



MEMORANDUM

**FROM:** Carrie A. Swain, Clerk  
Board of Education

**DATE:** September 27, 2016

**TO:** Michael J. Dalton, City Clerk

**SUBJECT:** Notice of Committee Meetings – Thursday, September 29, 2016,  
5:30 p.m., Waterbury Arts Magnet School, **Media Center**  
Notice of Regular Meeting – Thursday, October 6, 2016, 6:30 p.m.,  
Waterbury Arts Magnet School, Atrium

The Committees of the Board of Education will meet on Thursday, September 29, 2016, 5:30 p.m. Waterbury Arts Magnet School, **Media Center**, 16 South Elm Street, Waterbury, CT.

AGENDA

SILENT PRAYER

PLEDGE ALLEGIANCE TO THE FLAG

1. Committee on Finance/5 minutes ~ Request approval of an Agreement with PowerSchool Group, LLC for a Student Information Management System [BFC: n/a] – W. Zhuta.
2. Committee on Finance/5 minutes ~ Request approval of an Agreement with ACES Cooperative Educational Services for project management services for the Student Information Management System [BFC: n/a] – W. Zhuta.
3. Committee on Finance/2 minutes ~ Request approval of the submission of the 2016-17 State Bilingual Grant application [BFC: G1/02 & G2/01] – A. Jorge Nelson.
4. Committee on Finance/2 minutes ~ Request approval of the submission of the 2016-17 Title III Grant application [BFC: G1/02 & G2/01] – A. Jorge Nelson.
5. Committee on Building/5 minutes ~ Request approval of an Agreement with Friar Associates, Inc. for design of two elevators and resurfacing of parking lots and tennis courts [BFC: n/a] – R. Brenker, O & G.
6. Committee on Building/5 minutes ~ Request acceptance of the following projects as complete: 1) Code Combination/Project #151-0243; 2) Reed Elementary School/State Project #151-0253; and 3) Waterbury Career Academy/State Project #151-0273 [BFC: n/a] (no backup) – R. Brenker, O & G.
7. Committee of the Whole/15 minutes ~ Presentation: Smarter Balance/CMT Data [BFC: G1/01, 2, & 4; G2/02 & 4] – S. Strand, P. Baim, M. Baker, N. Buckley, J. Frenis, D. Mortensen, J. Reed.
8. Committee on Finance/5 minutes ~ Request approval of an Agreement with Easter Seals Rehabilitation Center of Greater Waterbury, Inc. for a Board Certified Behavior Analyst [BFC: n/a] – W. Owen.
9. Committee on Finance/5 minutes ~ Request approval of an Agreement with Ambassador Wheelchair Services, Inc. for transportation for medically fragile students and/or students with disabilities [BFC: n/a] – R. Brenker.

10. Committee on Curriculum/2 minutes ~ Request permission be granted to Robyn Hicock, KHS, and four chaperones to take 50 students to Salem, MA on Friday, October 21, 2016 to visit various sites [BFC: G2/01].
11. Committee on School Facilities & Grounds/5 minutes ~ Use of school facilities by school organizations and/or City departments [BFC: n/a].
12. Committee on School Facilities & Grounds/5 minutes ~ Use of school facilities by outside organizations and/or waiver requests [BFC: n/a].
13. Superintendent's Notification to the Board/5 minutes: [BFC: n/a]
  - a. Athletic appointments effective immediately:  
Soucey, David – Assistant Football Coach, KHS.
  - b. Grant funded appointments effective immediately:  
DeCena, Davina – Parent Liaison, Washington School, \$15.12 per hour for 30 hours per week, school year only, non-union with salary and benefits governed by UPSEU #69, funded by Title I grant.  
Leach, Darice – Classroom Assistant, Rotella Magnet School, \$11.15 per hour for 35 hours per week, school year only, salary & benefits governed by UPSEU #68 bargaining agreement, funded by Rotella Magnet grant.  
Matazzo, Claudette – Child Associate (recalled from layoff list), Duggan School, \$22.00 per hour for 19.5 hours per week, school year only, non-union and without benefits, funded by Primary Mental Health grant.  
McIntosh, Natasha – Assistant Tutor to the Homeless, \$16.00 per hour for 8-10 hours per week, school year only, non-union and without benefits, funded by EHC&Y grant.  
Rentas, Benoni – Classroom Assistant, Sprague School, \$11.15 per hour for 35 hours per week, school year only, salary & benefits governed by UPSEU #68 bargaining agreement, funded by School Readiness grant.  
Rinaldi, Joseph – Assistant Tutor to the Homeless, \$16.00 per hour for 8-10 hours per week, school year only, non-union and without benefits, funded by EHC&Y grant.  
Walluck, Robin – Assistant Tutor to the Homeless, \$16.00 per hour for 8-10 hours per week, school year only, non-union and without benefits, funded by EHC&Y grant.
  - c. Recreation Specialist appointments, State Department of Education and 21<sup>st</sup> Grant After-school Programs, maximum of 10 hours per week @ \$12.00 p/hour, non-union and without benefits, effective immediately:  

Chase Park House: Jedidah Burke	Hopeville: Adnyl Trinidad
Driggs: Josiah Burke	Wilson: Joshua Adorno
Substitute: Rachel Lamb	
  - d. State Department of Education After-school Program appointments, Sprague School, salary according to individual's contract:  

Geraldine Horan – teacher	Stephanie Pascale – teacher
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  - e. 21<sup>st</sup> Century Grant After-school Program appointments, salary according to individual's contract:  

Jamie Donahue – PE teacher	Wesley Katrenya – PE teacher
Lauren Abarzua – Sub Teacher	Christian Baumbach – Sub Teacher
Carli Carpentieri – Sub Teacher	Vivaldi Demas – Sub Teacher
Alison Kirchberger – Sub Teacher	Marcy Peschke – Sub Teacher
  - f. Rotella Magnet School's After School Program appointments, October 3-December 8, 2016 – Monday through Thursday, salary according to individual's contract:  

Administrator – Robin Henry	AV Tech – Brian Michaud
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Grants Facilitator – Jean Zastaury

Teachers – Enrichment and/or Academics

Altieri, Christina  
Argenta, Lauren  
Barrett, Ellen  
Cipriano, Nancyjean  
Ciuffo, Stephanie  
D’Aniello, Kara  
Drysdale, Dana  
Ecke, Lisa  
Ledbetter, Brenda  
Lee, Ellen  
McLaren, Ashley  
Miller, Terri  
Rinaldi, Heather  
Shopey, Meghan  
Silva, Joseph  
Vargas, Melissa

Paras

Begin, Debra  
Cicchiello, Ersilia  
Sugrue, Kathleen

Subs

Heidgerd, Angela  
Matthews, Julia  
Monroe, Mary  
Ouellette, Bernadette  
Romano, Lisa  
Russaw, Crystal  
Santovasi, Monica  
Stanco, Barbara

Aides

Beaudoin, Janet  
Generali, Linda  
Hamel, Jacqueline  
Lopez, Elizabeth  
Meehan, Lisa  
Santos, Jeannine  
Vicenzi, Valerie  
Walters, Kimberly

g. Waterbury Career Academy Grade 8 After-school STEM Program appointments, funded by Alliance Grant:

Albini, Nicholas – Administrator  
Russo, Joseph – Sub Administrator

Solla, Anna - Secretary  
Toucet, Nyree – Sub Administrator

Teachers:

Michael Blasavage  
Reese Denu  
Jose Ferreira  
Jacqueline Lestage  
Vincent Sapone  
Ken Sirois

Joseph Chabot  
Mario Dias  
Kay Ann Hewell-Walker  
Linda Richards  
Stephanie Simms

h. Teacher new hires:

Name		Assignment		Step		Effective
Booth (Lawrence)	Caley	WMS	ELA	BA	2	8/25/2016
Gizzie	Danna	WHS	ELA	MA	3	8/26/2016
Jeon	Sunghee	WHS	Math	MA	6	9/6/2016
Johnson	Deanna	WMS	Art	MA	5	8/25/2016
Kissell	Stephen	NEMS	Science-Gr. 7	PHD	6	8/25/2016
Mangi	Theodore	Reed	Reading/LA	MA	6	9/22/2016
Oliveira	Gustavo	WSMS	Computer Educ.	MA	3	8/26/2016
Pal	Ayesha	Kingsbury	Guidance	MA	1	8/25/2016
Patrick	Kenneth	WHS	Health/Phys Ed.	BA	1	9/6/2016
Scialla	Joseph	WMS	Special Ed.	BA	3	9/6/2016
Scocozza-Johnson	Joy	Generali/Tinker	School Psych.	6TH	8	8/25/2016
Swarts	Garrett	Gilmartin	ELA	MA	1	8/25/2016

i. Adult Education appointments, effective immediately:

Iasevoli, Luigi – Security (Evening Division), \$20.00 per hour for 20 hours per week, 12 month position, non-union and without benefits.  
Krasney, Kelly – CAN CNA Instructor, \$32.00 per hour for up to 9 hours per week, 12 month position, non-union and without benefits.

j. Resignations:

Gavrillis, Diana – Carrington School, School Psychologist, eff. 10/01/16.  
Julian, Kate – Driggs School, Special Education, eff. 09/30/16.

Stirgwolt, Amanda – Waterbury Career Academy, Human Services, eff.  
09/27/16.

k. Leave of absence requests:

Coussens, Maria – Hopeville School, Literacy Facilitator, requesting an  
unpaid childrearing leave of absence from 11/24/16 through  
02/15/17.

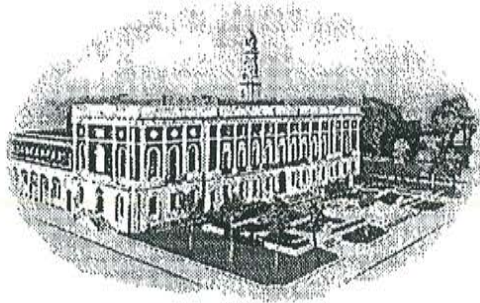
14. Committee of the Whole/120 minutes ~ Lighthouse Training (no backup)  
[BFC: n/a] – Nick Caruso/CABE.

**EXECUTIVE SESSION** for discussion concerning the appointment, employment,  
performance, evaluation, health, or dismissal of a public officer or employee.

**ADJOURNMENT**

ATTEST:   
Carrie A. Swain, Clerk  
Board of Education





#1

DEPARTMENT OF EDUCATION  
**THE CITY OF WATERBURY**  
CONNECTICUT

Memorandum

To: Board of Education/Alderman

From: Will Zhuta

Date: September 23, 2016

Re: **Board of Education/Alderman Approval Request for Student Management System/Executive Summary**

The Department of Education respectfully requests your approval of the PowerSchool and A.C.E.S contracts for a new Student Information System, the contracts total to the amount of \$321,166.00 (\$229,750.00- PowerSchool and \$91,416.00 – A.C.E.S.). This project will be funded by the Districts Alliance Grant.

Initial impetus for replacement of the current system started a few years ago, when our current provider notified us that they will only be supporting the current Student Information System (SIS) for a few more years and that maintenance will ultimately be discontinued. While, the current system has served the district for an extend time, it is based on dated technology and is limited in the ease in which modification can be made, and its ability to integrate and interface with other technologies.

The new Student Information System will provide the Waterbury Public Schools a district wide, innovative technology solution, for managing administrative functions, student records, federal and state reports and dally tasks with an intuitive solution that will allow staff to perform day-to-day functions with greater efficiency.

This contract was initiated under a Request for Proposal process. Three were 6 bidders for the project, 3 were invited to demonstrate their solution to a steering committee for consideration (*see table below*). After careful review of the RFP responses and assessment of the products, the committee selected PowerSchool's Student Information System and A.C.E.S for implementation services. (*see table below for a summary of roles and responsibilities for each vendor.*)

By separating the application, training and professional services and re-negotiating with the vendors, we were able to reduce the overall cost of the project by 40 %.

<b>Original Cost</b>	<b>\$ 532,744.00</b>
<b>Negotiated Cost</b>	<b>\$ 321,166.00</b>
<b>Savings</b>	<b>\$ 211,578.00 (40%)</b>

	Original Pricing	Negotiated Pricing	
<b>ACES</b>			
<b>Professional Services and Training</b>	\$ 140,400.00	\$ 91,416.00	2 years- onsite
<b>PowerSchool</b>	\$ 392,744.00	\$ 229,750.00	
<b>License and Subscription</b>	\$ 221,820.00	164,900.00	
<b>Implementation</b>	\$97,724.00	\$48,650.00	
<b>Training</b>	\$73,200.00	\$16,200.00	

**Hourly Rate for Professional Services and Implementation**

<b>ACES</b>	\$112.50	\$73.25 (35% savings)	\$45,708.00 for 624 hours per year
<b>PowerSchool</b>	\$275.00	\$275.00	\$171,600.00 for 624 hours
Using ACES for Implementation and training services will reduce those costs by 78%. 251,784.00 Over 2 years.			\$125,892.00 savings (78% savings)

**Recurring Costs – PowerSchool Only \$ 187,600.00**

**Steering Committee**

Will Zhuta- I.T. Director: Education  
Darren Schwartz- Chief Academic Officer  
Steven Strand- Director of Teaching and Learning  
Gary Miller- Interim Chief of Staff  
Robert Johnson- High School Principal

Kevin Eagan- Elementary School Teacher/  
President of WTA  
Dunia Rodriguez- Special Education Services  
Bill Foley- IT Specialist  
Vitto Caligiuri- IT Specialist  
Kevin McCaffery- Purchasing Agent

**Vendor Roles and Responsibilities**

ACES	PowerSchool
Project Management	Project Management
Implementation Assistance	Software License
Data Mapping	Software Installation & Hardware Design / Install Coordination
Data Conversion- Extract-Transform and Load	Data Conversion
Data Validation	
Training Services	
General & Technical	
Report Writer & Query	
Attendance & Gradebook	
Discipline & Behavior	
Portals & Dashboards	
Scheduling	
Special Education	
State Reporting	
Student Records & Demographics	
Transcripts & Grade Reporting	
Online Student Registration	
Health/Nursing	
Athletics	
Bilingual	
Guidance	

#1

**AGREEMENT**  
**RFP No. 5403**  
**for**  
**Student Information Management System**  
**between**  
**The City of Waterbury, Connecticut**  
**and**  
**PowerSchool Group, LLC**

**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 PowerSchool Group, LLC, located at 150 Parkshore Drive, Folsom, California 95630, a State of Delaware duly registered foreign Limited Liability Company ("PowerSchool").

**WHEREAS**, PowerSchool submitted a proposal to the City responding to Request for Proposal (RFP) No. 5403 for Student Management System; and

**WHEREAS**, the City accepted PowerSchool's proposal for RFP No. 5403; and

**WHEREAS**, the City desires to obtain PowerSchool'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.** PowerSchool 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. PowerSchool 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 Project Management Services, a Software license, software installation & hardware design, installation, maintenance, training and consulting, coordination and data conversion as more particularly described in **Attachment A**, attached hereto and hereby made material provisions of this Contract. **Attachment A** shall consist of the following:

- i. City of Waterbury Request for Proposal Number 5403, (consisting of 15 pages) and Additional Documents attached to RFP for additional Scope of Services shall be incorporated herein by reference.



- ii. PowerSchool response to City of Waterbury Request for Proposal Number 5403, consisting of 209 pages.
- iii. PowerSchool Quote number Q-08593-1 dated 7/25/2016
- iv. PowerSchool Licensed Product and Service Agreement (updated as of 4/6/16).
- v. PowerSchool Addendum to PowerSchool Licensed Product and Service Agreement.

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 PowerSchool. 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

- i. This Executed Agreement.
- ii. City of Waterbury Request for Proposal Number 5403, (consisting of 15 pages) and Additional Documents attached to RFP for additional Scope of Services shall be incorporated herein by reference.
- iii. PowerSchool response to City of Waterbury Request for Proposal Number 5403, consisting of 209 pages.
- iv. PowerSchool Quote number Q-08593-1 dated 7/25/2016
- v. PowerSchool Licensed Product and Service Agreement (updated as of 4/6/16).
- vi. PowerSchool Addendum to PowerSchool Licensed Product and Service Agreement.

The parties agree that in the event that any provision contained in this Executed Agreement and the PowerSchool Licensed Product and Service Agreement (updated as of 4/6/16 and PowerSchool Addendum to PowerSchool Licensed Product and Service conflict that the terms and provisions of this Executed Agreement shall prevail.

**2. PowerSchool Representations Regarding Qualification and Accreditation.** PowerSchool represents that, to the extent required by law, its employees are licensed to perform the scope of work set forth in this agreement. PowerSchool 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.** PowerSchool 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 PowerSchool 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.** PowerSchool hereby represents that, to the extent required by Federal, State and Local statutes, regulations, codes, ordinances, and policies, that PowerSchool and/or its employees be licensed, certified, registered, or otherwise qualified, PowerSchool and all employees providing services under this agreement, are in full compliance with those statutes, regulations and ordinances. Upon City request, PowerSchool shall provide to the City a copy of PowerSchool's licenses, certifications, registrations, etc.

**3. Responsibilities of PowerSchool.** All data, information, etc. given by the City to PowerSchool and/or created by PowerSchool shall be treated by PowerSchool 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. PowerSchool agrees to forever hold in confidence all files, records, documents and other information which may come into the PowerSchool'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 PowerSchool disclosure is required to comply with statute, regulation, or court order, PowerSchool shall provide prior advance written notice to the City of the need for such disclosure. PowerSchool agrees to properly implement the services required in the manner herein provided.

**A. Use of City Property.** To the extent PowerSchool is required to be on City property to render its services hereunder, PowerSchool shall have access to such areas of City property as the City and PowerSchool agree are necessary for the performance of PowerSchool's services under this agreement (the "Site" or the "Premises") and at such times as the City and PowerSchool may mutually agree. PowerSchool 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. PowerSchool 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 PowerSchool, City may, but shall not be required to, correct same at PowerSchool's expense. City shall confirm in writing any oral notice given within five (5) days thereafter.

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

**C. Cleaning Up.** To the extent PowerSchool is required to be on City property to render its services hereunder, PowerSchool shall at all times keep the premises free from accumulation of waste materials or rubbish caused by PowerSchool, 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 PowerSchool.

**D. Publicity.** PowerSchool 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 PowerSchool shall be that standard of care and skill ordinarily used by other members of PowerSchool's profession practicing under the same or similar conditions at the same time and in the same locality. PowerSchool's services rendered hereunder shall be rendered completely and by qualified personnel in accordance with standard industry practice.

**F. PowerSchool's Employees.** PowerSchool 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.** PowerSchool 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. PowerSchool 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 PowerSchool to complete Due Diligence prior to submission of its proposal shall be borne by PowerSchool. Furthermore PowerSchool 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 PowerSchool, or otherwise required, during the performance of its services, the sole responsibility for any modification, delay and cost of such changes shall reside with PowerSchool.

(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 PowerSchool 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.** For PowerSchool professional services, PowerSchool shall provide monthly invoices setting forth (i) the date of the invoice, (II) the time period covered by the invoice (iii) a brief description of the work and services completed and /or delivered by PowerSchool during the time period covered by the invoice.(vi) PowerSchool's declaration as to whether the entirety of PowerSchool'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. Each report shall be signed by

NOTE, PowerSchool'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.

**I. Confidentiality.** PowerSchool acknowledges that in the course of providing services under this Agreement, it may come into the possession of education records or information of City Waterbury students as 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) and shall comply with the requirements of said statutes and regulations and shall hold said information in the strictest of confidence, and agrees to use information obtained from the City only for the purposes provided in this Agreement. Without the prior written consent of the student's parent or guardian, as required by FERPA, the Contractor has no authority to make disclosures of any Personally Identifiable Information obtained in the course of performing this agreement.

**J. Student Data Privacy - Electronic Transmission of Student Records**

(1) PowerSchool shall comply will all relevant provisions of Public Act No. 16- 189 entitled An Act Concerning Student Data Privacy, as it applies to this contract, and agrees to take all actions designed and required by applicable State, Federal, and local law to ensure the confidentiality of all student data.

(2) PowerSchool agrees that student records, student information, and student-generated content (herein after "student data") as defined by Connecticut P.A. 16-189 are not the property of, or under the control of the POWERSCHOOL. PowerSchool agrees that it will not use student data for any purposes other than those specifically allowed under the terms of this Agreement.

(3) PowerSchool agrees that the City may at any time upon five (5) business days written notice request the deletion of student data in the possession of the PowerSchool.

(4) PowerSchool agrees that, Students, their parents or legal guardians may review personally identifiable information contained in student information, student records, or student-generated content and correct erroneous information, if any, in such student record pursuant to the Waterbury Board of Education Policy's

(5) PowerSchool agrees that it will not retain any student data or let said student data remain available to PowerSchool upon completion of the services under this Agreement unless the Parents, Legal guardians, and/or the student have entered into an Agreement with POWERSCHOOL regarding the retention of the student's data in an electronic form or database.

(6) PowerSchool agrees and is responsible to take all actions designed and required by applicable State, Federal, and local law to ensure the confidentiality of all student data.

**K. Security Breach of Student Information and Data.**

(1) **PowerSchool's Procedure for Notification Regarding Breach or Unauthorized Release of Student Information.** PowerSchool shall establish a procedure and provide a copy of said procedure to the City and its Board of Education setting forth its notification policy to the Board of Education and the Parents when there has been a breach or unauthorized release of student information or records.

(2) **PowerSchool shall provide a 30-Day notification in event of**

**unauthorized release of student information.** Upon the discovery of a breach of security that results in the unauthorized release of student information, as defined by Public Act 16-189, (excluding directory information), PowerSchool must notify the City of such breach without unreasonable delay, and in no case later than thirty (30) days from discovery of the breach. During that 30-day period, PowerSchool may (1) conduct an investigation to determine the scope of the unauthorized release and the identity of the students whose information was compromised or (2) restore the integrity of the PowerSchool's data system.

(3) **PowerSchool shall provide a 60-Day notification in event of unauthorized release of directory information, student records, or student-generated content.** Upon the discovery of a breach of security that results in the unauthorized release of directory information, student records, or student-generated content as defined by Public Act 16-189, the PowerSchool must notify the City without unreasonable delay and in no case later than sixty (60) days from discovery of the breach. During the 60-day period, PowerSchool may (1) conduct an investigation to determine the scope of the unauthorized release and the identity of the students whose information was compromised or restore the integrity of PowerSchool's data system, or (2) restore the reasonable integrity of the PowerSchool's data system.

**4. Responsibilities of the City.** Upon the City's receipt of PowerSchool's written request, the City will provide PowerSchool with all documents, data and other materials the City agrees are necessary and appropriate to the service to be performed by PowerSchool 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 PowerSchool for the purpose of carrying out the services under this agreement.

**5. Contract Time.** PowerSchool shall complete all work and services required under this agreement within one year of execution of this agreement. ("Initial term").

Time is and shall be of the essence for all Project milestones and completion dates for the Project. PowerSchool 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 PowerSchool and City, that the Contract Time is reasonable for the completion of the Work. PowerSchool shall be subject to City imposed fines and/or penalties in the event PowerSchool breaches the foregoing dates.

**6. Compensation.** The City shall compensate PowerSchool 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 PowerSchool shall not exceed **TWO HUNDRED TWENTY NINE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$229,750.00)** for the one-year term of this Agreement. The basis of payment being as set forth in PowerSchool Quote number Q-08593-1 dated 7/25/2016 and Attached hereto in Attachment A, and as set forth below.

- i. License and Subscription Fees.....\$164,900.00  
Payment to be paid within one week of effective date.
- ii. Professional Service and Set up Fees.....\$ 48,650.00
- iii. Training Services.....\$ 16,200.00

B. Payment for ii and iii above shall be made to PowerSchool on a monthly basis upon receipt of a PowerSchool monthly invoice.

**B. Limitation of Payment.** Compensation payable to PowerSchool 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 PowerSchool'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. PowerSchool'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.

PowerSchool 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 PowerSchool in an amount equaling the sum or sums of money PowerSchool and/or its affiliates is/are, or becomes delinquent or in arrears on, regarding PowerSchool's and/or its affiliate's real and personal tax obligations to the City.

**C. Review of Work.** PowerSchool shall permit the City to review, at any time, all work performed under the terms of this agreement at any stage of the work. PowerSchool 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 PowerSchool's demand for payment. The City shall not certify fees for payment to PowerSchool until the City has determined that PowerSchool has completed the work in accordance with the requirements of this agreement.

**D. Proposal Costs.** All costs of PowerSchool in preparing its proposal for RFP No. 5403 shall be solely borne by PowerSchool and are not included in the compensation to be paid by the City to PowerSchool under this agreement or any other agreement.

**E. Payment for Services, Materials, Employees.** PowerSchool 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. PowerSchool 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. PowerSchool Before final payment is made, PowerSchool shall furnish a legal statement to the City that all payments required under this subparagraph have been made.

**7. This Section Intentionally Blank.**

**8. This Section Intentionally Blank.**

**10. Indemnification.**

A. PowerSchool 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 are caused by any negligent or intentional act of PowerSchool, its employees, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, or a claim that PowerSchool has infringed upon the intellectual property of another in providing PowerSchool's products or services to the City

B. In any and all claims against the City or any of its boards, agents, employees or officers by PowerSchool or any employee of PowerSchool, 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 PowerSchool or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

C. PowerSchool understands and agrees that any insurance required by this agreement, or otherwise provided by PowerSchool, 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. PowerSchool's Insurance.** PowerSchool shall not commence work under this agreement until all insurance required under this Section 12 has been obtained by PowerSchool and such insurance has been approved by the City. PowerSchool 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 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, PowerSchool shall maintain the insurance coverages set forth below which shall protect the City from claims which may arise out of or result from PowerSchool's obligation under this agreement, whether such obligations are PowerSchool's or subcontractor or person or entity directly or indirectly employed by said PowerSchool or subcontractor, or by any person or entity for whose acts said PowerSchool or subcontractor may be liable.

PowerSchool's General, Automobile and Excess Liability Insurance policies shall be endorsed to include the City as an additional insured. The insurance afforded the additional insured shall be primary insurance and the coverage and limits provided under PowerSchool'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. 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-12 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 PowerSchool:

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A. General Liability Insurance: \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate  
\$2,000, 000 Products, Completed Operations Aggregate

B. Automobile Liability Insurance: \$1,000,000.00 combined single limit (CSL) Each Accident  
Hired Autos

C. Workers' Compensation: Statutory Limits within the State of Connecticut  
Employer Liability (EL):  
\$500,000 EL Each Accident  
\$500,000 EL Disease Each Employee  
\$500,000 EL Disease Policy Limit

D. Excess Liability Insurance: \$3,000,000.00 aggregate limit

E. Technology Professional Liability Insurance: \$1,000,000.00 aggregate limit

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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
- C. Workers' Compensation: PowerSchool 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. Technology Professional Liability Insurance: Technology Professional liability (also known as, errors and omissions) insurance providing coverage to PowerSchool.

Certificates of Insurance: At the time PowerSchool 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 included as additional insured as their interests may appear"**. The City's request for proposal number must be shown on the certificate of insurance. PowerSchool shall supply replacement/renewal certificates at least 30 days prior to the expiration of the policy (ies). Should any of the above policies be canceled before the expiration date of the policies, PowerSchool must provide written notice to the City/ Board of Education thirty (30) Days prior to cancellation.

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

**13. Conformance with Federal, State and Other Jurisdictional Requirements.** By executing this agreement, PowerSchool 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 PowerSchool 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 PowerSchool's work and services shall be secured in advance and paid by PowerSchool. PowerSchool 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 PowerSchool for transactions required or necessitated hereunder between it and its subcontractors, suppliers, etc. PowerSchool remains liable, however, for any applicable tax obligations it incurs. Moreover, PowerSchool represents that the proposal and pricing contained in this agreement do not include the amount payable for said taxes.

**C. Labor and Wages.** PowerSchool 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.

PowerSchool is aware of the provisions of Title 31, §53 of the Connecticut General Statutes, if applicable, 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 C.G.S. § 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.

PowerSchool 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, PowerSchool 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, PowerSchool 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. PowerSchool 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. This section intentionally left blank.**

**16. This section intentionally left blank.**

**17. Termination.**

**A. Termination of Agreement for Cause.** If, through any cause, in part or in full, not the fault of the City, PowerSchool shall fail to fulfill in a timely and proper manner its obligations under this agreement, or if PowerSchool shall violate any of the covenants, agreements, or stipulations of this agreement, and fails to remedy such breach in accordance with the cure provisions of this section, the City shall thereupon have the right to terminate this agreement by giving written notice to PowerSchool of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.

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



Upon receiving notice or upon learning of such breach as stated herein, the Vendor shall immediately take steps to correct the default in the thirty (30) days immediately following the receipt of such notice. In the event the default or breach cannot be cured within the thirty (30) days allotted, Vendor shall have a reasonable opportunity to cure said default or breach.

**B. Termination for Non-Appropriation or Lack of Funding.**

PowerSchool 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. PowerSchool 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 PowerSchool.

(2) **Effects of Reduced Levels of Funding.** If funding is reduced by law, or funds to pay PowerSchool for the agreed to level of the products, services and functions to be provided by PowerSchool under this agreement are not appropriated, authorized or otherwise made available by law, the City may, upon seven (7) business days written notice to PowerSchool, 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 PowerSchool for any lost or expected future profits.

**C. Rights upon Cancellation of Termination.**

(1) **Termination for Cause.** In the event the City terminates this agreement, for cause, PowerSchool 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, PowerSchool shall transfer all licenses to the City which PowerSchool is permitted to transfer in accordance with the applicable third party license. The City shall have no financial obligation to compensate

PowerSchool for such terminated documents, data, studies, reports, specifications, deliverables, etc. unless payment is otherwise approved by the City prior to such termination. PowerSchool 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 by PowerSchool.** PowerSchool may, by written notice to the City, terminate this agreement if the City materially breaches, provided that PowerSchool 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, PowerSchool will be compensated by the City for work performed prior to such termination date and PowerSchool shall deliver to the City all deliverables as otherwise set forth in this agreement.

**(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 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.

**(4) Delivery of Documents.** In the event of termination, (i) PowerSchool 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 PowerSchool 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).

**18. Force Majeure.** PowerSchool 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 PowerSchool's vendors, except where such delays are the result of lack of adequate coordination by PowerSchool.

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

**19. Subcontracting.** PowerSchool shall not, without the prior written approval of the City, subcontract, in whole or in part, any of PowerSchool's services. Any subcontractor so approved shall be required to secure and maintain insurance coverage equal to or better than that required of PowerSchool 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 PowerSchool from its requirement that all work and services provided or required hereunder shall comply with all Federal, State and Local, laws, regulations and ordinances.

PowerSchool shall be as fully responsible to the City for the acts and omissions of PowerSchool'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 PowerSchool.

**20. Assignability.** PowerSchool may assign, transfer, convey, or otherwise dispose of this Agreement or its rights, title or interest in this Agreement with the City's prior written consent. Notwithstanding the foregoing, PowerSchool Group may assign, transfer, convey, or otherwise dispose of this Agreement or its rights, title or interest in this Agreement without the City's prior written consent in the event of a sale, merger, acquisition and/or transfer of control of all or substantially all assets related to this Agreement. In the event this contract is assigned, without the City's consent, then the City shall have 30 days after the assignment to terminate this contract, and it shall be responsible for payment of services actually received.

**21. Audit.** The City reserves the right to audit PowerSchool's books of account statements, invoices, and any contracts 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, PowerSchool shall immediately make available to the City all statements, invoices, and contracts pertaining to this agreement.

**22. Risk of Damage and Loss.** PowerSchool 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 PowerSchool, by someone under the care and/or control of PowerSchool, by any subcontractor of PowerSchool, or by any shipper or delivery service. PowerSchool 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, PowerSchool 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 PowerSchool.** PowerSchool 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. PowerSchool further covenants that in the performance

of this agreement no person having any such interest shall be employed.

**24. Entire Agreement.** This agreement and its attachments 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 PowerSchool. In the event that any provisions of this Agreement or its attachments conflict with one another the City form Agreement terms and conditions shall prevail.

**25. Independent Contractor Relationship.** The relationship between the City and PowerSchool is that of client and independent contractor. No agent, employee, or servant of PowerSchool shall be deemed to be an employee, agent or servant of the City. PowerSchool 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 PowerSchool hereby agrees and covenants, that it and any and all third party(ies) and subcontractor(s) retained by PowerSchool 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 PowerSchool or between the City of Waterbury and any third party(ies) or subcontractor(s). Thus, PowerSchool 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 PowerSchool 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 PowerSchool'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 PowerSchool, any City designated representative(s), and a duly authorized representative of the City's Using Agency prior to PowerSchool'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 and its attachments represent the full and complete concurrence between the City and PowerSchool 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) PowerSchool's proposal responding to the aforementioned RFP and are hereby fully incorporated by the foregoing reference. In the event that any provisions of this Agreement or its attachments conflict with one another the City form Agreement terms and conditions shall prevail.

**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; and Continued Performance** Each party reserves its right to 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.

**31. Binding Agreement.** The City and PowerSchool 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 PowerSchool, 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:

PowerSchool: PowerSchool Group, LLC  
150 Parkshore Drive  
Folsom, CA 95630

City: City of Waterbury  
Department of Education  
c/o Director of Personnel  
235 Grand Street, 1<sup>st</sup> Floor  
Waterbury, CT 06702

Will Zhuta  
IT Administrator  
Waterbury Public Schools  
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 PowerSchool 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 PowerSchool 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. PowerSchool 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. PowerSchool 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. PowerSchool 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. PowerSchool 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 PowerSchool 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 PowerSchool 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.

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

**WITNESS:**

**CITY OF WATERBURY**

\_\_\_\_\_

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

\_\_\_\_\_

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

**WITNESS:**

**PowerSchool Group, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its \_\_\_\_\_

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

## **ATTACHMENT A**

1. City of Waterbury Request for Proposal Number 5403, (consisting of 15 pages) and Additional Documents attached to RFP for additional Scope of Services shall be incorporated herein by reference.
2. PowerSchool response to City of Waterbury Request for Proposal Number 5403, consisting of 209 pages.
3. PowerSchool Quote number Q-08593-1 dated 7/25/2016
4. PowerSchool Licensed Product and Service Agreement (updated as of 4/6/16).
5. PowerSchool Addendum to PowerSchool Licensed Product and Service Agreement.

**REQUEST FOR PROPOSAL**  
**BY**  
**THE CITY OF WATERBURY**  
***Computer Technology Center- Department of Education***  
***Student Management System***

The City of Waterbury, Department of Education (hereinafter "City"), is seeking a vendor to replace its current legacy Student Information System (SIS), a critical step in transforming the way it conducts business.

**A. Background and Intent**

The current Student Information System is based on a very stable and strategic platform, an IBM AS400 midrange computer, and has satisfied the needs of the District, as well as State and Federal requirements for the past 20 years. Now, however, we are in an era of ever increasing demand for student data, data access, flexible scheduling, integrated solutions, enhanced communications and ease of use. Due to these demands, coupled with the belief that greater demands are imminent, we believe the new Student Information System is right. Among other outcomes, a new SIS will enable the WPS to benefit from scale-economy in supporting "Best Practices" and advanced business processes; such as analytics (BI), workflow and document management.

The Waterbury Public Schools (WPS) is in the process of seeking a new Student Information Software System. WPS wishes to capitalize on new tools, technologies, applications and services. It is the intent of the WPS to enter into an agreement with the successful vendor for the purchase of the system, services and if appropriate, hardware.

Vendors may respond to any or all sections. Vendors may also partner with another provider to supply a complete turnkey solution. If your response contains proposed services or equipment from multiple providers, all responding parties must be clearly identified and a synopsis of the partner relationship as well as the party that will serve as the prime vendor/contact for the district must be detailed. The District reserves the right to "unbundle" the responses and proceed with the provider deemed most suitable. The District is seeking the best solution(s) to meet its functional requirements and is open to both single vendor and best of breed solution(s).

**B. Qualifications**

See SIS RFP Questionnaire.xlsx document attached General

**C. Scope of Services**

**See Attached Documents for additional Scope of Services requirements:**

1. Middle Management Table.docx
2. SIS- Addendum 1.docx
3. SIS RFP Questionnaire.xlsx
4. Waterbury SIS Data Dictionary.xlsx

The scope of this RFP includes a Student Information System and associated implementation services for the Waterbury Public schools. The goals of this system are to:

- Enable users at every level to interact with student data- empowering them to track, trend, analyze, interpret and act quickly
- Provide current and future internal, state, federal data reporting requirements
- Create a platform to interact directly with our current District Systems and future systems
- Create a system that allows the District to be efficient and streamlined with easy access to data, ability to create own reports, intuitive and streamlined navigation
- Enhanced and robust scheduling functionality

#### **SOFTWARE AND HARDWARE INSTALLATION**

The Vendor is expected to specify, furnish, deliver, install and support all system software and hardware (hosted model). The Vendor shall work with WPS on changes to the network, if any are required.

#### **SOFTWARE CONFIGURATION**

The Vendor is expected to meet with WPS to review and discuss software configuration prior to implementation. The outcome of these meetings will determine how the software shall be configured to best meet the needs of WPS.

#### **REPORT DEVELOPMENT**

It is expected that the system will provide the ability for end-user querying and reporting to be performed without impacting the performance of the transactional system. It is also expected that the system will provide the ability to upload and download information ensuring integrity of uploaded information. The Vendor is expected to provide assistance to WPS staff in the development of needed reports, via technical training on the tools used for report development, database schema and architecture, etc.

#### **DATA CONVERSION PLAN**

As part of this implementation, vendors are required to provide data conversion of a minimum of 5 years of the student data files and 20 years of the transcript files. Vendor is required to perform data verification to confirm that all data was transferred successfully, and will be required to obtain District signoff to confirm as well.

The successful Vendor(s) is expected to assist WPS in the conversion of electronic data and coordination and planning related to manual data conversion (e.g., hand keying). It is expected that WPS will be responsible for data extraction from current system, data scrubbing and data pre-processing activities. The successful Vendor(s) will be responsible for overall data conversion coordination, definition of file layouts, and automated data import and validation into the new software. It is expected that WPS will be responsible for any manual data conversion (e.g., hand keying).

#### **INTEGRATIONS AND INTERFACES**

It is expected that information would generally only need to be entered once into the system. Modules within the system should be integrated in real-time with each other such that batch processes are not required to transfer information from one area of the system to another unless that is the preference of WPS.

#### **TRAINING**

WPS has an expectation that:

- All end-user and technical training will be performed on-site through implementation and be delivered by the Vendor.

- End user Implementation Training will use a train-the-trainer approach including joint participation by the relevant District process owner and District Student Information Services staff supporting the process area.
- Technical Implementation Training will include training for District staff on the technologies required to support the new system.
- The awarded Vendor will be responsible for providing training materials (in electronic format) for the Initial Vendor-delivered training as well as for use by WPS for subsequent training.

The Vendor should provide an overall description of their Training approach that addresses the following:

- General Timeframes in which training will be conducted
- The Vendor must list the nature, level, and amount of training to be provided in each of the following areas:
  - Technical training
  - User training
  - Other staff (e.g., executive level administrative staff)
  - Types of documentation that will be developed by the Vendor
  - Tools that will be used in developing the training material
  - On-going training opportunities
  - Ability to provide online training material versus classroom training

Any training that cannot be easily accommodated or is not practical to be performed on-site should be specifically identified. Alternatively, WPS is open to conducting remote training via the Internet but wishes to understand the pros and cons of such an approach.

#### **TESTING**

The Vendor should describe their recommended approach to the following types of testing that are anticipated to be performed during the implementation effort and the type of assistance they anticipate providing to WPS related to testing:

- System testing
- Integration testing
- Stress / performance testing
- User acceptance testing

#### **SYSTEM DOCUMENTATION**

The Vendor is expected to provide user manuals and on-line help for use by WPS as part of the initial training and on-going operational support. Additionally, the Vendor is expected to provide technical documentation. Describe what types of documentation you anticipate developing during the course of the project.

#### **KNOWLEDGE TRANSFER**

The Vendor should describe their process for ensuring that knowledge transfer occurs back to District staff (both technical staff and end users) such that staff are capable of supporting and maintaining the application in the most proficient manner.

## **STAFFING PLAN**

The Vendor must detail the type and amount of implementation support to be provided (e.g., number of personnel, level of personnel, time commitment, etc.). Include resumes for all personnel that will be assigned to the project to include the following information:

- Role on the project
- Number of years employed at your company
- Number of years conducting their proposed role on the project
- Expected amount of time (hours) that they will be committed to the project
- Relevant previous experiences

If the Vendor is using a subcontractor, please include information on subcontracting staff being used and their specific role on the project. Additionally, the Vendor should address the following items:

- Identify the degree to which Vendor staff will be onsite versus off-site during the project
- Demonstrate your ability to provide continuity of skilled consultant resources throughout the duration of the project
- Describe the degree in which activities will be performed during normal business hours versus off-hours

Likewise, WPS requests that the Vendor provide an overall staffing plan for the project including identification of WPS resources during the course of the implementation in terms of hours or full-time equivalents (FTEs), both for District Student Information Services staff as well as those within the various District process-owning and process-using departments.

## **ON-GOING SUPPORT AND MAINTENANCE**

The Vendor must specify the nature, costs and conditions of any post-implementation support options including:

- On-site support
- Telephone support - Include the minimum response time provided as part of the basic support agreement and average response time for the past twelve (12) months.
- Delivery method of future upgrades and product enhancements.
- Hardware upgrade coordination
- Database
- Frequency of upgrades
- Five-year Roadmap including enhancements and upgrades
- Availability of user groups
- Escalation procedures for issue resolution

Identify the party or business unit that is responsible for the support options provided above.

Likewise, WPS requests that the Vendor provide information respect to expectations on District staff involvement to provide on-going support of the application

## **SYSTEM PERFORMANCE**

System response time must not impede the ability for departmental staff to perform their required job functions using the system. The system must be available 24 x 7 x 365 with a minimum of 99.99% uptime. Describe system performance of the proposed solution including reference to the following performance areas:

- Guarantees on system performance
- Studies/benchmarks on system failure frequency, duration and impact and root-cause analysis
- Problem avoidance techniques
- Evidence of system scalability to meet future needs as noted in key volumes section
- Additionally, minimum hardware, software, storage, memory, operating system and other requirements for desktop computers to access the application must be provided such that the WPS can determine the extent to which existing computers must be upgraded or replaced.

## **Project Mission**

The project mission is to provide an integrated SIS that is highly effective and efficient for students, staff and administrators. All functional areas will challenge their current ways of doing business by incorporating industry best practices and leveraging latest technologies.

## **Project Objective**

Submit a recommended implementation plan and specify the areas where service will be provided  
Clearly defined responsibilities of the project team

- Software installation and configuration
- Data conversions
- Interface development
- Training and implementation support and management

Vendor recommendations on how to ensure project success, knowledge transfer and system acceptance

- Keep project costs at a reasonable level

Proposal should clearly delineate how:

- Software system can satisfy State requirements
- Implementation plan will minimize the risk of a delayed implementation
- Proposal to include recommendations for hardware and software
- WPS may choose to purchase hardware separately

Vendor must demonstrate success:

- Ensure accurate report with the CSDE to maintain individual data including Student demographic, course data, discipline data, assessments, staff assignments and other data for state and federal reporting.
- Reduced the amount of manual and repetitive tasks
- Achieve faster access to data, quick access to information and online reporting capabilities
- Produce timely reports, include ad hoc reports without the need for extensive report generation training or continual internal support or vendor support

## **Project Deliverables**

### **Written Deliverables**

- Project Work Plan

- Project Organization Chart
- Recommendations for WPS roles and responsibilities
- Recommendations for Project structure and decision making framework
- Project communications plan
- Project Status Report
- Risk and issue management
- Architectural Design, including ERD
- Software change and control process
- Software configuration plan
- Software configuration and design documentation
- System interface plan and design documentation
- Data conversion design and plan
- Knowledge transfer plan
- Deployment plan
- Comprehensive training plan, materials, and curriculum
- Complete system documentation
- End user support plan
- Technical support plan
- Application maintenance plan (including upgrades)
- List of minimum and maximum hardware requirements

#### **Software Deliverables**

- Baseline SIS software and licenses
- Fully configured software with any customizations required to satisfy State, Federal or WPS requirements
  - Configuration- defined as any task, including system setup, which can be accomplished without any programming changes
  - Customization- defined as any changes in programming required
- Functioning of new and existing in bound and out bound interfaces
- Fully tested data conversion programs

#### **Non Software Deliverables**

- Project Kick off meeting
- Dedicated project manager who will be responsible for all project activities performed by the vendor and the vendors team
- Provide implementation leadership and guidance to WPS team
- Conduct unit and system testing
- Conduct volume and stress testing
- Support user acceptance testing
- Perform production tests
- Cutover to new software
- Conduct training
- Access to training and administration material

Conduct Project closeout meeting

It is the intent to solicit pricing for two options:



## Hosted vs. Non Hosted

1. The system is installed and hosted at the WPS. The successful vendor is responsible for the installation and configuration of all software and utilities necessary for a fully operational system and specify the hardware necessary for the system. The successful vendor will be responsible for all installation, training and conversion services for the WPS. The WPS will procure the hardware and operating system separate from this RFP and will install the operating system on the hardware for the successful vendor to use.
2. The system is installed and hosted remotely (ASP Model). The successful vendor is responsible for the installation and configuration of all software and utilities necessary for a fully operational system. The successful vendor will be responsible for installation, training and conversion services for the WPS. The successful vendor will be responsible for all hardware purchases and maintenance in this model as well as providing level 2 and level 3 support.

### D. Agreement Period

The agreement period for any contract or purchase order resulting from this RFP is anticipated to be June 2016- June 2021.

### E. General Information

1. The City is an Equal Opportunity and Affirmative Action employer and does not discriminate in its hiring, employment, or business practices. The City is committed to complying with the Americans with Disabilities Act of 1990 (ADA) and does not discriminate on the basis of disability, in admission to, access to, or operation of its programs, services, or activities.
2. **(Optional)**
3. Proposers must review and be prepared to sign, prior to the execution of any contract with the City, the items and any forms included in Attachment A. (Contract Compliance Packet)
4. All questions and communications about this request for Proposal and submission requirements must be directed to the City of Waterbury eProcurement website and must be received **by 2:00 PM on February 1<sup>st</sup>, 2016**. Prospective proposers must limit their contact regarding this RFP to Mr. Orso or such other person otherwise designated by Mr. Orso. Responses to questions submitted by the above date or identified at any Information Session to be held in regard to this RFP, **along with any changes or amendments to this RFP**, will be available via the City of Waterbury eProcurement website **by (February 8<sup>th</sup>, 2016, 2:00 PM)**. It shall be the responsibility of the proposer to download this information. If you

have any procedural questions in this regard, please call Mr. Orso at (203) 574-6748.

#### **F. Management**

Any contract or purchase order resulting from this RFP will be managed by Will Zhuta, IT Director, Education.

#### **G. Conditions**

All those submitting proposals must be willing to adhere to the following conditions and must positively state this in the proposal:

1. All proposals in response to this RFP are to be the sole property of the City. Proposers are encouraged **not** to include in their proposals any information which is proprietary. All materials associated with this procurement process are subject to the terms of state laws defining freedom of information and privacy and all rules, regulations and interpretations resulting from those laws.
2. Any product, whether acceptable or unacceptable, developed under a contract awarded as a result of the RFP is to be the sole property of the City.
3. The timing and sequence of events resulting from this RFP will ultimately be determined by the City.
4. The proposer agrees that the proposal will remain valid for a period of **90** days after the closing date for the submission and may be extended beyond that time by mutual agreement.
5. The City may amend the terms or cancel this RFP any time prior to the execution of a contract or purchase order for these services if the City deems it to be necessary, appropriate or otherwise in the best interests of the City. Failure to acknowledge receipt of amendments, in accordance with the instructions contained in the amendments, may result in a proposal not being considered. At his option, the City's Director of Purchasing may provide all proposers with a limited opportunity to remedy any technical deficiencies identified by the City in their initial review of proposals.
6. The proposer must certify that the personnel identified in its response to this RFP will be the persons actually assigned to the project. Any additions, deletions or changes in personnel from the proposal during the course of the agreement period must be approved by the City, with the exception of personnel who have terminated employment. Replacements for personnel who have terminated employment are subject to approval by the City. At its discretion, the City may require the removal and replacement of any of the

proposer's personnel who do not perform adequately, regardless of whether they were previously approved by the City.

7. All subcontractors hired by the proposer awarded a contract or purchase order as a result of this RFP must have prior approval of the City prior to and during the agreement period.
8. Any costs and expenses incurred by proposers in preparing or submitting proposals are the sole responsibility of the proposer.
9. A proposer must be prepared to present evidence of experience, ability, financial standing, and any other information deemed necessary by the City to satisfactorily meet the requirements set forth or implied in the proposal.
10. No additions or changes to the original proposal will be allowed after submittal, except as may be allowed by the City, at its option, in accordance with Section G.5. of this RFP. While changes are not permitted, clarification of proposals may be required by the City at the proposer's sole cost and expense. The final price and scope of services of any contract or purchase order resulting from this RFP may be negotiated with responsible proposers.
11. The proposer may be required to give presentations to the extent necessary to satisfy the City's requirements or needs. In some cases, proposers may have to give presentations or further explanation to any RFP selection committee established by the City.
12. The proposer represents and warrants that the proposal is not made in connection with any other proposer and is in all respects fair and without collusion or fraud. The proposer further represents and warrants that it did not participate in any part of the RFP development process, had no knowledge of the specific contents of the RFP prior to its issuance, and that no agent, representative or employee of the City participated directly in the proposer's proposal preparation.
13. All responses to the RFP must conform to instruction. Failure to include any required signatures, provide the required number of copies, to meet deadlines, answer all questions, follow the requested format, or failure to comply with any other requirements of this RFP may be considered appropriate cause for rejection of the response.
14. The proposer must accept the City's standard agreement language. See Attachment B.
15. Any contract or purchase order resulting from this RFP process will represent the entire agreement between the proposer and the City and will supersede all prior negotiations, representations or agreements, alleged or made, between the parties. The City shall assume no liability for payment of services under the terms of the contract or purchase order until the

successful proposer is notified that the contract or purchase order has been accepted and approved by the City. Any contract resulting from this RFP may be amended only by means of a written instrument signed by the proposer and signed by the Mayor.

#### H. Proposal Requirements & Required Format

One original (clearly identified as such) and (7) paper copies of the proposal, as well as a copy of the original proposal in pdf format on a CD or flash drive, must be received at the following address no later than **10:30 AM on February 24, 2016**.

Mr. Rocco Orso  
Director of Purchasing  
City of Waterbury  
235 Grand Street  
Waterbury, CT 06702

**Proposals** submitted must be bound, paginated, indexed and numbered consecutively. Proposers shall complete **Attachment C** addressed to Mr. Orso, which, in part, includes a statement by the proposer accepting all terms and conditions and requirements contained in the RFP, and which shall be signed by a duly authorized official of the organization submitting the proposal. Proposers shall also, as indicated in Attachment C, identify the name of a contact person, along with their telephone number, email address, if applicable, and address, who can be contacted for the purpose of clarifying the information contained in their response to this RFP. In addition to any other information required in Attachment C, proposers shall provide their firm's authorization and a request to any persons, firm, or corporation to furnish any information requested by the City of Waterbury in verification of the recitals included in its response to this RFP.

Proposals must set forth accurate and complete information for each of the items listed below. At the City's discretion, failure to do so could result in disqualification.

1. Proposer Information: Please provide the following information:
  - a. Firm Name
  - b. Permanent main office address
  - c. Date firm organized.
  - d. Legal Form of ownership. If a corporation, indicate where incorporated.
  - e. How many years have you been engaged in services you provide under your present name?
  - f. Names, titles, reporting relationships, and background and experience of the principal members of your organization, including officers.
2. Experience, Expertise and Capabilities

- a. Philosophy Statement and Business Focus. A statement of the proposer's philosophy and approach in undertaking the services of the nature outlined in the RFP, as well as a description of its primary business focus.
- b. Summary of Relevant Experience. A listing of all projects that the proposer has completed within the last three (3) years must be provided, as well as all projects of a similar nature to those included in the Scope of Services in this RFP. The following information shall be provided for each organization listed under this subsection:
  - Organization name and the name, title, address and telephone number of a responsible contact person.
  - Nature of services provided and dates services started and actually completed. Please indicate, for each assignment, if it was completed within the original contract timeframe and budget. If not, please explain.
  - For each project done for a municipality or other government agency, please indicate the gross cost of the agreement.

Additionally, please list any contracts or purchase orders in the last three (3) years between the proposer and any agency of the City of Waterbury.

- c. Personnel Listing. A complete listing of the staff identified in the work plan by job classification, along with their resumes. Each resume shall include the individual's qualifications and experience in the subject area.
- d. Conflict of Interest. Disclose any current (within the last 3 years) business, financial, personal or other types of relationships which may pose a conflict of interest.

### 3. Statement of Qualifications and Work Plan

- a. Qualifications. Please describe your firm's qualifications, experience and capabilities as they pertain to each of the areas of qualifications listed, as well as those of the personnel to be assigned to this project.
- b. Work Plan. Please describe the approach that would be generally followed in undertaking the Scope of Services in Section C above.
- c. Services Expected of the City. Identify the nature and scope of the services that would be generally required of the City in undertaking these projects.

### 3. Cost Schedule. (See Attached Pricing Sheet (SIS Pricing.xls))

This price should encompass the entire Scope of Services in this RFP. The City reserves the right to negotiate costs, scope of services, and key personnel based on provider proposals

**Since the City may desire to consider the proposer's experience, qualifications, statement of work, and other aspects of the RFP prior to the Cost Proposal, the Cost Proposal shall be sealed in a separate envelope marked "Confidential: Cost Proposal".**

*Note: The City is exempt from the payment of excise, transportation and sales taxes imposed by the Federal Government and/or the State. Such taxes must not be included in prices.*

5. Information Regarding: Failure to Complete Work, Default and Litigation.

Please respond to the following questions:

- a. Have you ever failed to complete any work awarded to you? If so, where and why?
- A. Have you ever defaulted on a contract? If so, where and why?
- B. Is there any pending litigation which could affect your organization's ability to perform this agreement? If so, please describe.
- a. Has your firm ever had a contract terminated for cause within the past five years? If yes, provide details.
- b. Has your firm been named in a lawsuit related to errors and omissions within the past five years? If yes, provide details.
- c. During the past seven years, has your firm ever filed for protection under the Federal bankruptcy laws? If yes, provide details.
- d. Are there any other factors or information that could affect your firm's ability to provide the services being sought about which the City should be aware?

6. Exceptions and Alternatives. Proposers wishing to take any exceptions to any requirement in the RFP shall state and explain such exceptions. The City may accept proposals which take exception to any requirements in this RFP, or which offer any alternative to a requirement herein, as well as consider such exceptions and alternatives in evaluating responses. Any exception or alternative must be clearly delineated and cannot materially affect the substance of this Request for Proposals.

7. Additional Data. Any additional information which the proposer wishes to bring to the attention of the City that is relevant to this RFP.

**I. Evaluation of Proposals; Selection Process**

1. Evaluation Criteria

The following criteria are expected to be among those utilized in the selection process. They are presented as a guide for the proposer in understanding the City's requirements and expectations for this project and are not necessarily all inclusive or presented in order of importance.

- a. Proposed statement of work. Emphasis will be on grasp of the issues involved, soundness of approach and the quality of the overall proposal.
- b. Proposed cost schedule.

- c. Experience, expertise, and capabilities of the proposer. Background, qualifications, and previous experience of personnel to be assigned to the project and their demonstrated competence, experience and expertise in the type of work to be performed. The type of experience, expertise, capabilities, and qualifications desired are outlined in Section B. - Qualifications of this RFP. The City may contact one or more of the organization references listed in Section H.2.b. of this RFP as part of assessing the experience, expertise and capabilities of the proposers or those selected as the finalist(s).
- d. Time, Project and Cost Schedule. Emphasis will be on the proposer's record with completing tasks and producing the necessary products within required time frames and within budget.

## 2. Selection Process

The City of Waterbury may elect to have the proposals evaluated by a committee as part of making a selection. If deemed necessary, the City reserves the right to arrange for interviews/oral presentations as part of the selection process, which invitations for interviews may involve a short-listing of the proposals received.

## J. Rights Reserved To The City

The City reserves the right to award in part, to reject any and all proposals in whole or in part for misrepresentation or if the proposer is in default of any prior City contract, or if the proposal limits or modifies any of the terms and conditions and/or specifications of the RFP. The City also reserves the right to waive technical defects, irregularities and omissions if, in its judgment, the best interest of the City will be served.

## K. Federal, State and Local Employment Requirements - NOT APPLICABLE

Contractors, if applicable, shall be obligated to fully comply with the attached Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects, i.e. City of Waterbury Ordinances Chapter 34 ("Good Jobs Ordinance"), Federal Davis- Bacon Act, Federal American Recovery and Reinvestment Act of 2009, and the Housing and Urban Development Section 3 Clause, all as further specified in the attached City of Waterbury Contract form. Also attached hereto, is a full copy of the aforesaid City of Waterbury Ordinance, commonly referred to as the "Good Jobs Ordinance".

## L. State Set-Aside Requirements - NOT APPLICABLE

The contractor who is selected to perform this municipal public works project, funded in whole or part by the State, must comply with CONN. GEN. STAT. §§ 4a-60, 4a-60a, 4a-60g, and 46a-68b through 46a-68f, inclusive, as amended by June 2015 Special Session Public Act 15-5. An Affirmative Action Plan must be filed with and approved by the Commission on Human Rights and Opportunities prior to the commencement of construction.

State law requires a minimum of twenty-five (25%) percent of the state-funded portion of the contract for award to subcontractors holding current certification from the Connecticut Department of Administrative Services ("DAS") under the provisions of CONN. GEN. STAT. § 4a-60g, as amended. (25% of the work with DAS certified Small and Minority owned businesses and 25% of that work with DAS certified Minority, Women and/or Disabled owned businesses.) The contractor must demonstrate good faith effort to meet the 25% set-aside goals.

For municipal public works contracts, the contractor must file a written or electronic non-discrimination certification with the Commission on Human Rights and Opportunities. Forms can be found at [http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav_GID=1806).



Finance/HR/Payroll	Lawson
Teacher Call System/Absence Module	Aesop
HR Application Management	AESOP
Student Assessment	Lexia, Mclass, Read180, Edgenuity, Echo
Student Scheduling	FCS
Student Registration	Tenex
Notification Service	Tech Radium
Parent -Teacher conference Scheduler	
Web Service Provider	
Online Payment System	
Transportation	
Food Service	iBoss
Data Warehouse/BI	Cognos
Adult Ed	
Early Childhood	
Summer School	
Gradebook	Progress Books
Health / Nursing Module	
Sports Scheduling/Athletics	
Career Planning/College Ready	Naviance
Electronic Transcripts	Naviance
Discipline/Behavior	Swis/Tenex
State Compliance	Tenex
IEP	Tienet
Medicaid	Tienet
Special Ed	Tenex
504 Tracking	Tenex
Bilingual	Tenex





PowerSchool LLC  
150 Parkshore Dr, Folsom, CA 95630  
Quote #: Q-08593-1  
Quote Expiration Date: 7/25/2016

Prepared By: Aster Laleman  
Customer Name: Waterbury School District  
Enrollment: 18,000  
# of Schools: 30.00  
Contract Term: 12 Months  
Start Date: 5/26/2016  
End Date: 5/25/2017

Customer Contact: Will Zhuta  
Title: IT Director  
Address: 236 Grand St  
City: Waterbury  
State/Province: Connecticut  
Zip Code: 06702  
Phone #: (203) 574-8004

Product Description	Quantity	Unit
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License and Subscription Fees

PS SIS Annual Fee	18,000.00	Students
PS SIS Distance Learning Annual Fee	18,000.00	Students
PS SIS Hosting	18,000.00	Students
PS SIS SSL Certificate	1.00	Each
PS SIS Hosting Promo	18,000.00	Students

License and Subscription Totals: **USD 164,900.00**

Professional Services and Setup Fees

PS SIS Standard Pub School Implementation Services	30.00	Schools
PS SIS Hardware Integration Services - Remote	5.00	Day
PS SIS Data Services - Remote	5.00	Days

Professional Services and Setup **USD 48,650.00**  
Fee Totals:

Training Services

PS SIS Training and Consulting - Onsite	6.00	Day
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Training Services Total: **USD 16,200.00**

Quote Total

Year One Total	<b>USD 229,750.00</b>
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Estimated Ongoing Fees

PS SIS Annual Fee	18,000.00	Students
PS SIS Distance Learning Annual Fee	18,000.00	Students
PS SIS Hosting	18,000.00	Students

PS SIS SSL Certificate

1.00

Each

Estimated Annual Ongoing Fees **USD 187,600.00**  
Total:

On-Going PowerSchool Subscription/Maintenance & Support Fees are invoiced at then current rates & enrollment per terms of the Licensed Product and Services Agreement, which may be subject to an annual increase after the first year for non-multi-year contracts and/or enrollment increases.

This proposal, including pricing, is valid for 60 days from the date of submission. Any applicable state sales tax has not been added to this quote. Subscription Start and Expiration Dates shall be as set forth above, which may be delayed based upon the date that PowerSchool receives your purchase order.

In the event that this quote includes promotional pricing, said promotional pricing may not be valid for the entire sixty (60) day period that governs this quotes validity.

All invoices shall be paid within thirty (30) days of the date of invoice.

**All purchase orders must contain the exact quote number stated within.**



**IMPORTANT: DO NOT ALLOW LICENSED PRODUCT (AS DEFINED BELOW) TO BE INSTALLED OR USED WITHOUT READING THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, YOU MUST RETURN THE LICENSED PRODUCT TO POWERSCHOOL WITHIN TEN (10) DAYS OF RECEIPT. BY INSTALLING AND USING THE LICENSED PRODUCT AS PERMITTED BY THIS LICENSE OR ORDERING SERVICES (AS DEFINED BELOW), YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.**

## **LICENSED PRODUCT AND SERVICES AGREEMENT**

Last updated as of April 6, 2016

1. **DEFINITIONS.** PowerSchool Group LLC, the licensor of Licensed Product pursuant to this Agreement, is referred to herein as "PowerSchool." The school, school district or other entity licensing Licensed Product is referred to herein as "Licensee." This Licensed Product and Services Agreement is referred to herein as the "Agreement." In addition, the following definitions shall apply:

1.1 **Documentation** means all written user information, whether in electronic, printed or other format, delivered or made available to Licensee by PowerSchool with respect to Licensed Product, now or in the future, including instructions, manuals, training materials, and other publications that contain, describe, explain or otherwise relate to Licensed Product.

1.2 **Embedded Applications** means software developed by third parties that may be embedded in or bundled with the software developed by PowerSchool as part of Licensed Product.

1.3 **Hosting Services** means the hosting of the Licensee's license to the Licensed Product and Third Party Software by PowerSchool or its hosting providers from a server farm that is comprised of application, data and remote access servers used to store and run the Licensed Product and Third Party Software, including associated offline components.

1.4 **Licensed Product(s)** means all software (including Embedded Applications) and subsequent versions provided under Support Services and all related Documentation licensed to Licensee pursuant to this Agreement, now or in the future; provided, however, that Licensed Product shall not include any Third Party Software.

1.5 **Licensed Sites** means Licensee's schools, administrative offices, and other locations at which Licensee conducts its school administrative functions.

1.6 **Professional Services** means data conversion, implementation, site planning, configuration, integration and deployment of the Licensed Products or Hosting Services, application development, training, project management and other consulting services.

1.7 **Support Services** is defined in section 3.1. of the Support and Services Policies attached hereto.

1.8 **Services** means Support Services, Hosting Services and Professional Services collectively.

1.9 **State Reporting Code (or SRC)** means Licensed Product that may be available to Licensee to assist Licensee in meeting specific state reporting requirements and that is designated as State Reporting Code by PowerSchool.

1.10 **Third Party Software** means any software product designated as Third Party Software by PowerSchool, and any related documentation supplied to Licensee. Any product designated as Third Party Software is licensed by an entity other than PowerSchool, under different license terms than those set forth herein. Third Party Software is different from Embedded Applications in that PowerSchool licenses the Embedded Applications to Licensee as part of Licensed Product (but in some cases, such Embedded Applications may be subject to additional license terms as identified herein). PowerSchool is not the licensor of Third Party Software.

## **2. LICENSE GRANT**

2.1 **Basic Terms.** Subject to the terms and conditions of this Agreement and the Privacy Policy located at <http://www.powerschool.com/customer-contract-privacy-policy>, PowerSchool grants to Licensee a restricted, personal, non-exclusive, non-transferable license to use the

Licensed Product specified in the PowerSchool's quotation or acceptance of License purchase order solely to support its school administrative functions, only at the Licensed Sites, not to exceed the maximum student enrollment as set forth in Section 1 of the Supplemental Terms and Conditions. Such license shall be perpetual, unless it is specified in PowerSchool's price quotation or proposal to Licensee that Licensee's license will be limited to a specified length of time, or unless this license is terminated under the provisions of this Agreement. In no event may Licensed Product be: (a) used other than at the Licensed Sites; (b) made available via a network or otherwise to any school, school district or third party other than the Licensed Sites; or (c) used to perform service bureau functions for third parties or to process or manage data for locations other than the Licensed Sites. Licensed Product will be provided by PowerSchool and may be used by Licensee in executable code form only; source code to Licensed Product will not be provided. Licensed Product shall only be used as expressly authorized by this Agreement.

2.2 **Copies.** Licensee shall not make copies of, otherwise reproduce, or allow any unauthorized and/or third-party access to any Licensed Product, except that: (a) Licensee may make copies of the software component of any Licensed Product, in executable code form, only for backup or archival purposes; and (b) Licensee may make unlimited printed copies for Licensee's internal use of any Documentation delivered by PowerSchool to Licensee. Licensee shall retain and include all of PowerSchool's or any third parties' copyright and other proprietary rights notices on all copies of Licensed Product. Licensee shall not otherwise reproduce Licensed Product.

2.3 **Supplemental Terms and Conditions.** The product-specific terms and conditions set forth in the Supplemental Terms and Conditions attached hereto are incorporated herein by reference. These additional terms and conditions are applicable to the extent that Licensee licenses any of the specific products or modules listed therein.

## **3. PROPRIETARY RIGHTS**

3.1 **Restrictions on Use of the Licensed Product and Services.** Licensee shall use the Licensed Products and Services only for the internal business purposes of Licensee. Licensee shall not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Licensed Products or Services; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Licensed Products or Services, in whole or in part, for competitive purposes or otherwise; (iii) write or develop any derivative works based upon the Licensed Product or Services; (iv) modify, adapt, translate or otherwise make any changes to the Licensed Products or Services or any part thereof; (v) use the Licensed Products or Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vi) disclose or publish, without PowerSchool prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Licensed Products or Services; or (viii) otherwise use or copy the same except as expressly permitted herein. Licensee shall not transfer, assign, provide or otherwise make Licensed Products available to any other party without the prior written consent of PowerSchool. Any attempted sublicense, assignment or transfer of any rights, duties or obligations by Licensee in violation of this Agreement shall be void. Licensee shall hold PowerSchool harmless from claims for damages resulting from Licensee's misuse of the Licensed Products and

Services, including PowerSchool's intellectual property.

**3.2 Intellectual Property Rights.** Licensed Product is proprietary to PowerSchool and/or third parties and is protected by copyright, trade secret, and other intellectual property rights. The placement of a copyright notice on any portion of Licensed Product does not mean that such portion has been published and will not derogate any claim of trade secret protection for the same. Title to all complete or partial copies, and all applicable rights to copyrights, patents, trademarks and trade secrets in Licensed Product, are and shall remain the property of PowerSchool or their other owners, as applicable.

**3.3 Confidentiality.** Licensee agrees to keep Licensed Product confidential and to prevent unauthorized disclosure or use of Licensed Product in Licensee's possession. Licensee shall notify PowerSchool immediately in writing of any unauthorized use or distribution of Licensed Product of which Licensee becomes aware and shall take all steps necessary to ensure that such unauthorized use or distribution is terminated. For any Licensed Product for which PowerSchool makes available passwords or other user identification technology to access such Licensed Product, Licensee shall advise all users of such passwords or other user identifications that such passwords or user identifications must be maintained in confidence and not transmitted or shared.

**4. SUPPORT AND OTHER SERVICES.** Any Support and/or Professional Services and/or Hosting Services ordered from PowerSchool by Licensee in connection with the license of Licensed Product shall be provided by PowerSchool pursuant to PowerSchool's terms, conditions and policies applicable at the time of order to the particular Services purchased. PowerSchool's current terms, conditions and policies for delivery of Support and Services, which are subject to change from time to time, are attached hereto as the Support and Services Policies. Licensee's license of Licensed Product does not, by itself, entitle Licensee to any support, upgrades, patches, fixes or the like for Licensed Product; Licensee must maintain a current Support subscription and pay any applicable Support fees to be eligible for Support Services. Support Services must be purchased for all licenses in Licensee's possession. Support may not be purchased or renewed for a subset of such licenses only. Support Services may not be used as a substitute for Professional Services.

**5. FEES AND TAXES.** Licensee agrees to pay PowerSchool, in accordance with PowerSchool's invoice terms, the fees charged for the Licensed Products and related Services and/or other items ordered by Licensee, together with any other charges made in accordance with this Agreement, and all applicable sales, use or other taxes or duties, however designated, except for taxes based on PowerSchool's net income. Licensee agrees to also pay for PowerSchool's reasonable travel and lodging expenses for Services performed at Licensee's premises, at actual cost. If Licensee claims tax exempt status, Licensee agrees to provide evidence of such tax exemption upon PowerSchool's request. To the extent that such tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, Licensee shall be responsible for any and all taxes and assessments that arise from this Agreement and related transactions (except for taxes based upon PowerSchool's net income). Licensee shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or, if a lower maximum rate is established by law, then such lower maximum rate. All pricing set forth in any PowerSchool quotation or invoice is in United States dollars unless otherwise specified.

**6. THIRD PARTY SOFTWARE LICENSE TERMS; EMBEDDED APPLICATIONS; OPEN SOURCE SOFTWARE.** Any software designated by PowerSchool as Third Party Software is provided to Licensee pursuant to a separate license agreement between Licensee and the third party supplier, which will be provided to Licensee by the third party supplier. All support, warranties, and services related to Third Party Software are provided by the supplier of the Third Party Software under such third party's terms and conditions, and not by PowerSchool, unless otherwise specifically provided under this Agreement. Only Sections 5, 6, 9 and 12 of this Agreement apply to Third Party Software and any related support and services set forth in this Agreement. In addition, Licensed Product may contain Embedded Applications. If any additional license terms are identified in the Supplemental Terms and Conditions with respect to any Embedded Applications, Licensee shall

comply with such conditions with respect to such applications. Certain Embedded Applications may also be subject to "open source" licensing terms. In some cases, the open source licensing terms may conflict with portions of this Agreement, and to the extent of any such conflict, the open source licensing terms shall govern, but only as to the software components subject to those terms. Notwithstanding the foregoing, Licensee acknowledges that if any open source software component is licensed under terms that permit Licensee to modify such component, and if Licensee does so modify such component, then PowerSchool will not be responsible for any incompatibility with such modifications and the remainder of the Licensed Product.

**7. COMPATIBLE PLATFORMS/HARDWARE.** Licensee is responsible for obtaining and maintaining an appropriate operating environment with the necessary hardware, operating system software and other items required to use and access Licensed Product. PowerSchool will not be responsible for any incompatibility between Licensed Product and any versions of operating systems, hardware, browsers or other products not specifically approved by PowerSchool for Licensee's use with Licensed Product. PowerSchool will make written requirements available to Licensee at Licensee's request.

**8. LIMITED MEDIA WARRANTY.** PowerSchool warrants that the media on which Licensed Product is recorded shall be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of purchase. Licensee's exclusive remedy under this Section shall be replacement of the defective media.

**9. DISCLAIMER OF OTHER WARRANTIES. LICENSED PRODUCT AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND (EXCEPT AS PROVIDED IN SECTION 8), AND POWERSCHOOL AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. POWERSCHOOL DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE LICENSED PRODUCT WILL MEET LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE LICENSED PRODUCT OR HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED PRODUCT WILL BE CORRECTED. FURTHERMORE, POWERSCHOOL DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE LICENSED PRODUCT OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, SECURITY OR OTHERWISE. LICENSEE AGREES THAT THE USE OF LICENSED PRODUCT AND SERVICES IS AT LICENSEE'S OWN RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY POWERSCHOOL OR A POWERSCHOOL REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO LICENSEE.**

**10. STATE REPORTING CODE.** Unless PowerSchool specifically offers SRC for Licensee's state, PowerSchool makes no representation that Licensed Product includes any SRC designed to meet the reporting requirements of Licensee's state. If PowerSchool does offer SRC for Licensee's state, Licensee acknowledges that the SRC is intended as a tool to assist Licensee in complying with state regulatory requirements; however, PowerSchool does not warrant that the SRC conforms to, or that use of the SRC will ensure Licensee's compliance with, all state regulatory requirements that may apply or that the SRC will be maintained to conform to such requirements now or in the future. It is Licensee's, and not PowerSchool's, responsibility to understand and comply with all such requirements.

#### **11. TERMINATION**

**11.1 Termination for Breach.** PowerSchool shall have the right to suspend performance under this Agreement in the event that Licensee is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct

such breach within such thirty (30) day period, provided that PowerSchool shall have the right to terminate this Agreement immediately upon written notice in the event that Licensee breaches any of its obligations under Section 3. Licensee further acknowledges that, as breach of the provisions of Section 3 could result in irreparable injury to PowerSchool, PowerSchool shall have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.

**11.2 Effects of Termination.** In the event of any termination of all or any portion of this Agreement, Licensee shall not be relieved of any obligation to pay any sums of money that have accrued prior to the date of termination. In addition, the provisions of Sections 3, 5, 6, 9, 11, 12 and 13 shall survive termination of this Agreement. Immediately upon any termination of a license for any Licensed Product under this Agreement, Licensee shall, at its own expense, either return to PowerSchool or destroy all copies of such Licensed Product and associated Third Party Software in its possession or control, and shall forward written certification to PowerSchool that all such copies of such Licensed Product and Third Party Software have either been destroyed or returned to PowerSchool.

**11.3 Liquidated Damages.** In the event that Licensee enters into a multi-year contract with PowerSchool and Licensee terminates the contract or any portion thereof, Licensee agrees to pay PowerSchool the remaining sum due to PowerSchool through the stated term of the contract as liquidated damages, as actual damages being impossible to calculate. Notwithstanding the foregoing, Licensee shall not be liable for said liquidated damages in the event that: (i) Licensee provides PowerSchool at least thirty (30) days' advance notice of termination prior to the effective date anniversary; and (ii) said termination is a result of the non-appropriation of funds for Licensee's contract. Licensee shall not utilize this clause as a right to terminate the contract for convenience. PowerSchool reserves the right to seek documentation evidencing the non-appropriation of funds.

**12. LIMITATION OF LIABILITY. POWERSCHOOL SHALL NOT BE LIABLE TO LICENSEE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THIS AGREEMENT, LICENSED PRODUCT, THIRD PARTY SOFTWARE, SUPPORT, SERVICES, OR OTHER ITEMS PROVIDED, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF POWERSCHOOL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT, LICENSEE SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY LICENSEE TO POWERSCHOOL HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT, ITEM OR SERVICE ON WHICH THE CLAIM IS BASED. IN ADDITION, IN NO EVENT WILL THE LIABILITY OF POWERSCHOOL RELATING TO SUPPORT SERVICES OR HOSTING SERVICES EXCEED THE TOTAL AMOUNT OF MONEY PAID BY LICENSEE TO POWERSCHOOL DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD WITH RESPECT TO THE PARTICULAR SUPPORT SERVICES OR HOSTING SERVICES ON WHICH THE CLAIM IS BASED.**

### **13. GENERAL**

**13.1 Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. This Agreement shall not be subject to the Uniform Computer Information Transactions Act.

**13.2 Compliance Verification.** During the term of the Agreement and for a period of one year following its termination, PowerSchool shall have the right to verify Licensee's full compliance with the terms and requirements of the Agreement. Licensee shall (A) provide any assistance reasonably requested by PowerSchool or its designee in conducting any such audit, including installing and operating audit software, (B) make requested personnel, records, and information available to PowerSchool or its designee, and (C) in all cases, provide

such assistance, personnel, records, systems access and information in an expeditious manner to facilitate the timely completion of such compliance verification. If such verification process reveals any noncompliance, Licensee shall reimburse PowerSchool for the reasonable costs and expenses of such verification process incurred by PowerSchool (including but not limited to reasonable attorneys' fees), and Licensee shall promptly cure any such noncompliance; provided, however, that the obligations under this section do not constitute a waiver of PowerSchool's termination rights and do not affect PowerSchool's right to payment for Services and interest fees related to usage in excess of the quantities purchased.

**13.3 General Provisions.** Neither party shall be held liable to the other party for failure of performance where such failure is caused by supervening conditions beyond that party's control, including acts of God, civil disturbance, strikes or labor disputes. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, this Agreement shall be enforced to the maximum extent possible to effectuate the original express intent of the parties. Licensee may bring no action arising out of this Agreement, regardless of form, more than one (1) year after the cause of action has arisen. In the case of notices to PowerSchool, such notices shall be sent to: PowerSchool Group LLC, Attn General Counsel, 150 Parkshore Drive, Folsom, CA 95630. In the case of notices to Licensee, such notices shall be sent to PowerSchool's address of record for Licensee. Either party may change its notice address by notifying the other in like manner. Licensee agrees that the terms of this Agreement, including all pricing for PowerSchool's products and services, shall be kept confidential and not disclosed to any third party without the prior written consent of PowerSchool.

**13.4 Facilities.** Licensee acknowledges that certain Services are intended to be performed by PowerSchool off-site (e.g., through remote communication capabilities). If any portion of the work will be performed on Licensee's premises, Licensee agrees to provide appropriate access to utilities, work space and other on-site accommodations reasonably necessary to enable PowerSchool to perform such work.

**13.5 Confidentiality.** PowerSchool agrees to use commercially reasonable efforts to maintain the confidentiality of Licensee confidential information that is disclosed to PowerSchool in connection with the performance of services, and to use such Licensee confidential information solely for purposes of performing services hereunder. PowerSchool shall require its employees, agents and subcontractors performing work hereunder to do likewise. For purposes of this Section, "Licensee confidential information" shall mean any student or personnel data belonging to Licensee, or any other Licensee information or data labeled or identified as confidential at the time of disclosure, provided, however, that this definition and the obligations of this Section shall not extend to any information that: (a) is or becomes publicly known through no fault or negligence of PowerSchool; (b) is or becomes lawfully available from a third party without restriction; (c) is independently developed by PowerSchool; or (d) is disclosed without restriction by Licensee to any third party at any time.

**13.6 Limited License.** Licensee grants to PowerSchool a non-exclusive, royalty free license, to use equipment, software, Licensee data or other material of Licensee solely for the purpose of performing its obligations under the Agreement. However, PowerSchool may use and distribute the Licensee data for any lawful purpose outside the scope of the Agreement, provided always that such Data must be aggregated and de-identified.

**13.7 Export.** Without in any way limiting the restrictions on transfer set forth elsewhere in this Agreement, Licensee specifically agrees that Licensee will not, directly or indirectly, export or transfer any export-controlled commodity, technical data or software: (a) in violation of any laws, regulations, rules or other limitations imposed by any government authority; or (b) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals.

**13.8 U.S. Government Restricted Rights.** Licensed Product is a "commercial item" as that term is defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "commercial

computer software documentation" as such terms are defined in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212, 48 C.F.R. §227.7202 and 48 C.F.R. §52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government end users acquire Licensed Product only with those rights set forth herein.

**13.9 Entire Agreement.** This Agreement, inclusive of the Supplemental Terms and Conditions and the Support and Services Policies attached hereto, constitutes the complete and entire agreement between the parties with respect to its subject matter, and

supersedes all prior discussions, understandings, arrangements, proposals and negotiations with respect to same. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Licensee with respect to Licensed Product or any related support or services, and PowerSchool hereby refuses any such different or additional provisions in purchase orders or other documents. By mutual agreement of the parties, this Agreement is effective upon receipt and supersedes all prior Agreements entered into by the parties, the parties' agents, and/or the parties' previous affiliates. This Agreement shall not be modified or amended without the written agreement of both parties.

## SUPPLEMENTAL TERMS AND CONDITIONS

**1. PRICING; ENROLLMENT INCREASES.** License pricing for Licensed Product is based on student enrollment at the Licensed Sites. If an increase in student enrollment in excess of five percent (5%) occurs at the Licensed Sites, then Licensee shall pay additional license fees to PowerSchool in accordance with PowerSchool's invoice. Such additional license fees shall be computed by multiplying the then-current per student license fee for Licensed Product by Licensee's additional enrollment. Licensee's subsequent Support invoices will be based on the increased enrollment as well.

### **2. TERMS RELATING TO EMBEDDED APPLICATIONS**

**2.1 Oracle.** The following terms are applicable to a certain Embedded Application known as Oracle Database Enterprise Edition (the "Oracle Software"):

(a) The Oracle Software may only be used in conjunction with the Licensed Product and solely for Licensee's internal business purposes.

(b) Oracle USA, Inc. ("Oracle") shall have no liability whatsoever to Licensee for any damages, whether direct, indirect, incidental, or consequential arising from Licensee's use of Licensed Product or the Oracle Software.

(c) Licensee is prohibited from publishing the results of any benchmark tests run on the Oracle Software.

(d) Licensee shall be prohibited from timesharing, rental, facility management, or service bureau use of the Oracle Software.

(e) Licensee's records may be audited, by PowerSchool or Oracle, during normal business hours to verify compliance with the terms of this Agreement.

(f) Oracle shall be a third party beneficiary of this Agreement.

(g) Oracle shall have no performance obligation or liability to Licensee in connection with this Agreement.

(h) Should the Oracle Software contain any source code provided by Oracle, such source code shall be governed by the terms of this Agreement.

**2.2 GPL Software.** Certain Embedded Applications included with the Licensed Product may be free software licensed under the terms of the GNU General Public License (GPL). Licensee may obtain a complete machine-readable copy of the source code for such free software under the terms of the GPL, without charge except for the cost of media, shipping, and handling, upon written request to PowerSchool. The GPL software is distributed in the hope that it will be useful, but WITHOUT ANY WARRANTY, including even the implied warranties of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. A complete copy of the GPL is included within the Licensed Product.

**3. HARDWARE.** If, in conjunction with Licensee's licensure of Licensed Product, Licensee is purchasing any hardware through PowerSchool, Licensee acknowledges that such hardware purchase is being facilitated by PowerSchool as an accommodation to Licensee only. The warranties on any hardware not manufactured by PowerSchool will be limited to those provided by the manufacturers of such hardware and/or the vendors through which such hardware is being supplied. PowerSchool will pass through any manufacturer's or other vendor's warranty to the extent permitted by the manufacturer or other vendor, as applicable. Licensee agrees to look solely to the applicable manufacturer or other vendor, and not to PowerSchool, to fulfill any such warranties and any maintenance, repair, support, or other service obligations related to such hardware. Unless otherwise specifically agreed to in writing by PowerSchool, PowerSchool does not provide support for any of the hardware or third party software being purchased by Licensee through PowerSchool. Any requests for such support should be directed to the applicable hardware or software manufacturer. Licensee further agrees that any claims related to any such hardware, whether for breach of warranty or otherwise, must be made directly against the applicable manufacturer or other vendor, and not against PowerSchool, and that PowerSchool shall have no liability whatsoever in connection with such claims.

## SUPPORT AND SERVICES POLICIES

### **I. SUPPORT SERVICES**

**1. Definitions.** Capitalized terms not defined herein shall have the meanings assigned to them in the applicable Licensed Product Agreement ("Agreement") between Licensee and PowerSchool to which these Support and Services Policies ("Policies") are attached. In addition, for purposes of these Policies, the following definitions shall apply:

**Errors** shall mean a reproducible failure of Licensed Product to operate in accordance with its standard Documentation, despite the proper installation and use of Licensed Product in a proper operating environment and on hardware and system software sufficient to meet PowerSchool's then-current minimum requirements, which are subject to change as New Versions are released. User mistakes are not Errors within the meaning of these Policies. Errors may be due to problems in Licensed Product, the Documentation, or both.

**Fix** shall mean a patch, service pack or corrective update of Licensed Product that PowerSchool may prepare in its discretion on an interim basis, prior to issuance of a New Version, to correct programming Errors that prevent or obstruct normal operation of Licensed Product in accordance with the applicable then-current Documentation.

**New Products** shall mean new products, programs or modules developed by PowerSchool that provide features, functions or applications not included in the Licensed Product originally licensed by Licensee and for which additional license fees apply as determined by PowerSchool. A New Product may be usable with or in addition to the Licensed Product originally licensed by Licensee. New Products will be licensed to Licensee under the terms of PowerSchool's then-current license agreement only after payment of applicable fees.

**New Version** shall mean an updated version of Licensed Product issued by PowerSchool, which may include Fixes, together with such other modifications, updates, enhancements and improvements to Licensed Product that PowerSchool may, in its discretion, develop and deem ready for distribution and that PowerSchool standardly provides to all customers with a current support subscription to such Licensed Product.

**Support Services** shall mean those support services described in Section 3.1 below that will be provided hereunder with respect to Licensed Product during Licensee's Support Term.

**Support Term** shall mean the length of time Support Services are to be provided hereunder and for which Licensee has paid any



applicable Support Services fees, including any initial Support Term and any renewal Support Terms.

**Telephone and E-mail Support** shall mean telephone and e-mail support services, available Monday through Friday, during PowerSchool's normal business hours, exclusive of PowerSchool's holidays, regarding Licensee's use of Licensed Product and any problems that Licensee experiences in using Licensed Product.

2. **Support Term; Fees.** Support Services for Licensed Product are available at an additional cost. For Support Services purchased concurrently with Licensee's license to Licensed Product, Licensee's initial Support Term will begin upon shipment of Licensed Product (or, in the case of Licensed Product made available for download electronically, upon PowerSchool's provision of the necessary licensing information to enable Licensee to download Licensed Product) and terminate one (1) year thereafter, unless a different Support Term is specified in PowerSchool's written acknowledgment of Licensee's order, or unless terminated earlier in accordance with the terms of these Policies or the Agreement. Either party may terminate the provision of Support Services as of the end of the then-current Support Term by providing written notice to the other party prior to the end of the then-current Support Term that such party does not wish to renew the Support Term. If no notice of non-renewal is given by either party, the Support Term will automatically renew for the applicable renewal term stated on PowerSchool's renewal invoice at the then current Support fees; otherwise, Licensee's Support Term will terminate at the end of Licensee's current paid-up Support Term. If Licensee's Support Term is so terminated due to non-payment, and then PowerSchool subsequently reinstates Licensee's access to support, such reinstated access shall remain subject to the terms of these Policies and payment of applicable reinstatement fees. For the initial Support Term, Licensee shall pay the charges specified in PowerSchool's initial invoice. For renewal Support Terms, Licensee shall pay PowerSchool's then-current annual Support Services fees. PowerSchool may supply new or modified Support and Services Policies or other terms and conditions to Licensee related to the provision of Support Services in a renewal term, in which event such new or modified Support and Services Policies or other terms and conditions will govern PowerSchool's provision of Support Services in such renewal term.

3. **Support Services Scope.** PowerSchool, or an entity under contract with and authorized by PowerSchool to provide Support Services, will provide Support Services for Licensed Product during the Support Term. The scope of Support Services shall be as follows:

3.1 **Support.** Support Services shall include: (a) Telephone and E-mail Support; (b) access to an online support website, as maintained by PowerSchool for customers maintaining a current support subscription; (c) Fixes, as developed and made generally available by PowerSchool in its discretion to address Errors that Licensee is experiencing in using Licensed Product; and (d) New Versions, as developed and made generally available by PowerSchool. Support Services do not include New Products. PowerSchool determines, in its sole discretion, what constitutes a New Product (for which additional license fees apply), and what improvements and enhancements to existing Licensed Product functionality are to be included in a New Version (and are therefore provided at no charge to customers with a current support subscription).

3.2 **Custom Programs.** For any custom programs developed for Licensee by PowerSchool, Support Services are available only on a time and materials basis at PowerSchool's current rates and charges for these services; support for custom programs is not included in Support Services. In addition, to the extent that Licensed Product includes any functionality that allows Licensee to customize screens or reports, PowerSchool will support the application infrastructure utilized to create such customizations but will not be responsible for supporting any such customizations.

3.3 **Requisite Training.** In order to receive Support Services described herein, Licensee must purchase appropriate training

regarding the use and operation of Licensed Product. Telephone and E-mail Support may be limited to a specified number of authorized representatives of Licensee who have been appropriately trained.

3.4 **Enhancements to SRC.** PowerSchool may provide certain enhancements to SRC to customers that are current in their payment of annual Support fees for the SRC to PowerSchool. However, PowerSchool reserves the right, in its discretion: (a) to require that additional fees be paid by customers desiring that SRC be updated in connection with new reporting requirements in their state, in the event that such state's education department or equivalent entity makes changes to the state's reporting requirements that were not anticipated at the time PowerSchool determined its applicable Support fees for the SRC in that state; or (b) not to make further changes or enhancements to SRC in a given state based on lack of market demand, the nature and scope of the changes required, or other factors.

4. **Authorized Representatives.** If Licensee has purchased Support Services for the Licensed Product from PowerSchool, then in order to receive such Support Services, Licensee shall identify to PowerSchool up to two (2) people who will contact PowerSchool with any technical and product questions ("Authorized Representatives"). If it is desired that additional Authorized Representatives be permitted to contact PowerSchool for Support, Licensee must pay additional Support fees for such additional Authorized Representatives. All such Authorized Representatives shall complete, at a minimum, PowerSchool's Initial Product Training for the Licensed Product. Licensee shall provide PowerSchool with a written list of its Authorized Representatives as part of the implementation process for the Licensed Product, and shall keep PowerSchool informed of replacements for Authorized Representatives as soon as possible after the replacements occur.

5. **Licensee Other Responsibilities.** To receive Support Services, Licensee shall: (a) report Errors or suspected Errors for which Support Services are needed, and supply PowerSchool with sufficient information and data to reproduce the Error; (b) procure, install, operate and maintain hardware, operating systems and other software that are compatible with the most current supported version of Licensed Product; (c) establish adequate operational back-up provisions in the event of malfunctions or Errors; (d) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Licensed Product; (e) maintain hardware and system software consistent with PowerSchool's minimum requirements; and (f) timely install all Fixes and New Versions supplied by PowerSchool in the proper sequence, and have the most current version of Licensed Product installed. Licensee acknowledges that Fixes and New Versions may be made available electronically, and that, in some cases, PowerSchool may maintain e-mail distribution lists that are used to notify customers of the availability of Fixes and New Versions and to provide other information to customers that are maintaining a current support subscription. Licensee shall be responsible for including the appropriate Licensee personnel on any such e-mail distribution lists of PowerSchool so that Licensee receives such notifications and other information.

6. **Support For Prior Versions.** Licensee must timely install all Fixes and New Versions to receive Support Services. In some cases, it may not be practical for certain customers to install a New Version immediately upon release. Therefore, PowerSchool may, in its discretion, continue to provide Telephone and E-mail Support for the prior version of Licensed Product for a period of time after release of a New Version. Licensee acknowledges that Fixes and other code maintenance will not be available for prior versions of Licensed Product (including SRC) after the release of a New Version.

## **II. PROFESSIONAL SERVICES**

1. **Fees and Expenses.** In addition to providing Support Services during the Support Term, PowerSchool will perform such other Professional Services (training, installation, consulting, project management, etc.) as may be specified in PowerSchool's written

acknowledgment of Licensee's order, or as may be subsequently agreed upon by the parties; provided that PowerSchool may, at its option, arrange for any such services to be performed by another entity on behalf of PowerSchool. Licensee agrees to pay for such services at the rates and charges specified in PowerSchool's written acknowledgment of Licensee's order, or, for work subsequently requested, at the rates agreed upon by Licensee and PowerSchool for such subsequent work. PowerSchool reserves the right to require a purchase order or equivalent documentation from Licensee prior to performing any such Services, or to require prepayment of certain Services. Unless otherwise specified, all rates quoted are for services to be performed during PowerSchool's normal business hours; additional charges may apply for evenings, weekends or holidays. Licensee shall also pay PowerSchool for travel expenses (lodging, meals, transportation and other related expenses) incurred in the performance of services. All such additional charges will be due and payable concurrently with payment for services. PowerSchool reserves the right to impose a minimum labor charge for each on-site visit. The rates and charges specified in PowerSchool's acknowledgment of Licensee's order shall apply to those services originally ordered; however, PowerSchool reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement. In the event that Licensee pays in advance for any services, all services must be scheduled and delivered within twelve (12) months of such payment, unless otherwise agreed in writing by PowerSchool; any portion of any prepaid services amount that has not been used by Licensee toward services actually rendered within such twelve (12) month period shall be forfeited.

2. **Training.** PowerSchool reserves the right to limit the number of persons permitted to attend any training class in accordance with PowerSchool's training standards.

3. **Services Cancellation.** Licensee shall pay a cancellation charge equal to fifty percent (50%) of the services fee and any non-refundable expenses incurred by PowerSchool if Licensee cancels any scheduled professional services less than fourteen (14) days before the occurrence of any service dates that PowerSchool has scheduled at Licensee's request.

4. **Ownership Of Materials.** PowerSchool shall be the owner of all copyrights, patent rights and other intellectual property rights in any software code, documentation, reports or other deliverables (collectively, "Deliverables") created for or provided to Licensee pursuant to Professional Services. Provided that Licensee pays PowerSchool all fees and expenses associated with the development and provision of such Deliverables, Licensee shall have a paid-up, royalty-free license to use such Deliverables for Licensee's internal use only, solely for the purpose for which such Deliverables were provided. Nothing in this Agreement shall prevent PowerSchool from providing any Deliverables to PowerSchool's other customers or third parties. Notwithstanding the foregoing, PowerSchool acknowledges and agrees that any Licensee confidential information (as defined in Section 13.5 of these Policies) that is incorporated into any Deliverable remains subject to the provisions of such Section.

### III. HOSTING SERVICES

1. **Term; Fees.** Hosting Services are available at an additional cost. For Hosting Services purchased concurrently with Licensee's license to Licensed Product, Licensee's initial Hosting Term will begin upon PowerSchool's written acknowledgment of Licensee's order and terminate one (1) year thereafter, ("Hosting Term") unless a different Hosting Term is specified in PowerSchool's written acknowledgment of Licensee's order, or unless terminated earlier in accordance with the terms of these Policies or the Agreement. Either party may terminate the provision of Hosting Services with effect as of the end of the then-current Hosting Term by providing written notice to the other party prior to the end of the then-current Term that such party does not wish to renew the Hosting Term. PowerSchool will provide Licensee with at least sixty (60) days' notice if PowerSchool determines that it will no longer offer Hosting Services to Licensee (but in any event will continue providing Hosting Services for the balance of the current term for which Licensee has prepaid for such

Services). If no notice of non-renewal is given by either party, then PowerSchool will invoice Licensee for the applicable renewal fees for a subsequent Hosting Term. If Licensee's Hosting Term is so terminated due to non-payment, and then PowerSchool subsequently reinstates Licensee's access to Hosting Services, such reinstated access shall remain subject to the terms of these Policies and payment of applicable reinstatement fees. For the initial Hosting Term, Licensee shall pay the charges specified in PowerSchool's initial invoice. For renewal Terms, Licensee shall pay PowerSchool's then-current annual Hosting Services fees. PowerSchool may supply new or modified Support and Services Policies or other terms and conditions to Licensee related to the provision of Hosting Services in a renewal term, in which event such new or modified Support and Services Policies or other terms and conditions will govern PowerSchool's provision of Hosting Services in such renewal term. Should Licensee decide to terminate hosting services, Licensee will retain its license to Licensed Product, subject to the terms of this Agreement.

2. **Availability.** Licensee acknowledges and agrees that the Licensed Product may be inaccessible or inoperable from time to time due to planned maintenance or to causes that are beyond the control of PowerSchool or are not reasonably foreseeable by PowerSchool, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively "Downtime"). PowerSchool shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Licensed Product caused by Downtime, whether scheduled or not.

3. **Acceptable Use Policy.** Licensee acknowledges and agrees that PowerSchool does not monitor or police the content of communications or data of Licensee or its users transmitted through the Services, and that PowerSchool shall not be responsible for the content of any such communications or transmissions. Licensee shall use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations and PowerSchool's policies. Licensee agrees not to post or upload any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (c) otherwise violates any applicable law. PowerSchool may remove any violating content posted or transmitted through the Hosting Services, without notice to Licensee. PowerSchool may suspend or terminate any user's access to the Hosting Services upon notice in the event that PowerSchool reasonably determines that such user has violated the terms and conditions of this Agreement.

4. **Security.** Licensee will not: (a) breach or attempt to breach the security of the Hosting Services or any network, servers, data, computers or other hardware relating to or used in connection with the Hosting Services, or any third party that is hosting or interfacing with any part of the Hosting Services; or (b) use or distribute through the Hosting Services any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the Hosting Services or the operations or assets of any other customer of PowerSchool or any third party. Licensee will comply with the user authentication requirements for use of the Hosting Services. Licensee is solely responsible for monitoring its authorized users' access to and use of the Hosting Services. PowerSchool has no obligation to verify the identity of any person who gains access to the Hosting Services by means of an access ID. Any failure by any authorized user to comply with the Agreement shall be deemed to be a material breach by Licensee, and PowerSchool shall not be liable for any damages incurred by Licensee or any third party resulting from such breach. Licensee must immediately take all necessary steps, including providing notice to PowerSchool, to effect the termination of an access ID for any authorized user if there is any compromise in the security of that access ID or if unauthorized use is suspected or has occurred.

5. **Data.** Licensee has sole responsibility for the legality, reliability, integrity, accuracy and quality of the data it processes through and submit to the Hosting Services.



## **Addendum**

This Addendum addresses amended terms to be included into the Licensed Product and Services Agreement (the "Agreement"). Except as set forth in this Addendum, the Agreement, including the quotes (Quotes #Q-08593-1 and Q-10914) attached to the Agreement, is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Addendum and the Agreement, the terms of this Addendum will prevail.

### **1. 2 LICENSE GRANT**

Delete Subsection 2.1 Basic Terms in its entirety, and replace with the following:

"2.1 Basic Terms. Subject to the terms and conditions of this Agreement and the Privacy Policy located at <http://www.powerschool.com/customer-contract-privacy-policy> that is incorporated into and made a part of this Agreement as if fully set forth herein, PowerSchool grants to Licensee a restricted, personal, non-exclusive, non-transferable license to use the Licensed Product specified in the PowerSchool's quotation or acceptance of License purchase order solely to support its school administrative functions, only at the Licensed Sites, not to exceed the maximum student enrollment as set forth in Section 1 of the Supplemental Terms and Conditions. Such license shall be perpetual, unless it is specified in PowerSchool's price quotation or proposal to Licensee that Licensee's license will be limited to a specified length of time, or unless this license is terminated under the provisions of this Agreement. In no event may Licensed Product be: (a) used other than at the Licensed Sites; (b) made available via a network or otherwise to any school, school district or third party other than the Licensed Sites; or (c) used to perform service bureau functions for third parties or to process or manage data for locations other than the Licensed Sites. Licensed Product will be provided by PowerSchool and may be used by Licensee in executable code form only; source code to Licensed Product will not be provided. Licensed Product shall only be used as expressly authorized by this Agreement."

### **2. Privacy Policy: Incorporations by State**

Delete the introductory sentence to the Incorporations by State Subsection in its entirety, and replace with the following:

"The following state laws and specific language is hereby incorporated into and made a part of this privacy policy as if fully set forth herein, provided that PowerSchool is providing and/or offering you PowerSchool Products in one of the following states:"

#### **POWERSCHOOL GROUP LLC**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

#2

**AGREEMENT**  
**RFP No. 5403**  
**for**  
**Student Information Management System**  
**between**  
**The City of Waterbury, Connecticut**  
**and**  
**Area Cooperative Educational Services**

**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 Area Cooperative Educational Services, located at 350 State Street, North Haven, CT 06753 a State of Connecticut duly registered domestic corporation (the "ACES").

**WHEREAS**, ACES submitted a proposal to the City responding to RFP No. 5403 for Computer Technology-Department of Education Student Management Systems.; and

**WHEREAS**, the City accepted ACES's proposal for RFP No. 5403 and

**WHEREAS**, the City desires to obtain ACES'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.** ACES 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. ACES 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 Project Management, Implementation Assistance, Data Mapping, Data Conversion-Extract-Transform and Load, Data Validation, and Training Services Modules to include but not be limited to: General and Technical Training, Report Writer and Query, Attendance and Gradebook, Discipline & Behavior, Portal & Dashboards, Scheduling, Special Education, State Reporting, Student Records & Demographics, Transcripts & Grade Reporting, Online Student Registration, Health/Nursing, Athletics, Bilingual, and Guidance as more particularly shown on **Attachment A** attached hereto and hereby made material provisions of this Contract. **Attachment A** shall consist of the following:

- i. City of Waterbury Request for Proposal Number 5403 (consisting of 15 page, excluding sample contract and contractor compliance documents, and additional scope of service documents)

- ii. ACES Response to City of Waterbury Request for Proposal Number 5403, consisting of 17 pages
- iii. ACES Cost Proposal Dated February 22, 2016 consisting of 7 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:

**2. ACES Representations Regarding Qualification and Accreditation.** ACES represents that, to the extent required by law, its employees are licensed to perform the scope of work set forth in this agreement. ACES 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.** ACES 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 ACES 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.** ACES hereby represents that, to the extent required by Federal, State and Local statutes, regulations, codes, ordinances, and policies, that ACES and/or its employees be licensed, certified, registered, or otherwise qualified, ACES and all employees providing services under this agreement, are in full compliance with those statutes, regulations and ordinances. Upon City request, ACES shall provide to the City a copy of ACES's licenses, certifications, registrations, etc.

**3. Responsibilities of ACES.** All data, information, etc. given by the City to ACES and/or created by ACES shall be treated by ACES 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. ACES 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 ACES disclosure is required to comply with statute, regulation, or court order, ACES shall provide prior advance written notice to the City of the need for such disclosure. ACES agrees to properly implement the services required in the manner herein provided.



**A. Use of City Property.** To the extent ACES is required to be on City property to render its services hereunder, ACES shall have access to such areas of City property as the City and ACES agree are necessary for the performance of ACES's services under this agreement (the "Site" or the "Premises") and at such times as the City and ACES may mutually agree. ACES 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. ACES 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 ACES, City may, but shall not be required to, correct same at ACES's expense. City shall confirm in writing any oral notice given within five (5) days thereafter.

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

**C. Cleaning Up.** To the extent ACES is required to be on City property to render its services hereunder, ACES shall at all times keep the premises free from accumulation of waste materials or rubbish caused by ACES, 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 ACES.

**D. Publicity.** ACES 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 ACES shall be that standard of care and skill ordinarily used by other members of ACES's profession practicing under the same or similar conditions at the same time and in the same locality. ACES's services rendered hereunder shall be rendered completely and by qualified personnel in accordance with standard industry practice.

**F. ACES' Employees.** ACES 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.** ACES 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. ACES 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 ACES to complete Due Diligence prior to submission of its proposal shall be borne by ACES. Furthermore ACES 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 ACES, or otherwise required, during the performance of its services, the sole responsibility for any modification, delay and cost of such changes shall reside with ACES.

(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 ACES 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.** ACES shall deliver periodic, quarterly, 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 Firm and/or delivered by ACES 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) ACES's declaration as to whether the entirety of ACES'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. Each report shall be signed by Steven Manley.

NOTE, ACES'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.

**I. Confidentiality.** ACES acknowledges that in the course of providing services under this Agreement, it may come into the possession of education records or information of City Waterbury students as 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) and shall comply with the requirements of said statutes and regulations and shall hold said information in the strictest of confidence, and agrees to use information obtained from the City only for the purposes provided in this Agreement. Without the prior written consent of the student's parent or guardian, as required by FERPA, the Contractor has no authority to make disclosures of any information obtained in the course of performing this agreement.

**J. Student Data Privacy - Electronic Transmission of Student Records**

(1) ACES shall comply with all relevant provisions of Public Act No. 16-189 entitled An Act Concerning Student Data Privacy, as it applies to this contract, and agrees to take all actions designed and required by applicable State, Federal, and local law to ensure the confidentiality of all student data.

(2) ACES agrees that student records, student information, and student-generated content (herein after "student data") as defined by Connecticut P.A. 16-189 are not the property of, or under the control of the ACES. ACES agrees that it will not use student data for any purposes other than those specifically allowed under the terms of this Agreement.

(3) ACES agrees that the City may at any time upon five (5) business days written notice request the deletion of student data in the possession of the ACES.

(4) ACES agrees that, Students, their parents or legal guardians may



review personally identifiable information contained in student information, student records, or student-generated content and correct erroneous information, if any, in such student record pursuant to the Waterbury Board of Education Policy's

(5) ACES agrees that it will not retain any student data or let said student data remain available to ACES upon completion of the services under this Agreement unless the Parents, Legal guardians, and/or the student have entered into an Agreement with ACES regarding the retention of the student's data in an electronic form or database.

(6) ACES agrees and is responsible to take all actions designed and required by applicable State, Federal, and local law to ensure the confidentiality of all student data.

(7) ACES agrees that it will not retain any student data or let said student data remain available to PowerSchool, PowerSchool upon completion of the services under this Agreement unless the Parents, Legal guardians, and/or the student have entered into an Agreement with the Contractor regarding the retention of the student's data in an electronic form or database.

**K. Security Breach of Student Information and Data.**

(1) **ACES' Procedure for Notification Regarding Breach or unauthorized Release of Student Information.** ACES shall establish a procedure and provide a copy of said procedure to the City and its Board of Education setting forth its notification policy to the Board of Education and the Parents when there has been a breach or unauthorized release of student information or records.

(2) **ACES shall provide a 30-Day notification in event of unauthorized release of student information.** Upon the discovery of a breach of security that results in the unauthorized release of student information, as defined by Public Act 16-189, (excluding directory information), ACES must notify the City of such breach without unreasonable delay, and in no case later than thirty (30) days from discovery of the breach. During that 30-day period, ACES may (1) conduct an investigation to determine the scope of the unauthorized release and the identity of the students whose information was compromised or (2) restore the integrity of the ACES' data system.

(3) **ACES shall provide a 60-Day notification in event of unauthorized release of directory information, student records, or student-generated content.** Upon the discovery of a breach of security that results in the unauthorized release of directory information, student records, or student-generated content as defined by Public Act 16-189, ACES must notify the City without unreasonable delay and in no case later than sixty (60) days from discovery of the breach. During the 60-day period, ACES may (1) conduct an investigation to determine the scope of the unauthorized release and the identity of the students whose information was compromised or restore the integrity of ACES data system, or (2) restore the reasonable integrity ACES' data system.

**4. Responsibilities of the City.** Upon the City's receipt of ACES's written request, the City will provide ACES with all documents, data and other materials the City agrees are necessary and appropriate to the service to be performed by ACES 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 ACES for the purpose of carrying out the services under this agreement.

**5. Contract Time.** ACES shall commence all work and services required under this Agreement upon execution of this agreement by the City and will complete all work and services required shall complete all work and services required under this agreement within on or before June 30, 2018.

Time is and shall be of the essence for all Project milestones and completion dates for the Project. ACES 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 ACES and City, that the Contract Time is reasonable for the completion of the Work. ACES shall be subject to City imposed fines and/or penalties in the event ACES breaches the foregoing dates.

**6. Compensation.** The City shall compensate ACES 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 ACES shall not exceed Ninety-One THOUSAND FOUR HUNDRED SIXTEEN DOLLARS (\$91,416.00) for the entire term of this Agreement. With the basis of payment being as further delineated in the ACES Cost Proposal dated February 22, 2016 attached hereto and made part hereof as part of Attachment A.

**B. Limitation of Payment.** Compensation payable to ACES 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 ACES'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. ACES'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.

ACES 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 ACES in an amount equaling the sum or sums of money ACES and/or its affiliates is/are, or becomes delinquent or in arrears on, regarding ACES's and/or its affiliate's real and personal tax obligations to the City.

**C. Review of Work.** ACES shall permit the City to review, at any time, all work performed under the terms of this agreement at any stage of the work. ACES

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 ACES's demand for payment. The City shall not certify fees for payment to ACES until the City has determines that ACES has completed the work in accordance with the requirements of this agreement.

**D. Proposal Costs.** All costs of ACES in preparing its proposal for RFP No. 5403 shall be solely borne by ACES and are not included in the compensation to be paid by the City to ACES under this agreement or any other agreement.

**E. Payment for Services, Materials, Employees.** ACES 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. ACES 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. ACES Before final payment is made, ACES shall furnish a legal statement to the City that all payments required under this subparagraph have been made.

**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 ACES for that item. ACES 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. ACES 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 ACES, 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 ACES or any employee of ACES, 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 ACES or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

C. ACES understands and agrees that any insurance required by this agreement, or otherwise provided by ACES, 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. ACES Insurance.** ACES shall not commence work under this Contract until all insurance required under this Section 12 has been obtained by ACES and such insurance has been approved by the City. ACES 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, ACES 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 ACES's obligation under this Contract, whether such obligations are ACES's or subcontractor or person or entity directly or indirectly employed by said Consultant or subcontractor, or by any person or entity for whose acts said Consultant or subcontractor may be liable.

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 ACES:

**General Liability Insurance: \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate and \$2,000,000.00 Products and completed operations aggregate**

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.

**Automobile Liability Insurance: \$1,000,000.00** combined single limit (CSL)  
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 auto including hired & non-owned autos..

**Workers' Compensation:** Statutory Limits within the State of Connecticut:  
Employer Liability (EL):  
\$500,000 EL Each Accident  
\$500,000 EL Disease Each Employee  
\$500,000 EL Disease Policy Limit

ACES shall comply with all State of Connecticut statutes as it relates to workers' compensation.

**Excess/Umbrella Liability Insurance: \$3,000,000.00** Aggregate limit

**Professional Liability Insurance: \$1,000,000.00** Aggregate limit  
Professional liability (also known as, errors and omissions) insurance providing coverage to ACES.

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

**Cancellation:** The City of Waterbury shall receive written notice of cancellation from ACES at least thirty (30) calendar days prior to the date of actual cancellation, regardless of the reason for such cancellation.

**Certificates of Insurance:** ACES's General, Automobile and Excess/Umbrella Liability Insurance policies shall be endorsed to add the City and its Board of Education as additional insured and provide a waiver of subrogation on all lines of coverage except Professional Liability. The insurance afforded the additional insured shall be primary and non-contributory insurance and the coverage and limits provided under ACES'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. At the time ACES executes this Contract, it shall furnish to the City, subject to City approval, certificate(s) of insurance and Additional Insured Endorsement and Waiver of Subrogation Endorsement verifying the above coverages, including the naming of the City of Waterbury, as follows: "The City of Waterbury and its Board of Education

**are listed as additional insured on all lines of coverage except Workers Compensation and Professional Liability and include a waiver of subrogation on all lines of coverage except Professional Liability as their interests may appear".** The City's request for proposal number must be shown on the certificate of insurance. ACES must supply replacement/renewal certificates at least thirty (30) calendar 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.

No later than thirty (30) calendar days after ACES receipt, ACES shall deliver to the City a copy of ACES's insurance policies, endorsements, and riders.

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

By executing this agreement, ACES 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 ACES 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 ACES's work and services shall be secured in advance and paid by ACES. ACES 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. ACES remains liable, however, for any applicable tax obligations it incurs. Moreover, ACES represents that the proposal and pricing contained in this agreement do not include the amount payable for said taxes.

**C. Labor and Wages.** ACES 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.

ACES 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, ACES 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, ACES 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. ACES 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. This Section Intentionally Blank.**

**16. This Section Intentionally Blank.**

**17. Termination.**

**A. Termination of Agreement for Cause.** If, through any cause, in part or in full, not the fault of ACES, ACES shall fail to fulfill in a timely and proper manner its obligations under this agreement, or if ACES 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 ACES 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 ACES under this agreement shall, at the option of the City, become the City's property, and ACES shall be entitled to receive just and equitable compensation for any satisfactory work completed for such.

Notwithstanding the above, ACES shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this agreement by ACES, and the City may withhold any payments to ACES for the purpose of setoff until such time as the exact amount of damages due the City from ACES 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 ACES. If this agreement is terminated by the City as provided herein, ACES 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 ACES covered by this agreement, less payments of compensation previously made.

**C. Termination for Non-Appropriation or Lack of Funding.** ACES 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. ACES 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 ACES.

(2) **Effects of Reduced Levels of Funding.** If funding is reduced by law, or funds to pay ACES for the agreed to level of the products, services and functions to be provided by ACES under this agreement are not appropriated, authorized or otherwise made available by law, the City may, upon seven (7) business days written notice to ACES, 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 ACES for any lost or expected future profits.

**D. Rights Upon Cancellation or Termination.**

(1) **Termination for Cause.** In the event the City terminates this agreement, for cause, ACES 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, ACES shall transfer all licenses to the City which ACES is permitted to transfer in accordance with the applicable third party license. The City shall have no financial obligation to compensate ACES for such terminated documents, data, studies, reports, specifications, deliverables, etc. unless payment is otherwise approved by the City prior to such termination. ACES 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 ACES for all documents, data, studies, reports, specifications, deliverables, etc. (including any holdbacks), installed and delivered to the City as of the Termination Date and ACES 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). ACES 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 ACES may negotiate a mutually acceptable payment to ACES 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 ACES.** ACES may, by written notice to the City, terminate this agreement if the City materially breaches, provided that ACES 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, ACES will be compensated by the City for work performed prior to such termination date and ACES 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) ACES 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 ACES 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 ACES'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.** ACES 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 ACES's vendors, except where such delays are the result of lack of adequate coordination by ACES.

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

**19. Subcontracting.** ACES shall not, without the prior written approval of the City, subcontract, in whole or in part, any of ACES's services. Any subcontractor so approved shall be required to secure and maintain insurance coverage equal to or better than that required of ACES 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 ACES from its requirement that all work and services provided or required hereunder shall comply with all Federal, State and Local, laws, regulations and ordinances.

ACES shall be as fully responsible to the City for the acts and omissions of ACES'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 ACES.

**20. Assignability.** ACES 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 ACES 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 ACES'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, ACES 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.** ACES 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 ACES, by

someone under the care and/or control of ACES, by any subcontractor of ACES, or by any shipper or delivery service. ACES 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, ACES 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 ACES.** ACES 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. ACES 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 ACES.

**25. Independent Contractor Relationship.** The relationship between the City and ACES is that of client and independent contractor. No agent, employee, or servant of ACES shall be deemed to be an employee, agent or servant of the City. ACES 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 ACES hereby agrees and covenants, that it and any and all third party(ies) and subcontractor(s) retained by ACES 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 ACES or between the City of Waterbury and any third party(ies) or subcontractor(s). Thus, ACES 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 ACES 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 ACES'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 ACES, any City designated representative(s), and a duly authorized representative of the City's Using Agency prior to ACES'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 ACES 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) ACES'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.** ACES 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, ACES shall continue to perform services under this agreement in a timely manner, unless otherwise directed by the City.

**31. Binding Agreement.** The City and ACES 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 ACES, 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:

ACES:                      Area Cooperative Educational Services  
                                 350 State Street  
                                 North Haven, CT 06753

City:                        City of Waterbury  
                                 c/o Department of Education  
                                 235 Grand Street, 1<sup>st</sup> Floor  
                                 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 ACES 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 ACES 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 ACES 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 ACES 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.

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

WITNESS:

CITY OF WATERBURY

\_\_\_\_\_

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

\_\_\_\_\_

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

WITNESS:

AREA COOPERATIVE EDUCATIONAL  
SERVICES

\_\_\_\_\_

By: \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_

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

## ATTACHMENT A

- i. City of Waterbury Request for Proposal Number 5403 (consisting of 15 page, excluding sample contract and contractor compliance documents, and additional scope of service documents)
- ii. ACES Response to City of Waterbury Request for Proposal Number 5403, consisting of 17 pages
- iii. ACES Cost Proposal Dated February 22, 2016 consisting of 7 pages.

**REQUEST FOR PROPOSAL  
BY  
THE CITY OF WATERBURY  
*Computer Technology Center- Department of Education  
Student Management System***

The City of Waterbury, Department of Education (hereinafter "City"), is seeking a vendor to replace its current legacy Student Information System (SIS), a critical step in transforming the way it conducts business.

**A. Background and Intent**

The current Student Information System is based on a very stable and strategic platform, an IBM AS400 midrange computer, and has satisfied the needs of the District, as well as State and Federal requirements for the past 20 years. Now, however, we are in an era of ever increasing demand for student data, data access, flexible scheduling, integrated solutions, enhanced communications and ease of use. Due to these demands, coupled with the belief that greater demands are imminent, we believe the new Student Information System is right. Among other outcomes, a new SIS will enable the WPS to benefit from scale-economy in supporting "Best Practices" and advanced business processes; such as analytics (BI), workflow and document management.

The Waterbury Public Schools (WPS) is in the process of seeking a new Student Information Software System. WPS wishes to capitalize on new tools, technologies, applications and services. It is the intent of the WPS to enter into an agreement with the successful vendor for the purchase of the system, services and if appropriate, hardware.

Vendors may respond to any or all sections. Vendors may also partner with another provider to supply a complete turnkey solution. If your response contains proposed services or equipment from multiple providers, all responding parties must be clearly identified and a synopsis of the partner relationship as well as the party that will serve as the prime vendor/contact for the district must be detailed. The District reserves the right to "unbundle" the responses and proceed with the provider deemed most suitable. The District is seeking the best solution(s) to meet its functional requirements and is open to both single vendor and best of breed solution(s).

**B. Qualifications**

See SIS RFP Questionnaire.xlsx document attached General

**C. Scope of Services**

See Attached Documents for additional Scope of Services requirements:

1. Middle Management Table.docx
2. SIS- Addendum 1.docx
3. SIS RFP Questionnaire.xlsx
4. Waterbury SIS Data Dictionary.xlsx

The scope of this RFP includes a Student Information System and associated implementation services for the Waterbury Public schools. The goals of this system are to:

- Enable users at every level to interact with student data- empowering them to track, trend, analyze, interpret and act quickly
- Provide current and future internal, state, federal data reporting requirements
- Create a platform to interact directly with our current District Systems and future systems
- Create a system that allows the District to be efficient and streamlined with easy access to data, ability to create own reports, intuitive and streamlined navigation
- Enhanced and robust scheduling functionality

#### **SOFTWARE AND HARDWARE INSTALLATION**

The Vendor is expected to specify, furnish, deliver, install and support all system software and hardware (hosted model). The Vendor shall work with WPS on changes to the network, if any are required.

#### **SOFTWARE CONFIGURATION**

The Vendor is expected to meet with WPS to review and discuss software configuration prior to implementation. The outcome of these meetings will determine how the software shall be configured to best meet the needs of WPS.

#### **REPORT DEVELOPMENT**

It is expected that the system will provide the ability for end-user querying and reporting to be performed without impacting the performance of the transactional system. It is also expected that the system will provide the ability to upload and download information ensuring integrity of uploaded information. The Vendor is expected to provide assistance to WPS staff in the development of needed reports, via technical training on the tools used for report development, database schema and architecture, etc.

#### **DATA CONVERSION PLAN**

As part of this implementation, vendors are required to provide data conversion of a minimum of 5 years of the student data files and 20 years of the transcript files. Vendor is required to perform data verification to confirm that all data was transferred successfully, and will be required to obtain District signoff to confirm as well.

The successful Vendor(s) is expected to assist WPS in the conversion of electronic data and coordination and planning related to manual data conversion (e.g., hand keying). It is expected that WPS will be responsible for data extraction from current system, data scrubbing and data pre-processing activities. The successful Vendor(s) will be responsible for overall data conversion coordination, definition of file layouts, and automated data import and validation into the new software. It is expected that WPS will be responsible for any manual data conversion (e.g., hand keying).

#### **INTEGRATIONS AND INTERFACES**

It is expected that information would generally only need to be entered once into the system. Modules within the system should be integrated in real-time with each other such that batch processes are not required to transfer information from one area of the system to another unless that is the preference of WPS.

#### **TRAINING**

WPS has an expectation that:

- All end-user and technical training will be performed on-site through implementation and be delivered by the Vendor.

- End user Implementation Training will use a train-the-trainer approach including joint participation by the relevant District process owner and District Student Information Services staff supporting the process area.
- Technical Implementation Training will include training for District staff on the technologies required to support the new system.
- The awarded Vendor will be responsible for providing training materials (in electronic format) for the initial Vendor-delivered training as well as for use by WPS for subsequent training.

The Vendor should provide an overall description of their Training approach that addresses the following:

- General Timeframes in which training will be conducted
- The Vendor must list the nature, level, and amount of training to be provided in each of the following areas:
  - Technical training
  - User training
  - Other staff (e.g., executive level administrative staff)
  - Types of documentation that will be developed by the Vendor
  - Tools that will be used in developing the training material
  - On-going training opportunities
  - Ability to provide online training material versus classroom training

Any training that cannot be easily accommodated or is not practical to be performed on-site should be specifically identified. Alternatively, WPS is open to conducting remote training via the Internet but wishes to understand the pros and cons of such an approach.

#### **TESTING**

The Vendor should describe their recommended approach to the following types of testing that are anticipated to be performed during the implementation effort and the type of assistance they anticipate providing to WPS related to testing:

- System testing
- Integration testing
- Stress / performance testing
- User acceptance testing

#### **SYSTEM DOCUMENTATION**

The Vendor is expected to provide user manuals and on-line help for use by WPS as part of the initial training and on-going operational support. Additionally, the Vendor is expected to provide technical documentation. Describe what types of documentation you anticipate developing during the course of the project.

#### **KNOWLEDGE TRANSFER**

The Vendor should describe their process for ensuring that knowledge transfer occurs back to District staff (both technical staff and end users) such that staff are capable of supporting and maintaining the application in the most proficient manner.

- Guarantees on system performance
- Studies/benchmarks on system failure frequency, duration and impact and root-cause analysis
- Problem avoidance techniques
- Evidence of system scalability to meet future needs as noted in key volumes section
- Additionally, minimum hardware, software, storage, memory, operating system and other requirements for desktop computers to access the application must be provided such that the WPS can determine the extent to which existing computers must be upgraded or replaced.

### **Project Mission**

The project mission is to provide an integrated SIS that is highly effective and efficient for students, staff and administrators. All functional areas will challenge their current ways of doing business by incorporating industry best practices and leveraging latest technologies.

### **Project Objective**

Submit a recommended Implementation plan and specify the areas where service will be provided  
Clearly defined responsibilities of the project team

- Software installation and configuration
- Data conversions
- Interface development
- Training and implementation support and management

Vendor recommendations on how to ensure project success, knowledge transfer and system acceptance

- Keep project costs at a reasonable level

Proposal should clearly delineate how:

- Software system can satisfy State requirements
- Implementation plan will minimize the risk of a delayed implementation
- Proposal to include recommendations for hardware and software
- WPS may choose to purchase hardware separately

Vendor must demonstrate success:

- Ensure accurate report with the CSDE to maintain individual data including Student demographic, course data, discipline data, assessments, staff assignments and other data for state and federal reporting.
- Reduced the amount of manual and repetitive tasks
- Achieve faster access to data, quick access to information and online reporting capabilities
- Produce timely reports, include ad hoc reports without the need for extensive report generation training or continual internal support or vendor support

### **Project Deliverables**

#### **Written Deliverables**

- Project Work Plan

- Project Organization Chart
- Recommendations for WPS roles and responsibilities
- Recommendations for Project structure and decision making framework
- Project communications plan
- Project Status Report
- Risk and issue management
- Architectural Design, including ERD
- Software change and control process
- Software configuration plan
- Software configuration and design documentation
- System interface plan and design documentation
- Data conversion design and plan
- Knowledge transfer plan
- Deployment plan
- Comprehensive training plan, materials, and curriculum
- Complete system documentation
- End user support plan
- Technical support plan
- Application maintenance plan (including upgrades)
- List of minimum and maximum hardware requirements

#### **Software Deliverables**

- Baseline SIS software and licenses
- Fully configured software with any customizations required to satisfy State, Federal or WPS requirements
  - Configuration- defined as any task, including system setup, which can be accomplished without any programming changes
  - Customization- defined as any changes in programming required
- Functioning of new and existing in bound and out bound interfaces
- Fully tested data conversion programs

#### **Non Software Deliverables**

- Project Kick off meeting
- Dedicated project manager who will be responsible for all project activities performed by the vendor and the vendors team
- Provide implementation leadership and guidance to WPS team
- Conduct unit and system testing
- Conduct volume and stress testing
- Support user acceptance testing
- Perform production tests
- Cutover to new software
- Conduct training
- Access to training and administration material

Conduct Project closeout meeting

It is the intent to solicit pricing for two options:

## Hosted vs. Non Hosted

1. The system is installed and hosted at the WPS. The successful vendor is responsible for the installation and configuration of all software and utilities necessary for a fully operational system and specify the hardware necessary for the system. The successful vendor will be responsible for all installation, training and conversion services for the WPS. The WPS will procure the hardware and operating system separate from this RFP and will install the operating system on the hardware for the successful vendor to use.
2. The system is installed and hosted remotely (ASP Model). The successful vendor is responsible for the installation and configuration of all software and utilities necessary for a fully operational system. The successful vendor will be responsible for installation, training and conversion services for the WPS. The successful vendor will be responsible for all hardware purchases and maintenance in this model as well as providing level 2 and level 3 support.

### D. Agreement Period

The agreement period for any contract or purchase order resulting from this RFP is anticipated to be June 2016- June 2021.

### E. General Information

1. The City is an Equal Opportunity and Affirmative Action employer and does not discriminate in its hiring, employment, or business practices. The City is committed to complying with the Americans with Disabilities Act of 1990 (ADA) and does not discriminate on the basis of disability, in admission to, access to, or operation of its programs, services, or activities.
2. *(Optional)*
3. Proposers must review and be prepared to sign, prior to the execution of any contract with the City, the items and any forms included in Attachment A. (Contract Compliance Packet)
4. All questions and communications about this request for Proposal and submission requirements must be directed to the City of Waterbury eProcurement website and must be received **by 2:00 PM on February 1<sup>st</sup>, 2016**. Prospective proposers must limit their contact regarding this RFP to Mr. Orso or such other person otherwise designated by Mr. Orso. Responses to questions submitted by the above date or identified at any Information Session to be held in regard to this RFP, **along with any changes or amendments to this RFP**, will be available via the City of Waterbury eProcurement website **by (February 8<sup>th</sup>, 2016, 2:00 PM)**. It shall be the responsibility of the proposer to download this information. If you



have any procedural questions in this regard, please call Mr. Orso at (203) 574-6748.

#### **F. Management**

Any contract or purchase order resulting from this RFP will be managed by Will Zhuta, IT Director, Education.

#### **G. Conditions**

All those submitting proposals must be willing to adhere to the following conditions and must positively state this in the proposal:

1. All proposals in response to this RFP are to be the sole property of the City. Proposers are encouraged **not** to include in their proposals any information which is proprietary. All materials associated with this procurement process are subject to the terms of state laws defining freedom of information and privacy and all rules, regulations and interpretations resulting from those laws.
2. Any product, whether acceptable or unacceptable, developed under a contract awarded as a result of the RFP is to be the sole property of the City.
3. The timing and sequence of events resulting from this RFP will ultimately be determined by the City.
4. The proposer agrees that the proposal will remain valid for a period of **90** days after the closing date for the submission and may be extended beyond that time by mutual agreement.
5. The City may amend the terms or cancel this RFP any time prior to the execution of a contract or purchase order for these services if the City deems it to be necessary, appropriate or otherwise in the best interests of the City. Failure to acknowledge receipt of amendments, in accordance with the instructions contained in the amendments, may result in a proposal not being considered. At his option, the City's Director of Purchasing may provide all proposers with a limited opportunity to remedy any technical deficiencies identified by the City in their initial review of proposals.
6. The proposer must certify that the personnel identified in its response to this RFP will be the persons actually assigned to the project. Any additions, deletions or changes in personnel from the proposal during the course of the agreement period must be approved by the City, with the exception of personnel who have terminated employment. Replacements for personnel who have terminated employment are subject to approval by the City. At its discretion, the City may require the removal and replacement of any of the

proposer's personnel who do not perform adequately, regardless of whether they were previously approved by the City.

7. All subcontractors hired by the proposer awarded a contract or purchase order as a result of this RFP must have prior approval of the City prior to and during the agreement period.
8. Any costs and expenses incurred by proposers in preparing or submitting proposals are the sole responsibility of the proposer.
9. A proposer must be prepared to present evidence of experience, ability, financial standing, and any other information deemed necessary by the City to satisfactorily meet the requirements set forth or implied in the proposal.
10. No additions or changes to the original proposal will be allowed after submittal, except as may be allowed by the City, at its option, in accordance with Section G.5. of this RFP. While changes are not permitted, clarification of proposals may be required by the City at the proposer's sole cost and expense. The final price and scope of services of any contract or purchase order resulting from this RFP may be negotiated with responsible proposers.
11. The proposer may be required to give presentations to the extent necessary to satisfy the City's requirements or needs. In some cases, proposers may have to give presentations or further explanation to any RFP selection committee established by the City.
12. The proposer represents and warrants that the proposal is not made in connection with any other proposer and is in all respects fair and without collusion or fraud. The proposer further represents and warrants that it did not participate in any part of the RFP development process, had no knowledge of the specific contents of the RFP prior to its issuance, and that no agent, representative or employee of the City participated directly in the proposer's proposal preparation.
13. All responses to the RFP must conform to instruction. Failure to include any required signatures, provide the required number of copies, to meet deadlines, answer all questions, follow the requested format, or failure to comply with any other requirements of this RFP may be considered appropriate cause for rejection of the response.
14. The proposer must accept the City's standard agreement language. See Attachment B.
15. Any contract or purchase order resulting from this RFP process will represent the entire agreement between the proposer and the City and will supersede all prior negotiations, representations or agreements, alleged or made, between the parties. The City shall assume no liability for payment of services under the terms of the contract or purchase order until the

successful proposer is notified that the contract or purchase order has been accepted and approved by the City. Any contract resulting from this RFP may be amended only by means of a written instrument signed by the proposer and signed by the Mayor.

#### **H. Proposal Requirements & Required Format**

One original (clearly identified as such) and (7) paper copies of the proposal, as well as a copy of the original proposal in pdf format on a CD or flash drive, must be received at the following address no later than **10:30 AM on February 24, 2016.**

Mr. Rocco Orso  
Director of Purchasing  
City of Waterbury  
235 Grand Street  
Waterbury, CT 06702

**Proposals** submitted must be bound, paginated, indexed and numbered consecutively. Proposers shall complete Attachment C addressed to Mr. Orso, which, in part, includes a statement by the proposer accepting all terms and conditions and requirements contained in the RFP, and which shall be signed by a duly authorized official of the organization submitting the proposal. Proposers shall also, as indicated in Attachment C, identify the name of a contact person, along with their telephone number, email address, if applicable, and address, who can be contacted for the purpose of clarifying the information contained in their response to this RFP. In addition to any other information required in Attachment C, proposers shall provide their firm's authorization and a request to any persons, firm, or corporation to furnish any information requested by the City of Waterbury in verification of the recitals included in its response to this RFP.

Proposals must set forth accurate and complete information for each of the items listed below. At the City's discretion, failure to do so could result in disqualification.

1. Proposer Information: Please provide the following information:
  - a. Firm Name
  - b. Permanent main office address
  - c. Date firm organized.
  - d. Legal Form of ownership. If a corporation, indicate where incorporated.
  - e. How many years have you been engaged in services you provide under your present name?
  - f. Names, titles, reporting relationships, and background and experience of the principal members of your organization, including officers.
2. Experience, Expertise and Capabilities

- a. Philosophy Statement and Business Focus. A statement of the proposer's philosophy and approach in undertaking the services of the nature outlined in the RFP, as well as a description of its primary business focus.
- b. Summary of Relevant Experience. A listing of all projects that the proposer has completed within the last three (3) years must be provided, as well as all projects of a similar nature to those included in the Scope of Services in this RFP. The following information shall be provided for each organization listed under this subsection:

- Organization name and the name, title, address and telephone number of a responsible contact person.
- Nature of services provided and dates services started and actually completed. Please indicate, for each assignment, if it was completed within the original contract timeframe and budget. If not, please explain.
- For each project done for a municipality or other government agency, please indicate the gross cost of the agreement.

Additionally, please list any contracts or purchase orders in the last three (3) years between the proposer and any agency of the City of Waterbury.

- c. Personnel Listing. A complete listing of the staff identified in the work plan by job classification, along with their resumes. Each resume shall include the individual's qualifications and experience in the subject area.
- d. Conflict of Interest. Disclose any current (within the last 3 years) business, financial, personal or other types of relationships which may pose a conflict of interest.

### 3. Statement of Qualifications and Work Plan

- a. Qualifications. Please describe your firm's qualifications, experience and capabilities as they pertain to each of the areas of qualifications listed, as well as those of the personnel to be assigned to this project.
- b. Work Plan. Please describe the approach that would be generally followed in undertaking the Scope of Services in Section C above.
- c. Services Expected of the City. Identify the nature and scope of the services that would be generally required of the City in undertaking these projects.

### 3. Cost Schedule. (See Attached Pricing Sheet (SIS Pricing.xls))

This price should encompass the entire Scope of Services in this RFP. The City reserves the right to negotiate costs, scope of services, and key personnel based on provider proposals

Since the City may desire to consider the proposer's experience, qualifications, statement of work, and other aspects of the RFP prior to the Cost Proposal, the Cost Proposal shall be sealed in a separate envelope marked "Confidential: Cost Proposal".

*Note: The City is exempt from the payment of excise, transportation and sales taxes imposed by the Federal Government and/or the State. Such taxes must not be included in prices.*

5. Information Regarding: Failure to Complete Work, Default and Litigation.

Please respond to the following questions:

- a. Have you ever failed to complete any work awarded to you? If so, where and why?
- A. Have you ever defaulted on a contract? If so, where and why?
- B. Is there any pending litigation which could affect your organization's ability to perform this agreement? If so, please describe.
- a. Has your firm ever had a contract terminated for cause within the past five years? If yes, provide details.
- b. Has your firm been named in a lawsuit related to errors and omissions within the past five years? If yes, provide details.
- c. During the past seven years, has your firm ever filed for protection under the Federal bankruptcy laws? If yes, provide details.
- d. Are there any other factors or information that could affect your firm's ability to provide the services being sought about which the City should be aware?

6. Exceptions and Alternatives. Proposers wishing to take any exceptions to any requirement in the RFP shall state and explain such exceptions. The City may accept proposals which take exception to any requirements in this RFP, or which offer any alternative to a requirement herein, as well as consider such exceptions and alternatives in evaluating responses. Any exception or alternative must be clearly delineated and cannot materially affect the substance of this Request for Proposals.

7. Additional Data. Any additional information which the proposer wishes to bring to the attention of the City that is relevant to this RFP.

**I. Evaluation of Proposals; Selection Process**

1. Evaluation Criteria

The following criteria are expected to be among those utilized in the selection process. They are presented as a guide for the proposer in understanding the City's requirements and expectations for this project and are not necessarily all inclusive or presented in order of importance.

- a. Proposed statement of work. Emphasis will be on grasp of the issues involved, soundness of approach and the quality of the overall proposal.
- b. Proposed cost schedule.

- c. Experience, expertise, and capabilities of the proposer. Background, qualifications, and previous experience of personnel to be assigned to the project and their demonstrated competence, experience and expertise in the type of work to be performed. The type of experience, expertise, capabilities, and qualifications desired are outlined in Section B. - Qualifications of this RFP. The City may contact one or more of the organization references listed in Section H.2.b. of this RFP as part of assessing the experience, expertise and capabilities of the proposers or those selected as the finalist(s).
- d. Time, Project and Cost Schedule. Emphasis will be on the proposer's record with completing tasks and producing the necessary products within required time frames and within budget.

## **2. Selection Process**

**The City of Waterbury may elect to have the proposals evaluated by a committee as part of making a selection. If deemed necessary, the City reserves the right to arrange for interviews/oral presentations as part of the selection process, which invitations for interviews may involve a short-listing of the proposals received.**

## **J. Rights Reserved To The City**

The City reserves the right to award in part, to reject any and all proposals in whole or in part for misrepresentation or if the proposer is in default of any prior City contract, or if the proposal limits or modifies any of the terms and conditions and/or specifications of the RFP. The City also reserves the right to waive technical defects, irregularities and omissions if, in its judgment, the best interest of the City will be served.

## **K. Federal, State and Local Employment Requirements - NOT APPLICABLE**

Contractors, if applicable, shall be obligated to fully comply with the attached Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects, i.e. City of Waterbury Ordinances Chapter 34 ("Good Jobs Ordinance"), Federal Davis- Bacon Act, Federal American Recovery and Reinvestment Act of 2009, and the Housing and Urban Development Section 3 Clause, all as further specified in the attached City of Waterbury Contract form. Also attached hereto, is a full copy of the aforesaid City of Waterbury Ordinance, commonly referred to as the "Good Jobs Ordinance".

## **L. State Set-Aside Requirements - NOT APPLICABLE**

The contractor who is selected to perform this municipal public works project, funded in whole or part by the State, must comply with CONN. GEN. STAT. §§ 4a-60, 4a-60a, 4a-60g, and 46a-68b through 46a-68f, inclusive, as amended by June 2015 Special Session Public Act 15-5. An Affirmative Action Plan must be filed with and approved by the Commission on Human Rights and Opportunities prior to the commencement of construction.

State law requires a minimum of twenty-five (25%) percent of the state-funded portion of the contract for award to subcontractors holding current certification from the Connecticut Department of Administrative Services ("DAS") under the provisions of CONN. GEN. STAT. § 4a-60g, as amended. (25% of the work with DAS certified Small and Minority owned businesses and 25% of that work with DAS certified Minority, Women and/or Disabled owned businesses.) The contractor must demonstrate good faith effort to meet the 25% set-aside goals.

For municipal public works contracts, the contractor must file a written or electronic non-discrimination certification with the Commission on Human Rights and Opportunities.

Forms can be found at

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav_GID=1806).

Finance/HR/Payroll	Lawson
Teacher Call System/Absence Module	Aesop
HR Application Management	AESOP
Student Assessment	Lexia, Mclass, Read180, Edgenuity, Echo
Student Scheduling	FCS
Student Registration	Tenex
Notification Service	Tech Radium
Parent -Teacher conference Scheduler	
Web Service Provider	
Online Payment System	
Transportation	
Food Service	iBoss
Data Warehouse/BI	Cognos
Adult Ed	
Early Childhood	
Summer School	
Gradebook	Progress Books
Health / Nursing Module	
Sports Scheduling/Athletics	
Career Planning/College Ready	Navlance
Electronic Transcripts	Navlance
Discipline/Behavior	Swis/Tenex
State Compliance	Tenex
IEP	Tienet
Medicaid	Tienet
Special Ed	Tenex
504 Tracking	Tenex
Bilingual	Tenex







**Area Cooperative Educational Services  
Response to**

**THE CITY OF WATERBURY**

***Computer Technology Center- Department of Education***

***Student Management System***

February 22, 2016

1. <u>Proposer Information:</u> Please provide the following information:	
a. Firm Name	Area Cooperative Educational Services
b. Permanent main office address	350 State Street North Haven, CT 06473
c. Date firm organized.	1969
d. Legal Form of ownership. If a corporation, indicate where incorporated.	501(c)(3) -- since May 10, 1974
e. How many years have you been engaged in services you provide under your present name?	47 Years
f. Names, titles, reporting relationships, and background and experience of the principal members of your organization, including officers.	<pre> graph TD     GB[GOVERNING BOARD] --&gt; ED[Thomas M. Danehy, Ed.D. EXECUTIVE DIRECTOR]     ED --&gt; ERF[Erika P. Forte ASSISTANT EXECUTIVE DIRECTOR FOR SCHOOLS &amp; PROGRAMS]     ED --&gt; CJB[Claudette J. Beamon ASSISTANT EXECUTIVE DIRECTOR FOR PERSONNEL &amp; SPECIAL SERVICES]     ED --&gt; TSH[Timothy S. Howes ASSISTANT EXECUTIVE DIRECTOR FOR FISCAL SERVICES &amp; OPERATIONS]          ERF --&gt; SP[Strategic Planning]     ERF --&gt; PD[Program Development]     ERF --&gt; PRM[Public Relations &amp; Marketing]     ERF --&gt; PBL[Project Based Leadership]     ERF --&gt; S[Schools]     ERF --&gt; PPS[Pupil Personnel Services]     ERF --&gt; C[Curriculum]     ERF --&gt; ECS[Early Childhood Services]     ERF --&gt; ET[Educational Technology]          CJB --&gt; HR[Human Resources]     CJB --&gt; ETS[Extension Therapy Services]     CJB --&gt; BS[Behavior Services]     CJB --&gt; PDS[Professional Development &amp; School Improvement Services / Grants]     CJB --&gt; AJD[ACCESS / Job Development]          TSH --&gt; F[Facilities]     TSH --&gt; FS[Fiscal Services]     TSH --&gt; TS[Technology Services]     TSH --&gt; T[Transportation]     TSH --&gt; FOS[Food Services]     TSH --&gt; OC[Open CHOICE] </pre>

## 2. Experience, Expertise and Capabilities

### a. Philosophy Statement and Business Focus

A statement of the proposer's philosophy and approach in undertaking the services of the nature outlined in the RFP, as well as a description of its primary business focus.

#### Area Cooperative Educational Services (ACES)

Technology Services delivers collaborative, customized, cost effective solutions designed to meet school districts' technology needs. We provide network and data support services for the implementation of PowerSchool. Our services range from per-diem technical support and training to full-time information technology management. These services are provided through a collaborative model in which districts are fully engaged in the decisions and technological directions affecting their students and teachers.

With firsthand experience working in school districts, the ACES' team has a keen understanding of the unique technological needs of the educational community. Our team members possess diverse skill sets that complement our clients' strengths while addressing the organizations' needs. Our Technology Services division is available to serve your district's technology needs and find solutions to your educational technology issues. We are not a vendor selling a particular product, but rather a consultant who is able help your district find the best products and services to meet your needs.

**b. Summary of Relevant Experience.** A listing of all projects that the proposer has completed within the last three (3) years must be provided, as well as all projects of a similar nature to those included in the Scope of Services in this RFP. The following information shall be provided for each organization listed under this subsection:

ACES' PowerSchool experience is extensive. Our schools have been using this 21st century product since 2006. Our data support team has over 50 years combined experience supporting schools with their technology needs. This experience includes working with multiple Student Information Systems (SIS) platforms and third party vendors. We have facilitated SIS transitions to PowerSchool for Bethany, East Haven, Wallingford, Wolcott and Woodbridge with excellent results. We have worked in concert with PowerSchool's implementation teams and have a good working relationship with this vendor. During the conversion process ACES provides in person training sessions, advice on configuration options, system configuration, and data conversion assistance and go live support.

ACES Technology Services continues to offer support to districts beyond the initial product launch. We are currently providing ongoing support to Bethany,

	<p>Marlborough, Meriden, Middletown, New Beginnings Family Academy, Waterford, and Woodbridge.</p> <p>As ACES is generally restricted geographically to our designated region in CT, our pool is somewhat small. None of our partner districts have changed SIS vendors in the last three years. We have included references which are older than the 3 year timeframe. Additionally, many of the tasks that we perform every year for our member districts directly relate to the training experience that we are proposing in this response. A perfect example is the work we performed for Waterford Public Schools this year. When they hired a new staff member to manage their PowerSchool system, ACES trained this employee from the ground up while assuring the district was able to perform all of the required SIS functions.</p>
<ul style="list-style-type: none"> <li>• Organization name and the name, title, address and telephone number of a responsible contact person.</li> </ul>	<p>Bethany Public School District  Tamra Velleca, Information Technology Program Leader  44 Peck RD Bethany, CT 06524  (203) 393-3350</p> <p>East Haven Public Schools  Randel Osborne, Director of Technology  35 Wheelbarrow Lane, East Haven, Connecticut 06513  (203) 468-3261</p> <p>Marlborough Public School District  Debbie Kaika, Technology Coordinator  25 School Drive, Marlborough, CT 06447  (860) 295-6236</p> <p>Meriden Public Schools  Barbara Haeffner  Director of Curriculum and Instructional Technology  22 Liberty Street, Meriden, CT 06450  (203) 630-4437</p> <p>Middletown Public Schools  Michael Skott, Director of Technology Services  425 Hunting Hill Avenue, Middletown, CT  (860) 638-1461</p> <p style="text-align: right;">continued</p>

	<p>New Beginnings Family Academy Tom Lupinski, Operations Manager 184 Garden Street, Bridgeport, CT 06605 (203) 384-2897</p> <p>Wallingford Public Schools Bob Morrison, Network Administrator 43 Hall Avenue, Wallingford, CT 06492 (203) 949-6500</p> <p>Waterford Public Schools Ed Crane, Director of Technology 15 Rope Ferry Road, Waterford, CT 06385 (860) 625-5764</p> <p>Woodbridge School District Gina Prisco, Principal 40 Beecher Road, Woodbridge, CT 06525 (203) 389-2195</p> <p>Wolcott Public Schools Mr. Joseph Monroe, Principal - (203) 879-8164 Mrs. Arline Tansley, Principal - (203) 879-8151 457 Boundline Road, Wolcott, CT 06716</p>
<ul style="list-style-type: none"> <li>• Nature of services provided and dates services started and actually completed. Please indicate, for each assignment, if it was completed within the original contract timeframe and budget. If not, please explain.</li> </ul>	<p>Bethany Public School District SIS Implementation 2009-2010 ACES Services Provided Training, Set-Up, Reports, Report Cards, State Reporting, End-of-Year Past Three Years ACES Services Provided Standards based grade adoption including all setup, scheduling, and report card changes, ongoing support All services completed as requested by the district.</p> <p>continued</p>

	<p><b>East Haven Public Schools</b>  <b>SIS Implementation 2010-2011</b>  <b>ACES Services Provided</b>  Data migration from SASI, initial product training, advanced training for guidance counselors, configure grade book settings, training for teachers including attendance and grade book, advanced training for new year rollover, Connecticut state reports, create PowerSchool user accounts, create user security groups, custom report card for all schools</p> <p><b>Past Three Years</b>  <b>ACES Services Provided</b>  No services requested  All services completed as requested by the district.</p> <p><b>Marlborough Public School District</b>  <b>SIS Implementation</b>  ACES was not involved in the implementation</p> <p><b>Past Three Years</b>  <b>ACES Services Provided</b>  State reporting support, custom report cards, ongoing support  All services completed as requested by the district.</p> <p><b>Meriden Public Schools</b>  <b>SIS Implementation</b>  ACES was not involved in the implementation</p> <p><b>Past Three Years</b>  <b>ACES Services Provided</b>  Standards based grade adoption including all setup, scheduling, and report card changes, ongoing support  All services completed as requested by the district.</p> <p style="text-align: right;">continued</p>
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	<p>Middletown Public Schools</p> <p>SIS Implementation</p> <p>ACES was not involved in the implementation</p> <p>Past Three Years</p> <p>ACES Services Provided</p> <p>Custom report card generation</p> <p>All services completed as requested by the district.</p> <p>New Beginnings Family Academy</p> <p>SIS Implementation</p> <p>ACES was not involved in the implementation</p> <p>Past Three Years</p> <p>ACES Services Provided</p> <p>Ongoing support</p> <p>All services completed as requested by the district.</p> <p>Wallingford Public Schools</p> <p>SIS Implementation 2010-2011</p> <p>ACES Services Provided</p> <p>Training, object reports, report card modifications, end of year.</p> <p>Past Three Years</p> <p>ACES Services Provided</p> <p>End of year rollover assistance, hiring assistance</p> <p>All services completed as requested by the district.</p> <p>Waterford Public Schools</p> <p>SIS Implementation</p> <p>ACES was not involved in the implementation</p> <p>Past Three Years</p> <p>ACES Services Provided</p> <p>PowerScheduler training, complete SIS administrator training and emergency staffing including end of year, new year, scheduling, and state reporting</p> <p>All services completed as requested by the district.</p> <p>continued</p>
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	<p>Woodbridge School District</p> <p>SIS Implementation 2008-2009</p> <p>ACES Services Provided</p> <p>Training, creating report cards, creating other object reports, state reporting assistance, TCS, live scheduling</p> <p>Past Three Years</p> <p>ACES Services Provided</p> <p>Standards based grade adoption including all setup, scheduling, and report card changes</p> <p>All services completed as requested by the district.</p> <p>Wolcott Public Schools</p> <p>SIS Implementation 2008</p> <p>ACES Services Provided</p> <p>Data migration from SASI, initial product training, advanced training for guidance counselors, configure grade book settings, training for teachers including attendance and grade book, advanced training for new year rollover, Connecticut state reports, create PowerSchool user accounts, create user security groups, custom report card for all schools, customized student transcripts</p> <p>Past Three Years</p> <p>ACES Services Provided</p> <p>No services requested</p> <p>All services completed as requested by the district.</p>
<ul style="list-style-type: none"> <li>For each project done for a municipality or other government agency, please indicate the gross cost of the agreement.</li> </ul>	<p>Past 3 years gross costs.</p> <p>Bethany Public School District \$24,000</p> <p>Meriden Public Schools \$12,800</p> <p>Middletown Public Schools \$19,500</p> <p>Wallingford Public Schools \$800</p> <p style="text-align: right;">continued</p>

	<p>Waterford Public Schools \$12,000</p> <p>Woodbridge School District \$11,200</p>
<p>Additionally, please list any contracts or purchase orders in the last three (3) years between the proposer and any agency of the City of Waterbury.</p>	<p>The Technology Services division of ACES has performed the following services for Waterbury Public Schools in the last three years.</p> <p>2015-16 Information Technology Management/Consulting PO# 128275 Amount \$49,900</p> <p>2014-15 Information Technology Management/Consulting PO# 118789 Amount \$49,900 Information Technology Management/Consulting additional days PO# 123365 Amount \$8,457</p> <p>2013-14 Information Technology Management/Consulting PO# 106117 Amount \$49,900</p> <p>ACES has a continuing relationship with the Waterbury Board of Education. ACES other divisions have provided various services throughout the year. A Waterbury Board of Education member has always had a seat on the ACES Governing Board.</p>
<p>c. <u>Personnel Listing.</u> A complete listing of the staff identified in the work plan by job classification, along with their resumes. Each resume shall include the individual's qualifications and experience in the subject area.</p>	<p>Pamela Davis Pam has worked for Area Cooperative Educational Services (ACES) since 2009, having moved from Massachusetts where she was the assistant Database Manager administering PowerSchool for Wellesley Public Schools. Pam's professional career began as a social worker, moved into special education, and then transitioned into technology. Her current position with ACES is that of Administrative Application Technologist.</p>

As part of her current responsibilities, Pam manages and coordinates the usage of PowerSchool, provides district-wide training and support of PowerSchool, and extends these services to numerous member districts who contract with ACES for services. In addition, Pam supports other programs that integrate with PowerSchool, such as School Messenger, Destiny and Canvas.

Pam has designed and created numerous object reports in PowerSchool, to be used as report cards, transcripts, and other customized reports, for both ACES and member districts. In the last several years, the focus has shifted toward Standards Based Report Cards (SBRC) for many elementary and middle grade level schools. The report card design process usually involves on-site visits with faculty and staff, and training with the end-users, the teachers, once the final drafts are approved. Pam has also been heavily involved in the exporting and uploading of student data into other databases often used by school districts, such as i – Ready and SBAC, as well as independent lunch and health programs for our member districts.

#### Robert Tatham

Bob (Robert) Tatham has worked for Area Cooperative Educational Services (ACES) for over 27 years in their Technology Services Department. He began as a Computer Operator and advanced in his career into positions such as Interim Director and User Support Manager. Throughout his tenure, he also held positions focused on application and database support for not only the ACES school system but also external school districts that were contracted with ACES for this type of Information Technology Support.

Bob served the Wolcott Public School District as their in-house Database Manager from Spring of 2006 until the Fall of 2012. This role encompassed a wide range of responsibilities focused primarily on supporting the district's SIS program. Their current SIS program is Power School which required ongoing daily support. This application has many components that require equal amount of daily support such as Power Teacher, Grade

continued

Book and the Parent Portal. His support of each program included front-line support, back-end support and maintenance, customization, training and documentation. Some examples of other data programs that he also supported for the district include School Messenger, Protraxx, Naviance, Destiny, Remark Scanning Tools, Horizon's Point of Sale System, etc.

In addition to the database support that he provided, he was also the districts key contact for most of the Connecticut State Department of Education's (CSDE) state reports the district is responsible for. He was responsible for the timely reporting of their PSIS, ED166, ELL, TCS, ED205 data collections as well as the federal government's Civil Rights Data Collection (CRDC).

In October of 2012 Bob returned to ACES Data Team. In his current role, Bob manages and coordinates the usage of PowerSchool, as well as the district-wide training and support of PowerSchool. These responsibilities extend beyond ACES to our member districts who contract with ACES.

#### Kevin Culvert

Kevin Culvert comes to us with over 30 years of IT experience. He has worked as both a consumer and developer of software services. His development experience includes developing and supporting financial, distribution and production software at a national level. Product support was offered on multiple mid-range architectures as well as client server configurations.

Throughout his career, he has been responsible for numerous software installation and upgrade projects. He has been responsible for daily operations and problem analysis and solution provision. Operationally he has overseen consumer billing, payment processing, product design support, production scheduling, production distribution, mass mailing, database integrity, data integration and archiving.

Analytically, he has been responsible for data analysis, report design and production, custom software solutions and their supporting database structures.

continued

	<p>Since his arrival at ACES, Kevin has put his skills to work for us. He developed a custom screen for PowerSchool to store our Student Success Plans. He created a PowerSchool form along with a PowerShell script that automate the creation and management of student network accounts. He has written numerous data extracts including our data integration with School Messenger and he oversees our PowerSchool upgrades.</p>
<p>d. <u>Conflict of Interest</u>. Disclose any current (within the last 3 years) business, financial, personal or other types of relationships which may pose a conflict of interest.</p>	<p>None.</p>
<p>3. Statement of Qualifications and Work Plan</p>	
<p>a. <u>Qualifications</u>. Please describe your firm's qualifications, experience and capabilities as they pertain to each of the areas of qualifications listed, as well as those of the personnel to be assigned to this project.</p>	<p>As described in item 2. ACES has extensive experience managing the PowerSchool SIS. We have provided training and support to our own employees as well as partner districts' employees. Because we are active users of the system we have a deeper understanding of practical solutions and our educators' needs.</p>
<p>b. <u>Work Plan</u>. Please describe the approach that would be generally followed in undertaking the Scope of Services in Section C above.</p>	<p>ACES will work with the SIS vendor to schedule training sessions along the installation and configuration timeline. These sessions will provide Waterbury personnel the background and understanding to facilitate the SIS installation and conversion.</p> <p>ACES will train Waterbury personnel to be self-sufficient, and proficient in the operation and management of the SIS. Hands on training will be provided. In some cases it will be practical to train all staff involved in a particular strand; in other cases it will be necessary to use a train the trainer approach to reach a larger audience.</p>

<p>c. <u>Services Expected of the City.</u> Identify the nature and scope of the services that would be generally required of the City in undertaking these projects.</p>	<p>Many of the training sessions will be geared towards installation and configuration tasks necessary for a successful SIS launch. These sessions will provide the steps and understanding needed to perform these tasks. Waterbury staff will need to accomplish these tasks post-training. Some training sessions will be sequential. Waterbury personnel will need to complete items in previous sessions to move on to the next training phase.</p>
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4. Cost Schedule.	
<p>(See Attached Pricing Sheet (SIS pricing.xls))</p> <p>This price should encompass the entire Scope of Services in this RFP. The City reserves the right to negotiate costs, scope of services, and key personnel based on provider proposals</p>	<p>See attached sealed, separate envelope marked "Confidential: Cost Proposal".</p>

<b>5. Information Regarding: Failure to Complete Work, Default and Litigation.</b> Please respond to the following questions:	
Have you ever failed to complete any work awarded to you? If so, where and why?	No.
Have you ever defaulted on a contract? If so, where and why?	No.
Is there any pending litigation which could affect your organization's ability to perform this agreement? If so, please describe.	No.
Has your firm ever had a contract terminated for cause within the past five years? If yes, provide details.	No.
Has your firm been named in a lawsuit related to errors and omissions within the past five years? If yes, provide details.	No.
During the past seven years, has your firm ever filed for protection under the Federal bankruptcy laws? If yes, provide details.	No.
Are there any other factors or information that could affect your firm's ability to provide the services being sought about which the City should be aware?	No.



6. Exceptions and Alternatives. Proposers wishing to take any exceptions to any requirement in the RFP shall state and explain such exceptions. The City may accept proposals which take exception to any requirements in this RFP, or which offer any alternative to a requirement herein, as well as consider such exceptions and alternatives in evaluating responses. Any exception or alternative must be clearly delineated and cannot materially affect the substance of this Request for Proposals.

ACES wishes to clarify that our organization is bidding solely on the training aspects of the RFP. All questions regarding the technical aspects of the SIS product or the SIS historical conversion should be answered by the selected SIS vendor.

**7. Additional Data.** Any additional information which the proposer wishes to bring to the attention of the City that is relevant to this RFP.

Area Cooperative Educational Services (ACES) is the Regional Educational Service Center providing support to the 25 school districts of South Central Connecticut. These districts include: Ansonia, Bethany, Branford, Cheshire, Derby, East Haven, Hamden, Meriden, Middletown, Milford, Naugatuck, New Haven, North Branford, North Haven, Orange, Oxford, Regional District #5 (Amity), Regional District #13 (Durham, Middlefield), Regional District #16 (Prospect, Beacon Falls), Seymour, Wallingford, Waterbury, Waterbury, West Haven Wolcott, and Woodbridge. ACES programs, schools and services include adult and vocational programs, magnet schools and inter-district programs, child and adolescent services, professional development, school improvement, and technology services.

ACES Technology Services continues to offer support to districts beyond the initial product launch. We are currently providing ongoing support to Bethany, Marlborough, Meriden, Middletown, New Beginnings Family Academy, Waterford, and Woodbridge. We are pleased to provide the following menu of services for these school districts:

- Application customization
- Data validation
- Standards-based recording and reporting
- Scheduling design and support
- Reports designed to meet your requirements
- Staff training
- State reporting assistance
- Gradebook setup and support
- Attendance reporting
- Integration with third-party products
- Start/End of year processing
- Teacher and staff phone support
- Emergency staffing

Our deep understanding of the needs of education systems stems from our longstanding dedication to continuous improvement in education. As a school district, we at ACES are not only a provider of the PowerSchool platform, we are also a client. We are local and are committed to serving our neighboring educational communities.

ACES understands the importance of selecting a partner to assist in an undertaking as large as a SIS migration. We are enthusiastic about straightening or relationship with Waterbury Public Schools.



**Area Cooperative Educational Services  
Response to**

**THE CITY OF WATERBURY**

***Computer Technology Center- Department of Education  
Student Management System***

**February 22, 2016**

***SIS Pricing Cover Sheet***

**Confidential: Cost Proposal**

ACES has a good working relationship with PowerSchool. We have worked in concert with neighboring districts' implementation teams and this vendor in the past. We are willing to share and or supplement training provided by this vendor.

ACES wishes to clarify that our organization is bidding solely on the training aspects of the RFP. All questions regarding the technical aspects of the SIS product or the SIS historical conversion should be answered by the selected SIS vendor.

In addition to the training outlined in this proposal, ACES is willing to enter into an agreement to augment City staff during the conversion timeline. ACES will supplement Waterbury staffing up to 2 days per week at their request at the rate of \$900 per day.

ACES understands the importance of selecting a partner to assist in an undertaking as large as a SIS migration. We are enthusiastic about straightening or relationship with Waterbury Public Schools.

ACES SIS Pricing - Proposal Summary

Proposal Summary				
Cost Category	One-Time Cost	On-Going Annual Cost	Comments	
Purchase Model				
Application Software				
Other Software				
Training	\$23,850			
Implementation Services				
Purchase Model - Grand Total	\$23,850	\$0		
ASP Model				
Application Software				
Other Software				
Training	\$23,850			
Implementation Services				
ASP Model - Grand Total	\$23,850	\$0		
Other Pricing				
Additional Licenses - Purchase Model			Indicate how cost is determined (e.g. per pupil cost, per user cost, etc.)	
Additional Licenses - ASP			Indicate how cost is determined (e.g. per pupil cost, per user cost, etc.)	
OPTIONAL: Adult Education Module			Indicate how cost is determined (e.g. per pupil cost, per user cost, etc.)	
OPTIONAL: Early Childhood Module			Indicate how cost is determined (e.g. per pupil cost, per user cost, etc.)	
OPTIONAL: Summer School			Indicate how cost is determined (e.g. per pupil cost, per user cost, etc.)	

2/22/2016

ACES SIS Pricing - Purchase Module Summary

Purchase Model - Module Summary		#REF!		Application Software		Training Services		Totals	
		One-Time Cost	On Going Annual Cost	Estimated Hours	Hourly Rate	Extended Cost	One-Time Costs	On-Going Annual Costs	
General & Technical				16	\$112.50	1,800	\$1,800	\$0	
Report Writer & Query				24	\$112.50	2,700	\$2,700	\$0	
Attendance & Gradebook				16	\$112.50	1,800	\$1,800	\$0	
Discipline & Behavior				8	\$112.50	900	\$900	\$0	
Portals & Dashboards				16	\$112.50	1,800	\$1,800	\$0	
Scheduling				56	\$112.50	6,300	\$6,300	\$0	
Special Education				4	\$112.50	450	\$450	\$0	
State Reporting				16	\$112.50	1,800	\$1,800	\$0	
Student Records & Demographics				8	\$112.50	900	\$900	\$0	
Transcripts & Grade Reporting				8	\$112.50	900	\$900	\$0	
Online Student Registration				0	\$0.00	0	\$0	\$0	
Health/Nursing				0	\$0.00	0	\$0	\$0	
Athletics				0	\$0.00	0	\$0	\$0	
Bilingual				4	\$112.50	450	\$450	\$0	
Guidance				32	\$112.50	3,600	\$3,600	\$0	
Parent/Teacher Conference Scheduler				0	\$0.00	0	\$0	\$0	
Adult Education				0	\$0.00	0	\$0	\$0	
School Lunch				4	\$112.50	450	\$450	\$0	
Online Payment System				0	\$0.00	0	\$0	\$0	
Notification System				0	\$0.00	0	\$0	\$0	
Purchase Model - Module Summary Total		\$0	\$0	212		\$23,850	\$23,850	\$0	

2/22/2016

## ACES SIS Pricing - Purchase Model Software

<i>Purchase Model - Software</i>			
Application Software	One-Time Cost	On-Going Annual Cost	Comments
General & Technical			No Bid
Report Writer & Query			No Bid
Attendance & Gradebook			No Bid
Discipline & Behavior			No Bid
Portals & Dashboards			No Bid
Scheduling			No Bid
Special Education			No Bid
State Reporting			No Bid
Student Records & Demographics			No Bid
Transcripts & Grade Reporting			No Bid
Online Student Registration			No Bid
Health/Nursing			No Bid
Athletics			No Bid
Bilingual			No Bid
Guidance			No Bid
Parent Teacher Conference Scheduler			No Bid
Adult Education			No Bid
School Lunch			No Bid
Online Payment System			No Bid
Notification System			No Bid
<i>Application Software Total</i>	\$0	\$0	
Other Software	One-Time Cost	On-Going Annual Cost	Comments
<i>Other Software Total</i>	\$0	\$0	

ACES SIS Pricing - Purchase Model Services

Purchase Model - Services				
Please complete the Estimated Hours and Hourly Rate for the Purchase Model including both end user & technical training in the training section indicating any additional info or "No Bid" in the Comments column. Additional proposed modules/required components can be added in the Module Summary Tab.				
Training	Estimated Hours	Hourly Rate	Extended Cost	Comments
General & Technical	16	\$112.50	\$1,800	
Report Writer & Query	24	\$112.50	\$2,700	
Attendance & Gradebook	16	\$112.50	\$1,800	
Discipline & Behavior	8	\$112.50	\$900	
Portals & Dashboards	16	\$112.50	\$1,800	
Scheduling	56	\$112.50	\$6,300	
Special Education	4	\$112.50	\$450	
State Reporting	16	\$112.50	\$1,800	
Student Records & Demographics	8	\$112.50	\$900	
Transcripts & Grade Reporting	8	\$112.50	\$900	
Online Student Registration			\$0	No Bid
Health/Nursing			\$0	No Bid
Athletics			\$0	No Bid
Bilingual	4	\$112.50	\$450	
Guidance	32	\$112.50	\$3,600	
Parent Teacher Conference Scheduler			\$0	No Bid
Adult Education			\$0	No Bid
School Lunch	4	\$112.50	\$450	
Online Payment System			\$0	No Bid
Notification System			\$0	No Bid
<b>Training Total</b>	<b>212</b>	<b>N/A</b>	<b>\$23,850</b>	
Implementation Services	Estimated Hours	Hourly Rate	Extended Cost	Comments
Project Management			N/A	No Bid
Implementation Assistance		\$112.50	\$0	ACES will supplement Waterbury staffing up to 2 days/week at their request
Software Installation & Hardware Design / Install Coordination			N/A	No Bid
Data Conversion			N/A	No Bid
Travel & Lodging			N/A	No Bid
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
<b>Implementation Services Total</b>	<b>0</b>	<b>N/A</b>	<b>\$0</b>	

ACES SIS Pricing - ASP Model Summary

ASP Model - Module Summary	Application Software		Training Services			Totals	
	One-Time Cost	On Going Annual Cost	Estimated Hours	Hourly Rate	Extended Cost	One-Time Costs	On-Going Annual Costs
General & Technical			16	113	1,800	\$1,800	\$0
Report Writer & Query			24	113	2,700	\$2,700	\$0
Attendance & Gradebook			16	113	1,800	\$1,800	\$0
Discipline & Behavior			8	113	900	\$900	\$0
Portals & Dashboards			16	113	1,800	\$1,800	\$0
Scheduling			56	113	6,300	\$6,300	\$0
Special Education			4	113	450	\$450	\$0
State Reporting			16	113	1,800	\$1,800	\$0
Student Records & Demographics			8	113	900	\$900	\$0
Transcripts & Grade Reporting			8	113	900	\$900	\$0
Online Student Registration			0	0	0	\$0	\$0
Health/Nursing			0	0	0	\$0	\$0
Athletics			0	0	0	\$0	\$0
Bilingual			4	113	450	\$450	\$0
Guidance			32	113	3,600	\$3,600	\$0
Parent Teacher Conference Scheduler			0	0	0	\$0	\$0
Adult Education			0	0	0	\$0	\$0
School Lunch			4	113	450	\$450	\$0
Online Payment System			0	0	0	\$0	\$0
Notification System			0	0	0	\$0	\$0
ASP Model - Module Summary Total	\$0	\$0	212	N/A	\$23,850	\$23,850	\$0

2/22/2016



## ACES SIS Pricing - ASP Model Software

[illegible]

ACES SIS Pricing - ASP- Services

<p><b>ASP - Services</b></p> <p>Please complete the Estimated Hours and Hourly Rate for ASP - Services, including both end user and technical training in the training section, indicating any additional info or 'No Bid' in the Comments column. Additional proposed modules/required components can be added in the 'Module Summary' Tab.</p>				
Training	Estimated Hours	Hourly Rate	Extended Cost	Comments
General & Technical	16	\$112.50	\$1,800	
Report Writer & Query	24	\$112.50	\$2,700	
Attendance & Gradebook	16	\$112.50	\$1,800	
Discipline & Behavior	8	\$112.50	\$900	
Portals & Dashboards	16	\$112.50	\$1,800	
Scheduling	56	\$112.50	\$6,300	
Special Education	4	\$112.50	\$450	
State Reporting	16	\$112.50	\$1,800	
Student Records & Demographics	8	\$112.50	\$900	
Transcripts & Grade Reporting	8	\$112.50	\$900	
Online Student Registration			\$0	No Bid
Health/Nursing			\$0	No Bid
Athletics			\$0	No Bid
Bilingual	4	\$112.50	\$450	
Guidance	32	\$112.50	\$3,600	
Parent Teacher Conference Scheduler			\$0	No Bid
Adult Education			\$0	No Bid
School Lunch	4	\$112.50	\$450	
Online Payment System			\$0	No Bid
Notification System			\$0	No Bid
<b>Training Total</b>	<b>212</b>	<b>N/A</b>	<b>\$25,850</b>	
Implementation Services	Estimated Hours	Hourly Rate	Extended Cost	Comments
Project Management			N/A	No Bid
Implementation Assistance		\$112.50	\$0	ACES will supplement Waterbury staffing up to 2 days/week at their request
Software Installation & Hardware Design / Install Coordination			N/A	No Bid
Data Conversion			N/A	No Bid
Travel & Lodging			N/A	No Bid
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
<b>Implementation Services Total</b>	<b>0</b>	<b>N/A</b>	<b>\$0</b>	

#3+4

## SUMMARY

### Title III Grant Application

### Bilingual Grant Application

2016 – 2017

<u>2015 – 2017</u>	<u>2016-2018</u>	<u>Title III – English Language Acquisition Enhancement and Academic Achievement Act</u>
\$352,509	\$372,175	The grant is for Limited English Proficient (LEP) students. Educational materials will be purchased to expand or enhance existing language and academic content instruction programs. The grant funds salaries for Bilingual Instructional aides, technology, office support staff, and language assessors

## SUMMARY

### Bilingual Grant Application

2016 – 2017

<u>2015-2016</u>	<u>2016-2017</u>	<u>Bilingual Grant</u>
\$175,551	\$181,652	In accordance with Section 10-17g of the Connecticut General Statutes (CGS), Waterbury Public Schools provides Bilingual Education to eligible students. Funding provided through the Bilingual Grant allows for additional parental involvement, supplemental educational materials and training to ensure students develop English linguistic and academic proficiency.

Goal 1: Provide all students with quality school principals and teachers who deliver rigorous and effective instruction

- **Objective 2:** Provide embedded professional development for teachers and administrators

Goal 2: Ensure all students equal access to quality curriculum that is aligned to Common Core State Standards (CCSS)

- **Objective 1:** Conduct a curriculum audit and create or adopt units of study that align to CCSS

# **Waterbury Public Schools**

## **Board of Education Workshop**

**9/29/2016**

- **Bilingual and Title III Grant Application Budget Narrative**
- **Number of EL Students by Program**

# SUMMARY

## Bilingual and Title III Grant Application

<b><u>2015-2016</u></b>	<b><u>2016-2017</u></b>	<b><u>Bilingual Grant</u></b>
<b>\$175,551</b>	<b>\$181,652</b>	In accordance with Section 10-17g of the Connecticut General Statutes (CGS), Waterbury Public Schools provides Bilingual Education to eligible students. Funding provided through the Bilingual Grant allows for additional parental involvement, supplemental educational materials and training to ensure students develop English linguistic and academic proficiency.
<b><u>2015 – 2017</u></b>	<b><u>2016-2018</u></b>	<b><u>Title III – English Language Acquisition Enhancement and Academic Achievement Act</u></b>
<b>\$352,509</b>	<b>\$372,175</b>	The grant is for Limited English Proficient (LEP) students. Educational materials will be purchased to expand or enhance existing language and academic content instruction programs. The grant funds salaries for Bilingual Instructional aides, technology, office support staff, and language assessors



# English Learners by Program

The Bilingual/ESOL Education Department serves over 2,300 students identified as English Learners. As mandated by Connecticut General Statutes, Section 10-17, we offer Bilingual Education, Language Transition Support Services, and English as a Second Language (ESL).

Level	BIL	ESL	LTSS	LEP REG	Grand Total
ES K-5	430	744	131	52	1357
MS 6-8	152	256	134	27	569
HS 9-12	151	244	189	28	612
Grand Total	636	1188	454	107	2538 (9/26/16)



# English Learners by Language Background

Albanian	65
Arabic	20
Bangla	8
Bengali	2
Creole-Cape Verdean	2
Creole-Haitian	7
Dari	6
Farsi	4
French	2
Georgian	1
Gujarati	1
Guyanese Creole	2
Italian	4

Karen	10
Khmer (Cambodian)	2
Kurdish	11
Lao	1
Macedonian	3
Malay (Indonesian)	1
Mandarin	9
Montenegrin	1
Pashto	5
Persian	3
Pilipino (Filipino)	1
Polish	2
Portuguese	66

Punjabi	5
Russian	1
Serbo-Croatian	2
<b>Spanish</b>	<b>2256</b>
Swahili	2
Tamil	1
Thai	1
Turkish	1
Twi/Fante	4
Urdu	16
Vietnamese	6
Yoruba	1
Zulu	3

**Total 2538 Sept 23 2016**



# Programs

**BIL:** The Bilingual Education Program follows the same curriculum as the mainstream education program, with a focus on the language and academic needs of English Learners (ELs). Instruction in content areas (Mathematics, Science and Social Studies) for bilingual students uses both English and the native language for clarification of the subject matter being taught pursuant to section 10-17e of the Connecticut General Statutes (CGS). Participation in a Bilingual program is generally limited to 30 months. After the first 30 months, participation can be extended up to 60 months in 10 months increments.

**LTSS:** Language Transition Support Services are provided to students who have completed 30 months in the Bilingual Education Program and have not met the Connecticut English mastery standard.

**ESL:** The English as a Second Language Program is for students learning to speak, read, and write in English for the purposes of academic achievement and social interaction. Teachers provide strategies for students to acquire proficiency in English, promoting and enhancing students' Basic Interpersonal Communication Skills (BICS) and Cognitive Academic Language Proficiency (CALP).

**LEP REG:** This refers to students who have been identified as having limited English proficiency, but do not receive any EL services due to parental request.



# EL English Learners

- Any student who has been identified as having limited English proficiency
- Per Federal and local mandates, ALL ELs **must** take the LAS Links every year
- ELs must be monitored until the Connecticut English Mastery Standard is met
- All ELs are entitled to receive accommodations on a regular basis

## Bilingual

**Students identified as EL who receive native language support in the content areas while acquiring English**

Students receive accommodations on a regular basis.

Participation is generally limited to 30 months. After the first 30 months, participation can be extended up to 60 months in 10 months increments.

Parent must provide consent.

## ESL

**Students identified as EL who receive support through an ESL class as needed**

Students are placed in regular education classes for the majority of the day and are entitled to receive accommodations in mainstream classes on a regular basis.

## LEP in Regular

**Students identified as EL, but do not receive support due to parental request**

Student **can not** enroll in an ESL or sheltered class, but **can** receive accommodations in mainstream classes on a regular basis.

## LTSS

**Language Transition Support Services**

If a student does not meet the CT English Mastery Standard at the end of 30 months, they continue to receive support (ESL or Sheltered classes as needed) until they meet the English mastery standard. They are entitled to receive accommodations in mainstream classes on a regular basis.

## Connecticut English Mastery Standard

**LAS Links: Grades Overall Level 4 or 5**

**And**

**Grades K-12**

**LAS Links Reading Score 4 or Higher**

**LAS Links Writing Score 4 or Higher**

### **Accommodations include, but are not limited to:**

- Differentiated Instruction based on English proficiency levels (LAS Links)
- Assessment based on English proficiency levels (LAS Links) and CT ELL Framework
- Time Extension
- Native Language support