

**PROFESSIONAL SERVICES AGREEMENT**  
**for**  
**Leader in Me Software Subscription**  
**between**  
**The City of Waterbury, Connecticut**  
**and**  
**Franklin Covey Client Sales, Inc.**

**THIS AGREEMENT** (the "Agreement" or "Contract"), effective on the date signed by the Mayor, is by and between the City of Waterbury, Connecticut (the "City"), located at City Hall, 235 Grand Street, Waterbury, Connecticut 06702 and Franklin Covey Client Sales, Inc. (the "Consultant" or "FranklinCovey"), located at 2200 West Parkway Boulevard, Salt Lake City, Utah 84119, a State of Utah duly registered domestic corporation, jointly referred to as the "Parties" to this Agreement.

**WHEREAS**, the Consultant provides licenses for various proprietary software products, including the Leader in Me software; and

**WHEREAS**, the Consultant provides custom coaching services to further assist customers who are utilizing the Leader in Me software; and

**WHEREAS**, the City desires to obtain custom coaching services and software licenses for the Consultant's Leader in Me software pursuant to the terms, conditions and provisions set forth in this Agreement (the "Project").

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

**1. Scope of Services.** The Consultant 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 and such shall be completed in a satisfactory manner, as reasonably determined by the City. All labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc. shall comply with any and all applicable Local, State and Federal laws, statutes, ordinances and regulations and with generally accepted professional standards. The Consultant 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.

**1.1.** The Project consists of **five hundred ninety (590)** annual user licenses for Leader in Me software and annual customized coaching sessions, as detailed and described more precisely in **Attachment A** and are hereby made material provisions of this Contract. **Attachment A** shall consist of the following, which are attached hereto, are acknowledged by the Consultant as having been received, or are otherwise hereby incorporated by reference as noted below, and all are made a part hereof:

- 1.1.1 Consultant's Price Proposal, consisting of one (1) page, attached hereto;
- 1.1.2 Consultant's Proposal, consisting of five (5) pages, attached hereto;
- 1.1.3 Any and all amendment(s) and Change Orders, issued by the City after execution of Contract, incorporated herein by reference;
- 1.1.4 City Contract Compliance Documents, incorporated herein by reference;
- 1.1.5 Certificates of Insurance, incorporated herein by reference;
- 1.1.6 Licenses, incorporated herein by reference;
- 1.1.7 All applicable Federal, State, and local statutes, regulations charter and ordinances, incorporated herein by reference.

1.2. 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 Consultant. In the event that any provision in the Contract Documents conflict with any other provision therein, the provision in the component part of the Contract Document first enumerated below shall govern over any other component part which follows it numerically:

- 1.2.1 All applicable Federal, State, and local statutes, regulations charter and ordinances
- 1.2.2 Any and all amendments and Change Orders, issued by the City after execution of this Contract
- 1.2.3 This Contract
- 1.2.4 Consultant's Price Proposal
- 1.2.5 Consultant's Proposal

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

2.1. **Representations Regarding Personnel.** The Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City, unless use of City employees or of personnel having a contractual relationship with the City is approved by the City in writing. As set forth above, all the services required hereunder shall be performed by the Consultant 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.

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



Upon City request, the Consultant shall provide to the City a copy of the Consultant's licenses, certifications, registrations, etc.

**2.3. Activities, Work, and Services Performed in Department of Education Facilities, on School Grounds, at Student Sporting Events, and/or where City Students Present.** For all activities in school facilities and/or Department of Education facilities, the Consultant shall first be required to coordinate all on-site visits and activities with the appropriate Department/personnel in Education, or the designated person and shall obtain any necessary clearance, ID badges, etc. Consultant shall enter and exit all school facilities and Department of Educational facilities as designated as authorized by the appropriate Department/personnel in Education, or the designated person.

**2.4. Criminal Background Check and DCF Registry Check.** The Consultant shall comply with the requirements of C.G.S. 10-222 c (g) and shall ensure, and represents to the City, that any employee who will be on school grounds/Department of Education Property/at Department of Education events and/or where City Students Present, that will or may have direct contact with Students while providing services pursuant to this Agreement has stated, in writing, whether such person has ever been convicted of a crime or whether criminal charges were ever pending against such person. The Consultant shall further ensure, and represents to the City that any person who will have direct contact with a Student has submitted to a records check of the Department of Children and Families child abuse and neglect registry established pursuant to Conn. Gen. Stat. §17a-101k, as well as state and national criminal history records checks conducted in accordance with Conn. Gen. Stat. §29-17a, the federal National Child Protection Act of 1993, and the federal Volunteers for Children Act of 1998. The Consultant shall not permit any person with a disqualifying criminal history to have direct contact with a student. The Consultant agrees the "direct contact" shall include the Consultant and its employees providing services under this contract if said services are performed on school grounds/Department of Education Property/at Department of Education events and/or where City students are present.

**2.5. Activities, Work, and Services Performed on other City Property (Non-Education facilities).** For all activities involving non-Board of Education facilities and/or buildings, Consultant shall first be required to coordinate all on-site visits and activities with the appropriate City Department or its designee.

**3. Responsibilities of the Consultant.** All data, information, etc. given by the City to the Consultant and/or created by the Consultant shall be treated by the Consultant 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 Contract. The Consultant 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 Contract, except where a disclosure is expressly stated as a requirement of this Contract. Notwithstanding the foregoing, where a Consultant disclosure is required to comply with statute, regulation, or court order, the Consultant shall provide prior advance written notice to the City of the need for such disclosure. The Consultant agrees to properly implement the services required in the manner herein provided.



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

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

**3.3. Cleaning Up.** To the extent the Consultant is required to be on City property to render its services hereunder, the Consultant shall at all times keep the Premises free from accumulation of waste materials or rubbish caused by Consultant, its employees or subcontractors, and at the completion of the work shall remove all rubbish from and about the Project and all tools, scaffolding and surplus materials and shall leave the Premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute, the City may remove the rubbish and charge the cost to the Consultant.

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

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



**3.6. Consultant's Employees.** The Consultant 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.

**3.7. Due Diligence Obligation.** The Consultant hereby warrants and represents that prior to the submission of its Proposal and Price Proposal 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 Contract and thereby warrants that:

**3.7.1** It conducted or had opportunity to conduct all Due Diligence prior to the submission of its Proposal and Price Proposal and, accordingly, any additional costs, services or products resulting from the failure of the Consultant to complete Due Diligence prior to submission of its Proposal and Price Proposal shall be borne by the Consultant. Furthermore the Consultant had the opportunity to ask questions it saw fit and to review the responses from the City;

**3.7.2** 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;

**3.7.3** 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.

**3.7.4** It was responsible for specifying any changes and disclosing any new costs prior to the submittal of its Proposal and Price Proposal. Thus, in the event any changes or costs are disclosed by the Consultant, or otherwise required, during the performance of its services, the sole responsibility for any modification, delay and cost of such changes shall reside with the Consultant.

**3.7.5** It 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;

**3.7.6** It has given the City written notice of any conflict, error or discrepancy that the Consultant has discovered in the Contract Documents; and

**3.7.7** It agrees that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

**3.8. Reporting Requirement.** The Consultant shall deliver periodic written reports to the City's Using Agency setting forth (i) the issue date of the report, (ii) the time period covered by the report, (iii) a brief description of the work and services completed by the Consultant and/or delivered by the Consultant during the time period covered by the report, (iv) expressed as a percentage of the total work and services required under this Contract, the percentage of the total work represented by the work and services described in subsection iii above, (v) expressed as a percentage of this Contract's Section 6 total compensation, the percentage of the total compensation represented by the work and services described in subsection iii above, (vi) the Consultant's declaration as to whether the entirety of the Consultant'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 the Consultant's Principal or a specifically authorized individual.

NOTE: the Consultant'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.

**3.9. Student Data Privacy.** All student records, student information, and student-generated content (collectively, "Student Data") provided or accessed pursuant to this Agreement are not the property of, or under the control of, the Consultant.

**3.9.1** The City's Board of Education ("Board") shall have access to and the ability to delete Student Data in the possession of the Consultant except in instances where such data is (A) otherwise prohibited from deletion or required to be retained under state or federal law, or (B) stored as a copy as part of a disaster recovery storage system and that is (i) inaccessible to the public, and (ii) unable to be used in the normal course of business by the Consultant. The Board may request the deletion of any such student information, student records or student generated content if such copy has been used by the operator to repopulate accessible data following a disaster recovery. The Board may request the deletion of Student Data by the Consultant within two (2) business days of receiving such a request and provide to the Board confirmation via electronic mail that the Student Data has been deleted in accordance with the request, the date of its deletion, and the manner in which it has been deleted. The confirmation shall contain a written assurance from the Consultant that proper disposal of the data has occurred in order to prevent the unauthorized access or use of Student Data and that deletion has occurred in accordance with industry standards/practices/protocols.

**3.9.2** The Consultant shall not use Student Data for any purposes other than those authorized pursuant to this Agreement.

**3.9.3** A student, parent or legal guardian of a student may review personally identifiable information contained in Student Data and correct any erroneous information, if any, in such Student Data. If the Consultant receives a request to review Student Data in the Consultant's possession directly from a student, parent,



or guardian, the Consultant agrees to refer that individual to the Board and to notify the Board within two (2) business days of receiving such a request. The Consultant agrees to work cooperatively with the Board to permit a student, parent, or guardian to review personally identifiable information in Student Data that has been shared with the Consultant, and correct any erroneous information therein.

**3.9.4** The Consultant shall take actions designed to ensure the security and confidentiality of student data.

**3.9.5** The Consultant will notify the Board, in accordance with Conn. Gen. Stat. § 10-234dd, when there has been an unauthorized release, disclosure or acquisition of Student Data. Such notification will include the following steps: Upon discovery by the Consultant of a breach of Student Data, the Consultant shall conduct an investigation and restore the integrity of its data systems and, without unreasonable delay, but not more than thirty (30) days after such discovery, shall provide the Board with a more detailed notice of the breach, including but not limited to the date and time of the breach; name(s) of the student(s) whose student data was released, disclosed or acquired; nature of and extent of the breach; and measures taken to ensure that such a breach does not occur in the future.

**3.9.6** Student Data shall not be retained or available to the Consultant upon expiration of the Agreement between the Consultant and City, except a student, parent or legal guardian of a student may choose independently to establish or maintain an electronic account with the Consultant after the expiration of such Agreement for the purpose of storing student-generated content.

**3.9.7** The Consultant and Board shall each ensure their own compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, as amended from time to time.

**3.9.8** The Consultant acknowledges and agrees to comply with the above and all other applicable aspects of Connecticut's Student Data Privacy law according to Connecticut General Statutes §§ 10-234aa through 10-234dd.

**3.9.9** The Parties agree that this Agreement controls over any inconsistent terms or conditions contained within any other Agreement entered into by the Parties concerning Student Data.

**3.10. Confidentiality/FERPA.** Consultant shall strictly adhere to all State and Federal Statutes, rules, policy, regulations, codes of participant protection and confidentiality, administrative directives of the State of Connecticut Board of Education, Connecticut Department of Education and the Waterbury Board of Education regarding confidentiality of student records, files, PPTs, IEPs, etc. Consultant shall further ensure that its employees, agents, or anyone performing work on their behalf under the terms of this Agreement shall strictly adhere to all State and Federal Statutes, rules, policy, regulations, codes of participant protection and confidentiality, administrative directives of the State of

Connecticut Board of Education and those of the Waterbury Board of Education regarding confidentiality of student records, files, PPTs, IEPs, etc.

**3.10.1** Any and all materials contained in City of Waterbury student files that are entrusted to Consultant or gathered by the Consultant in the course of its services shall remain in the strictest confidence to prevent disclosure of the same. All information furnished by the City or gathered by Consultant shall be used solely for the purposes of providing services under this Agreement.

**3.10.2** Consultant acknowledges that in the course of providing services under this Agreement, it may come into the possession of education records 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) Consultant and City shall comply with the requirements of said statute and regulations, as amended from time to time and Consultant agrees to use information obtained from the City or student education records only for the purposes provided in this Agreement. Without the prior written consent of the student's parent or guardian, as required by FERPA, Consultant has no authority to make disclosures of any information from education records. Consultant shall instruct its employees of their obligations to comply with FERPA.

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

**5. Contract Time.**

**5.1. Initial Term.** The Initial Term of this Contract shall commence on January 31, 2024 and terminate on January 30, 2027 ("Contract Time"). Consultant shall complete all work and services required under this Contract during Contract Time. Continuation of this Agreement for each year is contingent upon continued State funding.

**5.2. Option Periods.** The City, in its sole discretion, shall have the option to extend this Contract for up to **two (2)** additional **one (1)** year terms (collectively, the "Option Periods") upon reasonable notice to the Consultant and upon the same terms and conditions.

**5.2.1 Option Period 1:** January 31, 2027 through January 30, 2028

**5.2.2 Option Period 2:** January 31, 2028 through January 30, 2029

**5.3.** Time is and shall be of the essence for the completion date for the Project. The Consultant further agrees that the Work shall be prosecuted regularly, diligently, and uninterruptedly and at such rate of progress as will insure full completion thereof within



the Contract Time stated above. It is expressly understood and agreed by and between the Consultant and City that the Contract Time is reasonable for the completion of the Work. The Consultant shall be subject to City imposed fines and/or penalties in the event the Consultant breaches the foregoing dates.

**6. Compensation.** The City shall compensate the Consultant for satisfactory provision of all of the goods and services set forth in this Contract as follows in this Section 6 and subject to continued State funding:

**6.1. Fee Schedule.** The fee payable to the Consultant shall be as set forth below and in accordance with Consultant's Price Proposal:

**6.1.1. Year One: January 31, 2024 – January 30, 2025.** The fee payable to the Consultant for services rendered shall not exceed **TEN THOUSAND ONE HUNDRED NINETY DOLLARS and ZERO CENTS (\$10,190.00)**, as more particularly set forth below.

**6.1.1.1 (590) Student Memberships, \$11.00 each.....\$6,490.00**

**6.1.1.2 (1) Custom Coaching Session, \$3,700.00 each.....\$3,700.00**

**Total: \$10,190.00**

**6.1.2. Year Two: January 31, 2025 – January 30, 2026.** The fee payable to the Consultant for services rendered shall not exceed **THIRTEEN THOUSAND EIGHT HUNDRED NINETY DOLLARS and ZERO CENTS (\$13,890.00)**, as more particularly set forth below.

**6.1.2.1 (590) Student Memberships, \$11.00 each.....\$6,490.00**

**6.1.2.2 (2) Custom Coaching Sessions, \$3,700.00 each.....\$7,400.00**

**Total: \$13,890.00**

**6.1.3. Year Three: January 31, 2026 – January 30, 2027.** The fee payable to the Consultant for services rendered shall not exceed **THIRTEEN THOUSAND EIGHT HUNDRED NINETY DOLLARS and ZERO CENTS (\$13,890.00)**, as more particularly set forth below.

**6.1.3.1 (590) Student Memberships, \$11.00 each.....\$6,490.00**

**6.1.3.2 (2) Custom Coaching Sessions, \$3,700.00 each.....\$7,400.00**

**Total: \$13,890.00**

**6.1.4. First Option Period: January 31, 2027 – January 30, 2028.** The fee payable to the Consultant for services rendered during the first Option Period, if so exercised by the City, shall not exceed **THIRTEEN THOUSAND EIGHT HUNDRED NINETY DOLLARS and ZERO CENTS (\$13,890.00).**

**6.1.4.1 (590) Student Memberships, \$11.00 each.....\$6,490.00**

**6.1.4.2 (2) Custom Coaching Sessions, \$3,700.00 each.....\$7,400.00**

**Total: \$13,890.00**

**6.1.5. Second Option Period: January 31, 2028 – January 30, 2029.** The fee payable to the Consultant for services rendered during the second Option Period, if so exercised by the City, shall not exceed **THIRTEEN THOUSAND EIGHT HUNDRED NINETY DOLLARS and ZERO CENTS (\$13,890.00).**

**6.1.5.1 (590) Student Memberships, \$11.00 each.....\$6,490.00**

**6.1.5.2 (2) Custom Coaching Sessions, \$3,700.00 each.....\$7,400.00**

**Total: \$13,890.00**

**6.2. Limitation of Payment.** Compensation payable to the Consultant is limited to those fees set forth in Section 6.1., above. Such compensation shall be paid by the City upon review and approval of the Consultant's invoices for payment and review of the work, services, deliverables, etc. required in this Contract and review as may be further required by the Charter and Ordinances of the City. Consultant'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.

**6.2.1** The Consultant and its affiliates are hereby provided with notice that the City reserves the right, in the City's sole discretion, to offset, withhold, or otherwise reduce City payment(s) to the Consultant in an amount equaling the sum or sums of money the Consultant and/or its affiliates is/are, or becomes delinquent or in arrears on, regarding the Consultant's and/or its affiliate's real and personal tax obligations to the City.

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



**6.4. Proposal Costs.** All costs of the Consultant in preparing its Proposal and Price Proposal shall be solely borne by the Consultant and are not included in the compensation to be paid by the City to the Consultant under this Contract or any other Contract.

**6.5. Payment for Services, Materials, Employees.** The Consultant shall be fully and solely responsible for the suitability, and compliance with the Contract, of all labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc. furnished to the City under this Contract. The Consultant 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. Before final payment is made, the Consultant shall furnish a legal statement to the City that all payments required under this subparagraph have been made.

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

**7. Passing of Title and Risk of Loss.** Title to each item of equipment, material, reports, plans, specifications, supplies, services, etc. required to be delivered to the City hereunder shall pass to City upon City payment to the Consultant for that item. Consultant 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.

**8. Indemnification.**

**8.1.** The Consultant shall indemnify, defend, and hold harmless the City, City's Boards, and Board of Education, 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, design, drawings, deliverables, incidentals, etc. provided that any such claims, suits, damages, losses, judgments, costs or expenses (i) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting there from, (ii) are alleged to be caused in whole or in part by any willful, intentional, negligent, or reckless act or omission of the Consultant, its employees, any subcontractor or consultant, 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;



(iii) enforcement action or any claim for breach of the Consultant duties hereunder or (iv) claim for intangible loss(es) including but not limited to business losses, lost profits or revenue, regardless of whether or not it is caused in part by a party indemnified hereunder.

**8.2.** In any and all claims against the City or any of its boards, agents, employees or officers by the Consultant or any employee of the Consultant, 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 8.1, above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

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

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

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

**8.6.** In the event this Contract and/or the Contractor's, or its subcontractor, work and services provisioned hereunder is/are subject to the provisions of any Federal or State statute or regulations, or the City Charter or City Ordinance, the Consultant shall indemnify, defend and hold harmless the City from any fine, penalty or other amounts imposed on the City under said statutes, regulations, Charter or Ordinances, if caused by Consultant, or its subcontractor, omission or commission..

## **9. Consultant's Insurance.**

**9.1.** The Consultant shall not commence work under this Contract until all insurance required under this Section 9 has been obtained by the Consultant and such insurance has been approved by the City. The Consultant 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.

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

**9.3.** 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.

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

**9.4.1 General Liability Insurance:**

**\$ 1,000,000.00** Per Occurrence

**\$ 2,000,000.00** General Aggregate

**\$ 2,000,000.00** Products/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.

**9.4.2 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.

**9.4.3 Workers' Compensation:** Statutory Limits within the State of Connecticut. Employers' Liability ("EL"):

**\$ 1,000,000.00** EL Each Accident

**\$ 1,000,000.00** EL Disease Each Employee

**\$ 1,000,000.00** EL Disease Policy Limit

Consultant shall comply with all State of Connecticut statutes as it relates to Workers' Compensation.

**9.4.4 Excess/Umbrella Liability:**

**\$ 1,000,000.00** Per Occurrence

**\$ 1,000,000.00** Aggregate

**9.4.5 Professional Liability/E&O:**  
**\$ 1,000,000.00 Per Wrongful Act**  
**\$ 1,000,000.00 Aggregate**

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

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

**9.7. Certificates of Insurance.** The Consultant's General, Automobile and Excess/Umbrella Liability Insurance policies shall be endorsed to add the City and The Board of Education as an 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 the Consultant'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 the Consultant 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 is listed as Additional Insured on a primary and non-contributory basis on all policies except Workers Compensation and Professional Liability. All policies shall include a Waiver of Subrogation except Professional Liability."** The Consultant 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 the Corporation Counsel, 235 Grand Street, Waterbury, CT 06702.

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

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

By executing this Contract, the Consultant represents and warrants that, at all pertinent and relevant times to the Contract, it has been, is and will continue to be in full compliance with all applicable statutes, acts, ordinances, guidelines, resolutions, orders, judgments, decrees, injunctions, rules, and regulations of all government authorities applicable to performance by the Consultant 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); the *HOUSING and COMMUNITY DEVELOPMENT ACT of 1974*, as amended; TITLE 31 and Section 12-430(7) 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.

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

**10.2. 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 Consultant for transactions required or necessitated hereunder between it and its subcontractors, suppliers, etc. The Consultant remains liable, however, for any applicable tax obligations it incurs. Moreover, the Consultant represents that the proposal and pricing contained in this Contract does not include the amount payable for said taxes.

**10.3. Labor and Wages.** The Consultant 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.

**10.3.1** The Consultant 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 Contract. The Act provides that the Connecticut prevailing wage law applies to certain remodeling, refurbishing, alteration, repair and new construction. The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in Conn. Gen. Statute § 31-53(i), shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

**10.3.2** The Consultant 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.

**11. Discriminatory Practices.** In performing this Contract, the Consultant 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, gender identity or expression, age, religious creed, disability, national origin or ancestry, marital status, family status, prior psychiatric treatment, health care, military status or source of income or because of a handicap that is unrelated to the employee's or the applicant's ability to perform the duties of a particular job or position. Subcontracts with each subcontractor shall contain a provision requiring non-discrimination in employment as herein specified. This covenant is required pursuant to § 93.04 of the Code of Ordinances of the City and any breach thereof may be regarded as a material breach of this Contract. Said provisions with subcontractors shall require conformity and compliance with all Local, State and Federal laws, rules and regulations and Executive orders pertaining to discrimination and equal opportunity requirements.

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

**11.2. Equal Opportunity.** In its execution of the performance of this Contract, the Consultant shall not discriminate and shall comply with applicable laws prohibiting discrimination on the grounds of race, color, religion, sex, gender identity or expression, national origin or citizenship status, age or handicap. The Consultant 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.

**12. Intentionally Omitted.**

**13. Termination.**

**13.1. Termination of Contract for Cause.** If, through any cause, in part or in full, the fault of the Consultant, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) business days before the effective date of such termination.

**13.1.1** In the event of such termination, all finished or unfinished documents, data, studies, reports, specifications, deliverables, etc. prepared by the Consultant



under this Contract shall, at the option of the City, become the City's property, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed for such.

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

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

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

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

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

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

### **13.4. Rights Upon Cancellation or Termination.**

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

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

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

**13.4.4 Assumption of Subcontracts.** In the event of termination of this Contract, the City shall have the right to assume, at its option, any and all subcontracts for products, services and functions provided exclusively under this Contract, and may further pursue completion of the work under this Contract by replacement contract or otherwise as the City may in its sole judgment deem expedient.



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

**14. Ownership of Instruments of Professional Services.** The City acknowledges the Consultant's documents, data, studies, reports, specifications, deliverables, etc. created and to be created pursuant to this Contract, 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 Contract 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.

**15. Force Majeure.** Neither the Contractor nor the City shall be held responsible for delays or be considered to be in breach of this Contract or be subject to liquidated damages when their respective obligations under this Contract are caused by conditions beyond their control, including without limitation:

**15.1.** Acts of God, such as severe acts of nature or weather events including floods, fires, earthquakes, hurricanes, cyclones, or explosions;

**15.2.** War, acts of terrorism, acts of public enemies, revolution, civil commotion or unrest, riots, pandemics or epidemics;

**15.3.** Acts of governmental authorities such as expropriation, condemnation, changes of law and order or regulations, proclamation, ordinance, or other governmental requirement;

**15.4.** Strikes and labor disputes; and

**15.5.** Certain accidents including but not limited to hazardous, toxic, radioactive or nuclear contamination spills, contamination, combustion or explosion, which prevent a Party from fulfilling their obligations or otherwise render performance under the Contract impossible.

Upon cessation of work for reason of force majeure delays, the Party(ies) whose obligations are affected shall use their best efforts to meet their obligations under this Agreement.

**16. Subcontracting.** The Consultant shall not, without the prior written approval of the City, subcontract, in whole or in part, any of the Consultant's services. Any subcontractor so approved shall be required to secure and maintain insurance coverage equal to or better than that required

of the Consultant and shall name the City as an additional insured party and said subcontractors shall deliver to the City a certificate of insurance evidencing such coverages. All subcontractors shall comply with all Federal, State and Local, laws, regulations and ordinances but such requirement shall not relieve the Consultant from its requirement that all work and services provided or required hereunder shall comply with all Federal, State and Local, laws, regulations and ordinances.

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

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

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

**19. Risk of Damage and Loss.** The Consultant shall be solely responsible for causing the timely repair to and/or replacement of, City property or item(s) intended to become City property hereunder, where the need for repair or replacement was caused by the Consultant, by someone under the care and/or control of the Consultant, by any subcontractor of the Consultant, or by any shipper or delivery service. The Consultant shall be solely responsible for all costs and expenses, including but not limited to shipping, delivery, insurance, etc. associated with the foregoing repair and replacement obligation. Further, the Consultant 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.

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

**21. Entire Agreement.** This Contract shall constitute the complete and exclusive statement of the contract between the parties as it relates to this transaction and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter. Any



amendment to this Contract must be in writing and agreed to and executed by the City and the Consultant.

**22. Independent Contractor Relationship.** The relationship between the City and the Consultant is that of client and independent contractor. No agent, employee, or servant of the Consultant shall be deemed to be an employee, agent or servant of the City. The Consultant shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract. It is the express intention of the parties hereto, and the Consultant hereby agrees and covenants, that it and any and all third party(ies) and subcontractor(s) retained by the Consultant hereunder is/are not and shall not be deemed an employee of the City of Waterbury, but is/are and shall remain an independent contractor relative to the City and that nothing herein shall be interpreted or construed as creating or establishing the relationship of employer-employee between the City of Waterbury and the Consultant or between the City of Waterbury and any third party(ies) or subcontractor(s). Thus, the Consultant hereby covenants that it, its subcontractor(s) and third party(ies) shall not be entitled to the usual characteristics of employment, such as income tax withholding, F.I.C.A. deductions, pension or retirement privileges, Workers Compensation coverage, health benefits, etc. and that the Consultant shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants, representatives, subcontractors and third party(ies).

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

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

**25. Contract Change Orders.**

**25.1.** 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 Contract where the scope of the Change Order is:

**25.1.1** within the scope of the original Contract OR is made pursuant to a provision in the original Contract; and

**25.1.2** 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); and

**25.1.3** the Final Completion Date has not been changed.

**25.2.** Notwithstanding the foregoing Subsection 25.1, a Change Order shall not include:

**25.2.1** an upward adjustment to a Consultant's payment claim; or

**25.2.2** a payment increase under any escalation clause set forth in the original contract, or any Change Order, or any amendment.

**25.3.** 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 if agreed to, approved by the City's Using Agency and any City designated representative(s). To be binding and enforceable, a Change Order shall thereafter be signed by both the Consultant, any City designated representative(s), and a duly authorized representative of the City's Using Agency prior to the Consultant's delivery of the services, etc. contemplated in said Change Order. All Change Orders are governed by the provisions of this Contract. Any contract change NOT fully complying with this Section 25 shall be effectuated solely by an amendment to this Contract complying with Section 38.073 of the City's "Centralized Procurement System" ordinance.

**26. Conflicts or Disputes.** This Contract represents the full and complete concurrence between the City and the Consultant and governs all disputes between them.

**26.1. 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.

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

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

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



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

**30. Governing Law and Choice of Forum.** This Contract shall be construed in accordance with the terms and conditions set forth in this Agreement and the law of the State of Connecticut without regard to choice or conflict of laws principles that would cause the application of any other laws. Any dispute or controversy arising out of or relating to this Contract or otherwise shall be determined by a court of competent jurisdiction in Waterbury, Connecticut (or the Federal Court otherwise having territorial jurisdiction over such City and subject matter jurisdiction over the dispute), and not elsewhere.

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

Consultant: Franklin Covey Client Sales, Inc.  
2200 West Parkway Boulevard  
Salt Lake City, UT 84119

City: City of Waterbury  
Board of Education  
236 Grand Street  
Waterbury, CT 06702

With a copy to: Office of the Corporation Counsel  
City Hall Building  
235 Grand Street, 3<sup>rd</sup> Floor  
Waterbury, CT 06702

**32. 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:

**32.1.** 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.

**32.2.** 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.

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

**32.4.** 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.

**32.5.** Upon a showing that a subcontractor made a kickback to the City, a prime Consultant 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.

**32.6.** 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 32.6, 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 32.6 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.



**32.7.** 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 (i) 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; (ii) filed the City authored financial disclosure statement form as set forth in the City's Code of Ordinances regarding disclosure of financial interests; (iii) 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 (iv) 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 32.7 shall be deemed a material breach of this Contract and shall be a violation of the City's Code of Ordinances.

**32.8.** The definitions set forth in the City's Code of Ordinances shall be the primary source for interpretation of the forgoing subsections 32.1-32.7.

**32.9.** The Consultant 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.

**32.10.** The Consultant 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: <https://www.waterburyct.org/services/city-clerk/code-of-ordinances> [click link titled "Code of Ordinances (Rev. 12/31/19)."] 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"].

**32.11.** The Consultant 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.

**32.12.** 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.

**32.13. 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 Contract pertains shall have any personal interest, direct or indirect, in this Contract.

**32.14. Prohibition Against Contingency Fees.** The Consultant 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.

**32.15. Freedom of Information Act Notice.** Pursuant to State statute, in the event the total compensation payable to the Consultant set forth in Section 6 herein is greater than \$2,500,000.00, the City is entitled to receive a copy of any and all Consultant 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.

**33. Leader in Me License Terms and Conditions.**

**33.1. Grant of Rights to Portal.** FranklinCovey hereby grants the City a limited, non-exclusive, non-transferable, revocable license for teachers and/or staff for whom an annual license fee has been paid ("Users") to access the Leader in Me Online portal ("Portal"). Access to the Portal shall be available only to Users. Users will receive a unique registration code from an authorized representative of the City (e.g., Principal) prior to logging into the Portal. The City and Users agree not to make the Portal available in any manner to the general public, non-parties to this Agreement, students, or any other individual who is not a User.

**33.2. Intellectual Property License.** FranklinCovey hereby grants to the City a limited, non-exclusive license (the "License") to use the FC IP (defined below) only in connection with the delivery or promotion of FranklinCovey's the Leader in Me® solution within the City's school. For clarity, and by way of example only, the FC IP may be used with lesson plans, bulletin boards, posters, tee shirts, pins, songs, and other similar uses. However, FC IP may not be used with planners/agendas, unless such planners/agendas are purchased through SDI Innovations. Further, the City shall not use a FranklinCovey trademark, such as "The Leader in Me®," in or as a domain name. The License to the FC IP shall not be sublicensed, assigned, or transferred by the City. All works created by the City using the FC IP shall be deemed derivative works ("Derivative Works"), and are owned by FranklinCovey and may be used only pursuant to the License granted herein. "FC IP" shall mean the Leader in Me trademarks and other materials provided to the City by FranklinCovey, including intellectual property associated with The 7 Habits®. The City shall effectively communicate to its staff, employees, teachers, and anyone else who may have access to or receive the FC IP, that such FC IP is copyright- and/or trademark-protected and the proprietary property of FranklinCovey, and that neither the City nor its employees shall modify, reproduce, file share, email, distribute to a third party, or publicly



post (Slide Share, YouTube, etc.) the FC IP and any Derivative Works created by the City or its employees except as expressly provided for herein. Upon termination of this Agreement for any reason, the City shall immediately (i) discontinue all use of the FC IP; and (ii) discontinue all use of Derivative Works.

**33.3. Measurable Results Assessment.** The Leader in Me process includes a voluntary survey whereby staff, parents, and students are asked questions related to leadership, culture, and academics. An authorized person from the City will be provided a URL link of the survey questions to share with staff, parents, and students. Survey results will be compiled in an aggregate form and shared with third parties, such as donors and sponsors. Survey results may also be used for research.

**33.4. Leadership Development.** Principals Development Track and Lighthouse Coordinator Development Track provide an opportunity for Users to attend professional development. The City is responsible for all travel expenses incurred by Users attending such professional development.

**33.5. Copyright.** FranklinCovey owns all intellectual property rights, proprietary rights, and copyrights to all training session concepts and materials including, but not limited to, student and teacher guides, documentation, images, animation, sound, music, and text related to the Leader in Me program. Any unauthorized use, reuse, copying, reproduction, recording, transmittal, modification, or revision of such concepts and materials or any portion thereof is expressly prohibited and shall constitute a breach of this Agreement. The materials provided herein are intended for personal use only by Users to apply the concepts learned within the school, and are not for resale or public display. Nothing in this Agreement implies a license for the City to use the training session concepts and materials outside the scope of this Agreement.

**33.6. Leader in Me Notifications.** FranklinCovey may send to teachers, staff, and employees via email or other means promotional materials, product updates, upcoming events, and other information pertinent to the Leader in Me process. Anyone receiving such information may opt out at any time.

**(Signature page follows)**

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

**WITNESSES:**

**CITY OF WATERBURY**

Sign:   
Print name: Alexandra DeGirolamo

By:   
Paul K. Pernerewski Jr., Mayor


Sign:   
Print name: Eden Stano

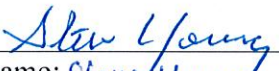
Date: 4/24/2024

**WITNESSES:**

**FRANKLIN COVEY CLIENT SALES, INC.**

Sign:   
Print name: Stephanie King

By:   
Printed Name: Kimberly Neville  
Title: Legal Director

Sign:   
Print name: Steve Young

Date: 12/11/2023



## ATTACHMENT A

1. Consultant's Price Proposal, consisting of one (1) page, attached hereto;
2. Consultant's Proposal, consisting of five (5) pages, attached hereto;
3. Any and all amendment(s) and Change Orders, issued by the City after execution of Contract, incorporated herein by reference;
4. City Contract Compliance Documents, incorporated herein by reference;
5. Certificates of Insurance, incorporated herein by reference;
6. Licenses, incorporated herein by reference;
7. All applicable Federal, State, and local statutes, regulations charter and ordinances, incorporated herein by reference.

Deliverable	Start Date	End Date	Invoice Date	Amount	Quantity	Total
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#### 2024 - 2025

Membership per Student	1/31/2024	1/30/2025	1/31/2024	\$11.00	590	\$6,490.00
Custom Coaching Daily Rate				\$3,700.00	1	\$3,700.00
Subtotal for 2024-2025						\$10,190.00

#### 2025 - 2026

Membership per Student	1/31/2025	1/30/2026	1/31/2025	\$11.00	590	\$6,490.00
Custom Coaching Daily Rate				\$3,700.00	2	\$7,400.00
Subtotal for 2025-2026						\$13,890.00

#### 2026 - 2027

Membership per Student	1/31/2026	1/30/2027	1/31/2026	\$11.00	590	\$6,490.00
Custom Coaching Daily Rate				\$3,700.00	2	\$7,400.00
Subtotal for 2026-2027						\$13,890.00

#### 2027 - 2028

Membership per Student	1/31/2027	1/30/2028	1/31/2027	\$11.00	590	\$6,490.00
Custom Coaching Daily Rate				\$3,700.00	2	\$7,400.00
Subtotal for 2027-2028						\$13,890.00

#### 2028 - 2029

Membership per Student	1/31/2028	1/30/2029	1/31/2028	\$11.00	590	\$6,490.00
Custom Coaching Daily Rate				\$3,700.00	2	\$7,400.00
Subtotal for 2028-2029						\$13,890.00

Total Investment						\$65,750.00
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# The Power of Coaching

Though often underestimated and underutilized, coaching is the key to effective school improvement, including implementing SEL. FranklinCovey *Leader in Me* Coaching provides three types of coaching services to K-12 schools—Implementation, Executive, and Leadership Transition.

## The Challenge

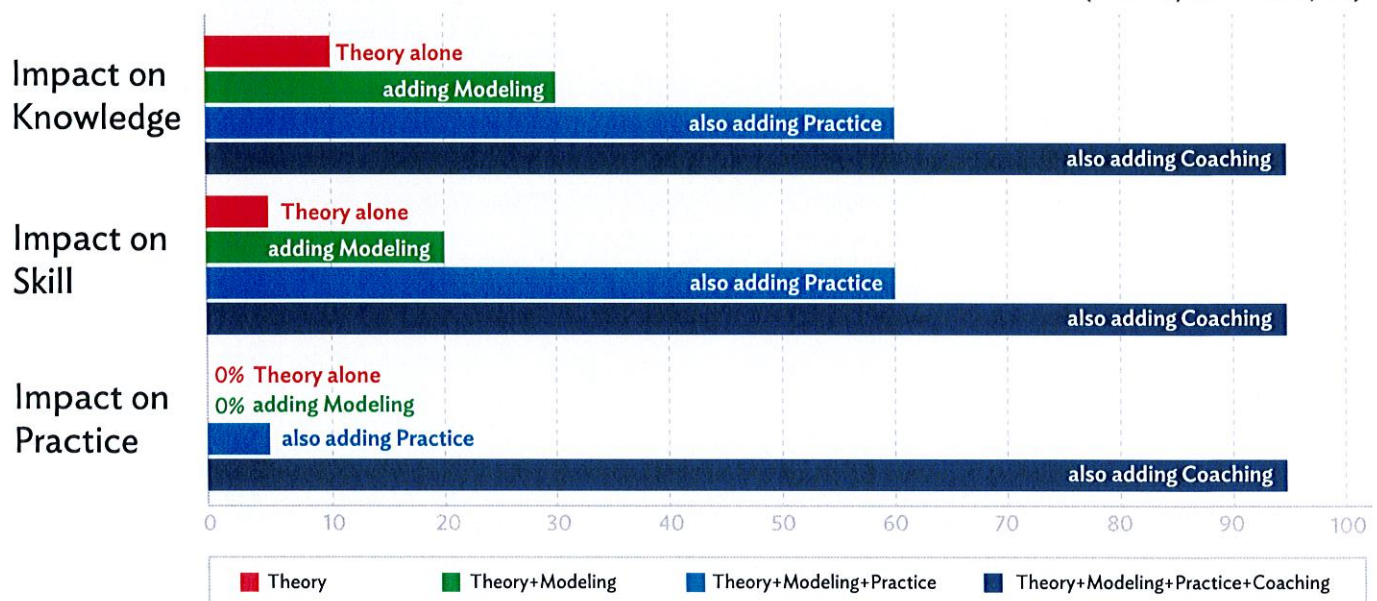
As schools become the front lines of addressing challenges that extend far beyond academics, they are increasingly turning to social-emotional learning (SEL) for research-based solutions. Unfortunately, many districts and schools struggle to implement SEL in a way that meets their greatest needs.

*44% of those schools and districts that do not use SEL say the primary barrier is “a lack of clarity on how to start implementing SEL.”*  
– Tyton Partners, 2020

## So, What Works for Effective Implementation? Effective, Ongoing Coaching

Experts in professional development have long understood the value of coaching. Research, like the classic work by Joyce and Showers (below), demonstrates its dramatic impact. Their work clearly shows that the addition of coaching to professional development models substantially increases the transfer of new knowledge into actual classroom practice above and beyond that of theory, modeling, and even practice.

(Source: Joyce and Showers, 2011)



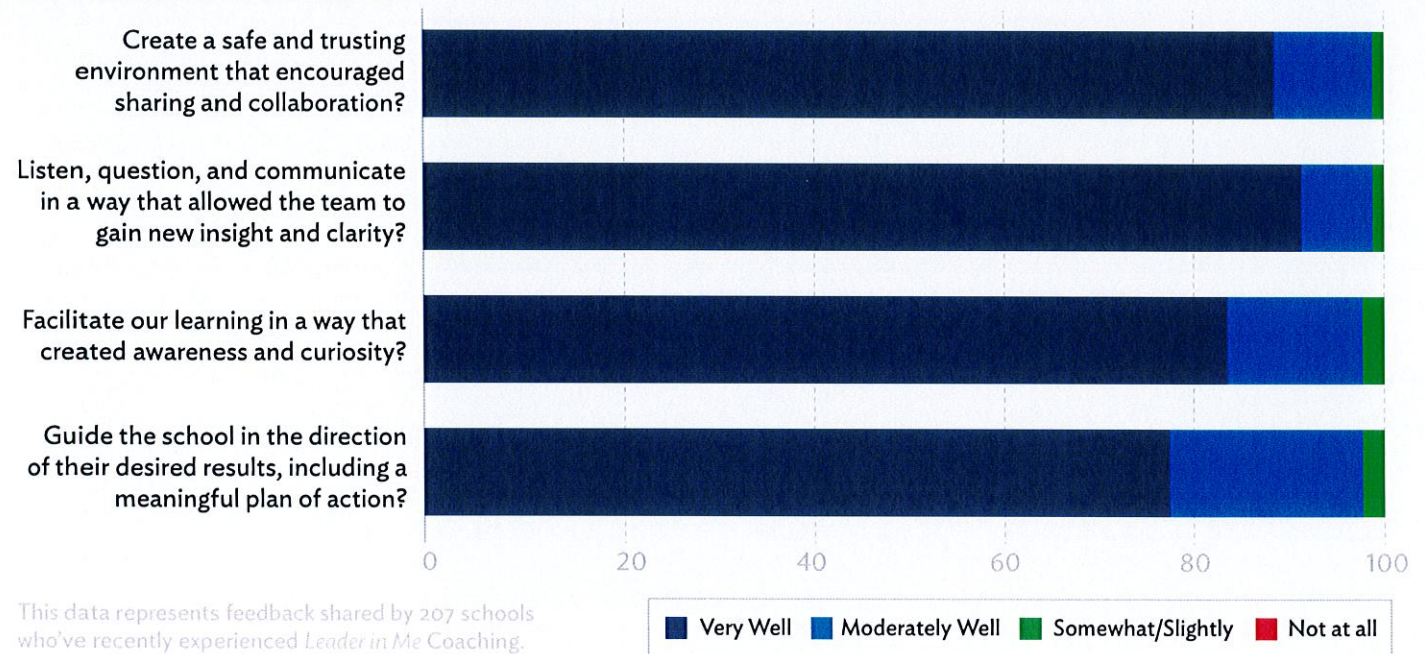


# Leader in Me Coaching

FranklinCovey *Leader in Me* is endorsed by CASEL as an evidence-based SEL process (K–6). However, *Leader in Me* is much more than SEL. It is a process of continuous growth and improvement that develops students, staff, and families with Core Paradigms and effective practices aligned to school, district, and statewide initiatives.

As a part of our ongoing professional learning, our Implementation Coaches support schools in taking their workshop knowledge and skill to a higher level of practice to drive a school's targeted measurable results.

## How Well Did Your Coach:



## What Schools are Saying About *Leader in Me* Coaching

"[Coach] is an **AMAZING LISTENER** and consistently asks questions that help us to remain focused and on a path that ensures school improvement. She has modeled how to have effective reflective conversations which has assisted me in doing that better with our staff."

"It was nice to have the individual time to address barriers and successes. Took the time to **ESTABLISH A SOLID ACTION PLAN** and looking forward to implementation and review."

"[Coach] is well prepared, creates a **WARM AND WELCOMING ENVIRONMENT** where all feel safe to share and learn from one and other."

"**EXCEPTIONALLY HELPFUL** for administrators that are trying to take their school to the next level."

"[Coach] asks great questions and **GUIDES US TO COME UP WITH SOLUTIONS ON OUR OWN.**"



# We Aim to Meet the Highest International Standards of Credibility

FranklinCovey *Leader in Me* has an established Executive Coach Training Program (LiMECTP). LiMECTP is designed to provide fundamental coach training aligned with the International Coach Federation (ICF).

Our training school is the first ICF accredited program in the field of education and is available to those who want to maximize the power of coaching in their schools, districts, and states. Our program occurs over a one-year period through a series of modules and mentoring.



## Transformational Coaching

### Executive Coaching

Executive Coaching through FranklinCovey *Leader in Me* is a one-on-one coaching partnership with a district or school-based leader established for the purpose of unlocking personal and/or professional potential, jointly achieving critical personal and organizational goals. The FranklinCovey Coach will partner with a leader in a thought-provoking and creative process that helps them break through barriers and focus on the actions necessary to achieve their desired results as a leader.

### Leadership Transition Coaching

Leadership Transition Coaching is a one-on-one coaching partnership with a new building leader established for the purpose of equipping them in *The 4 Essential Roles of Leadership*®. Conversations also include alignment of the *Leader in Me* process with School Improvement Plans and Measurable Results Assessment. The FranklinCovey Coach will partner with building leaders in a way that supports clarity and confidence in their leadership journey.

## The Support You Need

### We Bring Coaching Expertise That Gets Results

**Results matter!** Our Implementation Coaching helps schools adopt a results mindset. Coaches bring a track record of building trust that enable school teams to identify their daily actions necessary to drive results.

# 483

combined years of experience  
coaching in education.

# 290

combined years of experience  
coaching SEL implementation.



# Leader in Me Coaching: We Know Education

**Experience Matters!** Our *Leader in Me* Coaching team has spent many years on the front lines of education, working in classrooms and as administrators. This experience gives them first-hand knowledge of the barriers and fatigue that can get in the way of implementing new initiatives; Coaches support schools in overcoming these challenges.

## TEACHING EXPERTISE

**682**  
years

of combined classroom  
teaching experience

**Primary: 409 years**

(Average Coach experience: 9.1 years)

**Secondary: 273 years**

(Average Coach experience: 8.2 years)

## ADMINISTRATIVE EXPERTISE

**507**  
years

of combined school  
administrative experience

**Primary: 375 years**

(Average Coach experience: 9.6 years)

**Secondary: 132 years**

(Average Coach experience: 6.0 years)

## OTHER K-12 EXPERTISE

**250**  
years

of combined experience  
filling other school roles\*

**Primary: 155 years**

(Average Coach experience: 7.0 years)

**Secondary: 95 years**

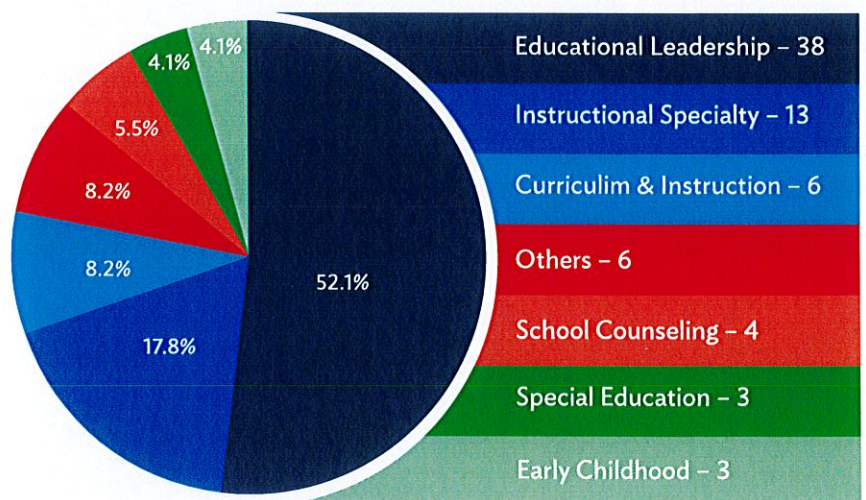
(Average Coach experience: 9.5 years)

## Leader in Me Coaching: Advanced Levels of Educational Expertise

LiM Coaches' Advanced Degrees: Areas of Specialization

**90%** of *Leader in Me*  
Coaches have  
masters degrees  
in education or  
a related field.\*

**15%** *Leader in Me*  
Coaches have  
doctorate  
degrees in  
education or  
a related field.



\*All Coaches who do not have an advanced academic degree have advanced certifications or experience in professional coaching.

\*(e.g. School Counselors, Instructional Coaches, ESL/ELL, and other Content Area Specialists, etc.).

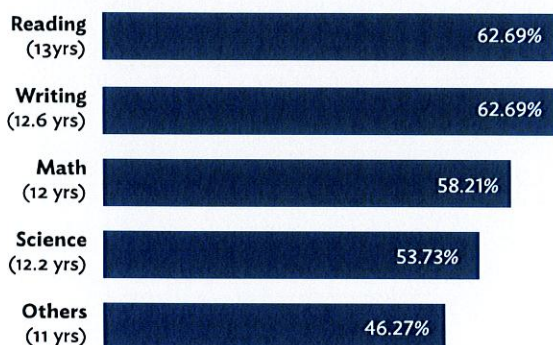


# Leader in Me Coaching: We Understand Your Students

Implementing new school improvement initiatives can be a large shift for many communities. Schools often find comfort in the depth of experience of *Leader in Me* Coaches. Their knowledge of varying subjects and familiarity with different student populations is wide-ranging, as evidenced below.

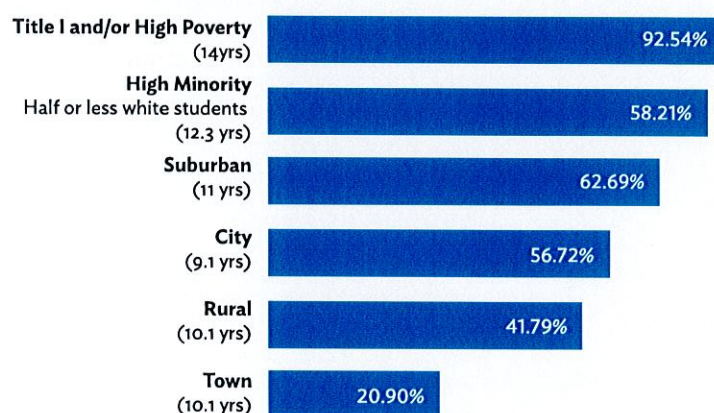
## % of LiM Coaches With Experience Teaching These Subject Areas

(Average length of coach experience)

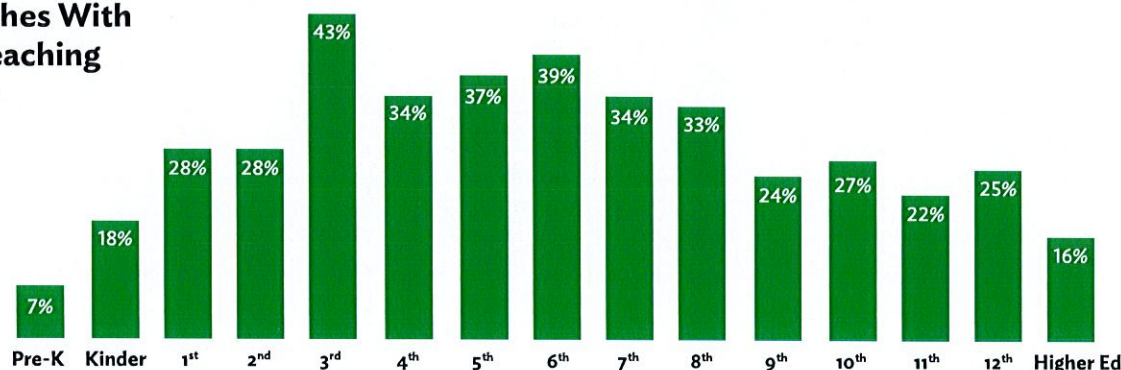


## % of LiM Coaches With Experience Working With These School Populations

(Average length of coach experience)



## % of LiM Coaches With Experience Teaching These Grades



## REFERENCE

1. Bryant, G., Mainelli, A., Crowley, S., & Davidsen, C. (2020) Finding Your Place: The Current State of K-12 Social Emotional Learning. Tyton Partners.
2. Kraft, M.A., Blazar, D., Hogan, D. (2018). The effect of teacher coaching on instruction and achievement: A meta-analysis of the causal evidence. Review of educational research, 88(4), 547-588.
3. Tschannen-Moran, M., & McMaster, P. (2009). Sources of self-efficacy: Four professional development formats and their relationship to self-efficacy and implementation of a new teaching strategy. The elementary school journal, 110(2), 228-245.