passed 8/24/2009". For Chapter 38, click on "TITLE III: ADMINISTRATION", then click on "CHAPTER 38: CENTRALIZED PROCUREMENT SYSTEM". For Chapter 39, click on "TITLE III: ADMINISTRATION", then click on "CHAPTER 39: ETHICS AND CONFLICTS OF INTEREST"].

K. The Contractor is hereby charged with the requirement that it shall have knowledge of, and shall fully comply with, the City's Ordinance Sections 34.15 through 34.99 entitled, "Ordinance Concerning the Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects" and the State of Connecticut Legislature's Special Act No. 01-1.

L. Every Person who conducts business with, contracts, with or provides commodities or services to the City, is charged with notice of the extent of the powers and authority, and the limitations thereon, of the Public Officials and Employees of the City, as set forth in the charter of the City, the Code of Ordinances and any Regulations or Policies pertaining thereto. In particular, and without implying any limitation as to its applicability, it applies to all Persons who participate in the procedures pertaining to the Centralized Procurement System as set forth in Chapter 38, and the Ethics and Conflict of Interest provisions set forth in Chapter 39 of the Code of Ordinances.

M. INTEREST OF CITY OFFICIALS. No member of the governing body of the City, and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the project, to which this agreement pertains, shall have any personal interest, direct or indirect, in this agreement.

N. PROHIBITION AGAINST CONTINGENCY FEES. The Contractor hereby represents that it has not retained anyone to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage or contingency fee.

O. FREEDOM OF INFORMATION ACT NOTICE. Pursuant to State statute, in the event the total compensation payable to the Consultant/Vendor set forth in Section 6 herein is greater than \$2,500,000.00, the City is entitled to receive a copy of any and all Consultant/Vendor records and files related to the performance of this contract and those records and files are subject to the Freedom of Information Act ("the Act") and may be disclosed by the City pursuant to the Act.

Professional Services Agreement (PSA) between the City of Waterbury, Connecticut, and The Connecticut Center  
for School Change - RFP No. 4596

IN WITNESS WHEREOF, the parties hereto execute this agreement on the dates signed  
below.

WITNESS:

CITY OF WATERBURY

[Signature]  
Rec. 11/20/12

By:

[Signature]  
Neil M. O'Leary, Mayor

Date:

11/20/12

APPROVED AS TO FORM

[Signature]  
Municipal Administration Council's Office

WITNESS:

THE CT CENTER FOR SCHOOL CHANGE

[Signature]  
Theresa Benjamin

By:

[Signature]  
Andrew Lachman, Executive Director

Date:

11/19/12

Professional Services Agreement (PSA) between the City of Waterbury, Connecticut, and The Connecticut Center for School Change - RFP No. 4596

#### **ATTACHMENT A**

- 1. Scope of Services, consisting of 6 pages.**
- 2. RFP No. 4596 for District Transformation for Teaching and Learning Improvement/Professional Development, consisting of 53 pages.**
- 3. Response to RFP No. 4596 submitted by The Connecticut Center for School Change, consisting of 70 pages.**

## DISTRICT TRANSFORMATION FOR TEACHING & LEARNING IMPROVEMENT / PROFESSIONAL DEVELOPMENT

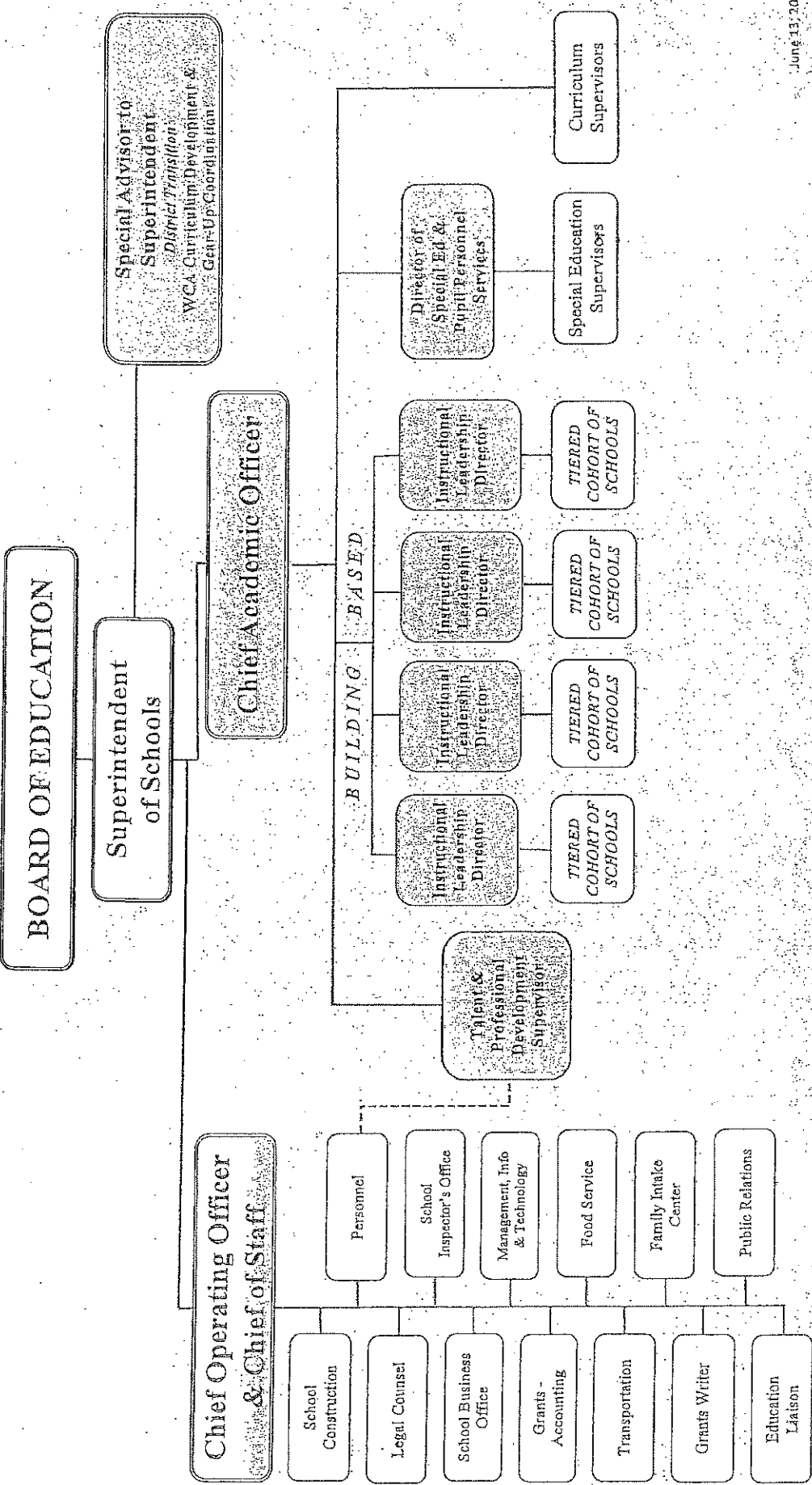
### Scope of Services

The Waterbury Public Schools is seeking professional services to provide the district with a research based approach to improving teacher and leadership effectiveness. Waterbury Public Schools has recently undergone a district-wide reform reorganization (attached) incorporating the position of Instructional Leadership Directors (ILD) to oversee tiered cohorts of schools. In support of this initiative the district is seeking proposals for the following services:

- Provide a partnership with Waterbury Public Schools to support the Superintendent and her core leadership team in developing and implementing a plan of instructional leadership.
- Provide an instructional assessment of principals and selected administrators.
- Provide professional development for the ILD and other administrators and on-going support for the ILD.
- Develop ILD routine including school visit protocol, communication plans, and principal meeting structures.
- Develop a system and provide protocol and tools necessary to facilitate instructional rounds.
- Develop and implement an action plan to guide central office leaders and principals to work together to improve instructional leadership
- Provide coach(es) for the Chief Academic Officer and the ILD.

Proposers are requested to submit a proposal addressing the above described scope of services, including identification of key personnel, strategies to be employed, and a cost proposal.

The district plans to negotiate a contract with the successful proposer which will incorporate agreed upon terms and conditions.



June 13, 20

b. Work Plan Per Scope of Services.

Part 2g above provides a general summary of the Center and CEL's project approach, which partially addresses our management process. Below is a more detailed plan for addressing the specific services identified in the Scope of Services.

<p>The following scope of services provides the Waterbury Public Schools (WPS) with a research-based approach to improving teacher and leadership effectiveness, with a direct focus on developing the capacity of Instructional Leadership Directors (ILDs). These services will be provided through a collaborative effort between the Center for Educational Leadership (CEL) and the Connecticut Center for School Change (CCSC). The services outlined below draw heavily from research on central office systems change and improvement. Central to this research and to the theory of action of CEL and CCSC is the belief that classroom instructional will only improve at scale if central office leaders such as ILDs transform their practices to more keenly focus on supporting the improvement of their principals' instructional leadership skills.</p>	<p>The following scope of services provides the Waterbury Public Schools (WPS) with a research-based approach to improving teacher and leadership effectiveness, with a direct focus on developing the capacity of Instructional Leadership Directors (ILDs). These services will be provided through a collaborative effort between the Center for Educational Leadership (CEL) and the Connecticut Center for School Change (CCSC). The services outlined below draw heavily from research on central office systems change and improvement. Central to this research and to the theory of action of CEL and CCSC is the belief that classroom instructional will only improve at scale if central office leaders such as ILDs transform their practices to more keenly focus on supporting the improvement of their principals' instructional leadership skills.</p>	<p>The following scope of services provides the Waterbury Public Schools (WPS) with a research-based approach to improving teacher and leadership effectiveness, with a direct focus on developing the capacity of Instructional Leadership Directors (ILDs). These services will be provided through a collaborative effort between the Center for Educational Leadership (CEL) and the Connecticut Center for School Change (CCSC). The services outlined below draw heavily from research on central office systems change and improvement. Central to this research and to the theory of action of CEL and CCSC is the belief that classroom instructional will only improve at scale if central office leaders such as ILDs transform their practices to more keenly focus on supporting the improvement of their principals' instructional leadership skills.</p>
RFP Identified Services	Strategies for Addressing Identified Service Key Personnel	Deliverables/Tools/Key
<p>Provide a partnership with Waterbury Public Schools to support superintendent and her core leadership team in developing and implementing a plan of instructional leadership.</p>	<p>Theory of Action. CEL will support the Superintendent and her core leadership team in developing a theory of action and a definition of instructional leadership. This work will be specifically related to the development of an Instructional Leadership Director role. <i>Max Silverman</i></p> <p>Communication Plan. CEL will support the Superintendent and her core leadership team in communicating the theory of action and designing a "curriculum" to engage principals in working within the theory of action. <i>Max Silverman</i> <i>Robert Villanova</i></p> <p>Restructured Roles and Responsibilities. CEL and CCSC staff will work side by side with WPS superintendent and ILDs to create job descriptions,</p>	<p>Theory of action process and tool for depicting theory of action</p> <p>Curriculum and communication plan for sharing and teaching the theory of action to principals and other district leaders.</p> <p>Job descriptions, along with organizational chart explaining central office roles and responsibilities.</p>

	roles and responsibilities. <i>Max Silverman</i> <i>Robert Villanova</i>	
Provide an instructional assessment of principals and selected administrators.	Assess Instructional Leadership Proficiency. CEL will administer its 5D Assessment to project participants. <i>Max Silverman</i>	Group and individual analysis of instructional leadership proficiency.  Presentation of key findings and suggested next steps based on the analysis of results.
Provide professional development for the ILD and other administrators and ongoing support for the ILD.	Conceptual Framing. CEL faculty will use discussions, research, and reading to support ILDs and those central office leaders who work most closely with them to better understand this role and the support that ILDs need. <i>Max Silverman</i> <i>Sandy Austin</i> <i>Gail Gerry</i>  Superintendent/ILD Meetings. CEL and CCSC staff will support the superintendent in designing and facilitating regular meetings with ILDs to better understand their work with principals and the support they need. <i>Robert Villanova</i> <i>Laura Boutilier</i> <i>Max Silverman</i> <i>Sandy Austin</i> <i>Gail Gerry</i>  ILDs Supporting Principals. CEL and Center faculty will support ILDs with tools and processes to continually assess their principals as instructional leaders. This will involve time for sharing and	Curriculum aimed at supporting the development of ILDs.  Evidence gathering tool for central office leaders to use in assessing evidence of principals' instructional leadership.

	debriefing what is learned through the process. <i>Robert Villanova Laura Boutilier Max Silverman Sandy Austin Gail Gerry</i>	
Develop ILD routines including school visit protocol, communication plans, and principal meeting structures.	Routines. CEL and Center faculty will use retreats, learning meetings, and embedded coaching to support WPS ILDs in creating routines to drive their practice. Specifically, the faculty will work with ILDs to create calendars, visit protocols, communication plans, and meeting structures. <i>Robert Villanova Laura Boutilier Max Silverman Sandy Austin</i>	Concrete and practice routines to drive leadership practice.
Develop a system and provide protocol and tools necessarily to facilitate instructional rounds.	CCSC staff will support the use of instructional rounds as a key structure for a maintaining a focus on teaching and learning. CCSC will use a gradual release model by initially leading rounds with ILDs and central office leaders and then supporting them in leading instructional rounds with principals. <i>Laura Boutilier Andrew Lachman</i>	Protocols and tools necessarily to facilitate instructional rounds.



Develop and implement an action plan to guide central office	Center and CEL will work with the superintendent and her core leadership team to develop a comprehensive action plan for restructuring central office, developing ILDs, and how ILDs will support the development of principals as instructional leaders. <i>Andrew Lachman</i> <i>Robert Villanova</i> <i>Max Silverman</i>	Action plan to drive central office work in supporting principals as instructional leaders.
Provide coach(es) for the Chief Academic Officer and the ILDs	CCSC will provide 1:1 coaching of ILDs and Chief Academic Officer. The coaching will focus on the development of the knowledge, skills and dispositions to develop principals as instructional leaders and guide large-scale instructional improvement across a district, specifically within the context of the WPS theory of action. <i>Laura Boutilier</i> <i>Robert Villanova</i>	

**AMENDMENT NUMBER 1**  
**to**  
**OTHER PROFESSIONAL SERVICES AGREEMENT**  
**RFP No. 4596**  
**for**  
**District Transformation for Teaching and Learning**  
**Improvement/Professional Development**  
**between**  
**The City of Waterbury, Connecticut**  
**and**  
**The Connecticut Center for School Change**

**THIS AMENDMENT**, effective on the date signed by the Mayor, is by and between the CITY OF WATERBURY, 236 Grand Street, Waterbury, Connecticut (the "City") and The Connecticut Center for School Change, located at 151 New Park Avenue, Suite 203, Hartford, CT 06106, a State of Connecticut duly registered domestic corporation (the "Consultant/Vendor").

**WHEREAS**, the parties hereto entered into a Contract effective on November 23, 2012 for District Transformation for Teaching and Learning Improvement/Professional Development; and

**WHEREAS**, the City wishes to extend the term of said Contract from June 30, 2013 to June 30, 2014; and

**NOW THEREFORE**, the City and Consultant/Vendor hereby agree and covenant to amend the term of the Contract by this Amendment Number 1:

- 1) **Contract Time.** The parties hereto agree to amend the contract dated November 23, 2012, by this Amendment Number 1, upon the following terms, and conditions:
  - a) **Contract Time.** Section 5, of the November 23, 2012 contract is hereby amended, by this Amendment Number 1, to extend the termination date from June 30, 2013 to June 30, 2014, to allow for the completion of the work contemplated under said contract.
- 2) Except as expressly modified, all the terms, conditions and provisions of the original contract remain in full force and effect and binding upon the parties.

**[Signature page follows.]**

**IN WITNESS WHEREOF**, the parties hereto executed this contract on the dates signed below.

**Witness**  
**Sign and print two (2) witness names**

**THE CONNECTICUT CENTER  
FOR SCHOOL CHANGE**

\_\_\_\_\_

**By:** \_\_\_\_\_  
**Andrew Lachman, Executive Director**

\_\_\_\_\_

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

**Witness**  
**Sign and Print two Witness names**

**CITY OF WATERBURY**

\_\_\_\_\_

**By:** \_\_\_\_\_  
**Neil M. O'Leary, Mayor**

\_\_\_\_\_

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

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON BUILDING**

Item #9.3

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on Building, the Superintendent of Schools recommends approval of an agreement with Richards Corporation for Crosby High School Science Room Improvements funded by the State's Low Performing Schools Bond for Crosby.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

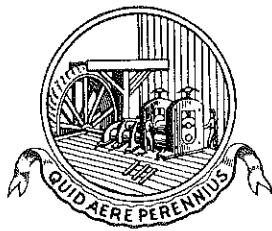
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Jason Van Stone

**Richards Corporation Contract**  
**Crosby High School Science Room Improvements**

<b>Current Proposed Contract</b>	
Base Bid	\$95,950
20% Contingency	\$19,190
<b>Total</b>	<b>\$115,140</b>

<b>Proposed Revised Contract (as bid)</b>	
Base Bid	\$95,950
10% Contingency	\$9,595
<b>Total</b>	<b>\$105,545</b>



# Waterbury Public Schools

236 Grand Street ♦ Waterbury, Connecticut 06702 ♦ (203) 346-2340 ♦ Fax (203) 574-8010

Paul F. Guidone  
Chief Operating Officer  
& Chief of Staff

## MEMORANDUM

**DATE:** December 15, 2014

**TO:** Board of Education Commissioners

**FROM:** Paul Guidone, Chief Operating Officer & Chief of Staff *PFG*

**SUBJECT:** **Proposed Agreement with Richards Corporation for Crosby High School Science Room Improvements**

---

Attached, for Board of Education (BOE) approval, is a copy of the Agreement between the City of Waterbury and Richards Corporation to perform improvements to science rooms to include: replacement of an existing fume hood and exhaust fan, relocation of existing student desk GFI power outlets in five classrooms, installation of marker boards at the teaching wall in three classrooms and painting, ceiling tile replacement and marker board installation in one classroom.

A total of three (3) bids were received. The bid tabulation is attached, which includes 10% contingency from each bidder. The budget for this scope of work is \$128,000. The lowest bid was submitted by Richards Corporation. Richards recently completed the Walsh School Improvements. A scope review meeting was held with Richards. Their bid was responsive to the ITB.

The Agreement value will be \$115,140 which is the sum of Richards' Base Bid amount of \$95,950 plus a contingency of \$19,190 for potential change orders. The costs for this Agreement are funded by the Low Performing Schools – Crosby Bond.

Please feel free to call me with any questions regarding this matter.

PFG/cb

Attachment

cc: Linda T. Wihbey, Corporation Counsel  
Chris Butterfield, O&G Industries Program Manager  
File

12/5/2014

[illegible]

**CONSTRUCTION CONTRACT**  
**ITB No. 5132**  
**for**  
**Crosby High School Science Room Improvements**  
**between**  
**City of Waterbury**  
**and**  
**Richards Corporation**

**THIS CONTRACT**, effective on the date signed by the Mayor, is by and between the CITY OF WATERBURY, City Hall, 235 Grand Street, Waterbury, Connecticut (the "City") and Richards Corporation, located at 72 North Harwinton Avenue, Terryville, CT 06786, a State of Connecticut, duly registered domestic corporation (the "Contractor").

**WHEREAS**, the Contractor submitted a bid to the City in response to Invitation to Bid ("ITB") Number 5132 for Crosby High School Science Room Improvements; and,

**WHEREAS**, the City accepted the Contractor's bid for ITB Number 5132; and

**WHEREAS**, the City desires to obtain the Contractor's services for science room improvements noted in the ITB pursuant to the terms set forth in this Contract (the "Project").

**NOW THEREFORE, THE PARTIES AGREE AND COVENANT AS FOLLOWS:**

1. **Scope of Services.** The Contractor shall furnish all of the labor, services, equipment, materials, supplies, transportation, and incidentals necessary to complete the Project as specified in this Agreement (also referred to herein as "Contract") and such shall be completed in a satisfactory manner, as reasonably determined by the City. All labor, services, equipment, materials, supplies, transportation, and incidentals shall comply with (a) any and all applicable local, state and federal laws, statutes, ordinances, rules and regulations, including without limitation all notice requirements thereunder, and (b) generally accepted professional standards.

The Project consists of performing improvements to science rooms to include: replacement of an existing fume hood and exhaust fan; relocation of existing student desk GFI power outlets; installation of marker boards at the teaching walls and painting, ceiling tile replacement and marker board installation as noted in **Attachment A** attached hereto and hereby made material provisions of this Contract. **Attachment A** shall consist of the following:

- Richards Corporation Response, 36 pages, dated December 5, 2014, to City of Waterbury Invitation to Bid Number 5132, entitled Crosby High School Science Room Improvements, (hereinafter referred to as the "Response to ITB").



- City of Waterbury Invitation to Bid Number 5132, dated November 17, 2014, entitled Crosby High School Science Room Improvements, (hereinafter referred to as the "Scope of Services/Bid Documents"), 461 pages.
- City of Waterbury Invitation to Bid Number 5132, Bid Addendum #1, dated November 26, 2014, 4 pages, and Bid Addendum #2, dated December 1, 2014, 4 pages, all entitled Crosby High School Science Room Improvements, (hereinafter referred to as the "Scope of Services/Bid Documents").
- Disclosure and Certification Affidavit, 4 pages; Debarment Certificate, 1 page; Annual Statement of Financial Interests, 4 pages; Corporate Resolution, 1 page; Bid Submission Attachment C, 1 page (hereinafter referred to as the "Contract Compliance Documents")
- Any and all Amendments and Change Orders, issued by the City after execution of the Contract.
- Scope Review Checklist, dated December 9, 2014, consisting of 1 page
- Certificate of Insurance
- All applicable Federal, State and local statutes, regulations, charter and ordinances.
- All permits and licenses.
- Payment Bond and Performance Bond

The entirety of **Attachment A** plus this executed instrument are together deemed the Contract Documents (hereinafter collectively referred to as "Contract Documents"). The City's record copy of the Contract Documents shall control and shall be effective and binding on the Contractor. In the event that any provision in the Contract Documents conflict with any other provision therein, the provision in the component part of the Contract Document first enumerated below shall govern over any other component part which follows it numerically.

1. Change Orders and Amendments
2. Contract
3. Addendum
4. City of Waterbury's ITB
5. Project Manual
6. Schedule of Prevailing Wage Rate Determinations
7. List of Drawings
8. Historical Documents
9. Required Documents
10. All permits and licenses (including Contractor's abatement licenses)
11. Department of Environmental Protection Regulations (CWF-1 through CWF-32)
12. All applicable Federal, State, and local statutes, regulations charter and ordinances

**2. Representations Regarding Qualification and Accreditation.** The Contractor represents that its employees are licensed to perform the scope of work set forth in this Contract. The Contractor further represents that its employees have the requisite skill, expertise and knowledge necessary to perform the scope of work required under the terms of this Contract, including any supplementary work and the City relies upon these.

**Representations regarding Personnel.** The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City, unless use of City employees or of personnel having a contractual relationship with the City is approved in writing. As set forth above, all the services required hereunder shall be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

**3. Responsibilities of the Contractor.** The Contractor agrees to properly implement the services required in the manner herein provided. The Contractor shall, in addition to any other responsibilities set forth in this Contract and the Schedules and Attachments hereto, perform the following coincident with the performance of this Contract:

**A. Due Diligence Obligation.** The Contractor acknowledges its responsibilities to examine and to be thoroughly familiar with the City's bid document, including, but not limited to the plans, specifications, drawings and any addenda thereto. The Contractor hereby warrants and represents that prior to the submission of its proposal during the bid process it reviewed or was afforded opportunity, by the City, to review all physical items, facilities, services and functions essential to the satisfactory performance of the services required ("Due Diligence") and thereby certifies that all such items facilities, services and functions are included in this Contract and thereby warrants that:

(1) it conducted or had opportunity to conduct all due diligence prior to the submission of its bid and, accordingly, any additional costs, services or products resulting from the failure of the Contractor to complete Due Diligence prior to submission of its bid proposal shall be borne by the Contractor. Furthermore the Contractor had the opportunity during the bid process to ask questions it saw fit and to review the responses from the City;

(2) its failure or omission to make investigation and verification of data shall, in no way, be cause for future claim of ignorance of such data or conditions nor shall such failure to investigate and verify be the basis for any claim whatsoever, monetary or otherwise;

(3) it is solely responsible for resolving any issues resulting from its failure to conduct due diligence and it shall assume any and all resulting costs it incurs during the Project.

(4) it was responsible for specifying any changes and disclosing any associated new costs prior to submittal of its bid. In the event the Contractor failed to disclose any such new cost prior to the submittal of its bid, the Contractor hereby covenants that it shall remain solely responsible for, and shall absorb, those non-disclosed costs.

(5) has familiarized itself with the nature and extent of the Contract Documents, Project, locality, and with all local conditions and Federal, State and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Project;

(6) has given the City written notice of any conflict, error or discrepancy that the Contractor discovered in the City's bid documents and other documents for ITB Number 5132 (collectively "Bid Documents"); and

(7) agrees that the Bid Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Project.

(8) has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Scope of Services which were utilized in the preparation of the plans and specifications.

(9) has made or caused to be made examinations, investigations, measurements and tests and studies of any applicable reports and related data as it deems necessary for ensuring performance of the Scope of Services at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contracts; and certifies no additional examinations, investigations, tests, reports or similar data are or will be required by Contractor for such purposes.

(10) The Contractor shall not take advantage of any obvious error or apparent discrepancy in the Contract. Notice of any error or discrepancy discovered shall be given immediately in writing to the City, who shall make such corrections and interpretations as it may deem necessary for the completion of the Project in a satisfactory and acceptable manner.

**B. Safety.** Contractor shall perform all work in a safe manner in full compliance with local, state and federal health and safety regulations. Contractor shall immediately correct any dangerous condition caused by or resulting from its work. If it fails to correct, or to act diligently to correct, any condition which the City reasonably believes to be a hazard to persons or property, then immediately upon oral or written notice to any supervisory or similar personnel of Contractor, City may, but shall not be required to, correct same at Contractor's expense. City shall confirm in writing any oral notice given within five (5) days thereafter.

**C. Storage.** In the event the Project site has insufficient, inadequate, and/or improper storage space, it shall be the responsibility of the Contractor to secure, provide and maintain at the Contractor's sole cost and expense (i) adequate

off-site storage space for equipment, materials, incidentals, etc., and (ii) all associated delivery and transportation services. In either event, the Contractor shall assume full responsibility for equipment, materials, incidentals, etc. until both title and risk of loss pass to the City pursuant to Section 8 below.

**D. Working Hours.** To the extent the Contractor is required to be on City property to render the Contractor's services hereunder, the Contractor shall coordinate its schedule so that work on and at the Project site is performed during the following hours: When School is in session (8/25/14 thru 6/9/15), work hours will be 2:30 p.m. at the High Schools (one half hour after dismissal) to 10:00 p.m., Monday thru Friday, unless prior written permission is obtained from the City to work during other times. The Owner will consider work to be performed during School hours if the Contractor can show how the students and staff will not be impacted by construction activities. The Owner's decision whether or not to allow work to be performed during school hours will be final. This provision shall not excuse the Contractor from timely performance under the Contract.

**E. Cleaning Up.** The Contractor shall at all times keep the Project site free from accumulation of waste materials or rubbish caused by Contractor's employees or subcontractors, and at the completion of the work shall remove all rubbish from and about the Project and all tools, scaffolding and surplus materials and shall leave the work "broom clean" or its equivalent, unless more exactly specified. In case of dispute, the City may remove the rubbish and charge the cost to the Contractor.

**F. Publicity.** Contractor agrees not to deliberately disclose the fact that the City has entered into or terminated this Contract or disclose any of the terms of the Contract or use City's name in connection with any publicity, unless City gives prior written consent to such use of City's name in each instance.

**G. Standard of Performance.** All Contractor labor, materials, supplies, components, equipment, reports, plans, specifications, drawings, deliverables, incidentals, etc., required to be furnished or delivered under this contract shall conform in all respects with the requirements set forth in this Contract and shall meet or exceed those standards generally recognized in the Contractor's craft and trade in the State of Connecticut. City specified manufacturer and/or brand name substitution desired by the Contractor shall be made only with the prior written consent of an authorized representative of the City's Using Agency.

In carrying out the Project, the Contractor must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor, nor with the normal routine of the institution or agency operating at the site.

**H. Contractor's Employees.** The Contractor shall at all times enforce

strict discipline and good order among its employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned. The Contractor shall not, without the prior written approval of the City's Using Agency, substitute, terminate, replace or otherwise remove any Contractor employee expressly named, identified or required in this Contract.

**I. Subsurface/Unknown Site Conditions.** If Project site conditions are encountered which are (1) subsurface or otherwise concealed physical conditions or other conditions which differ materially from those indicated in Contract documents, or (2) unknown conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent or common in construction activities of the character provided for in this Contract, then prompt notice by the observing party shall be given to the other party to this Contract before Site conditions may be disturbed. The Contractor shall thereafter wait for written instructions from the City before proceeding with regard to such conditions.

**J. Surveys.** All surveys required under this Contract shall be performed by a State of Connecticut duly licensed land surveyor. Unless expressly stated to the contrary in Section 1 and its Attachments, the Contractor shall perform all layout work, all field measurements and all construction staking required, necessary or prudent for the satisfactory prosecution of the Scope of Services.

**K. Permits and Licenses.** Unless expressly stated to the contrary in Section 1 and **Attachment A**, the Contractor shall secure and obtain all permits and all licenses required, or necessary, or prudent for the performance of the Contractor's Scope of Services, and for the City's occupancy, use, and operation of the Project. The City of Waterbury building permit fee will be waived. The Contractor will be responsible to carry the cost of the State permit fee in their bid. The state permit fee calculation is: base bid amount times .026%.

**L. Manufacturer's Directions.** Where it is required in this Contract that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's directions, specifications or instructions, it shall be construed to mean that the said application or installation by the Contractor shall be in strict accord with printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the site. One (1) copy of such instructions shall be furnished to the City.

**M. Review by the City.** The Contractor shall permit the City and the City's duly authorized representatives and agents to review, at any time, all work performed under the terms of this Contract at any stage of the Project.

**N. Records Maintenance.** The Contractor shall maintain or cause to be maintained all records, books or other documents relative to charges, costs, expenses,

fees, alleged breaches of the Contract, settlement of claims or any other matter pertaining to the Contractor's demand for payment.

4. **Responsibilities of the City and City Reservation of Rights.** Upon the City's receipt of Contractor's written request for specific information, the City will provide the Contractor with existing documents, data and other materials the City agrees are necessary and appropriate to the services to be performed by the Contractor hereunder and the City will endeavor to secure, where feasible and where the City agrees it is necessary and appropriate, materials or information from other sources requested by the Contractor for the purpose of carrying out the services under this Contract.

The City may, in its sole discretion, designate person(s) to act as the City's Project engineer(s) and/or manager(s) and the City may, in its sole discretion, define such person(s) authority and responsibilities.

The City reserves the right to (a) perform work related or unrelated to the Project with the City's own forces adjoining, adjacent to, or in the vicinity of, the Project site and/or (b) let separate contracts related or unrelated to the Project for work and services adjoining, adjacent to, or in the vicinity of, the Project site. In such event, the Contractor shall afford all such parties reasonable opportunity for storage of materials and equipment and for the uninterrupted provision and delivery of such parties' work and/or services. The Contractor shall cooperate with such parties and in the case of a dispute, the decision of the City shall be complied with by all.

5. **Contract Time.** The Contractor shall complete all work and services required under this Contract before May 1, 2015. ("Contract Time").

Time is and shall be of the essence for all Project milestones, intermediate completion dates and the Final Completion Date for the Project. The Contractor further agrees that the Project shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time stated above. It is expressly understood and agreed, by and between the Contractor and City, that the Contract Time is reasonable for the completion of the Project.

Within one (1) week of the City's issuance of its written notice to proceed, and prior to the commencement of any work on the Project site, the Contractor shall submit for the City's written approval a construction progress schedule. On a monthly basis, the Contractor shall deliver to the City a written status report setting forth an analysis and critique of the Contractor's compliance with said schedule.

The Contractor shall pay to the City the sum of **Five Hundred Dollars (\$500.00) per calendar day** for each and every calendar day for which the Contractor shall be in default in completing the work beyond the time for completion set forth in this Article 5. The preceding sum is hereby agreed upon not as a penalty, but as liquidated damages that the City shall suffer due to such default. The City shall have the right to deduct the amount of any

such damages from any monies due the Contractor under this contract.

**6. Compensation.**

The City shall compensate the Contractor for satisfactory provision of all of the goods and services set forth in this Contract as follows in this Section 6.

No claims for additional compensation will be considered for conditions made known to the Contractor prior to bidding. No claims for additional compensation will be considered on account of failure of the Contractor to completely inform itself as required herein above.

**A. Fee Schedule.** Subject to retainage, limitations, etc. set forth below in this Section 6, the fee payable to the Contractor shall not exceed **ONE HUNDRED FIFTEEN THOUSAND, ONE HUNDRED FORTY AND 00/100 DOLLARS** (\$115,140.00) (hereafter referred to as "Total Compensation") The cost breakdown for the Project is as follows:

**1. Crosby High School Science Room Improvements:**

<i>a.</i> Base Bid .....	95,950.00
<i>b.</i> Contingency (at sole discretion & control of City).....	19,190.00
Total: \$115,140.00	

**B. Retainage.** At the City's sole discretion, it hereby reserves the right to withhold as retainage **Five percent (5.0%)** of any payment (or monetary sum otherwise required by law) owed to the Contractor to be withheld from payments to the Contractor otherwise payable to the Contractor until such time as the Contractor's work and services to be provided under this contract are fully completed and accepted in writing by the City. The retainage does not include additional sums that the City may withhold due to the Contractor's failure to comply with construction plans, specifications, etc. deemed provisions of this Contract.

**C. Contingency.** At sole discretion and control of the City, the Contingency amount as set forth in Section 6.A of this Contract shall be utilized for the payment to the Contractor for additional work not covered by this contract and requested by the City in writing to be performed by the Contractor. The basis for payment for the additional work under the contingency shall be, but not limited to, the Unit Labor Rates and Unit Prices as set forth in **Attachment B**.

**D. Limitation of Payment.** Compensation to the Contractor is limited to those fees set forth in Section 6.A. above and is further limited to work (i) performed in fact, (ii) conforming with this Contract, and (iii) accepted in writing by a duly authorized City employee. Such compensation shall be paid by the City upon its review and approval of the Contractor's invoices for payment and review of the Contractor's work.

In the event this Contract is funded, in whole or in part, by Federal and/or State monies, grants, loans, etc, all City payment(s) shall fully comply with all relevant Federal and State statutes and regulations. In the event this Contract is 100% funded by Federal and/or State monies, grants, loans, etc., the aggregate sum of all City payments shall not exceed the aggregate sum of such funding.

The Contractor and its affiliates are hereby provided with notice that the City reserves the right, in the City's sole discretion, to offset, withhold, or otherwise reduce City payment(s) to the Contractor, in an amount equaling the sum or sums of money the Contractor and/or its affiliates is/are, or become delinquent or in arrears on, regarding the Vendor's and/or its affiliates real and personal property taxes and other payment obligations to the City.

**E. Bid Costs.** All costs of the Contractor in preparing its bid for ITB No. 5132 shall be solely borne by the Contractor and are not included in the compensation to be paid by the City to the Contractor under this Contract or any other agreement.

**F. Payment for Services, Materials, Appliances, Employees.** The Contractor shall be responsible to the City for the suitability of services, materials and equipment furnished to comply fully with the requirements set forth in this Contract. The Contractor shall promptly pay all employees as their pay falls due, shall pay promptly as they fall due all bills for subcontractors, materials, supplies and services going into the work, and all bills for insurance, bonds, Worker's Compensation coverage, Federal and State Unemployment Compensation, and Social Security charges applicable to this Project. Before final City payment is made, the Contractor shall furnish to the City a sworn, notarized, affidavit stating that all of the foregoing payment obligations have been fully completed.

**G. Liens.** Neither the City's final payment nor any part of the retained percentage, if any, shall become due until the Contractor, if required by the City, shall deliver to the City a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof, and, if required, in either case, an affidavit that so far as the Contractor has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the City, to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the City all moneys that the City may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

**H. Certificate of Completion.** Upon the Contractor's (i) completion of all Project milestones, and (ii) substantial completion of the Project, and (iii) final completion of the Project, the Contractor shall file with the City a written, notarized affidavit setting forth the amount of Project work performed. The City reserves the right to verify or challenge by any reasonable means the accuracy of said affidavit.



**I. Final Payment.** All prior estimates and City payments, including those relating to extra or additional work, retainage(s), and holdback(s), shall be subject to correction by this final payment which is throughout this Contract called "Final Payment". No payment, final or partial, shall act as a release to the Contractor or its surety from any Contractor obligation(s) under this Contract.

**J. Clean Water Fund Project Requirements.** In the event this Contract is funded in whole or in part, is reliant upon, or falls within the jurisdiction of the Clean Water Fund and its statutes, regulations and rules, the Contractor shall:

- (i) submit Applications for Payment in accordance with the following:

The City must receive the Contractor's Application for Payment by the City's or its designee's, review and recommendation for payment, by the fifteenth calendar day of the month to receive payment within the next 50 days. If not received by the fifteenth calendar day of the month, payment can not be made until 50 days after the fifteenth calendar day of the subsequent month.

The Contractor shall provide at the City's request, reasonable documentation to substantiate Contractor's Application for Payment.

- (ii) Progress and Final Payments

The City will make progress payments on account of the Contract Price on the basis of the Contractor's Applications for Payment, monthly during construction as provided below. All progress payments will be on the basis of the progress of the Scope of Services as determined by the City, according to the schedule of values provided for in the Contract Documents, and approved by the City.

Prior to Substantial Completion, progress payments will be limited to an amount equal to 95 percent of the value of the Scope of Services completed. Upon Substantial Completion, the City will pay the amount as specified in the Contract Documents.

**7. Warranty of the Contractor.** The Contractor warrants to the City of Waterbury that all materials, supplies, components, equipment, etc. furnished under this contract shall be new and of good quality, except as otherwise expressly stated and permitted by the City elsewhere in this contract. The Contractor warrants that none of its work shall be defective. The Contractor shall be liable to repair and install and/or replace without charge any service, component, equipment or part thereof which is defective or does not conform with this contract within the greater of (i) 365 calendar days after the City delivers its written notice of its acceptance of the Project and statement therein

establishing the final completion date, or (ii) that time period or date expressly stated elsewhere in this Contract or **Attachment A**.

The Contractor further warrants that all materials, supplies, services, components, equipment, reports, plans, drawings, deliverables, incidentals, etc., shall be free from any and all defects caused by faulty design, faulty material or poor workmanship. The Contractor shall supply to the City copies of any written manufacturer's warranties and guarantees.

The Contractor's foregoing warranty obligations are in addition to, and not a limitation of, any other remedy stated in this contract or otherwise available to the City of Waterbury under applicable law.

**8. Passing of Title and Risk of Loss.**

A. City beneficial use of Project equipment, materials, site-work, etc. prior to the Contractor's final completion of the Project or prior to the City's final payment for the Project shall neither act to vest title in the City nor act to transfer risk of loss from the Contractor to the City. Said title and risk shall pass to the City upon the City's final payment for the Project.

B. Contractor and its insurer shall assume the risks of loss or damage to the equipment up to and including the date title passes, except that City shall be responsible for loss or damage caused by City's gross negligence.

C. After Project equipment, materials, etc. are delivered to the Project work-site and become operable or functional, the Contractor shall not thereafter remove any such equipment, materials, etc. from the Project work-site without securing the prior written consent of an authorized City Using Agency employee.

**9. Indemnification.**

A. The Contractor shall indemnify, defend, and hold harmless the City, the City's agents, officials and employees from and against all claims, suits, damages, losses, judgments, costs and expenses including attorney's fees arising out of or resulting from the performance of the services, provided that any such claims, suits, damages, losses, judgments, costs or expenses (a) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the services itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any willful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In the event this Contract and/or the Contractor's, or its subcontractor, work and services provisioned hereunder is/are subject to the provisions of any Federal or

State statute or regulations, or the City Charter or City Ordinance, the Contractor shall indemnify, defend and hold harmless the City from any fine, penalty or other amounts imposed on the City under said statutes, regulations, Charter or Ordinances, if caused by Contractor, or its subcontractor, omission or commission.

B. In any and all claims against the City or any of its boards, agents, employees or officers by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph A, above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

C. The Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City and the City's boards, agents, employees or officers as provided herein.

D. Royalties and Patents. The Contractor shall, for all time, secure to the City the free and undisputed right to the use of any and all patented articles and methods used in the work and shall defend at Contractor's own expense any and all suits for infringement or alleged infringement of such patents, and in the event of adverse award under patent suits, the Contractor shall pay such awards and hold the City harmless in connection with any patent suits that may arise as a result of installations made by the Contractor and as to any award made thereunder.

**10. Contract Bonds.** The Contractor shall furnish to the City, prior to the execution of this Contract by the City, both a performance bond and a payment bond each bond written for a penal sum equaling the Section 6 "Total Compensation" in a form and with a surety acceptable to the City. The bonds shall continue in effect for the greater of (i) the warranty period set forth in Section 7 hereinabove, or (ii) 365 calendar days after the Final Completion Date referenced elsewhere in this Contract.

**11. Contractor's Insurance.** The Contractor shall not commence work under this Contract until all insurance required under this Section 11 has been obtained by the Contractor and such insurance has been approved by the City. The Contractor shall not allow any subcontractor to commence work on any subcontract until all insurance required of any such subcontractor has been so obtained and approved by the City. Insurance shall be provided by insurers, satisfactory to the City and authorized to do business in the State of Connecticut, an "A-" Best's Rating and at least a Class V3 or better financial size category as shown in the most current A.M. Best Company ratings.

At no additional cost to the City, the Contractor shall purchase and maintain the insurance coverages set forth below which shall protect the City from claims which may arise out of or result from the Contractor's obligation under this Contract, whether such obligations

are the Contractor's or subcontractor or person or entity directly or indirectly employed by said Contractor or subcontractor, or by any person or entity for whose acts said Contractor or subcontractor may be liable.

The Contractor's General, Automobile and Excess Liability Insurance policies shall be endorsed to add the City as an additional insured. The insurance afforded the City as an additional insured shall be primary insurance and the coverage and limits provided under the Contractor's policies shall not be reduced or prorated by the existence of any other insurance applicable to any loss the City as an additional insured may have suffered. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless. If any insurance required herein is to be issued or renewed on a claims made form as opposed to an occurrence form, the retroactive date for coverage shall be no later than the commencement date of this Contract and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims ("Tail Coverage") shall be available for at least 60 months.

The following policies with stated limits shall be maintained, in full force and effect, at all times during which the services are to be performed by the Contractor:

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A. General Liability Insurance: \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate including Products Liability and Completed Operations Liability coverage within the General Liability Insurance for limits as shown here.

B. Automobile Liability Insurance: \$1,000,000.00 per accident, combined single limit (CSL)

C. Workers' Compensation: Statutory Limits within the State of Connecticut

D. Excess Liability Insurance: Not Applicable.

E. Installation Floater: Not Applicable.

F. Contractors Pollution Liability Insurance: \$1,000,000 per Claim / \$1,000,000 Aggregate.

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A. General Liability Insurance: Providing coverage to protect the City for all damages arising out of bodily injuries, sickness to or death of all persons in any one accident or occurrence and for all damages arising out of destruction of property in any one accident or occurrence.

B. Automobile Liability Insurance: Providing coverage to protect the City with respect to claims for damage for bodily injury and or property damage arising out of ownership, maintenance, operation, use or loading and unloading of any owned or non-owned vehicle

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- C. Workers' Compensation: Contractor shall comply with all State of Connecticut statutes as it relates to workers' compensation.
- D. Excess General Liability Insurance: Comprehensive general liability umbrella insurance coverage.
- E. Installation Floater Insurance: Special Form Clause of Loss including theft. Property Insurance coverage including all materials in transit and all materials in storage wherever stored. Value of any and all subsequent contract changes. This insurance shall include the interests of the Owner, the Contractor and any and all subcontractors. Property coverage included on the total value of the constructed property until an occupancy certificate is issued. Upon the issuance of said certificate the City will assume responsibility for insuring the completed constructed property. Property Deductible is the responsibility of the Contractor, not the City. If Property Deductible is over \$25,000, the City may request a bond or some other form of reinsurance that Contractor can cover such Property Deductible.
- F. Contractors Pollution Liability Insurance: The foregoing per occurrence coverage plus appropriate aggregate coverage depending on the size of the job for contractor caused pollution or asbestos events.

Failure to Maintain Insurance: In the event the Contractor fails to maintain the minimum required coverage as set forth herein, the City may at its option purchase same, and offset the Contractor's invoices for the cost of said insurance.

Cancellation: THE CITY OF WATERBURY SHALL RECEIVE WRITTEN NOTICE OF CANCELLATION FROM THE INSURER AT LEAST 30 CALENDAR DAYS PRIOR TO THE DATE OF ACTUAL CANCELLATION, REGARDLESS OF THE REASON FOR SUCH CANCELLATION.

Certificates of Insurance: Prior to the execution of this Contract by the City, the Contractor shall furnish to the City, subject to City approval, certificate(s) of insurance verifying the above coverages, including the naming of the City of Waterbury, as follows: "The City of Waterbury and the Waterbury Board of Education, their public officials, employees, and any other person acting under, through or for them are listed as additional insured as their interests may appear". Note: A copy of the Additional Insured Endorsement will be required in addition to the Certificate of Insurance. The City's request for quotation or request for proposal number must be shown on the certificate of insurance to assure correct filing. The Contractor must supply replacement/renewal certificates at least 30 days prior to the expiration of the policy(ies). Said certificates shall contain a provision that coverage afforded under the policies shall not be cancelled or reduced for any reasons unless notice of than 30 calendar days has been mailed to the City's Using Agency and a copy to the City's Office of Corporation Counsel, 235 Grand Street, Waterbury, CT. 06702.

Upon request the Contractor shall deliver to the City a copy of the Contractor's insurance policies and endorsements and riders.

**12. Conformance with Federal, State and Other Jurisdictional Requirements.** By executing this Contract, the Contractor represents and warrants that, at all pertinent and relevant times to the Contract, it has been, is and will continue to be in full compliance with all applicable statutes, acts, ordinances, guidelines, resolutions, orders, judgments, decrees, injunctions, rules, and regulations of all government authorities applicable to performance by the Contractor of services hereunder, including those having jurisdiction over its registration and licensing to perform services hereunder; including, but not limited to, the following: EQUAL EMPLOYMENT OPPORTUNITY; COPELAND ANTI-KICKBACK ACT, as supplemented in the Department of Labor Regulations (29 CFR, Part 3); DAVIS BACON ACT as supplemented by Department of Labor Regulations (29 CFR Part 5); Section 103 and 107 of the Contract Work Hours and Safety Standards Act, as supplemented by the Department of Labor Regulations (29 CFR Part 5); and the HOUSING and COMMUNITY DEVELOPMENT ACT of 1974, as amended; ; TITLE 31 of the State of Connecticut General Statutes. All applicable sections of the City Charter and Code of Ordinances are incorporated by reference made a part hereof.

**A. Taxes-Federal, State and Local.** The City is exempt from Federal Excise and Transportation, State and Local Sales and Use Taxes. The Contractor remains liable, however, for any applicable tax obligations it incurs. Moreover, the Contractor represents that the bid and pricing contained in this Contract do not include the amount payable for said taxes.

**B. Labor and Wages-Federal and State.** The Contractor and its subcontractors shall conform to Federal and State of Connecticut labor laws,, and all other laws, ordinances, and legal requirements affecting the work in Connecticut.

The Contractor is aware of, and shall comply with, the provisions of Title 31, §53 of the Connecticut General Statutes, latest revision (the "Act"), concerning the payment of minimum wages for work on public facilities. The provisions of the Act are hereby incorporated by reference and made a part of this Contract. The Act provides that the Connecticut prevailing wage law applies to certain remodeling, refurbishing, alteration, repair and new construction. The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in Conn.Gen.Statute 31-53(i), shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic,

laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

The Contractor is aware of, and shall comply with, the provisions of both the Federal Davis-Bacon Act and the Federal American Recovery and Reinvestment Act of 2009, the provisions of both acts hereby incorporated by reference and made a part of this Contract. The Federal Davis-Bacon Act provides that Federal wage rate laws apply to certain federally funded contracts. The American Recovery and Reinvestment Act ("ARRA") provides that Federal wage rate laws apply to all ARRA funded contracts regardless of the contract's dollar value.

**C. Compliance with Chapters 34, 38, and 39 of the Code of Ordinances of the City.** By executing this Contract, the Contractor represents and warrants that, at all pertinent and relevant times to the Contract, it has been, is and will continue to be in full compliance with the provisions of Chapters 34, 38, and 39 of the Code of Ordinances of the City and well as any other relevant provisions of the Charter and the Code of Ordinances.

**13. Discriminatory Practices.** In performing this Contract, the Contractor shall not discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, sex, age, religious creed, disability, national origin or ancestry, marital status, family status, prior psychiatric treatment, health care, military status or source of income or because of a handicap that is unrelated to the employee's or the applicant's ability to perform the duties of a particular job or position. Subcontracts with each subcontractor shall contain a provision requiring non-discrimination in employment as herein specified. This covenant is required pursuant to §93.04 of the Code of Ordinances of the City and any breach thereof may be regarded as a material breach of this Contract. Said provisions with subcontractors shall require conformity and compliance with all local, state and federal laws, rules and regulations and Executive orders pertaining to discrimination and equal opportunity requirements.

**A. Discrimination Because of Certain Labor Matters.** No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because such person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or related to the labor standards applicable hereunder to its employer.

**B. Equal Opportunity.** In its execution of the performance of this Contract, the Contractor shall not discriminate and shall comply with applicable laws prohibiting discrimination on the grounds of race, color, religion, sex, national origin or citizenship status, age or handicap. The Contractor agrees to comply with all local, state and federal laws, rules and regulations and Executive orders pertaining to

discrimination and equal opportunity requirements, and will require the same of all subcontractors

**14.1. Conformance With An Ordinance Concerning The Hiring Of Waterbury Residents On Certain Publicly-Funded Construction Projects.**

(A) The Contractors and its Subcontractors shall comply with the specific requirements of "An Ordinance Concerning the Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects" (the "Good Jobs Ordinance"), as may be amended from time to time and as set forth in Chapter 34 of the Code of Ordinances of the City. While the principal provisions of the ordinance are summarized as set forth in paragraphs C-H below, the Contractor does hereby acknowledge that it has reviewed a copy of the Good Jobs Ordinance and that it has read the Ordinance and that Contractor is familiar with the obligations imposed on the Contractor by the Good Jobs Ordinance.

(B) Failure of the Contractor or its Subcontractors to comply with the Good Jobs Ordinance shall be a material breach of this Agreement.

(C) This paragraph shall apply to a Covered Project, as that term is defined in the Good Jobs Ordinance, in the City with a value of \$500,000.00 or greater and only to the extent permitted by federal and state law.

(D) **Definitions.** For purposes of this paragraph:

(1) "Apprentice" shall be defined as it is in the Good Jobs Ordinance.

(2) "Construction work" shall be defined as it is in the Good Jobs Ordinance.

(3) "Subcontractor" shall include the Contractor's direct subcontractor providing construction work and all lower tiered (level) providers of construction work.

(4) "Resident" shall be defined as it is in the Good Jobs Ordinance.

(E) **Hiring Goals.** If this Agreement requires the Contractor to perform construction work, the Contractor shall have as its hiring goals:

(1) at least thirty percent (30%) of its total worker hours performed by City Residents, and

(2) at least twenty-five percent (25%) of construction trade jobs shall go to Apprentices, and



- (3) at least seventy percent (70%) of all "new hires" (as that term is defined in the Good Jobs Ordinance) shall be "economically disadvantaged" individuals (as that term is defined in the Good Jobs Ordinance), and
- (4) a minimum of five percent (5%) of the construction workforce labor hours will be local resident, minority artisans, and
- (5) a minimum of five percent (5%) of the construction workforce labor hours will be women, and
- (6) a minimum of ten percent (10%) of the total work hours shall be allocated for minorities, or
- (7) as may otherwise be required by any superseding Federal or State employment discrimination prohibition laws.

Moreover, each subcontractor shall each comply with the foregoing Hiring Goals.

(F) **Good Faith Efforts.** The Contractor shall engage in a Good Faith Efforts to comply with the Hiring Goals. For the purposes of this paragraph, the term "Good Faith Efforts" shall have the same meaning as it does in the Good Jobs Ordinance.

The Contractor and each subcontractor shall individually implement Good Faith efforts to satisfy the Hiring Goals.

(G) **Action Plan and Pre-Construction Meeting.** Not later than fourteen (14) business days prior to the scheduled commencement date for construction, the Contractor shall submit a written plan-of-action to the City and to the Administrator of the Good Jobs Ordinance defining how the Contractor, and each Subcontractor, shall implement Good Faith Efforts to fulfill the Hiring Goals. Each plan-of-action shall include the anticipated number of job positions required for the Work. Not later than five (5) business day prior to the commencement date of construction, the Contractor must attend a mandatory "pre-construction" meeting with the City to review all plans-of-action and other relevant materials. No construction work shall proceed absent this pre-construction meeting.

(H) **Other Contractor Obligations.** In addition to the foregoing, the Contractor shall ensure that all Subcontractor contracts and agreements expressly set forth and state as binding obligations therein, subject to appropriate party name change, the above Hiring Goals and Good Faith Efforts. The Contractor shall be accountable for and liable to the City for

Contractor and Subcontractor compliance with Hiring Goals and Good Faith efforts.

- (1) The Contractor shall be required to produce Contractor and Subcontractor documentation that may be required under the provisions of Good Jobs or that the City or the Administrator of the Good Jobs Ordinance reasonably believes will assist the City or the Administrator of the Good Jobs Ordinance with their evaluation of Hiring Goals and Good Faith Efforts.
- (2) The Contractor shall deliver weekly certified payroll records to the City within five (5) working days of the end of each payroll period. Moreover, the Contractor shall require each Subcontractor to create weekly certified payroll records.
- (3) The Contractor's and Subcontractors' payroll records shall include the person-hours, the residential address, race, gender, hiring date, and apprentice (job) classification of all personnel employed under this Agreement and all Contracts and Sub-Contracts thereunder. The Contractor and Subcontractors shall mark their respective final payroll period records as being final and be signed by an authorized officer or employee.

#### **14.2 Liquidated Damages Applicable To Paragraph 14.1**

- 1) If the City finds the Contractor, or a Subcontractor, has failed to achieve Hiring Goals during any five (5) day work period (Monday through Friday), the City shall:
  - (a) issue a written notice to the Contractor specifying the matters constituting such failure and the time period within which Good Faith Efforts documentation must be delivered to the City for its evaluation.
  - (b) if the Good Faith documentation is not provided or, if provided, it fails to demonstrate compliance with Good Faith Efforts, for each full five (5) day work period of the Contractor or Subcontractor's failure to achieve Hiring Goals, the City shall as liquidated damages withhold from payment to the Contractor:
    - (i) if the contact is for an amount between \$500,000.00 and \$1,000,000.00, inclusive, the lesser of \$1,000.00 or one (1%) percent of the Value of the payment then payable to the Contractor;

(ii) if the contact is for an amount between \$1,000,000.01 and \$5,000,000.00, inclusive, the lesser of \$2,000.00 or one (1%) percent of the Value of the payment then payable to the Contractor;

(iii) if the contact is for an amount greater than \$5,000,000.00, the lesser of \$2,500.00 or one (1%) percent of the Value of the payment then payable to the Contractor.

2) The foregoing liquidated damages provisions shall be expressly set forth, subject to appropriate party name adjustments, as material provisions in all Contracts that the Contractor has with Subcontractors and the Contractor is obligated hereunder to enforce compliance in such Contracts with Subcontractors.

3) Any payment of liquidated damages hereunder shall not preclude a later claim, nor any later finding of a breach, or any payment of additional damages related to such later claim.

**15 Housing and Urban Development Section 3 Clause.** In the event this agreement is funded, in whole or in part, through Housing and Urban Development assistance, 24 C.F.R. §135.38 may apply and the Contractor shall then be required to comply with the following (referred to as the "Section 3 clause"):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both

employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

#### **16. Termination.**

A. **Termination of Contract for Cause.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by either (i) giving written notice to the Contractor of a date certain by which Contractor shall, to the written satisfaction of the City, cure after which and without further action by any party, such termination shall automatically become effective and binding, or (ii) giving written notice to the Contractor specifying the

effective date of such termination at least five (5) days before the effective date of such termination.

In the event of a termination, all finished or unfinished documents, data, studies, reports, plans, specifications, drawings, supplies, services, etc. prepared by the Contractor under this Contract shall, at the option of the City, become the City's property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed for such.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the City from the Contractor is determined.

**B. Termination for Convenience of the City.** The City may terminate this Contract at any time for the convenience of the City, by a notice in writing from the City to the Contractor. If this Contract is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made.

**C. Termination for Non-Appropriation or Lack of Funding.** The Contractor acknowledges that the City is a municipal corporation and that this Contract is subject to the appropriation and disbursement of funds by the City sufficient for this Contract for each budget year in which this Contract is in effect. The Contractor therefore agrees that the City shall have the right to terminate this Contract in whole or in part without penalty to the City in the event that sufficient funds to provide for City payment(s) under this Contract is not appropriated, not authorized, or not made available, or such funding has been reduced. In the event this Contract is subject, in whole or in part, to the appropriation and disbursement of Federal and/or State funds and those Federal and/or State funds are not appropriated or are not disbursed to the City, the Contractor hereby agrees that the City shall have the right to terminate this Contract in whole or in part without penalty to the City.

**(1) Effects of Nonappropriation.** If funds to enable the City to effect continued payment under this Contract are not appropriated, authorized or otherwise made available by law, the City shall have the right to terminate this Contract without penalty at the end of the last period for which funds have been appropriated, authorized or otherwise made available by law by giving written notice of termination to the Contractor.

**(2) Effects of Reduced Levels of Funding.** If funding is reduced by law, or funds to pay the Contractor for the agreed to level of the products, services and functions to be provided by the Contractor under this

Contract are not appropriated, authorized or otherwise made available by law, the City may, upon seven (7) business days written notice to the Contractor, reduce the level of the products, services or functions in such manner and for such periods of time as the City may elect. The charges payable under this Contract shall be equitably adjusted to reflect such reduced level of products, services or functions and the parties shall be afforded the rights set forth in this Contract.

**(3) No Payment for Lost Profits.** In no event shall the City be obligated to pay or otherwise compensate the Contractor for any lost or expected future profits.

**D. Rights Upon Termination.**

**(1) Termination for Cause.** In the event the City terminates this Contract for cause, the Contractor shall relinquish to the City any applicable interest, title and ownership including, but not limited to, perpetual use of any proprietary rights in and to the products and deliverables delivered to, in possession of and properly invoiced and paid for by (except to the extent such invoiced amount is disputed) the City. With regard to third party products, the Contractor shall transfer all licenses which it is permitted to transfer in accordance with the applicable third party license. The City shall have no financial obligation to compensate the Contractor for such terminated products unless payment is otherwise approved by the City prior to such termination. The Contractor shall be liable for costs incurred by the City, including but not limited to reasonable attorney fees and all court awarded fees and costs incurred in terminating this Contract in whole or in part.

**(2) Termination for Lack of Funding or Convenience.** In the event of termination by the City for lack of funding or convenience, the City shall pay the Contractor for all labor, services, equipment, materials, reports, plans, specifications, drawings, deliverables, incidentals, etc.(including any holdbacks) installed and delivered to the City as of the Termination Date and the Contractor shall relinquish to the City any applicable interest, title and ownership including, but not limited to perpetual use of any proprietary rights in and to said labor, services, equipment, materials, reports, plans, specifications, drawings, deliverables, incidentals, etc. delivered to, in possession of and paid for by the City (except to the extent any invoiced amount is disputed). The Contractor shall be required to exercise commercially reasonable efforts to mitigate damages. In the event of a termination for Lack of Funding or Convenience the City and the Contractor may negotiate a mutually acceptable payment to the Contractor for reasonable demobilization expenses. Said demobilization expenses, if any, shall be handled in accordance with the provision of this Contract pertaining to changes in the Project.

**(3) Assumption of Subcontracts.** In the event of termination, the City shall have the right to assume, at its option, any and all subcontracts for products, services and functions provided exclusively under this Contract.

**(4) Delivery of Documents.** In the event of termination, (i) the Contractor shall promptly deliver to the City, in a manner reasonably specified by the City, all documents and other tangible items furnished by, or owned, leased, or licensed by, the City, and (ii) the City shall pay the Contractor for all services performed and deliverables completed and accepted (pro-rated for deliverables partially completed) prior to the effective date of the termination (except to the extent any invoice amount is disputed).

**17. Force Majeure.** Contractor shall not be held responsible for delays nor be subject to liquidated damages when such delays are caused by conditions beyond its control, including without limitation:

A. Acts of God, fire, explosion, epidemic, cyclone, flood, war, strikes, revolution, civil commotion, or acts of public enemies; and

B. Change of law and order, proclamation, regulation, ordinance, or governmental requirement.

Upon cessation of work for reason of force majeure delays, Contractor shall use its best efforts to meet the schedule set forth in Section 5 of this Contract.

**18. Subcontracting.** The Contractor shall not, without the prior written approval of the City's Using Agency, subcontract, in whole or in part, any of the Contractor's services. Any subcontractor so approved shall be required to secure and maintain insurance coverage equal to or better than that required of the Contractor and shall name the City as an additional insured party and said subcontractors shall deliver to the City a certificate of insurance evidencing such coverages. All subcontractors shall comply with all federal, state and local, laws, regulations and ordinances but such requirement shall not relieve the Contractor from its requirement that all services provided hereunder shall comply with all Federal, State and local, laws, regulations and ordinances.

The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

The Contractor is responsible for and shall control activities of its subcontractors, and the subcontractors shall consult and cooperate with one another and other contractors working on the site. Each subcontractor shall furnish all necessary information to other subcontractors and shall lay out and install its own work so as to avoid any delays or interferences with the work of another. Any cost for changes, cutting and/or repairing, made necessary by failure to observe the above requirements shall be borne by the Contractor or subcontractor responsible for such failure or neglect.

The Contractor shall not, without the prior written approval of the City's Using Agency, substitute, terminate, replace or otherwise remove a subcontractor.

**19. Assignability.** The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City; provided, however, that claims for money due or to become due the Contractor from the City under this Contract may be assigned to a bank, trust, company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

**20. Audit.** The City reserves the right to audit the Contractor's books of account in relation to this Contract any time during the period of this Contract or at any time during the twelve month period immediately following the closing or termination of this Contract. In the event the City elects to make such an audit, the Contractor shall immediately make available to the City all records pertaining to this Contract, including, but not limited to, payroll records, bank statements and canceled checks.

**21. Interest of City Officials.** No member of the governing bodies of the City, and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the Project to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract.

**22. Interest of Contractor.** The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the Project or any parcel of land therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

**23. Entire Contract.** This Contract shall constitute the complete and exclusive statement of the contract between the parties as it relates to this transaction and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter. Any amendment to this Contract must be in writing and agreed to and executed by the City and the Contractor, and must comply with the City's Charter and Code of Ordinances.

**24. Independent Contractor Relationship.** The relationship between the City and the Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor shall be deemed to be an employee, agent or servant of the City. The Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

**25. Severability.** Whenever possible, each provision of this Contract shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Contract, however, is held to be prohibited or invalid under applicable law, such provision shall be deemed restated to reflect the original intentions of the parties, as nearly as possible in accordance with applicable law, and if capable of substantial



performance, the remaining provisions of this Contract shall be enforced as if this Contract was entered into without an invalid provision. If the ruling and/or controlling principle of law or equity leading to the ruling is subsequently overruled, modified or amended by legislation, judicial or administrative action, then the provision(s) in question as originally set forth in this Contract shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

**26. Survival.** Any provisions of this Contract that impose continuing obligations on the parties shall survive the expiration or termination of this Contract for any reason.

**27. Changes in the Project: Change Orders.**

**A. Requests for Change Orders.** The City reserves the right to request from time to time any changes to the requirements and specifications of this Contract and the products to be provided and the functions and services to be performed by the Contractor under this Contract. Such changes must be authorized by the City. The City will not approve of any change orders, deletions, additions, or additional work items to the Scope of Services or any change in the terms and conditions of this Contract except by means of a City authorized amended Scope of Services, applicable and restricted to those items set forth in §1, above, or Change Order issued as set forth in this section, except in the event of an emergency endangering life or property.

**B. Procedures.**

**(1) The Contractor's Response to a Change Request.** Within thirty (30) calendar days after receipt of a request by the City for any such change or such other period of time as the Parties may mutually agree to in writing, the Contractor shall submit to the City a proposal describing any changes in products, functions, timing of delivery, assignment of personnel, and the like, and any associated price adjustment. The Contractor's proposal shall describe, in detail, the basis for the proposed price adjustment, including the charges for any products required to implement the change request.

To the extent that additional cost or cost savings result from a change in required products, the Contractor shall obtain any additional products and provide them to the City at a negotiated price acceptable to the City and the contractor. Similarly, if the change request is expected to result in a reduction in products required to perform the services, the Contractor's charges shall be reduced by the cost savings resulting from the products eliminated by the change request.

**(2) City's Acceptance of Change Request.** If the City accepts the Contractor's proposal, the City shall issue a change order referencing the Contractor's proposal and both parties shall sign the change order. The Contractor shall not implement any change request until the City has issued a valid, properly executed, change order.

**(3) City's Rejection of Change Request.** If the City does not accept the Contractor's proposal, the City may within two weeks of such non-acceptance: (i) withdraw its change request; or, (ii) modify its change request, in which case the procedures set forth above shall apply to the Contractor's response to the modified change request.

**C. City Discretion.** The City may, in its sole discretion, approve the proposed Change Order and shall forward same for additional signatures under the following conditions: (i) If it conforms to provisions of applicable laws, and (ii) if it is consistent with this Contract, and (iii) if the time of performance of this Contract will not be unreasonably delayed, and (iv) if the Change Order requires an increase in the price of the Contract, the City (1) has sufficient funds, and (2) if a budget transfer is required to cover the cost of the proposed Change Order, such transfer has secured the written approval of the Board of Aldermen and other required regulatory agencies.

**D. Change Orders Governed by the Provisions of this Contract.** All work performed under a Change Order are governed by the provisions of this Contract.

**28. Conflicts or Disputes.** This Contract represents the concurrence between the City and the Contractor and governs all disputes between them. In the instance of a conflict or dispute over issues not specifically referenced within the Contract, the following documents shall be used as historical documents, without regard to the order of precedence, to resolve such conflicts or disputes, as follows: (i) the City's ITB No. 5132 and (ii) the Contractor's bid response to ITB No. 5132 dated December 5, 2014. Said historical documents are attached hereto as **Attachment "A"**.

**A. Procedure.** This procedure supersedes all statements to the contrary occurring either in proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

**B. Presumption.** This Contract or any section thereof shall not be construed against any party due to the fact that the Contract or any section thereof was drafted by such party.

**29. Disputes; Legal Proceedings; Waiver of Trial by Jury and Continued Performance.** The Contractor agrees that it waives a trial by jury as to any and all claims, causes of action or disputes arising out of this Contract or services to be provided pursuant to this Contract. Notwithstanding any such claim, dispute or legal action, the Contractor shall continue to perform services under this Contract in a timely manner, unless otherwise directed by the City.

**30. Binding Contract.** The City and the Contractor each bind themselves, and their successors, assigns and legal representatives to the other party to this Contract and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Contract.

**31. Waiver.** Any waiver of the terms and conditions of this Contract by either of the parties hereto shall not be construed to be a waiver of any other term or condition of this Contract.

**32. Governing Laws.** This Contract, its terms and conditions and any claims arising there from shall be governed by the laws of the State of Connecticut.

**33 Notice.** Except as otherwise specifically prohibited in this Contract, whenever under this Contract approvals, authorizations, determinations, notices, satisfactions or waivers are required or permitted, such items shall be effective and valid only when given in writing signed by a duly authorized officer of the City or the Contractor, and delivered in hand or sent by mail, postage prepaid, to the party to whom it is directed, which until changed by written notice, are as follows:

Contractor: Richards Corporation  
27 North Harwinton Avenue  
Terryville, CT 06786

City: City of Waterbury, Department of Education  
c/o Chief Operating Officer and Chief of Staff  
Chase Municipal Building, 1st Floor  
236 Grand Street  
Waterbury, CT 06702

**34. City Code of Ordinances, Ethics and Conflict of Interest Code, Provisions.**

The Person (the term "Person" shall herein be as defined in Section 38 of the City's Code of Ordinances) supplying the labor, services, equipment, materials, reports, plans, specifications, drawings, deliverables, incidentals, etc. under this Contract shall comply with all applicable Federal, State and Municipal statutes, regulations, charters, ordinances, rules, etc, whether or not they are expressly stated in this Contract, including but not limited to the following:

A. It shall be a material breach of this Contract, and, except as may be permitted by regulations or rulings of the City of Waterbury Board of Ethics it shall be a violation of the City's Code of Ordinances, for any Public Official, City Employee or Member of a Board or Commission who is participating directly or indirectly in the procurement process as set forth in the City's Code of Ordinances, including those participating in exempt transactions, to become or be the employee of any person contracting with the governmental body by whom the Official, Employee, or Board or Commission member is employed or is a member.

B. It shall be a material breach of this Contract, and it shall be a violation of the City's Code of Ordinances for any Person to offer, give, or agree to give any current or former Public Official, Employee or Member of a Board or Commission, or for such current or former Public Official, Employee or Member of a Board or Commission to solicit, demand, accept or agree to accept from another Person, a gratuity or an offer of employment

in connection with any: decision; approval; disapproval; recommendation; preparation of any part of a program requirement or a requisition; influencing the content of any specification or procurement standard; or rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a Contract or Purchase Order, or to any solicitation or proposal therefore.

C. It shall be a material breach of this Contract and it shall be a violation of the City's Code of Ordinances for any payment, Gratuity, or offer of employment to be made as an inducement for the award of a subcontract or order, by or on behalf of a subcontractor, the prime Contractor or higher tier subcontractor or any Person associated therewith, under a Contract or Purchase Order to the City.

D. The value of anything transferred or received in violation of the City's Charter, Code of Ordinances, and/or regulations promulgated there under, by any Person subject to said Charter and/or Ordinances may be recovered by the City.

E. Upon a showing that a subcontractor made a kickback to the City, a prime Contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

F. It shall be a material breach of this Contract and it shall be a violation of the City's Code of Ordinances for a Person to be retained, or to retain a Person, to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and every Person, before being awarded a City Contract, shall deliver to the City, on a City authored form, a representation that such Person has not retained anyone in violation of this subsection F, the failure to deliver said form being a material breach of this Contract and a violation of the City's Code of Ordinances. Note, however, this subsection F shall not apply to full-time Employees who, as a condition of their employment, may be entitled to bonuses or other fees in accordance with their employment relationship.

G. The Person hereby expressly represents that he/she/it has complied with those sections of the City's Code of Ordinances requiring that said Person has (1) delivered to the City an affidavit, on a City authored form, stating that the Person and its affiliates have no delinquent taxes or other financial obligations owed to the City; (2) filed the City authored financial disclosure statement form as set forth in the City's Code of Ordinances regarding disclosure of financial interests; (3) delivered to the City a written acknowledgement, on a City authored form, evidencing receipt of a copy of the "Ethics and Conflict of Interest" ordinance for the City of Waterbury and hereby expressly represents that said Person is in full compliance with the entirety of said Code of Ordinances; and (4) filed a current list of all taxable personal and real property as required by the State of Connecticut General Statutes.

Any violation of this subsection G shall be deemed a material breach of this Contract and shall be a violation of the City's Code of Ordinances.

H. The definitions set forth in the City's Code of Ordinances shall be the primary source for interpretation of the forgoing subsections A-G.

I. The Contractor is hereby charged with the requirement that it shall have knowledge of, and shall fully comply with, all relevant provisions of the City's Charter and all relevant provisions of the City's Code of Ordinances, including without limitation Chapters 93, titled "Discriminatory Practices", Chapter 38 titled "Centralized Procurement System", and Chapter 39 titled "Ethics and Conflict of Interest", of said Code as may be amended from time to time.

J. The Contractor hereby acknowledges receipt of a copy of the Chapters 38 and 39 of City's Ordinance regarding Procurement, Ethics, and Conflicts of Interest and has familiarized itself with said Code and hereby agrees to adhere to said Code. The text of Chapters 38 and 39 of said Code may be obtained from the Office of the City Clerk of the City and on the internet at the City Clerk's web site: <http://www.waterburyct.org/content/458/539/default.aspx> [click link titled "The City of Waterbury Code of Ordinances Passed 8/24/2009". For Chapter 38, click on "TITLE III: ADMINISTRATION", then click on "CHAPTER 38: CENTRALIZED PROCUREMENT SYSTEM". For Chapter 39, click on "TITLE III: ADMINISTRATION", then click on "CHAPTER 39: ETHICS AND CONFLICTS OF INTEREST"].

K. The Contractor is hereby charged with the requirement that it shall have knowledge of, and shall fully comply with, the City's Ordinance Sections 34.15 through 34.99 entitled, "Ordinance Concerning the Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects," and the State of Connecticut Legislature's Special Act No. 01-1.

L. Every Person who conducts business with, contracts, with or provides commodities or services to the City, is charged with notice of the extent of the powers and authority, and the limitations thereon, of the Public Officials and Employees of the City, as set forth in the charter of the City, the Code of Ordinances and any Regulations or Policies pertaining thereto. In particular, and without implying any limitation as to its applicability, it applies to all Persons who participate in the procedures pertaining to the Centralized Procurement System as set forth in Chapter 38, and the Ethics and Conflict of Interest provisions set forth in Chapter 39 of the Code of Ordinances.

M. INTEREST OF CITY OFFICIALS. No member of the governing body of the City, and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the project, to which this agreement pertains, shall have any personal interest, direct or indirect, in this agreement.

N. **PROHIBITION AGAINST CONTINGENCY FEES.** The Contractor hereby represents that it has not retained anyone to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage or contingency fee.

O. **FREEDOM OF INFORMATION ACT NOTICE.** Pursuant to State statute, in the event the total compensation payable to the Contractor set forth in Section 6 herein is greater than \$2,500,000.00, the City is entitled to receive a copy of any and all Contractor records and files related to the performance of this contract and those records and files are subject to the Freedom of Information Act ("the Act") and may be disclosed by the City pursuant to the Act.

35. **Definitions.** Whenever the following, words, terms, etc. appear in this Contract, the intent and meaning shall be as follows:

- A. Additional Work: Work required by the City that involves a substantial addition to, deduction from or modification of the Contract Documents.
- B. Bid or Proposal: The form on which the bidder is to submit a bid for the Work contemplated.
- C. Bidder: A person, partnership, corporation or other business organization submitting a bid on the form for the Work contemplated.
- D. City: The City of Waterbury, acting directly or through specifically authorized personnel.
- E. Construction Supervisor: An employee of the City of Waterbury, or other City duly authorized person.
- F. Contract Time: The number of days as stated in the Contract to: (i) achieve Substantial Completion, and (ii) Final Completion.
- G. Equal: The recognized equivalent in substance and function; considering quality, workmanship, economy of operation, durability and suitability for purposes intended, and not constituting a change in the Work specified. Whenever the words "equal" or "equals" or words of like import are used, it shall be understood they mean "equal" in the opinion of the City.
- H. Final Completion: The time at which the Project has progressed to the point where, in the opinion of the City, the Project is complete such that it is ready for final payment as evidenced by the City's, or its duly authorized City representative's, written recommendation of final payment. The terms "finally complete" and "finally completed" as applied to the Project refer to Final Completion.

- I. Notice to Proceed: A letter from the City which shall state the beginning date of the contract and specifically advise the Contractor to begin work on the Contract.
- J. Plans: All drawings or reproductions of drawings pertaining to the construction of the work contemplated and its appurtenances.
- K. Project Engineer: An employee of the City or a person, partnership, corporation or other business organization under contract with the City, commissioned to perform construction administration and inspection duties during construction.
- L. Shop Drawings: Drawings, diagrams, schedules, performance charts, brochures and other materials prepared by the Contractor or subcontractors, manufacturers or distributors which illustrate some portion of the work.
- M. Specifications: The description, provisions and other requirements pertaining to the materials, methods and manner of performing the Project.
- N. Subcontractor: A person, partnership, corporation or other business organization supplying labor and/or materials for work at the site of the Project to and under agreement with the Contractor.
- O. Substantial Completion: The time at which the Project (or a specified part thereof) has progressed to the point where, in the opinion of the Engineer, the Project (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Project (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Project refer to Substantial Completion thereof.
- P. Substitution: A replacement of specified material, device or equipment which is sufficiently different in substance, function, quality or workmanship to become the subject of a Change Order.
- Q. Supplementary General Conditions: An extension to the terms, conditions, and provisions set forth in this document as additional, material, provisions of this Contract.
- R. Work: All plant, labor, materials, services, supplies, equipment and other facilities and items necessary for, or incidental to, the completion of the terms of the Contract.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto execute this Contract on the dates signed below.

WITNESS:

CITY OF WATERBURY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Neil M. O'Leary, Mayor

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

WITNESS:

RICHARDS CORPORATION

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Richard M. Doyle, Jr., President

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



## ATTACHMENT A

- ❖ Scope of Services/Bid Documents:
  - City of Waterbury Invitation to Bid Number 5132, dated November 17, 2014, entitled Crosby High School Science Room Improvements, 461 pages.
  - City of Waterbury Invitation to Bid Number 5132, Bid Addendum #1, dated November 26, 2014, 4 pages and Bid Addendum #2, dated December 1, 2014, 4 pages, all entitled Crosby High School Science Room Improvements.
- ❖ ITB Response:
  - Richards Corporation Response to ITB No. 5132, dated December 5, 2014, entitled Crosby High School Science Room Improvements, 36 pages.
- ❖ Contract Compliance Documents:
  - Annual Statement of Financial Interests, 4 pages.
  - Disclosure and Certification Affidavit, 4 pages.
  - Debarment Certificate, 1 page.
  - Corporate Resolution, 1 page.
  - Bid Submission Attachment C, 1 page.
- ❖ Scope Review Checklist, dated December 9, 2014, consisting of 1 page
- ❖ Certificate of Insurance
- ❖ Payment Bond and Performance Bond
- ❖ All applicable Federal, State and local statutes, regulations, charter and ordinances.
- ❖ All permits and licenses.

**ATTACHMENT B**

**UNIT LABOR RATES:**

Classification	Hourly Rate	Benefits	Workmen's Comp.	General Liability	FICA 7.65%	State U.C. 5.5%	Federal U.C. .8%	Total
Project Manager	\$50.00	\$14.50	\$10.43	\$1.40	\$4.93	\$4.00	\$0.52	\$85.78
Foreman	\$40.00	\$14.50	\$8.81	\$1.19	\$4.17	\$3.38	\$0.44	\$72.49
Laborer	\$27.05	\$17.80	\$7.25	\$0.98	\$3.43	\$2.78	\$0.36	\$59.65
Carpenter	\$31.00	\$22.50	\$7.38	\$1.16	\$4.09	\$3.32	\$0.43	\$69.88

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON POLICY**

Item #9.4

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on Policy, the Superintendent of Schools recommends approval of inconsequential revisions to the Discipline/Student Conduct Policy #5114, as attached.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

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Elizabeth C. Brown

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON CURRICULUM**

Item #9.5

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on Curriculum, the Superintendent of Schools recommends permission be granted to Carla Cruess, RMS, and 13 chaperones to take 96 kids to New York, NY on April 1, 2015 to visit Planet Hollywood and New Amsterdam Theatre.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

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Elizabeth C. Brown

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON CURRICULUM**

Item #9.6

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on Curriculum, the Superintendent of Schools recommends permission be granted to Meredith White-Clark, KHS, to take five students to Washington, DC from January 30 through February 1, 2015 to attend the Leadership Experience and Development Conference for National Honor Society.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

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Elizabeth C. Brown

# BOARD OF EDUCATION

*Waterbury, Connecticut*

## COMMITTEE ON SCHOOL FACILITIES & GROUNDS

Item #9.7

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on School Facilities and Grounds, the Superintendent of Schools recommends approval of the use of school facilities, at no charge, by the following school organizations and/or City departments:

GROUP	FACILITIES AND DATES/TIMES
K. Effes	Tinker gym: Fri., Dec. 12 <sup>th</sup> , 5:30 - 9:00 pm (Movie Night) <i>(prior to Board Mtg.)</i>
S. Petteway	Bucks Hill gym: Mon., Dec. 22 <sup>nd</sup> , 5:30-9:00 pm (holiday concert)
D. Currier	Chase gym: Thurs., Dec. 18 <sup>th</sup> , 5:00-8:00 pm (Movie Night) <i>(prior to Board Mtg.)</i>
C. Damre	Wilson gym: Wednesdays, Jan. 7, 14, 21, 28, 4:30-6:30 pm (Zumba)
M.A. Petrillo	Bunker Hill gym: Fri., Dec. 12 <sup>th</sup> , 5:00-8:30 pm (Movie Night) <i>(prior to Board Mtg.)</i>
Mayor's Office	WAMS atrium/café: Saturday, April 25 <sup>th</sup> , 8:00 am - 2:00 pm
Monroe Webster	(annual family & housing expo)
J. Christolini	Duggan café: Thurs., Dec. 18 <sup>th</sup> , 4:30-6:30 pm (school dance) (snow date: 12/22/14) <i>(prior to Board Meeting)</i>
D. Monti	Reed café: Wed., Dec. 17 <sup>th</sup> , 5 - 7:00 pm (Title I family movie night) <i>(prior to Board Mtg.)</i>
M. Rocco	W. Cross lib.: Sat. Dec. 13 <sup>th</sup> , 8:00 am - 1:00 pm (Para Pro Exam) <i>(prior to Board Mtg.)</i>
E. Racine	Reed café: Fri., Dec. 19 <sup>th</sup> , 3:00-5:00 pm (PBIS Incentive Dance)
M.A. Marold	Gilmartin café: Tues., Feb. 24 <sup>th</sup> , 3:30 - 6:00 pm (snow date: 2/26/15) WAMS café: Tues., March 24 <sup>th</sup> , 3:30 -6:00 pm (snow date: 3/26/15) (School Governance Council Modules 2 and 3 training)

Approved:

Respectfully submitted,

\_\_\_\_\_  
Felix M. Rodriguez

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# BOARD OF EDUCATION

*Waterbury, Connecticut*

## COMMITTEE ON SCHOOL FACILITIES & GROUNDS

Item #9.8

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee on School Facilities and Grounds, the Superintendent of Schools recommends approval of the use of school facilities by outside organizations and/or waiver requests, subject to fees and insurance as required:

GROUP	FACILITIES AND DATES/TIMES	
<b><u>REQUESTING WAIVERS:</u></b>		
P.A.L. Ofc. F. Santopietro	Career Academy gym: Dec. to Feb. Sat. and/or Sun. per game schedule	(\$1,512)
P.A.L. Ofc. F. Santopietro	Crosby gym: Fri., March 6 <sup>th</sup> , 1:00 - 10:00 pm (wrestling event)	(\$840)
Waterbury Ballers Andre Johnson	Kingsbury gym: Sat. & Sun., 12/20 - 3/8/15, 2:00-9:00 pm Carrington gym: Sundays, 12/21 - 3/8/15, noon-8:00 pm Chase gym: Sat. & Sun., 12/20 - 3/7/15, 5:00-9:00 pm, (Basketball program)	(\$3,024) (\$3,780) (\$3,990)
Western Ct. Warriors	Gilmartin gym: Sundays, 12/21 - 2/22/15, 5:00-7:00 pm	(\$1,260)
Girl Scouts of CT. J. Bielefield	WSMS café & 8 classrooms: Sat., March 14 <sup>th</sup> , 8:00 am - 5:00 pm (training for adult volunteers)	(\$1,230)

### **GROUPS NOT SUBJECT TO FEES OR WAIVER DUE TO TIME OF USE OR PREVIOUS WAIVER:**

Waterbury Ballers Andre Johnson	Walsh gym: Thursdays 1/8 - 3/5/15 5:30-9:00 pm (basketball program)
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MONIES COLLECTED TO DATE: \$ 25,366.00

These activities are completed and have been billed: Nationals, Inc., USA Wildcats Cheerleading,  
Sacred Heart H.S., Holy Cross H.S.

Approved:

\_\_\_\_\_  
Felix M. Rodriguez

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE OF THE WHOLE**

Item #11.1

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee of the Whole, the Superintendent of Schools recommends approval of a Memorandum of Understanding with Our Piece of the Pie to perform an independent analysis of student information at Crosby High School, as revised by Corporation Counsel as to form (previously approved on 9/4/14).

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

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Karen E. Harvey



# **MEMORANDUM OF UNDERSTANDING**

**between**

**Waterbury Public Schools**

**And**

**Our Piece of the Pie, Inc.**

**For**

## **Data sharing of Over Age Under –Credited (OU) Students At Crosby High School**

This Memorandum of Understanding ("MOU") is effective on the date signed by the Mayor, and is by and between the City of Waterbury, Waterbury Public Schools, 236 Grand Street, Waterbury, Connecticut, 06702 ("City" or "WPS") and Our Piece of the Pie, Inc., located at 20-28 Sargeant Street, Suite 200 Hartford, Connecticut 06105 ("OPP") with respect to a data- sharing agreement for OU Students at Crosby High School. This Memorandum of Understanding clarifies the roles and responsibilities of the District and OPP with regard to confidentiality of data, data analysis, and reports to be provided to WPS.

**WHEREAS**, the State of Connecticut Department of Education has mandated guidelines for a turnaround plan regarding Over Age Under Credited students in Connecticut's high schools; and

**WHEREAS**, the State of Connecticut has chosen Our Piece of the Pie , Inc., a Connecticut Non-Profit Organization focused on over-age and under-credit students, to act as a consultant to gather data regarding said students and form a turnaround plan; and

**WHEREAS**, the City is in need of such a turnaround plan for said OU students at Crosby High School; and

**WHEREAS**, the City desires to engage the services of Our Piece of the Pie, Inc., ("OPP") to gather the needed data and form said plan; and

**WHEREAS**, OPP has agreed to perform an independent segmentation analysis of Crosby High School student information to support the City's work at Crosby High School ("Project").

**NOW THEREFORE**, The Parties agree as follows:

**1. Term of Agreement:**

OPP agrees to have all analysis and reports necessary for this Project completed and returned to the City within Forty-five (45) days of execution of this MOU by the City.

**2. Compensation:**

The City shall not compensate OPP for its performance of the work described in Attachment A-Scope of Work. There shall be no compensation paid to OPP by the City. All compensation paid to OPP shall be paid by the State of Connecticut.

**3. OPP will:**

- A. Compile the planned data analyses and reports to be provided to WPS as more particularly described in the Proposed- Scope of Work, which is entitled Attachment A, attached hereto and made part hereof.
- B. OPP will maintain strict confidentiality of all data by ensuring the following:
  - 1. No data on individual students will be reported to any party outside WPS and as requested by WPS. Else, only aggregate summary statistics will be reported.
  - 2. Extensive data securing and confidentiality procedures will be followed including:
    - a. All electronic data analysis will be performed on secure, password-protected, and physically centralized computers at the OPP offices;
    - b. Only OPP staff assigned to this project will have access to these student-level data;
    - c. Other OPP employees, consultants, and other staff with access to the data will be required to sign a Statement of Confidentiality (on file for District review);
    - d. Confidential information that would identify a student will be stripped from the data as soon as it is feasible to do so by OPP.
    - e. Printed data and all external electronic storage devices containing confidential student level data must be kept in a locked cabinet in the OPP offices; data stored on OPP servers must be password-protected with access to data by project staff only.
    - f. WPS student data may not be transferred via the Internet except as noted below in (4).
    - g. Upon completion of the project, to be determined mutually by WPS and OPP, original data will be destroyed, and OPP will only keep a copy of analytical data needed for reproducing the analyses. Destruction of original data will be confirmed with WPS upon completion.

**4. WPS will:**

WPS will provide confidential student-level data to OPP necessary for the proposed analyses and reports, conditional on its existence. The list of specific data elements to be provided is included in Appendix A to this Agreement.

**5. The parties agree as follows:**

- A. No primary student-level data collection by WPS or OPP is required. Only data already in existence in WPS data systems will be required for transfer to

OPP for the purposes of this project.

- B. Transfer of data to OPP will be accomplished through electronic transfer to secure FTP sites. If required, requisite data may be downloaded directly to an encrypted, password-protected flash drive for transport back to OPP offices. These data will then be stored on a secure facility and deleted from transport device.
- C. This Agreement will become effective immediately upon signature and will continue to be in effect through the (45 days past the effective date). The provisions regarding confidentiality and destruction of confidential data will survive its term as set forth in this Agreement. This Agreement may be amended by written amendment executed by all parties.
- D. The parties acknowledge that in the course of obtaining information from the City OPP may come into possession of education records or information of students defined in and governed by Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. § 1232g) and related regulations (34 C.F.R. § 99). OPP shall comply with the requirements of said statute and regulations, and agrees to use information obtained from the City for the purposes provided in this Agreement. Without the prior written consent, as required by FERPA, the parties have no authority to make any other disclosures of any information.

#### **6. OPP Insurance:**

OPP shall not commence work under this agreement until all insurance required under this Section 6 has been obtained by OPP and such insurance has been approved by the City. OPP shall not allow any subcontractor to commence work on any subcontract until all insurance required of any such subcontractor has been so obtained and approved by the City. Insurance shall be provided by insurers that are satisfactory to the City, authorized to do business in the State of Connecticut, that have at least an "A-" Best's Rating, and are in an A.M. Best financial size category of VII or higher. The A.M. Best classifications are based on the most current A.M. Best Company ratings or an equivalent City approved rating system.

All policies required by this MOU shall be endorsed to add the City as an additional insured. The insurance afforded the additional insured shall be primary insurance and the coverage and limits provided under the Consultant/Vendor's policies shall not be reduced or prorated by the existence of any other insurance applicable to any loss the additional insured may have suffered. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless. If any insurance required herein is to be issued or renewed on a claims made form as opposed to an occurrence form, the retroactive date for coverage shall be no later than the commencement date of this agreement and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims ("Tail Coverage") shall be available for at least 60 months.

The following policies with stated limits shall be maintained, in full force and effect, at all times during which the services are to be performed by the Consultant/Vendor:

- A. General Liability Insurance: \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate
- B. Cyber Liability including Data Breach: \$1,000,000.00 per Claim, \$1,000,000.00 aggregate.

The following insurance descriptions shall correlate to the aforementioned insurance requirements:

- A. General Liability Insurance: Providing coverage to protect the City for all damages arising out of bodily injuries, sickness to or death of all persons in any one accident or occurrence and for all damages arising out of destruction of property in any one accident or occurrence.
- B. Cyber Liability policy: To provide coverage to the contractor for liability arising out of data loss/destruction, computer fraud or other loss of electronic data in the care, custody or control of contractor.

Failure to Maintain Insurance: In the event OPP fails to maintain the minimum required coverage as set forth herein, the City may at its option purchase same and shall be reimbursed by OPP.

Cancellation: THE CITY OF WATERBURY SHALL RECEIVE WRITTEN NOTICE OF CANCELLATION FROM THE INSURER AT LEAST 30 CALENDAR DAYS PRIOR TO THE DATE OF ACTUAL CANCELLATION, REGARDLESS OF THE REASON FOR SUCH CANCELLATION.

Certificates of Insurance: At the time OPP executes this agreement, it shall furnish to the City, subject to City approval, certificate(s) of insurance verifying the above coverage's, including the naming of the City of Waterbury, as follows: **"The City of Waterbury and its Board of Education (if applicable) are listed as additional insured as their interests may appear"**. OPP must supply replacement/renewal certificates at least 30 days prior to the expiration of the policy(ies). Said certificates shall contain a provision that coverage afforded under the policies shall not be cancelled or reduced for any reasons unless notice of not less than thirty (30) calendar days has been mailed to the Office of Corporation Counsel, 235 Grand Street, Waterbury, CT. 06702.

Upon request OPP shall deliver to the City a copy of OPP's insurance policies, endorsements, and riders.

**7. Prohibition of Discrimination:**

OPP will not discriminate against anyone in its performance of services under this MOU on the basis of race, color, national origin, sex, age, political affiliation, religion, or individuals with limited English proficiency, or on the basis of disability.

**8. Interest of City Officials:**

No member of the governing body of the City, and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

**9. Prohibition Against Gratuities and Kickbacks:**

No person shall offer, give or agree to give any current or former public official, employee or member of a board or commission, or for such current or former public official, employee or member of a board or commission to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any: decision; approval; disapproval; recommendation; preparation of any part of a program requirement or a requisition; influencing the content of any specification or procurement standard; or rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or purchase order, or to any solicitation or proposal therefore.

No person shall make any payment, gratuity, or offer of employment as an inducement for the award of a subcontract or order, by or on behalf of a subcontractor, the prime contractor or higher tier subcontractor or any person associated therewith, under contract or purchase order to the City.

Upon showing that a subcontractor made a kickback to the City, a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

The value of anything transferred or received in violation of the provisions of this Chapter or regulations promulgated hereunder by any person subject to this Chapter may be recovered by the City.

**10. Prohibition Against Contingency Fees:**

OPP hereby represents that it has not retained anyone to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage or contingency fee.

**11. City of Waterbury's Ethics Code Ordinance:**

OPP hereby acknowledges receipt of the City of Waterbury's Ordinance regarding Ethics and Conflicts of Interest and has familiarized itself with said Code.

**12. Relationship of the Parties:**

The Parties agree that the purpose of this Agreement is to collect pertinent data and share such data as necessary to complete a turnaround plan for Crosby High School's OU student population. Accordingly, no agent, employee, or volunteer of OPP shall be deemed to be an employee, agent or servant of the City. Likewise, no agent, or employee of the City shall be deemed to be an employee, agent or servant of OPP. Therefore the Parties agree that each parties employees shall not be entitled to the usual characteristics of employment, such as income tax withholding, F.I.C.A. deductions, pension or retirement privileges, Workers Compensation coverage, health benefits, etc. from the other party.

[Signature to follow.]

**IN WITNESS WHEREOF**, the parties hereto execute this Memorandum of Understanding on the dates indicated below:

WITNESS:

**CITY OF WATERBURY**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Neil M. O'Leary, Mayor

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

WITNESS:

**OUR PIECE OF THE PIE, INC.**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
, Director

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

## ATTACHMENT A

### Statement of Work:

Our Piece of the Pie will conduct a segmentation report for the Waterbury Public Schools comparing the over-age, under-credited (OU) student population of Crosby High School with total Crosby High School student population.

The segmentation study will answer the following questions:

1. Extent of the OU population in the school district
2. Characteristics of OU students
3. Location of OU students (by site and by grade)
4. Demographic of OU students (by site and by grade).

To complete the full analysis for Crosby High School students, WPS will provide data for the following fields:

1. Student ID
2. Current School
3. Date of Birth (or Age)
4. Current Grade
5. Current Number of Credits
6. ELL Status
7. SPED Status
8. FRL Status
9. Gender
10. Race
11. (If possible) Avg. Daily Attendance
12. (If possible) GPA

Motion to add Item 11.2,  
Blueprint for Change, to the  
Agenda.



# BOARD OF EDUCATION

*Waterbury, Connecticut*

## COMMITTEE OF THE WHOLE

Item #11.2

TO BE ADDED

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

With the approval of the Committee of the Whole, the Superintendent of Schools recommends approval of Waterbury Public Schools "Blueprint for Change" 2012-2017 Action Plan, 2<sup>nd</sup> edition, as attached.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

Approved:

---

Karen E. Harvey

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **SUPERINTENDENT'S NOTIFICATION TO THE BOARD**

Item #12.1

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following appointments effective immediately:

Shocki, Charlotte - Impartial Expulsion Hearing Officer.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **SUPERINTENDENT'S NOTIFICATION TO THE BOARD**

Item #12.2

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following temporary appointments:

Biolo, Dawn – Acting SVP, Walsh School, effective 12/1/14.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# BOARD OF EDUCATION

*Waterbury, Connecticut*

## SUPERINTENDENT'S NOTIFICATION TO THE BOARD

Item #12.3

UPDATED

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following grant funded appointments:

Lewis, Emroy – Behavior Technician, CHS, \$27.74 p/hour, non-union with benefits governed by the UPSEU Agreement, funded by the Alliance Grant.

Martinez, Mardelin – ELA Instructional Tutor, 15.75 hours p/week, 28 weeks, \$25.00 p/hour, non-union and without benefits, funded by Alliance Grant.

Cavanaugh, Ellon – Teacher, SDE After-school Program, Sprague, salary according to contract.

Cianfagna, Traci – Teacher, SDE After-school Program, Sprague, salary according to contract.

Martinez, Kristina – Teacher, SDE After-school Program, Sprague, salary according to contract.

Robinson, Debra – Teacher, SDE After-school Program, Sprague, salary according to contract.

Walsh, Kelly – Teacher, SDE After-school Program, Sprague, salary according to contract.

Williams, Chelcey – Teacher, SDE After-school Program, Sprague, salary according to contract.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **SUPERINTENDENT'S NOTIFICATION TO THE BOARD**

Item #12.3

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following grant funded appointments:

Lewis, Emroy – Behavior Technician, CHS, \$27.74 p/hour, non-union with benefits governed by the UPSEU Agreement, funded by the Alliance Grant.  
Martinez, Mardelin – ELA Instructional Tutor, 15.75 hours p/week, 28 weeks, \$25.00 p/hour, non-union and without benefits, funded by Alliance Grant.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# BOARD OF EDUCATION

*Waterbury, Connecticut*

## SUPERINTENDENT'S NOTIFICATION TO THE BOARD

Item #12.4

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following Extended School Hours (ESH) Program Appointments, salary according to individual's contract:

School	Last name	First name	Assignment
<b>Driggs</b>	Abarzua	Lauren	Teacher/split
	Atkinson	Jennifer	Clerical/split
	Blake	Zita	Substitute
	Card	Katie	Teacher/split
	DiGioia	Sue	Para/split
	Dopp	Karen	Para/split
	Dwyer	Jennifer	Administrator/split
	Gonzalez	Lourdes	Para/split
	Griffin	Karen	Substitute
	Healy	Heather	Teacher/split
	McDonald	Barbra	Para
	Morytko	Jess	Clerical/split
	Pastore-Quezada	Paula	Teacher/split
	Pearson	Robin	Para/split
	Ruffin	Mardelle	Substitute
	Sheetz	Lucia	Substitute
	Theriault	Michael	Administrator/split
	Wright	Valerie	Substitute

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# BOARD OF EDUCATION

*Waterbury, Connecticut*

## SUPERINTENDENT'S NOTIFICATION TO THE BOARD

Item #12.5

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following teacher hires:

Name		Location	Position	Effective	Step
Giammatteo	Timothy P.	Sprague	Kindergarten	11/21/14	MA/6
Kovach	Rachel A.	Bucks Hill	Pre-k	11/10/14	BA/2
O'Donnell	Patricia M.	Rotella	Grade 2	11/10/14	6 <sup>th</sup> /2

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **SUPERINTENDENT'S NOTIFICATION TO THE BOARD**

Item #12.6

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following  
Adult Education appointments:

Dest, Edward – Health Instructor, 25 hrs p/wk @ \$32.00 p/hr  
Koehler, Richard – ABE Instructor, 20 hrs p/wk @ \$32.00 p/hr  
Manjani, Halil – Substitute, as needed @ \$32.00 p/hr

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools



# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **SUPERINTENDENT'S NOTIFICATION TO THE BOARD**

Item #12.7

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following retirements:

Hollister-Sotolano, Lauren – WAMS Speech/LP, effective 01/01/15.  
Rossi, Stephen – CHS English, effective 07/01/15.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **SUPERINTENDENT'S NOTIFICATION TO THE BOARD**

Item #12.8

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following resignations:

Brown, Yvonne – Enlightenment/Excel Special Ed, effective 12/04/14.  
Radner, Feigie – Kingsbury Literacy Facilitator, effective 12/05/14.  
Vargas, Alicia – Bucks Hill Grade 3 Bilingual, effective 12/09/14.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **SUPERINTENDENT'S NOTIFICATION TO THE BOARD**

Item #12.9

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following leave of absence requests:

Mancini, Jacqueline – Maloney Magnet School grade 1, requesting an unpaid childrearing leave of absence from 01/05/15 through the end of the 2014/15 school year.

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# BOARD OF EDUCATION

*Waterbury, Connecticut*

## SUPERINTENDENT'S NOTIFICATION TO THE BOARD

Item #12.10

**UPDATED**

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following 21st Century After-school Program Grant appointments, salary according to individual's contract, effective immediately:

Angelo, Eileen	Substitute	Driggs
Blake, Zita	Teacher	Driggs
Griffin, Karen	Substitute	Driggs
Ruffin, Mardelle	Teacher	Driggs
Wright, Valerie	Substitute	Driggs
Ciuffo, Anthony	Teacher	Tinker/Duggan @ Chase Park House
Hanas, Karen	Teacher	Tinker/Duggan @ Chase Park House
Cocuzzi, Matt	Substitute	Wilson
Quesnel, Nina	Teacher	Wilson
Shaffer, Andrea	Substitute	Wilson
Vega, Betzaida	Teacher	Wilson
Esposito, Mark	Teacher	Hopeville
Williams, Sarah	Teacher	Hopeville
Abraham, Roxanne	Substitute	Program-wide
Coughlin, Timothy	Substitute	Program-wide
Katrenya, Wesley	PE Teacher	Program-wide
LaChance, Mark	PE Teacher	Program-wide
St. Pierre, Tim	Substitute	Program-wide

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# BOARD OF EDUCATION

*Waterbury, Connecticut*

## SUPERINTENDENT'S NOTIFICATION TO THE BOARD

Item #12.10

December 18, 2014

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Superintendent of Schools notifies the Board of Education of the following 21st Century After-school Program Grant appointments, salary according to individual's contract, effective immediately:

Angelo, Eileen	Substitute	Driggs
Blake, Zita	Teacher	Driggs
Griffin, Karen	Substitute	Driggs
Ruffin, Mardelle	Teacher	Driggs
Wright, Valerie	Substitute	Driggs
Ciuffo, Anthony	Teacher	Tinker/Duggan @ Chase Park House
Hanas, Karen	Teacher	Tinker/Duggan @ Chase Park House
Cocuzzi, Matt	Substitute	Wilson
Quesnel, Nina	Teacher	Wilson
Shaffer, Andrea	Substitute	Wilson
Vega, Betzaida	Teacher	Wilson
Esposito, Mark	Teacher	Hopeville
Williams, Sarah	Teacher	Hopeville
Coughlin, Timothy	Substitute	Program-wide

Respectfully submitted,

Dr. Kathleen M. Ouellette  
Superintendent of Schools

# Communications



Packet week ending: 12/16/14

## Carrie Swain

---

**From:** Ann M. Cullinan  
**Sent:** Friday, December 05, 2014 1:50 PM  
**To:** Carrie Swain  
**Subject:** FW: MM Generali Grants

**Follow Up Flag:** Follow up  
**Due By:** Friday, December 05, 2014 7:00 PM  
**Flag Status:** Flagged

Hi Carrie,

I just wanted to notice the BOE on the recipients of this year's Generali Grant recipients.

-----Original Message-----

**From:** Ed Generali [<mailto:edgeneral@hotmai.com>]  
**Sent:** Thursday, December 04, 2014 3:56 PM  
**To:** Ann M. Cullinan  
**Subject:** Re: MM Generali Grants

That would be great! Thanks

Sent from my iPhone

> On Dec 4, 2014, at 11:11 AM, Ann M. Cullinan <[acullinan@waterbury.k12.ct.us](mailto:acullinan@waterbury.k12.ct.us)> wrote:

>

> Should I prepare notification to our BOE?

>

> -----Original Message-----

> **From:** Ed Generali [<mailto:edgeneral@hotmai.com>]

> **Sent:** Wednesday, December 03, 2014 10:25 PM

> **To:** Ann M. Cullinan; JENNIFER DWYER; Karen Renna; Tricia G; [pjamele@holycrosshs-ct.com](mailto:pjamele@holycrosshs-ct.com); Alyssa G; ALZIRA EGAN

> **Cc:** Ed Generali

> **Subject:** MM Generali Grants

>

> Hi all,

> Thank you for serving on the selection committee! I was able to squeeze out 7 grants.

> They are as follows, in no particular order:

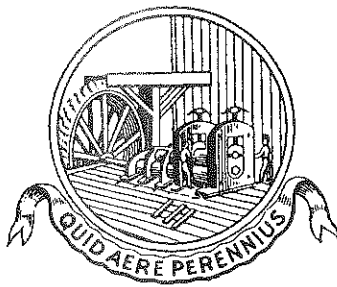
> Jenna Milo - West Side \$1200

> Eileen McDonnell, Lori Riggi, Jenn Taylor - Carrington K - 1500 Evelyn Levasseur - Wallace - \$1500 Miriam Giskin - Walsh - \$1050 Nancy McCulloch, Pam Weed, Diane Mauceri - Carrington preK - 1500 Children's Community School -1350 Michael Pannoni - North End - \$1050 Thank you again for all your help!

> Ed G

>

> Sent from my iPad



236 Grand Street  
Waterbury, CT 06702

(203) 574-6761

The City of Waterbury  
**Connecticut**  
*Department of Human Resources*  
Office of the Civil Service Commission

December 8, 2014

Rose Harvey  
82 Oak Hollow Dr.  
Waterbury, CT 06708

Dear Ms. Harvey:

Welcome to employment with the City of Waterbury. Your name is being certified to the Education Department for the position of Paraprofessional, Req. #15-10 at \$15.56 per hour. Please contact Wendy Owen, Director of Special Education at (203) 574-8017 with any questions you may have in regards to this position.

We have scheduled your orientation for Thursday, January 6, 2015 at 9:30 a.m. at the Department of Human Resources located at 236 Grand Street in Waterbury. You must attend this orientation session in order to work for the City. Your first day reporting to your new department/supervisor will be January 7, 2015 at your regular scheduled time.

At the orientation, we will provide you with a brief overview of the City, review its employment practices and complete all required paperwork. You will also be required to provide documentation, mandated by the federal government, to establish your right to work in this country. We have included a sheet that outlines the documents that are acceptable to meet this requirement. You cannot start work without providing us these documents. In addition, if you are an employee eligible for benefits, it is useful to bring the social security numbers and birth dates of your spouse and children in order to complete the insurance enrollment forms.

Please call us prior to the orientation session if you should have any questions regarding the process.

***Your new probationary period in accordance with your applicable contract will be 6 months in duration. The department head will be responsible for executing your probationary evaluation no later than 6 months from your first day in your new position.***

Again, welcome to the City of Waterbury.

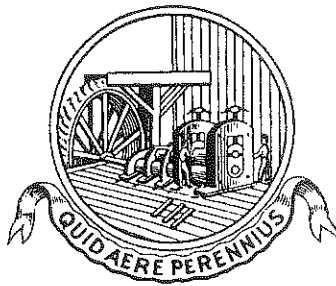
Sincerely,

  
Scott Morgan  
Senior Human Resources Generalist

SM/sd

cc Wendy Owen, Director of Special Education  
Dr. Ouellette, Supt. of Schools  
Board of Education  
file





236 Grand Street  
Waterbury, CT 06702

(203) 574-6761

The City of Waterbury  
**Connecticut**  
*Department of Human Resources*  
Office of the Civil Service Commission

December 8, 2014

Jonathan DeLucrezia  
213 Mansfield Ave.  
Waterbury, CT 06705

Dear Mr. DeLucrezia:

Welcome to employment with the City of Waterbury. Your name is being certified to the Education Department for the position of Paraprofessional, Req. #15-09 at \$15.56 per hour. Please contact Wendy Owen, Director of Special Education at (203) 574-8017 with any questions you may have in regards to this position.

We have scheduled your orientation for Thursday, January 6, 2015 at 9:30 a.m. at the Department of Human Resources located at 236 Grand Street in Waterbury. You must attend this orientation session in order to work for the City. Your first day reporting to your new department/supervisor will be January 7, 2015 at your regular scheduled time.

At the orientation, we will provide you with a brief overview of the City, review its employment practices and complete all required paperwork. You will also be required to provide documentation, mandated by the federal government, to establish your right to work in this country. We have included a sheet that outlines the documents that are acceptable to meet this requirement. You cannot start work without providing us these documents. In addition, if you are an employee eligible for benefits, it is useful to bring the social security numbers and birth dates of your spouse and children in order to complete the insurance enrollment forms.

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***Your new probationary period in accordance with your applicable contract will be 6 months in duration. The department head will be responsible for executing your probationary evaluation no later than 6 months from your first day in your new position.***

Again, welcome to the City of Waterbury.

Sincerely,

  
Scott Morgan  
Senior Human Resources Generalist

SM/sd  
cc Wendy Owen, Director of Special Education  
Dr. Ouellette, Supt. of Schools  
Board of Education  
file

Waterbury Board of Education  
President Charles Stango  
236 Grand Street  
Waterbury, CT 06702

Dear Mr. Stango:

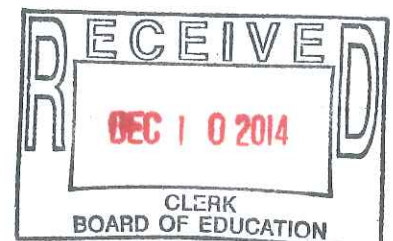
I am writing this letter in support of the petition to rename the Crosby High School gym in honor of Nicholas Augelli. I have known Nick for over 25 years, beginning as a fellow Waterbury Alderman back in 1989. He has shown his dedication as a public servant, educator and coach throughout those years. His love of coaching extends beyond the game, as I have personally witnessed the love and care he shows each of his players. Dinners at his house, driving them home when they needed a ride, these are things that go beyond the role of a coach. He is a great role model to his kids, an example they can look up to. He is Crosby basketball.

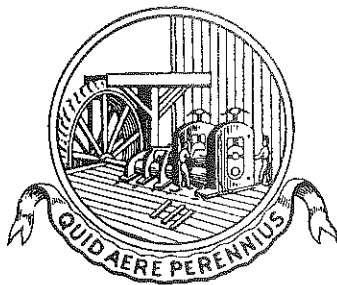
We too often wait until a person is deceased to bestow an honor that should be given while they are living.

I wholeheartedly support this proposal and urge the Board to approve it.



Nicholas A. Rinaldi  
51 Farmingberry Drive  
Marion, CT 06444  
860-628-3113





236 Grand Street  
Waterbury, CT 06702

(203) 574-6761

The City of Waterbury  
**Connecticut**  
*Department of Human Resources*  
Office of the Civil Service Commission

December 10, 2014

Terri LaRosa  
161 Morro St.  
Oakville, CT 06779

Dear Ms. LaRosa:

Welcome to employment with the City of Waterbury. Your name is being certified to the Education Department for the position of Paraprofessional, Req. #15-12 at \$15.56 per hour. Please contact Wendy Owen, Director of Special Education at (203) 574-8017 with any questions you may have in regards to this position.

We have scheduled your orientation for Thursday, January 6, 2015 at 9:30 a.m. at the Department of Human Resources located at 236 Grand Street in Waterbury. You must attend this orientation session in order to work for the City. Your first day reporting to your new department/supervisor will be January 7, 2015 at your regular scheduled time.

At the orientation, we will provide you with a brief overview of the City, review its employment practices and complete all required paperwork. You will also be required to provide documentation, mandated by the federal government, to establish your right to work in this country. We have included a sheet that outlines the documents that are acceptable to meet this requirement. You cannot start work without providing us these documents. In addition, if you are an employee eligible for benefits, it is useful to bring the social security numbers and birth dates of your spouse and children in order to complete the insurance enrollment forms.

Please call us prior to the orientation session if you should have any questions regarding the process.

***Your new probationary period in accordance with your applicable contract will be 6 months in duration. The department head will be responsible for executing your probationary evaluation no later than 6 months from your first day in your new position.***

Again, welcome to the City of Waterbury.

Sincerely,

  
Scott Morgan  
Senior Human Resources Generalist

SM/sd

cc Wendy Owen, Director of Special Education  
Dr. Ouellette, Supt. of Schools  
Board of Education  
file



State of Connecticut  
**COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES**

West Central Region Office, 55 West Main Street, 2<sup>nd</sup> Floor, Suite 210, Waterbury, CT 06702

*Promoting Equality and Justice for all People*

**RETURN TO CHRO BY - December 26, 2014 – Daniel Healy, HRO Representative**

December 11, 2014

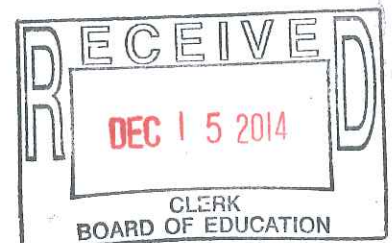
Paula N. Anthony, Esq. Office of the Corporation Counsel  
City of Waterbury  
235 Grand Street  
Waterbury, CT 06702

**SUBJECT: DRAFT REASONABLE CAUSE FINDING**  
**CHRO No.: 1330265/Byrd vs. City of Waterbury Public Schools**  
**EEOC No.: 16A201300666**

Dear Parties:

Transmitted herewith is a draft summary of Reasonable Cause Finding prepared by the investigator assigned to your complaint. I have reviewed it preliminarily and concur with it. However, prior to taking final action, I am providing you with an opportunity to comment. You have fifteen calendar (15) days from the date of this letter to provide me with any written comments concerning the investigator's proposed findings. During this period you may also review the materials in the case file and reference these in your comments. Unless I hear from you within this period, the investigation will be closed and the Commission shall proceed with its processing of the complaint.

If you do submit written comments, they will be reviewed and considered. However, if your comments do not rebut the substance of the investigator's summary or present new evidence that requires further investigation, the investigator's draft summary will be finalized.





State of Connecticut  
**COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES**

West Central Region Office, 55 West Main Street, 2<sup>nd</sup> Floor, Suite 210, Waterbury, CT 06702

*Promoting Equality and Justice for all People*

Additionally, if you submit written comments you must send a copy of the comments to the opposing party and sign the certification of mailing form attached hereto, and return it to the Commission.

Sincerely,

Donna Wilkerson Brilliant,  
West Central Region Manager

***Enclosure: Draft Summary***

cc:

Keith Byrd  
168 Mulloy Road Unit #1  
Waterbury, CT 06705

Ms. Carrie Swain, Clerk  
City of Waterbury Board of Education  
236 Grand Street  
Waterbury, CT 06702

STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES



DRAFT FINDING OF REASONABLE CAUSE

---

KEITH BYRD  
COMPLAINANT

VS.

CITY OF WATERBURY BOARD OF  
EDUCATION  
RESPONDENT

CHRO CASE NO: 1330265  
EEOC/HUD NO: 16A201300666

DATE FILED: 1/16/13  
DATE FILED: 1/16/13  
DATE AMENDED: 9/16/14

PARTIES

COMPLAINANT:

KEITH BYRD  
168 MULLOY ROAD, UNIT # 1  
WATERBURY, CT 06705

COMPLAINANT'S REPRESENTATIVE:

N/A

RESPONDENT:

CITY OF WATERBURY  
BOARD OF EDUCATION  
236 GRAND STREET  
WATERBURY, CT 06702

### RESPONDENT AGENT FOR SERVICE

MS. CARRIE SWAIN, CLERK  
CITY OF WATERBURY  
BOARD OF EDUCATION  
236 GRAND STREET  
WATERBURY, CT 06702

### RESPONDENT'S REPRESENTATIVE:

PAULA N. ANTHONY, ESQ.  
OFFICE OF CORPORATION COUNSEL,  
CITY OF WATERBURY  
235 GRAND STREET  
WATERBURY, CT 06702

### JURISDICTION

The investigator concludes that the Commission has jurisdiction to receive, investigate and issue a determination upon the merits of this complaint. However, allegations regarding conduct of the parties prior to July 20, 2012, 180 days from the time of the filing of the instant charge are time barred and outside the jurisdiction of the Commission.

### FINDINGS OF FACT

1. The Complainant is a forty-one (41) year-old (DOB: 07-11-71) disabled individual with a diagnosis of stiff person syndrome and associated autoimmune cerebellar ataxia which results in the Complainant having difficulty with walking, balance and speech.
2. The Respondent is the City of Waterbury Board of Education located at 236 Grand Street in Waterbury, Connecticut.
3. The Respondent hired the Complainant in 1998 as a teacher.
4. On or about July 1, 2009, the Respondent appointed the Complainant to the position of Vice Principal at Crosby High School effective July 1, 2009.
5. On or about July 28, 2009, the parties entered into an Administrator's Initial Contract for the school year beginning July 31, 2009 and ending June 30, 2010.
6. Under the terms of said Contract, the Contract was subject to termination by the Respondent, Superintendent of Schools, David L. Snead, Ph.D. prior to the administrator's (Complainant's) completion of 90 days of employment.
7. The Complainant successfully completed the 90 day probation period under the Contract without unilateral termination of the Contract by Snead.

8. As testified to by the Complainant, the Complainant began to experience difficulties associated with his physical disability including difficulty with his balance and his speech.
9. As testified to by the Respondent's former Personnel Director Ron Frost, now retired, age 40 and over, no physical disability, there were reports to Frost and to Shuana Tucker, the Respondent's Talent and Physical Disability Supervisor, age 40 and over, no physical disability, that they had observed the Complainant in a class setting and believed that he was exhibiting signs of and having speech and coordination issues as a result of the Complainant's physical disability prompting them to suggest that the Complainant take FMLA leave to address his health.
10. The Complainant was disabled from work as a consequence of his physical disability from October of 2009 until March of 2010.
11. In March of 2010, the Respondent presented the Complainant with the following options in regard to his continued employment with the Respondent: file for FMLA leave, resign or retire, or be terminated from the Respondent's employ based on medical incapacity.
12. On March 25, 2010, the parties to the instant case executed an Agreement relative to the Complainant's resignation.
13. Under the terms of the Agreement, the Complainant resigned his position as Vice Principal at Crosby High School effective June 30, 2010, due to medical incapacity.
14. The Agreement provided that the Respondent would place the Complainant on unpaid medical leave beginning on March 27, 2010 through June 30, 2010.
15. Under the Agreement, the Complainant was not restricted from seeking re-employment with the Respondent once medically cleared for a return to work.
16. The Complainant provided the Respondent (Tucker) with medical documentation indicating that the Complainant was able to return to work with restrictions as of May 11, 2012.

#### **JURISDICTIONAL FACTS:**

17. Between June of 2012 and August of 2012, the Complainant had several conversations with Frost regarding available positions if the Complainant should be able to seek re-employment with the Respondent.
18. Beginning in July of 2012, the Complainant had a light duty work capacity.



19. Frost was in transition with the Respondent from July of 2012 forward as the Respondent was in the process of replacing Frost due to Frost's retirement with the Respondent.
20. The interactions between the Complainant and the Respondent (Frost), the Respondent's then Personnel Director, beginning in July of 2012 are jurisdictional and timely with the Commission.
21. On August 17, 2012, the Complainant's doctor released the Complainant to full duty work. The Complainant gave the return to work note to clerical staff in Frost's office.
22. In August of 2012, the Complainant applied for a 5<sup>th</sup> grade teaching position at Howard R. Driggs Elementary School.
23. The Respondent interviewed seven applicants, including the Complainant, for the 5<sup>th</sup> grade teaching position. The interview panel consisted of Howard R. Driggs Elementary School Principal, Amy Yost, no disability, age 40 and over, and Vice Principal Jennifer Dwyer, no disability, age 40 and over.
24. The interview panel asked all seven (7) applicants the same six (6) interview questions.
25. The interview panel scored the Complainant the lowest out of the seven (7) candidates in his interview.
26. As testified to by Tucker, the Respondent did not select the Complainant for the position.
27. The candidate whom the Respondent selected had no known disability.
28. The testimony of Tucker was credible and convincing in regard to the qualifications of the selected candidate and the reason for selecting this applicant over the Complainant including the Complainant interviewed poorly, did not have a reading certificate desired for the teaching position and did not demonstrate the same level of understanding of classroom management, content knowledge, tiered intervention and parent communication.
29. Based on the testimony of Tucker, and the absence of contradictory evidence offered by the Complainant to rebut Tucker's assertions, there is insufficient evidence in the record upon which to find that the Respondent denied the Complainant the fifth grade teaching position based on a discriminatory animus by the Respondent based on one or more of the Complainant's protected class bases.
30. Frost and Tucker credibly testified that the Respondent had equal or better qualified candidates for the full time teaching position for which the Complainant also applied including that the Complainant did not interview as well as the selected candidates and that the selected candidates skill sets were better matched to the teaching position.

31. The Respondent offers credible documentary evidence and testimony to support its claim that the candidates it selected for the positions for which the Complainant applied were equally or better suited for the positions.
32. Between August of 2012 and October of 2013, the Complainant was also on a list for substitute teaching assignments.
33. As testified to by the Complainant, the Respondent routinely contacts teachers for substitute teaching work from the established list of available persons.
34. The Respondent did not contact the Complainant at all for substitute teaching work.
35. As testified to by the Complainant, the Respondent had the Complainant's current phone number on file and the phone number had not changed.
36. The reasons proffered by the Respondent, Frost and Tucker, for not contacting the Complainant for substitute teaching assignments are not credible.
37. The Respondent's actions and explanations of Frost and Tucker for not contacting the Complainant for substitute teaching assignments between August of 2012 and October of 2013, suggest a discriminatory animus toward the Complainant based on the Complainant's physical disability or perceived physical disability.
38. The Complainant is a current recipient of social security disability benefits employed elsewhere in a part-time capacity.
39. Since on or about September of 2013, the Respondent began offering the Complainant substitute teaching assignments which the Complainant has declined.
40. As testified to by the Complainant, the Complainant is not interested in a return to work for the Respondent on a part time or per diem basis.

#### **DETERMINATION**

After reviewing all of the evidence in the Commission's file, the investigator concludes that there is **reasonable cause** for believing that a discriminatory practice has been or is being committed as alleged in the complaint.

Dated and entered this 11<sup>th</sup> day of December, 2014.

**COMMISSION ON HUMAN RIGHTS  
AND OPPORTUNITIES**

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Daniel L. Healy  
Human Rights Representative