

PROFESSIONAL SERVICES AGREEMENT
RFP No. 8721
For
BOARD CERTIFIED BEHAVIORAL ANALYST SERVICES &
DISTRICT WIDE DE-ESCALATION & RESTRAINT TRAINING
between
The City of Waterbury, Connecticut
and
APEX Educational Solutions, LLC

THIS AGREEMENT, effective on the date signed by the Mayor ("Effective Date"), is by and between the CITY OF WATERBURY, (the "City"), located at City Hall, 235 Grand Street, Waterbury, Connecticut 06702 and APEX Educational Solutions, LLC (the "Consultant"), a State of Connecticut duly registered domestic corporation/limited liability company, with a principal place of business located at 95 Main Street, Suite 2, East Hampton, CT 06425 (Jointly referred to as the "Parties" to this Agreement).

WHEREAS, the Consultant submitted a proposal to the City responding to **RFP No. 8721** for **BOARD CERTIFIED BEHAVIORAL ANALYST SERVICES** ; and

WHEREAS, the City selected the Consultant to perform services regarding **RFP No. 8721**; and

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

NOW THEREFORE, THE PARTIES AGREE AND COVENANT AS FOLLOWS:

1. Scope of Services. The Consultant shall furnish all of the labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc. necessary to complete the Project as specified in this agreement (also referred to herein as "Contract") and such shall be completed in a satisfactory manner, as reasonably determined by the City. All labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc. shall comply with any and all applicable Local, State and Federal laws, statutes, ordinances and regulations and with generally accepted professional standards. The Consultant 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, and Consultant shall provide, one or more Board Certified Behavior Analyst(s) ("BCBA") who are certified in Physical and Psychological Management Training ("PMT"), and who, under the supervision of a Program Manager designated by Consultant, shall provide behavioral health services and district-wide PMT crisis intervention training to Waterbury Public Schools' staff

and students with disabilities ages 3-22 with behavior needs. The BCBA(s) shall oversee, monitor and develop student programs, develop appropriate Individual Education Plan goals and objectives, supervise and staff providing behavioral therapy services, create or modify instructional and behavioral support plans and provide training to school staff and parents under the direction of and as requested by school administration, for up to 1500 hours per contract year as detailed and described 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. Addendum #1, dated March 30, 2026, to RFP No 8721, consisting of 1 page, attached hereto;
 - 1.1.2. City of Waterbury RFP 8721, consisting of 12 pages, attached hereto;
 - 1.1.3. Consultant's Cost Proposal, entitled "Cost Schedule – RFP 8721" consisting of 1 page, attached hereto;
 - 1.1.4. Consultant's Response to City RFP 8721, excluding City forms, consisting of 88 pages, attached hereto;
 - 1.1.5. Annual Statement of Financial Interests; Disclosure and Affidavit Re: Outstanding Obligations to the City; Debarment Certification; Corporate Resolution, Non-Collusive Affidavit, as provided and executed by Consultant, incorporated herein by reference;
 - 1.1.6. Certificates of Insurance, incorporated herein by reference;
 - 1.1.7. Licenses, incorporated herein by reference;
 - 1.1.8. All applicable Federal, State and local statutes, regulations charter and ordinances incorporated 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 Federal, State and local laws, regulations, charter and ordinances
 - 1.2.2 Any Amendments to this Contract
 - 1.2.3 This Contract, consisting of 28 pages
 - 1.2.4 Consultant's Cost Proposal, entitled "Cost Schedule – RFP 8721," consisting of 1 page
 - 1.2.5 Addendum #1, dated March 30, 2026, to RFP No 8721, consisting of 1 page
 - 1.2.6 City of Waterbury RFP 8721, consisting of 12 pages
 - 1.2.7 Consultant's Response to RFP No. 8721, excluding City forms, consisting of 88 pages

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 and 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 may be 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.

2.6. 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.

2.6.1 Any and all materials contained in City of Waterbury student files that are entrusted to Consultant or gathered by 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.

2.6.2 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.

2.7 Student Data Requirements.

2.7.1 All student records, student information, and student-generated content (collectively, “Student Data”) provided or accessed pursuant this Agreement are not the property of, or under the control of, the Sub-Grantee.

2.7.2 The City’s Board of Education (“Board”) shall have access to and the ability

to delete Student Data in the possession of the Sub-Grantee 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 Sub-Grantee. 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 Sub-Grantee 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 Sub-Grantee 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.

2.7.3 The Sub-Grantee shall not use Student Data for any purposes other than those authorized pursuant to this Agreement.

2.7.4 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 Sub-Grantee receives a request to review Student Data in the Sub-Grantee's possession directly from a student, parent, or guardian, the Sub-Grantee agrees to refer that individual to the Board and to notify the Board within two (2) business days of receiving such a request. The Sub-Grantee 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 Sub-Grantee, and correct any erroneous information therein.

2.7.5 The Sub-Grantee shall take actions designed to ensure the security and confidentiality of student data.

2.7.6 The Sub-Grantee 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 Sub-Grantee of a breach of Student Data, the Sub-Grantee 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.

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

2.7.8 The Sub-Grantee 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.

2.7.9 The Sub-Grantee 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.

2.7.10 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. 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 acknowledges its responsibilities to examine and to be thoroughly familiar with the City's proposal document, including, but not limited to the specifications, and any addenda thereto. The Consultant hereby warrants and represents that prior to the submission of its proposal during the proposal process it reviewed or was afforded opportunity, by the City, to review all physical items, facilities, services or functions essential to the satisfactory performance of the services required ("Due Diligence") and thereby certifies that all such items facilities, services or functions are included in this 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, accordingly, any additional costs, services or products resulting from the failure of the Consultant to complete Due Diligence prior to submission of its proposal shall be borne by the Consultant. Furthermore the Consultant had the opportunity during the proposal process 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. 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 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 has given the City written notice of any conflict, error or discrepancy that the Consultant has discovered in the Proposal Documents; and

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

3.8. Reporting Requirement. The Consultant's Program Manager and Administration shall prepare and deliver biannual performance reviews of the BCBA(s) servicing City students, meet monthly with City school administrators to provide progress monitoring, and provide written reports as requested by the City 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. Consultant shall also ensure all BCBA staff are trained in and understand the reporting requirements for Medicaid billing services.

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.

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. The initial contract term shall be for three (3) years, commencing on July 1, 2026 and terminating on June 30, 2029 ("Initial Term").

5.1 Option Periods. The City shall have the option, at its sole discretion and upon reasonable notice to the Consultant, to extend this agreement pursuant to the same terms and conditions stated herein for two (2) additional one (1) year terms:

5.1.1. Option 1: July 1, 2029 – June 30, 2030

5.1.2. Option 2: July 1, 2030 – June 30, 2031

5.2 Time is and shall be of the essence for all Project milestones, 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.

6.1 Fee Schedule. The fee payable to the Consultant shall not exceed **FIVE HUNDRED SEVENTEEN THOUSAND DOLLARS (\$517,000.00)** for the Initial Term, and shall not exceed **ONE HUNDRED SEVENTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$172,000.00)** for any one year of the Contract and be in accordance with the Consultant's Cost Proposal and as follows:

6.1.1. Effective Date – June 30, 2027:	\$ 110.00 per hour
6.1.2. July 1, 2027 – June 30, 2028	\$ 113.00 per hour
6.1.3. July 1, 2028 – June 30, 2029	\$ 116.50 per hour
6.1.4 Option 1: July 1, 2029 – June 30, 2030	\$ 120.00 per hour
6.1.5 Option 2: July 1, 2030 – June 30, 2031	\$ 123.00 per hour

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 for **RFP No. 8721** 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 Each Occurrence,

\$2,000,000.00 General Aggregate

\$2,000,000.00 Products and Completed Operations Aggregate

9.4.2 Automobile Liability Insurance:

\$1,000,000.00 Combined Single Limit Each Accident

Any Auto, All Owned and Hired Autos

9.4.3 Workers' Compensation: WC Statutory Limits

Employer Liability (EL)

\$1,000,000 EL Each Accident

\$1,000,000 EL Disease Each Employee

\$1,000,000 EL Disease Policy Limits

9.4.4 Excess/Umbrella Liability Insurance:

\$7,000,000.00 Each Occurrence

\$7,000,000.00 Aggregate

9.4.5 Professional Liability Insurance/E&O:

\$1,000,000.00 Each Wrongful Act

\$1,000,000.00 Aggregate

9.4.6 Abuse/Molestation Liability:

\$1,000,000 Each Occurrence

\$1,000,000 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 of Waterbury 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 an 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 City's request for proposal number must be shown on the certificate of insurance. 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 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 do 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, 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, 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. Housing and Urban Development Section 3 Clause. In the event this Contract is funded, in whole or in part, through Housing and Urban Development assistance, 24 C.F.R. §135.38 may apply and the Consultant shall then be required to comply with the following (referred to as the "Section 3 clause"):

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

12.2. The parties to this Contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this

Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

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

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

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

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

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

13. Termination.

13.1. Termination of Contract for Cause. If, through any cause, in part or in full, not 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.

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

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

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

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

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.

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 A, 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. In the instance of a conflict or dispute over issues not specifically referenced within the Contract, the following documents shall be used as historical documents. Without regard to the order of precedence, to resolve such conflicts or disputes, the historical documents are **(i)** the City's aforementioned **RFP No. 8721** and **(ii)** the Consultant's proposal responding to the aforementioned **RFP No. 8721**.

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

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: Apex Educational Solutions, LLC
95 Main Street, Suite 2
East Hampton, CT 06424

City: City of Waterbury
c/o Wendy Johns, Director of Pupil Services
Waterbury Public Schools
236 Grand Street
Waterbury, CT 06702

With a copy to: City of Waterbury Office of the Corporation Counsel
235 Grand Street, 3rd 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, some 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: <http://www.waterburyct.org/content/458/539/default.aspx> [click link titled "The City of Waterbury Code of Ordinances Passed 8/24/2009". For Chapter 38, click on "TITLE III: ADMINISTRATION", then click on "CHAPTER 38: CENTRALIZED PROCUREMENT SYSTEM". For Chapter 39, click on "TITLE III: ADMINISTRATION", then click on "CHAPTER 39: ETHICS AND CONFLICTS OF INTEREST"]].

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.

(signature page follows)

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

WITNESSES:

A. Aga
Bijar Aga
Tracy Ann A. Deen
Tracy Ann A. Deen

WITNESSES:

Erin L. Dyett
Erin L. Dyett
Susan Fisher
Susan Fisher
May 4, 2026
Date:

CITY OF WATERBURY

By: Paul K. Perhejewski, Jr., Mayor

Date: 07/01/2026

APEX Educational Solutions

By: JASE DIANE

Its: COFOUNDER, CEO

May 4, 2026

ATTACHMENT A

- 1.1.1.** Addendum #1, dated March 30, 2026, to RFP No 8721, consisting of 1 page, attached hereto;
- 1.1.2.** City of Waterbury RFP 8721, consisting of 12 pages, attached hereto;
- 1.1.3.** Consultant's Cost Proposal, entitled "Cost Schedule – RFP 8721," consisting of 1 page, attached hereto;
- 1.1.4.** Consultant's Response to City RFP 8721, excluding City forms, consisting of 88 pages, attached hereto;
- 1.1.5.** Annual Statement of Financial Interests; Disclosure and Affidavit Re: Outstanding Obligations to the City; Debarment Certification; Corporate Resolution, Non-Collusive Affidavit, as provided and executed by Consultant, incorporated herein by reference;
- 1.1.6.** Certificates of Insurance, incorporated herein by reference;
- 1.1.7.** Licenses, incorporated herein by reference;
- 1.1.8.** All applicable Federal, State and local statutes, regulations charter and ordinances incorporated by reference