

NEGOTIATED CONTRACT FOR GOODS AND/OR SERVICES

**ISSUED BY:** Office of Contracts and Acquisitions (OCA)  
**ADDRESS:** 1200 First Street, NE, 9<sup>th</sup> Floor, Washington, DC 20002

**CONTRACT NO:** GAGA-2023-C-0024      **SOLICITATION NO:** N/A

**PROGRAM OFFICE:** Office of Teaching and Learning (OTL), Out of School Time Programs (OSTP)

**CAPTION:** Art Enrichment Service


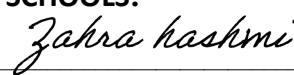
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The undersigned offers and agrees that, with respect to all terms and conditions, as negotiated between the offeror and DCPS, and contained herein, and the provisions of the solicitation, constitutes the Formal Contract.

**ACCOUNTING AND APPROPRIATION DATA:**

**PURCHASE ORDER NUMBER:** TBD

<p><b>CONTRACTOR:</b> (Contractor shall not commence performance until the District of Columbia Public Schools has signed this document)</p> <p><u>EYL 365 Project, LLC</u> Contractor's Name</p> <p>BY:  Signature of Authorized Representative</p> <p>_____ Founder &amp; Executive Director</p> <p>Title <u>10.27.2022</u> Date</p> <p><u>2557 36<sup>th</sup> Street, S.E.</u> <u>Washington, DC 20020</u> Mailing Address of Contractor</p> <p><u>202-270-5189</u>      <u>202.575.1699</u> Telephone No.      Facsimile</p>	<p><b>ACCEPTANCE BY THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS:</b></p> <p> Contracting Officer</p> <p><u>Zahra Hashmi</u>    <u>October 27, 2022</u> Type or Print Name      Date</p> <hr/> <p>The information contained in the box below is for District of Columbia Public School use only and, in the event of a discrepancy between this information and the terms of the contract, the contract terms shall take precedence.</p> <hr/> <p><b>PERIOD OF CONTRACT:</b> The term of the contract shall be from date of Notice To Proceed October 3, 2022 through November 30, 2022 for the amount of \$97,000.00. This leaves a contract balance of \$100,100.00 with the NTP amount of \$97,000.00. The total amount of the contract is \$197,100.00. The Notice to Proceed shall merge with this contract making the contract period of performance October 3, 2022 thru September 30, 2023.</p> <p><b>CONTRACT AMOUNT: \$197,100.00</b></p>
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**SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST**

**B.1** The District of Columbia Public Schools (DCPS), Office of the Chief Resource Strategy Officer, Contracts and Acquisitions Division, on behalf of the Office of Teaching and Learning (OTL), Out of School Time Programs (OSTP), has a need for a Contractor to provide Art Enrichment Service for DCPS Afterschool Arts Enrichment Programs for PreK-4 Students at three (3) Elementary Schools, Burrough ES, Payne ES and Truesdell ES.

**B.1.1** DCPS will be providing a five (5) day weeks Art Enrichment Program for its PreK-4 students, starting October 3, 2022 through September 30, 2023 and will be working with a partner (Contractor) to provide the art services.

**B.1.2** The Afterschool Arts Enrichment Program will be from 3:30 pm to 6:00 pm Monday thru Friday.

**B.1.3** The Contractor shall provide the required goods and services set forth in the Statement of Work and in accordance with the Contractor's price proposals (dated September 26, 2022) attached and made a part of this contract for the period of performance beginning October 3, 2022 through September 30, 2023.

**B.1.4** The Contractor shall provide Art Service to 50 students at Burrough ES, 50 students at Payne ES and 50 students at Truesdell ES.

**B.2 The District contemplates an award of a Labor Hour contract, in accordance with 27 DCMR Chapter 27**

**B.2.1** The Contractor shall charge an hourly rate for providing Teaching Artists.

**B.2.2** The fixed hourly rates shall be fully loaded and include wages, benefits, overhead, general and administrative expenses and profit.

**B.2.3 LABOR HOUR CEILING:**

**B.2.4** The labor hour ceiling for this contract is set forth in Section B.4.

**B.2.5** The costs for performing this contract shall not exceed the labor hour ceiling specified in Section B.4.

**B.2.6** The Contractor agrees to perform the work and requirements specified in the contract and to meet all obligations under this contract within the labor hour ceiling.

**B.2.7** The Contractor must notify the Contracting Officer (CO) in writing, whenever it has reason to believe that the total cost for the performance of this contract will be greater than the cost reimbursement ceiling.

**B.2.8** As part of the notification, the Contractor must provide the CO a revised estimate of the total cost of performing this contract.

**B.2.9** DCPS is not obligated to reimburse the Contractor for costs incurred in excess of the labor hour ceiling

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specified in Section B, and the Contractor is not obligated to continue performance under the contract or otherwise incur costs in excess of the labor hour ceiling specified in Section B. until the CO notifies the Contractor, in writing, that the estimated cost has been increased and provides a revised labor hour ceiling for performing the contract.

**B.2.10** If the Contractor exceeds the labor hour ceiling set forth in Section B. without obtaining the written notification from the CO as set forth in Section B. it does so at its own risk.

**B.3 REQUIREMENTS CONTRACT**

The District will purchase its requirements of the articles or services included herein from the Contractor. The estimated quantities stated herein reflect the best estimates available. The estimate shall not be construed as a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable. The estimated quantities shall not be construed to limit the quantities which may be ordered from the Contractor by the District or to relieve the Contractor of its obligation to fill all such orders.

- a) Delivery or performance shall be made only as authorized in accordance with the Ordering Clause, G.10. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations. If the District urgently requires delivery before the earliest date that delivery may be specified under this contract, and if the Contractor shall not accept an order providing for the accelerated delivery, the District may acquire the urgently required goods or services from another source.
- b) There is no limit on the number of orders that may be issued. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- c) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and District's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided that the Contractor shall not be required to make any deliveries under this contract after September 30, 2023.

**B.4 PRICE SCHEDULE – FIXED PRICE REQUIREMENTS**

**B.4.1 BASE YEAR (OCTOBER 3, 2022 THRU SEPTEMBER 30, 2023)**

Line Item CLIN No	Description of Services	Number of Employees	Total Hours per Day	Total Number of days	Total Number of Hours	Price per Hour	Total Amount
001	Teaching Artists	6	2.5	180  (5 days a week at 36 weeks)	2,700	\$ 73.00	\$197,100.00
<b>B.4.1 GRAND TOTAL</b>							<b>\$197,100.00</b>

**B.4.2 OPTION YEAR ONE (OCTOBER 1, 2023 THRU SEPTEMBER 30, 2024)**

Line Item CLIN No	Description of Services	Number of Employees	Total Hours per Day	Total Number of days	Total Number of Hours	Price per Hour	Total Amount
001	Teaching Artists						
<b>B.4.2 GRAND TOTAL</b>							<b>TBD</b>

**\*Should DCPS decide to exercise its unilateral option rights for any option year pursuant to Section F.2 of this contract, the parties agree that prices for each option year will be negotiated and finalized each year at ninety days prior to the expiration of the contract. Although option year prices will be negotiated, in no event shall the option year prices result in prices higher than the contractor’s list price.**

**SECTION C: SPECIFICATIONS/WORK STATEMENT**

**C.1 SCOPE:**

The District of Columbia Public Schools (DCPS), Office of the Chief Resource Strategy Officer, Contracts and Acquisitions Division, on behalf of the Office of Teaching and Learning (OTL), Out of School Time Programs (OSTP), has a need for a Contractor to provide Art Enrichment Services for DCPS Afterschool Arts Enrichment Program at three (3) Elementary Schools, Burrough ES, Payne ES and Truesdell ES.

**C.1.2 INTRODUCTION**

DCPS Out of School Time Programs (OSTP) in the Office of Teaching and Learning facilitates afterschool programs at 55 Title I schools to provide significant learning opportunities for students, assist students in meeting or exceeding the District’s standards in core academic subjects, provide engaging and robust enrichment opportunities, and offer families of students in the afterschool program opportunities for literacy, and related educational development.

**C.1.3** The Arts Enrichment Service for this project will enhance the DCPS, OSTP Afterschool programs at three Schools, Burrough Elementary, Payne Elementary and Truesdell Elementary, through teacher-led support and various arts enrichment from highly qualified partners.

**C.1.4** DCPS will provide an afterschool nutrition meal for its students

**C.1.5** DCPS School administrators, counselors, teachers and OSTP staff will identify and recruit students to participates in the program.

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- C.1.6** DCPS, OSTP, in partnership with EYL 365 Project LLC, will enhance the afterschool program and increase support and coverage for students in schools with significant waitlists and staffing needs at Burroughs, Payne, and Truesdell Elementary Schools.
  
- C.1.7** DCPS reserves the right to require the Contractor to remove personnel who are not responsible for deliverables outlined in Section F.3. Contractor must continue to staff the project to effectively meet the deliverables in Section F.
  
- C.1.8** The Art Enrichment Service will be provided at the following DCPS locations:
  - 1. Burrough ES  
1820 Monroe Street, NE  
Washington, DC 20018  
Coordinator: Andrew Miller  
PH: 202-317-2137
  
  - 2. Payne ES  
1445 C Street SE  
Washington, DC 20003  
Coordinator: Wil Yow  
PH: 202-657-2411
  
  - 3. Truesdell ES  
800 Ingraham Street, NW  
Washington, DC 20011  
Coordinator: Cristina Ortez  
PH: 202-308-9999

**C.2 APPLICABLE DOCUMENTS**

**C.2.1** The Following documents are applicable to this procurement and are hereby incorporated by this reference: N/A

**C.3 CONTRACTOR’S RESPONSIBILITIES**

- C.3.1** The Contractor shall provide and Art Enrichment Program that engages participates in Visual, Mixed Media, and Performing Arts programming for the DCPS Out of School Time Programs.
  
- C.3.2** The Contractor shall provide six (6) Teaching Artists that will provide programming to 150 students over the course of 36 weeks for 2.5 hours per day 5 days a week.
  
- C.3.3** Each Teaching Artist will facilitate 2.5-hour workshops for five (5) days a week (12.5 hours a week) for 36 weeks totaling to 450 hours per Teaching Artist for the entire program (450 hours x 6 Teaching Artist: 2700 hours).
  
- C.3.4** The Contractor shall provide unique, experiential art opportunities that foster character development,

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cultural identity, and pride (aligned with DCPS' anti-racist and equity values).

**C.3.5** The Contractor shall provide the services for the art enrichment program between the hours of 3:30 PM to 6:00 PM. Monday thru Friday.

**C.3.6** The Contractor shall provide a robust parent engagement event at the close of the program to showcase what students have learned during this pilot period for the families served at Burroughs ES, Payne ES and Truesdell, including, but not limited to:

1. Featuring students work in the afterschool space of the program on site
2. Weekly communication with OSTP Coordinator to support any family engagement needs
3. Provide a point of contact supervisor to interface with DCPS OSTP Program POC to address any issues or concerns regarding staffing and programming.
4. Follow all DCPS guidelines and procedures related to student discipline.
5. Participate in planning sessions, professional development, and meetings when requested by the principal, afterschool coordinator, and/or Afterschool Manager and when approved by the contract administrator.
6. Submit a quarterly program activity report to the DCPS OSTP specialist, [margaret.berkey@k12.dc.gov](mailto:margaret.berkey@k12.dc.gov)

#### **C.4 Staff Attendance Expectations**

**C.4.1** Provide documentation with invoices that: Corroborate the date(s) and times(s) of service provided by staff.

**C.4.2** Verify arrival and departure times through signed timesheets by school administrator or designee pursuant to schedules provide; and confirm the names of the students supported.

**C.4.3** A substitute must be available and cleared, when EYL staff are absent within two hours' notice.

**C.4.4** Notify contract administrator of staff absence and time frame for substitute support to report.

**C.4.5** Notify DCPS afterschool site coordinator of staff absence and estimated time of arrival of substitute.

#### **SECTION D: PACKAGING AND MARKING**

**D.1** The packaging and marking requirements for this contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

#### **SECTION E: INSPECTION AND ACCEPTANCE**

**E.1** The inspection and acceptance requirements for this contract shall be governed by clause number five (5) Inspection of Supplies AND clause number six (6), Inspection of Services of the Government of the

**SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES**

**F.1 TERM OF CONTRACT**

The term of the contract shall be from date of Notice To Proceed October 3, 2022 through November 30, 2022 for the amount of \$97,000.00. This leaves a contract balance of \$100,100.00 with the NTP amount of \$97,000.00. The total amount of the contract is \$197,100.00. The Notice To Proceed shall merge with this contract making the contract period of performance October 3, 2022 thru September 30, 2023, and as specified on the cover page of this contract.

**F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT**

**F.2.1** The District may extend the term of this contract for one (1) period of one year, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

**F.2.2** If the District exercises this option, the extended contract shall be considered to include this option provision.

**F.3 DELIVERABLES**

The Contractor shall perform the activities required to successfully complete the District’s requirements and submit each deliverable to the Contract Administrator identified in section G.9 in accordance with the following: **See Section B and Section C.**

**F.3.1 Required Tasks and Deliverables**

Task	Deliverable	Responsible (Contractor or DCPS)
Program & Facilities	Provide space (e.g., classrooms, cafeteria) for program activities	DCPS
	Provide arts enrichment programming to identified student population. Programming must include: <ul style="list-style-type: none"> <li>Arts enrichment activities that aim to foster cultural identity and pride</li> </ul>	Contractor
	Provide a strong parent engagement component to afterschool programming, including: <ul style="list-style-type: none"> <li>Support of sites “Back to School Night” (if applicable)</li> </ul>	Contractor

	<ul style="list-style-type: none"> <li>Featuring student work in the afterschool space of the program site</li> <li>Weekly communication with OSTP Coordinator to support any family engagement needs</li> </ul>	
Student Enrollment/attendance	Recruit and enroll students in the OSTP program	DCPS
	Enter and report student attendance	DCPS/Contractor
Staffing and supplies	Provide all needed staffing and supplies for afterschool program	Contractor
Reports & Monitoring	<ul style="list-style-type: none"> <li>Provide a comprehensive quarterly progress report (program goals and outcomes), including summary of enrichment activities delivered and measurable results, to DCPS OSTP specialist, <a href="mailto:margaret.berkey@k12.dc.gov">margaret.berkey@k12.dc.gov</a></li> <li>Provide staffing report (e.g., training, personnel changes) to DCPS</li> <li>Submit invoices to DCPS, ensuring all purchases are allowable</li> </ul> <p>Hold pre, mid, and post meeting with grant coordinator to discuss status of program</p>	Contractor

**SECTION G: CONTRACT ADMINISTRATION**

**G.1 INVOICE PAYMENT:**

**G.1.1** The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

**G.1.2** The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

**G.2 INVOICE SUBMITTAL:**

**G.2.1** The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>.

**G.2.2** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4.

**G.2.3** To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor’s profile.

**G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT:**

**G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.



**G.3.2** No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

**G.4 PAYMENT:**

**G.4.1 PAYMENTS ON PARTIAL DELIVERIES OF GOODS**

Unless otherwise specified in this contract, payment will be made on partial deliveries of goods accepted by the District if:

- a) The amount due on the deliveries warrants it; or
- b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

**G.4.2 PAYMENTS ON PARTIAL DELIVERIES OF SERVICES**

Unless otherwise specified in this contract, payment will be made on partial deliveries of services accepted by the District if:

- a) The amount due on the deliveries warrants it; or
- b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

**G.4.3 PARTIAL PAYMENTS**

Unless otherwise specified in this contract, payment will be made on partial deliveries of goods and services accepted by the District if:

- a) The amount due on the deliveries warrants it; or
- b) The Contractor requests it and the amount due on the deliveries is in accordance with the following:
  - "Payment will be made on completion and acceptance of each percentage or stage of work in accordance with the prices stated in the Schedule in Section B"; and
- c) Presentation of a properly executed invoice.

**G.4.4 LUMP SUM PAYMENT**

The District will pay the full amount due the Contractor after:

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- a) Completion and acceptance of all work; and
- b) Presentation of a properly executed invoice.

**G.4.5 PAYMENT FOR REIMBURSABLE ITEMS AND SERVICES**

Payment for approved reimbursable items and services provided on an hourly labor rate basis will be made based on submitted, approved documentation, including verified timesheets and receipts. Hourly rates shall be computed by multiplying the appropriate hourly rates in Section B by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis. Fixed hourly rates shall be fully loaded and include wages, overhead, general and administrative expenses and profit.

**G.5 ASSIGNMENT OF CONTRACT PAYMENTS:**

**G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

**G.5.2** Any assignment shall cover all unpaid amounts payable under this contract and shall not be made to more than one party.

**G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated \_\_\_\_\_, make payment of this invoice to (name and address of assignee).”

**G.6 THE QUICK PAYMENT CLAUSE:**

**G.6.1 Interest Penalties to Contractors**

**G.6.1.1** The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a) the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b) the 5<sup>th</sup> day after the required payment date for an agricultural commodity; or
- c) the 15<sup>th</sup> day after the required payment date for any other item.

**G.6.1.2** Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

**G.6.2 Payments to Subcontractors**

**G.6.2.1**The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**G.6.2.2**The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a) the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b) the 5<sup>th</sup> day after the required payment date for an agricultural commodity; or
- c) the 15<sup>th</sup> day after the required payment date for any other item.

**G.6.2.3**Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

**G.6.2.4**A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

### **G.6.3 Subcontract Requirements**

**G.6.3.1**The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d)

### **G.7 CONTRACTING OFFICER (CO):**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

**Zahra Hashmi  
Contracting Officer  
District of Columbia Public Schools  
Office of Resource Strategy  
Contracts and Acquisitions Division  
1200 1st Street, NE - 9th Floor  
Washington, DC 20002**

**G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER:**

**G.8.1** The CO is the only person authorized to approve changes in any of the requirements of this contract.

**G.8.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

**G.8.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

**G.9 CONTRACT ADMINISTRATOR (CA):**

**G.9.1** The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

**G.9.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

**G.9.1.2** Coordinating site entry for Contractor personnel, if applicable;

**G.9.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

**G.9.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

**G.9.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**G.9.2** The address and telephone number of the CA is:

Daisy Hicks  
Manager, Afterschool Programs  
Office of Teaching and Learning (OTL)  
Out of School Time Programs (OSTP)  
District of Columbia Public Schools (DCPS)  
1200 First Street NE  
Washington, DC 20002  
T (202) 321-4410  
E: [Daisy.Hicks@k12.dc.gov](mailto:Daisy.Hicks@k12.dc.gov)

**G.9.3** The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

**G.9.4** The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

**G.10 CONTRACTOR PERSONNEL**

**G.10.1** The Contractor has designated the following as “key” personnel in the execution of this contract:

**Candice Napper**  
**EYL 365 Project, LLC**  
**2557 36<sup>th</sup> Street, SE**  
**Washington, DC 20020**  
**PH: 202-270-5189**

**G.10.2** The Contractor shall reference Contract Number **GAGA-2023-C-0025** and Purchase Order Number **TBD** when submitting invoices for payment.

**SECTION H: SPECIAL CONTRACT REQUIREMENTS**

**H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

**H.1.1** For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor’s Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project’s labor force:

**H.1.1.1** At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

**H.1.2** The Contractor shall negotiate an Employment Agreement with the Department of Employment Services (DOES) for jobs created as a result of this contract. The DOES shall be the Contractor’s first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

**H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

The Contractor shall be bound by the Wage Determination No.: 2015-4281, Rev No. 24, dated 6/27/2022, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. § 351 *et seq.*, and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with **clause 24 of the SCP**. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

### **H.3 PREGNANT WORKERS FAIRNESS**

**H.3.1** The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

**H.3.2** The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

(1) Pay;

(2) Accumulated seniority and retirement;

(3) Benefits; and

(4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

**H.3.3** The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

**H.3.4** The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

**H.3.5** Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

#### **H.4 UNEMPLOYED ANTI-DISCRIMINATION**

**H.4.1** The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

**H.4.2** The Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

**H.4.3** Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

#### **H.5 51% DISTRICT RESIDENTS' NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT**

**H.5.1** For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.* (First Source Act).

**H.5.2** The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

- (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and
- (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

**H.5.3** The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

**H.5.4** The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

**H.5.5** The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

**H.5.6** The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

**H.5.7** If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.

**H.5.8** Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

**H.5.9** The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in **clause 14 of the SCP, Disputes**.

**H.5.10** The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

**H.6 ADVISORY AND ASSISTANCE SERVICES:**

**H.6.1** This contract is a "non-personal services contract". The Contractor and the Contractor's employees: (1) shall perform the services specified herein as independent contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government's right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the contract objectives.



**H.7 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA):**

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 et seq

**H.8 WAY TO WORK AMENDMENT ACT OF 2006:**

**H.8.1** Except as described in H.8.8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 et seq.) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

**H.8.2** The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**H.8.3** The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

**H.8.4** The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**H.8.5** The Contractor shall provide a copy of the Fact Sheet attached as J.6 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.5 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

**H.8.6** The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.

**H.8.7** The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 et seq.

**H.8.8** The requirements of the Living Wage Act of 2006 do not apply to: (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;

(2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage; (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility; (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor; (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the

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trainees do not replace employees subject to the Living Wage Act of 2006; (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006; (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District; (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3)); (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services

**H.8.9** The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

## **H.9 SUBCONTRACTING REQUIREMENTS:**

### **H.9.1 Mandatory Subcontracting Requirements**

**H.9.1.1** Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).

**H.9.1.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

**H.9.1.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.

**H.9.1.4** Except as provided in H.9.1.5 and H.9.1.7, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a setaside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**H.9.1.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the

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subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**H.9.1.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

**H.9.1.7** A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

## **H.9.2 Subcontracting Plan**

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.9.1 of this clause. The plan shall be submitted as part of the bid and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;
- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

## **H.9.3 Copies of Subcontracts**

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, CA, District of Columbia Auditor and the Director of DSLBD.

## **H.9.4 Subcontracting Plan Compliance Reporting**

**H.9.4.1** If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

- (A) The price that the prime contractor will pay each subcontractor under the subcontract;
- (B) A description of the goods procured or the services subcontracted for;
- (C) The amount paid by the prime contractor under the subcontract; and
- (D) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

**H.9.4.2** If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

### **H.9.5 Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

### **H.9.6 Notices**

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

### **H.9.7 Enforcement and Penalties for Breach of Subcontracting Plan**

**H.9.7.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

**H.9.7.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

**H.9.7.3** If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in clause 8 of the SCP, Default.

### **H.10 FAIR CRIMINAL RECORD SCREENING**

**H.10.1** The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) ("Act" as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.

**H.10.2** Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

**H.10.3** After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.

**H.10.4** The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

**H.10.5** This section and the provisions of the Act shall not apply:

- (a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;
- (b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;
- (c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or
- (d) To employers that employ less than 11 employees.

**H.10.6** A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

**H.11 DISTRICT RESPONSIBILITIES**

**SEE SECTION C.**

**H.12 CONTRACTOR RESPONSIBILITIES**

**SEE SECTION C.**

**H.13 CRIMINAL BACKGROUND AND TRAFFIC RECORDS CHECKS FOR CONTRACTORS THAT PROVIDE DIRECT SERVICES TO CHILDREN OR YOUTH:**

**H.13.1** A Contractor that provides services as a covered child or youth services provider, as defined in section 202(3) of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*), as amended (in this section, the "Act"), shall obtain criminal history records to investigate persons applying for employment, in either a compensated or an unsupervised volunteer position, as well as its current employees and unsupervised volunteers, in positions whose work requires unsupervised, direct contact with students (such as Managers of Teacher Leadership Development, or MTLDs). The Contractor shall request criminal background checks for the positions requiring criminal background checks determined by the program office.

**H.13.2** The Contractor shall also obtain traffic records to investigate persons applying for employment, as well as current employees and volunteers, when that person will be required to drive a motor vehicle to transport children in the course of performing his or her duties. The Contractor shall request traffic records for the positions requiring criminal background checks determined by the program office.

**H.13.3** The Contractor shall inform all applicants requiring a criminal background check that a criminal background check must be conducted on the applicant before the applicant may be offered a compensated position or an unsupervised volunteer position.

**H.13.4** The Contractor shall inform all applicants requiring a traffic records check that a traffic records check must be conducted on the applicant before the applicant may be offered a compensated position or a volunteer position.

**H.13.5** The Contractor shall obtain from each applicant, employee and unsupervised volunteer:

- (A) a written authorization which authorizes the District to conduct a criminal background check;
- (B) a written confirmation stating that the Contractor has informed him or her that the District is authorized to conduct a criminal background check;
- (C) a signed affirmation stating whether or not they have been convicted of a crime, pleaded nolo contendere, are on probation before judgment or placement of a case upon a stet docket, or have been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in any other state or territory:
  - (H) Murder, attempted murder, manslaughter, or arson;
  - (ii) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, or threats to do bodily harm;
  - (iii) Burglary;
  - (iv) Robbery;
  - (v) Kidnapping;
  - (vi) Illegal use or possession of a firearm;
  - (vii) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;
  - (viii) Child abuse or cruelty to children; or
  - (ix) Unlawful distribution of or possession with intent to distribute a controlled substance;
- (D) a written acknowledgement stating that the Contractor has notified them that they are entitled to receive a copy of the criminal background check and to challenge the accuracy and completeness of the report; and
- (E) a written acknowledgement stating that the Contractor has notified them that they may be denied employment or a volunteer position, or may be terminated as an employee or volunteer based on the results of the criminal background check.

**H.13.6** The Contractor shall inform each applicant, employee and unsupervised volunteer that a false statement may subject them to criminal penalties.

**H.13.7** Prior to requesting a criminal background check, the Contractor shall provide each applicant, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:

- (A) To authorize the Metropolitan Police Department (MPD), or designee, to conduct the criminal background check and confirm that the applicant, employee, or unsupervised volunteer has been informed that the Contractor is authorized and required to conduct a criminal background check; To affirm whether or not the applicant, employee, or unsupervised volunteer has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses or intra-family offenses in the District or their equivalent in any other state or territory of the United States, or for any of the felony offenses described in paragraph H.7.5(C);
- (B) To acknowledge that the applicant, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;
- (D) To acknowledge that the applicant may be denied employment, assignment to, or an unsupervised volunteer position for which a criminal background check is required based on the outcome of the criminal background check; and
- (E) To inform the applicant or employee that a false statement on the form or forms may subject them to criminal penalties pursuant to D.C. Official Code §22-2405.

**H.13.8** The Contractor shall direct the applicant or employee to complete the form or forms and notify the applicant or employee when and where to report to be fingerprinted.

**H.13.9** Unless otherwise provided herein, the Contractor shall request criminal background checks from the Chief, MPD (or designee), who shall be responsible for conducting criminal background checks, including fingerprinting.

**H.13.10** The Contractor shall request traffic record checks from the Director, Department of Motor Vehicles (DMV) (or designee), who shall be responsible for conducting traffic record checks.

**H.13.11** The Contractor shall provide copies of all criminal background and traffic check reports to the COTR within one business day of receipt.

**H.13.12** The Contractor shall pay for the costs for the criminal background and traffic record checks, pursuant to the requirements set forth by the MPD and DMV. The District shall not make any separate payment for the cost of criminal background and traffic record checks.

**H.13.13** The Contractor may make an offer of appointment to, or assign a current employee or applicant to, a compensated position which brings him/her into direct contact with students contingent upon receipt from the CO of the CA's decision after his or her assessment of the criminal background or traffic record check.

**H.13.14** The Contractor may not make an offer of appointment to an unsupervised volunteer whose position brings him or her into direct contact with children until it receives from the contracting officer the CA's decision after his or her assessment of the criminal background or traffic record check.

**H.13.15** The Contractor shall not employ or permit to serve as an unsupervised volunteer, an applicant or employee, whose position brings him/her into direct contact with students, who has been convicted of, has pleaded nolo contendere to, is on probation before judgment or placement of a case on the stet docket because of, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.

**H.13.16** Unless otherwise specified herein, the Contractor shall conduct periodic criminal background checks upon the exercise of each option year of this contract for current employees and unsupervised volunteer in the positions listed in sections H.7.1 and H.7.2.

**H.13.17** An employee or unsupervised volunteer, whose position brings them into direct contact with students, may be subject to administrative action including, but not limited to, reassignment or termination at the discretion of the CA after his or her assessment of a criminal background or traffic record check.

**H.13.18** The CA shall be solely responsible for assessing the information obtained from each criminal background and traffic records check report to determine whether a final offer may be made to each applicant or employee. The CA shall inform the CO of its decision, and the CO shall inform the Contractor whether an offer may be made to each applicant.

**H.13.19** If any application is denied because the CA determines that the applicant presents a present danger to children or youth, the Contractor shall notify the applicant of such determination and inform the applicant in writing that she or he may appeal the denial to the Commission on Human Rights within thirty (30) days of the determination.

**H.13.20** Criminal background and traffic record check reports obtained under this section shall be confidential and are for the exclusive use of making employment-related determinations. The Contractor shall not release or otherwise disclose the reports to any person, except as directed by the CO.

**H.13.21** The Contractor shall ensure that any Contractor Personnel having direct contact with students while providing service under this contract annually take the mandated reporter training offered by the DC Child and Family Services Agency (Mandated Reporter Training), which is provided for ANY person or employee (private or public) at no cost. This training can be found using the following website: <https://dc.mandatedreporter.org/Registration/Registration.action>. Additional information regarding the Mandated Reporter Training can be found by calling (202) 442-6000 or by visiting <http://cfsa.dc.gov/>. The Contractor shall ensure that Contractor Personnel report suspected instances of child abuse and neglect according to the requirements of District law and the means prescribed in the Mandated Reporter Training. The Contractor must also ensure that its representative responsible for managing this contract takes the Mandated Reporter Training annually. Copies of all Mandated Reporter Training Certificates verifying Contractor Personnel have completed training must be provided to DCPS for record keeping. The Contractor must also maintain copies of such certificates for its internal records. At any time, DCPS reserves the right to request a copy of a Mandated Reporter Training completion certificate for ANY Contractor Personnel working in direct contact with DCPS students.

#### **H.14 FREEDOM OF INFORMATION ACT:**

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA who will provide the request to the FOIA Officer for the



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agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the CA will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records.

### **H.15 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL:**

The Key Personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified Key personnel for any reason, the Contractor shall notify the Contracting Officer at least thirty calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall notify DCPS within one week of any substitution of Contractor's Executive Director.

### **H.16 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA):**

During the performance of the contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. 12101 et seq.

### **H.17 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.:**

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. See 29 U.S.C. 794 et seq.

### **H.18 RESERVED**

### **H.19 UNUSUAL INCIDENTS:**

**H.19.1** The Contractor shall report unusual incidents by facsimile or telephone to the Contract Administrator (CA) within 24 hours, and in writing within five (5) days. An unusual incident is an event that directly affects DCPS staff, students or Contractor's DC regional personnel providing services pursuant to this contract, which is significantly different from the regular routine or established procedures. Examples include but are not limited to death, injury, unexplained absence of Key Personnel, DCPS staff, or DCPS students; Contractor's DC regional staff negligence or willful misconduct in the performance of duties under this Contract; physical, sexual or verbal abuse of any individual by DCPS or Contractor's DC regional staff; fire; complaints directly related to Contractor's performance under this Contract; requests for information from the press, attorneys, or Government officials outside of DCPS related to, or requiring information about, DCPS; and behavior requiring attention of DCPS staff not usually involved in such a situation.

**H.19.2** The initial report shall include the date, time, place, person(s) involved, and a brief description of the incident. A full written report of the unusual incident addressing steps taken to resolve the problem shall be forwarded to the CA within the five (5) day period.

### **H.20 PUBLICITY:**

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Contractor shall not use the logo of DCPS, the District government or any District agency in any way including, but not limited to, in any statement, promotional materials (including on Contractor's website) or other published materials. In addition, Contractor shall not use the name of DCPS, the District government or any District agency in any statement, promotional materials (including on Contractor's website) or in any published materials in a manner which states or implies support for or an endorsement of Contractor by DCPS. Further, Contractor shall at all times obtain prior written approval from the CA before it makes any public statement, disseminates any promotional materials or issues any published materials bearing on the services it provides under this contract.

### **H.21 CONFLICT OF INTEREST:**

**H.21.1** No official or employee of the District of Columbia or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. (DC Procurement Practices Act of 1985, D.C. Law 6-85 and Chapter 18 of the DC Personnel Regulations).

**H.21.2** The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

## **SECTION I: CONTRACT CLAUSES**

### **I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated July 2010 (SCP) are incorporated as part of the contract. To obtain a copy of the SCP go to <http://ocp.dc.gov>, under Quick Links click on "Required Solicitation Documents".

### **I.2 CONTRACTS THAT CROSS FISCAL YEARS**

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

### **I.3 CONFIDENTIALITY OF INFORMATION**

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

### **I.4 TIME**

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

## I.5 RIGHTS IN DATA

Delete clause 42, Rights in Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 42, Rights in Data) in its place:

### A. Definitions

1. “Products” - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.

2. “Existing Products” - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.

3. “Custom Products” - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.

4. “District” – The District of Columbia and its agencies.

### B. Title to Project Deliverables

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. **Intellectual Property Rights.** District agrees and acknowledges that Contractor and its licensors own all intellectual property rights in and to the Products including, without limitation, all trademarks, trade names, service marks and copyrights in the Products and all underlying software programs and related documentation. District agrees and acknowledges that District and any school shall not acquire any right, title or interest in or to any Contractor’s intellectual property (IP), including, without limitation, software, trademarks, copyrights and other intellectual property of Contractor and no other rights are granted by Contractor to the District or any school in Contractor’s IP by implication, estoppel or otherwise. District further acknowledges and agrees that Contractor shall continue, during the term hereof, to expand and modify its Products, in its sole discretion.

**C. Subcontractor Rights**

Whenever any data, including computer software, are to be obtained from a subcontractor under the contract, the Contractor shall use this clause, **Rights in Data**, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

**D. Source Code Escrow**

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/ developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

**E. Indemnification and Limitation of Liability**

The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

**I.6 OTHER CONTRACTORS**

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

## **I.7 SUBCONTRACTS**

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

## **I.8 INSURANCE**

- A. **GENERAL REQUIREMENTS.** The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All applicable Contractor's policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia. For clarity, a waiver of subrogation shall be included in the Contractor's general liability, automobile liability, workers' compensation and umbrella, and cyber liability policies as required by this Agreement.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation, professional liability, and crime insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved reviewed by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation, professional liability, cyber liability, and crime insurance) shall include endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the

performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

1. Commercial General Liability Insurance (“CGL”). The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. (“ISO”) form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.
2. Automobile Liability Insurance. The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor’s commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers’ Compensation Insurance. The Contractor shall provide evidence satisfactory to the CO of Workers’ Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer’s Liability Insurance. The Contractor shall provide evidence satisfactory to the CO of employer’s liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

Crime Insurance (3<sup>rd</sup> Party Indemnity) - The Contractor shall provide a 3<sup>rd</sup> Party Crime policy to cover the dishonest acts of Contractor’s employees which result in a loss to the District. The policy shall provide a limit of \$50,000 per occurrence.

Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

Commercial Umbrella Liability. The Contractor shall provide evidence satisfactory to the CO of commercial umbrella liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of the underlying employers' liability, commercial general liability, and commercial automobile liability policies, with an effective date that is concurrent with such liability policies. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion, which includes umbrella drop down coverage.

**B. PRIMARY AND NONCONTRIBUTORY INSURANCE**

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

**C. DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

**D. LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**

**E. CONTRACTOR'S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

**F. MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

- G. NOTIFICATION. The Contractor or its insurers shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.
- H. CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia  
And mailed or emailed to the attention of:  
LaVeta Hilton  
Contracting Officer  
District of Columbia Public Schools  
Office of Resource Strategy  
Contracts and Acquisitions Division  
1200 1st Street, NE - 9th Floor  
Washington, DC 20002  
Ph: 202-442-5136 - E-Mail: [laveta.hilton@k12.dc.gov](mailto:laveta.hilton@k12.dc.gov)**

The CO may request, and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

- I. DISCLOSURE OF INFORMATION. The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.
- J. CARRIER RATINGS. All contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M Best Insurance Guide rating of at least A-VII (or the equivalent by any other rating agency) and licensed in the District.

## **I.9 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.3. An award cannot be made to any bidder who has not satisfied the equal employment requirements.

## **I.10 ORDER OF PRECEDENCE**

The contract awarded will contain the following clause:



A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Negotiated Contract for goods and services (pages 1-35)
- (3) Standard Contract Provisions for use with District of Columbia Supplies and Services Contract dated July 2010
- (4) Contract attachments other than the Standard Contract Provisions
- (5) Contractor's Quote dated September 26, 2022

#### **I.11 DISPUTES**

Delete clause 14, Disputes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 14, Disputes) in its place:

##### ***14. Disputes***

All disputes arising under or relating to the contract shall be resolved as provided herein.

(a) **Claims by the Contractor against the District:** Claim, as used in paragraph (a) of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant

- (1) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:
  - (i) A description of the claim and the amount in dispute;
  - (ii) Data or other information in support of the claim;
  - (iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
  - (iv) The Contractor's request for relief or other action by the CO.
- (2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (4) The CO's written decision shall do the following:

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- (i) Provide a description of the claim or dispute;
- (ii) Refer to the pertinent contract terms;
- (iii) State the factual areas of agreement and disagreement;
- (iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
- (v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
- (vi) Indicate that the written document is the CO's final decision; and
- (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.

(6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

**(b) Claims by the District against the Contractor:** Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.

(2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:

- (i) Provide a description of the claim or dispute;
- (ii) Refer to the pertinent contract terms;
- (iii) State the factual areas of agreement and disagreement;

- (iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
  - (v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
  - (vi) Indicate that the written document is the CO's final decision; and
  - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.
- (4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.
- (5) The authority contained in this paragraph (b) shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.
- (6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.
- (d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

## I.12 COST AND PRICING DATA

Delete clause 25, Cost and Pricing Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts.

## SECTION J: ATTACHMENTS

The following list of attachments is incorporated into the contract by reference.

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (July 2010) available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>

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<b>J.2</b>	U.S. Department of Labor Wage Determination No. 2015-4281, Revision 24, dated 6/27/2022
<b>J.3</b>	Equal Employment Opportunity Employer Information Report and Mayor's Order 85-85, at available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>
<b>J.4</b>	Way to Work Amendment Act of 2006 - Living Wage Notice available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> ,
<b>J.5</b>	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> ,
<b>J.6</b>	Tax Certification Affidavit available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a>
<b>J.7</b>	Bidder/ Offeror Certification Form available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> ,
<b>J.8</b>	Contractor Quote dated September 26, 2022

**\*\* END OF DOCUMENT \*\***