

**PROFESSIONAL SERVICES AGREEMENT**  
**RFP No. 6098**  
**for**  
**On-Line Learning System Provider**  
**between**  
**The City of Waterbury, Connecticut**  
**and**  
**Edgenuity Inc.**

**THIS AGREEMENT**, effective on the date signed by the Mayor, is by and between the CITY OF WATERBURY, City Hall, 235 Grand Street, Waterbury, Connecticut (the "City" "Customer" or "District") and Edgenuity Inc. located at 8860 East Chaparral Road, Suite 100, Scottsdale, Arizona 85250 a State of Nevada duly registered foreign corporation (the "Consultant or Edgenuity").

**WHEREAS**, Edgenuity has submitted a proposal to the City responding to **RFP No. 6098** for an On-Line Learning System Provider; and

**WHEREAS**, the City selected Edgenuity to perform services regarding **RFP No. 6098**; and

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

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

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

- i. **1.1.** The Project consists of and Edgenuity will provide between 120 and 200 licenses for access to its on-line learning system. Said on-line learning system shall provide online curriculum and customizable credit recovery for Common Core State Standards for all High School English, Language Arts, Science and Mathematics, test preparation options for ACT, SAT, PSAT, ACCUPLACET, and GED. Edgenuity shall provide Professional Development and/or Instructional Services and other curriculum support, assessments, tools, learning and technology management systems, training and support as set forth in the City's RFP and Edgenuity's response, as detailed and described in **Attachment A**, as well as any other services set

forth in this Agreement. **Attachment A** is hereby made a material provisions of this Contract. **Attachment A** shall consist of the following, which are attached hereto, are acknowledged by Edgenuity as having been received, or are otherwise hereby incorporated by reference as noted below, and all are made a part hereof: City of Waterbury RFP No. 6098 for On-Line Learning Provider, consisting of 10 pages, excluding Contract Compliance Packet and City's Standard Agreement (sample contract) , attached hereto

- ii. Addendum #1 to City of Waterbury RFP No. 6098 for On-Line Learning Provider, issued April 6, 2018, consisting of 1 page, attached hereto
- iii. Edgenuity's Response to City of Waterbury RFP No.6098 for On-Line Learning Provider, consisting of 111 pages including Edgenuity payment schedule. (incorporated by reference)
- iv. any and all amendment(s) and Change Orders, issued by the City after execution of Contract (incorporated by reference)
- v. Stockholder's Affidavit; Non-Collusion Affidavit; Debarment Certificate
- vi. Certificates of Insurance (incorporated by reference)
- vii. All applicable Federal, State and local statutes, regulations charter and ordinances (incorporated by reference)
- viii. All licenses. (incorporated by reference)

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

- i. This Contract
- ii. City of Waterbury RFP No.6098 for On-Line Learning Provider,
- iii. Addendum #1 to City of Waterbury RFP No.6098 for On-Line Learning Provider
- iv. Edgenuity's Response to City of Waterbury RFP No.6098

**1.3. License and Services.**

i. License. Edgenuity grants Customer a non-exclusive, non-transferable license to access and use Licensed Material for internal educational and training purposes solely for the Subscription as set forth in the Quote. This Agreement provides only Customer and Customer's specifically authorized instructors, administrators, students and parents ("End Users") access to and use of the Subscription solely for internal education- and training-related purposes.

ii. **Services.** If set forth in the Quote, Edgenuity will also provide Professional Development and/or Instructional Services, subject to the additional terms and conditions set forth herein. Customer's access to any Professional Development or Instructional Services will expire at the end of the Term set forth in the applicable Quote, or if the Subscription is terminated for any reason.

iii. **Edgenuity Technical and Customer Support.** Edgenuity will provide technical and customer support for the Service under the terms of Edgenuity's support policies found at [www.edgenuity.com/support](http://www.edgenuity.com/support) including all updates, bug fixes, and enhancements when generally made available.

iv. **Hardware** refers to any equipment with any pre-installed software marketed or supplied by Edgenuity and identified on a Quote. Edgenuity is not the manufacturer of Hardware and it is provided subject to the separate sale terms provided by the manufacturer (including without limitation, return and exchange terms). Customer grants Edgenuity permission to provide remote technical support for setup and diagnostic purposes for any Hardware if required. Customer owns the Hardware and has a license to any pre-installed software, subject to the applicable license agreement. During the term of this Agreement, if Customer modifies Hardware in any way, it may void the manufacturer's warranty. Upon expiration or termination of the Agreement, Edgenuity will remotely remove all Edgenuity content and software from the Hardware.

### **1.3. EDGENUITY PROPERTY.**

i. **Restrictions.** Customer may not (i) sell, resell, rent or lease the access to the Subscription or use it in a service provider capacity; (ii) use the Subscription to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Subscription or attempt to gain unauthorized access to the Subscription or its related systems or networks; (iv) use the Subscription for other than internal Customer educational purposes; (v) reproduce, frame, mirror, modify, translate, enhance, decompile, disassemble, copy, download or reverse engineer the Subscription or modify, create derivative works based on the Subscription; or (vi) access the Subscription to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

### **1.4 Third Party Terms.**

i. **Third Party Services** refer to web based software, content or services licensed by Edgenuity from a third party for use by Edgenuity for the

Subscription or Hardware. Customer's use of Third Party Services may be subject to additional terms from the third parties, some of which are listed below or can be found at the web links indicated:

ii. **ExploreLearning.** Access to and use of any ExploreLearning Gizmos (Gizmos) provided by Edgenuity are governed by the following additional terms: (i) Neither Customer nor any of its users are authorized to access or use any Gizmos, except: (a) users who are students and who are authorized by Customer to access and use the Service that includes or incorporates the Gizmos; and (b) users who are teachers of those same students, provided that such teachers may use the Gizmos only for the purposes of assigning and managing assignments for those students; (ii) a Gizmo may only be used in connection with the Service with which that particular Gizmo has been provided, and may not be used in connection with any other class, program, application, or software; and (iii) Customer understands and agrees that any access to or use of any Gizmo provided by Edgenuity by Customer or any of its users in contravention of the foregoing terms constitutes a material breach of the Agreement, and that if Customer desires to use a Gizmo in a manner that is not authorized by the Agreement, it is solely the responsibility of Customer (and not of Edgenuity) to obtain authorization for such use from the appropriate third party.

iii. **Education Testing Services (ETS) e-rater® Scoring Service.** If the Agreement includes any ETS services, Customer agrees as follows: (i) the score and/or feedback received from the e-rater® technology should be considered as one piece of evidence about a student's writing ability. When a score from the e-rater® engine is being used for an important decision about a student's performance, instructors should review and evaluate the score and/or feedback to ensure that the appropriate decision about placement or performance has been made;

iv. **Sophia® Learning Inc.** If this Agreement includes any Sophia Learning Inc. courses for use, the following term applies to any such purchase or use: "Customer agrees that the use of any Sophia course is prohibited for all students under the age of 13 years."

v. **CompassLearning Third Party Information.** (i) CKEditor (© 2003-2013 CKSource – Frederico Knabben, all rights reserved), is a third party software text editor, licensed pursuant to the CKEditor Enterprise OEM License 2.3.2 and the GNU Lesser General Public License Version 3 ("LGPL"), available at <http://www.gnu.org/licenses/gpl.html>; (ii) SSHNET (© 2010 RENC I, all rights reserved), is a third party secure connectivity software tool, licensed pursuant to the terms found at <https://sshnet.codeplex.com/license>; (iii) Agilix Labs, Inc.'s xLi platform, (© Agilix Labs, Inc., all rights reserved), is distributed with other licensed third party components under the MIT License and/or the Apache License

foundat <https://jquery.org/license/> and <http://cdn.mathjax.org/mathjax/2.0-latest/LICENSE>.

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

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

**2.2. Representations regarding Qualifications.** The Consultant hereby represents that, to the extent required by Federal, State and Local statutes, regulations, codes, ordinances, and policies, that the Consultant and/or its employees be licensed, certified, registered, or otherwise qualified, the Consultant and all employees providing services under this Contract, are in full compliance with those statutes, regulations and ordinances. Upon City request, the Consultant shall provide to the City a copy of the Consultant's licenses, certifications, registrations, etc.

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

**3.1. Use of City Property.** To the extent the Consultant is required to be on City property to render its services hereunder, the Consultant shall have access to such areas of City property as the City and the Consultant agree are necessary for the performance of the Consultant's services under this Contract (the "Site" or the "Premises") and at such times as the City and the Consultant may mutually agree. Consultant shall perform all work in full compliance with Local, State and Federal health and safety regulations. All work hereunder shall be performed in a safe manner. Consultant shall immediately correct any dangerous condition caused by or resulting from its work. If it fails to correct, or to act

diligently to correct, any condition which City reasonably believes to be a hazard to persons or property, then immediately upon oral or written notice to any supervisory or similar personnel of Consultant, City may, but shall not be required to, correct same at Consultant's expense. City shall confirm in writing any oral notice given within five (5) business days thereafter.

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

**3.3. Cleaning Up.** To the extent the Consultant is required to be on City property to render its services hereunder, the Consultant shall at all times keep the Premises free from accumulation of waste materials or rubbish caused by Consultant, its employees or subcontractors, and at the completion of the work shall remove all rubbish. In case of dispute, the City may remove the rubbish and charge the cost to the Consultant.

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

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

**3.6. Consultant's Employees.** The Consultant shall not employ any unfit person or anyone not skilled in the work assigned.

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

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

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

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

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

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

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

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

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

or will not be, completed within the Contract's Section 6 total compensation amount, and (vii) any and all additional useful and/or relevant information. Each report shall be signed by an authorized signatory.

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

### **3.9 Confidentiality/FERPA.**

**3.9.1 Compliance Warranty & Privacy Policy.** Edgenuity will comply with, and will cause each of its employees, agents, and contractors to comply with, all state, federal and municipal laws and regulations applicable to its performance under this Agreement ("Applicable Laws"), including without limitation the Family Educational Rights and Privacy Act ("FERPA"), and the Children's Online Privacy Protection Act ("COPPA"). Edgenuity's Privacy Policy, which is incorporated by reference into these terms and conditions, contains additional terms regarding Edgenuity's use of and commitment to safeguarding Student Data, and compliance with other student privacy laws. Customers and End Users can find Edgenuity's privacy policy at <http://www.edgenuity.com/Information/Privacy/>. Customer is responsible for providing notice of its own privacy policy to parents of its student and for obtaining any necessary parental consents for students to use the Subscription as may be required by Applicable Law.

**3.9.2** Edgenuity shall strictly adhere to all State and Federal Statutes, rules, policy, regulations, codes of participant protection and confidentiality, administrative directives of the State of Connecticut Board of Education and State Department of Education, as well as any policies, ordinances, rules and regulations established by the City of Waterbury regarding confidentiality of student records, files, PPTs, IEPs, etc. Edgenuity shall further ensure that the all social work interns shall strictly adhere to all State and Federal Statutes, rules, policy, regulations, codes of participant protection and confidentiality, administrative directives of the State of Connecticut Board of Education and State Department of Education, as well as any policies, ordinances, rules and regulations established by the City of Waterbury regarding confidentiality of student records, files, PPTs, IEPs, etc.

**3.9.3** Any and all materials contained in a City of Waterbury students file that are entrusted to Edgenuity and its employees, subcontractors, etc. or gathered by Edgenuity and its employees, subcontractors, etc in the course of its services shall remain in the strictest confidence to prevent disclosure of the same. All information furnished by the City or gathered by Edgenuity and its employees, subcontractors, etc. shall be used solely for the purposes of providing services under this agreement.

**3.9.4** Edgenuity and its employees, subcontractors, etc. acknowledge that in the course of providing services under this Agreement, they may come into the possession of education records of City Waterbury students as defined in and



governed by Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. § 1232g) and related regulations (34 C.F.R. § 99). Edgenuity and its employees, subcontractors, etc shall comply with the requirements of said statute and regulations, and agrees to use information obtained from the City or student education records only for the purposes provided in this Agreement. Without the prior written consent of the student's parent or guardian, as required by FERPA, the Contractor or Sub-grantee has no authority to make disclosures of any information from education records.

### **3.10 Use of Subscription.**

**3.10.1. Customer Data and Student Data.** All data and materials uploaded or entered during use of the Subscription by Customer, including student information and student records, remain the property of Customer ("Customer Data"). All student-generated content and personally identifiable information about any students ("Student Data") shall remain the property of the student, or of the parent or legal guardian of the student. Customer represents and warrants that it has appropriate rights to any Customer Data and Student Data. Customer grants Edgenuity the right to use the Customer Data and Student Data solely for purposes of performing under this Agreement. Students (or Parents or legal guardians of the Student), retain ownership and control of all Student Data that is provided or accessed through Edgenuity's course, and ownership of such Student Data never passes to Edgenuity. During the term of this Agreement, Customer may export Customer Data and Student Data to the extent allowed by the functionality within the Subscription. For training and demonstration purposes, Edgenuity may use and share Customer Data and Student Data, but will share only with supervisors, instructors and other Customer employees who have appropriate authorization.

### **3.11 Contracts Requirements re: Student Data.**

**3.11.1.** Edgenuity shall comply will all relevant provisions of Connecticut General Statutes ("C.G.S."). §10-234 bb regarding Student Data, including, but not limited to the following:

- i.** Edgenuity agrees that student records, student information, and student-generated content (collectively "Student Data") as defined by C.G.S. §10-234aa are not the property of, or under the control of the Edgenuity.
- ii.** Edgenuity agrees that the City may at any time upon prior written notice to the Edgenuity, request deletion, within a reasonable time, of Student Data in the possession of the Edgenuity that is not (a) otherwise prohibited from deletion or required to be retained under state or federal law, or (b) stored as a copy as part of a disaster recovery storage system and that is (i) inaccessible to the public, and (ii) unable to be used in the normal course of business by the

Edgenuity, however, the City may request the deletion of any such Student Data if such copy has been used by the operator to repopulate accessible data following a disaster recovery.

- iii. Edgenuity agrees that it will not use Student Data for any purposes other than those specifically allowed under the terms of this Agreement.
- iv. Edgenuity agrees that, students, their parents or legal guardians may review personally identifiable information contained in student information, student records, or student-generated content and correct erroneous information, if any, in such student record pursuant to the Waterbury Board of Education Policies.
- v. Edgenuity shall take all necessary actions designed and required by applicable State, Federal, and local law, to ensure the confidentiality of all Student Data.
- vi. Edgenuity agrees that it shall not retain Student Data and that Student Data shall not be available to Edgenuity upon the expiration of this Agreement unless the student, parent, or legal guardian of the student has independently established or maintained an electronic account with the Edgenuity after the expiration of this Agreement for the purpose of storing student-generated content.
- vii. All Student Data is the property of the student or the parent or legal guardian of the student.
- viii. Edgenuity shall not use (a) student information, student records or student –generated content for any purposes other than those authorized pursuant to the contract, or (b) personally identifiable information contained in student information, student records or student-generated content to engage in targeted advertising.
- ix. Edgenuity shall comply with the provisions of C.G.S. §10-234dd as amended with regard to unauthorized release, disclosure or acquisition of student data.

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

4.1. Customer must (i) keep its passwords secure and confidential; (ii) be solely responsible for Customer Data and all activity in its account; (iii) use commercially reasonable efforts to prevent unauthorized access to its account and notify Edgenuity promptly of any such unauthorized access; and (iv) use the Subscription as described in Edgenuity's written technical guides. Customer authorizes its integrators or other third party vendors and Edgenuity to conduct initial setup and to allow continued access to the Subscription for the sole benefit of Customer. Customer may provide Edgenuity the name and contact information for all third parties authorized by Customer, or necessary for Customer to use the Subscription. Customer is solely responsible for ensuring compliance by its authorized integrators or other third party vendor(s) with all federal, state and local privacy laws and regulations.

5. **Initial Term.** Edgenuity shall provide all licenses, work and services as required under this Agreement during the initial term commencing January 1, 2019 through December 31, 2019 ("Initial Term"):

5.1. Time is and shall be of the essence for the provision of all training and other services provided herein. The Edgenuity further agrees that the services shall be provided regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time stated above. It is expressly understood and agreed, by and between Edgenuity and City, that the time for providing said services is reasonable. The Edgenuity shall be subject to City imposed fines and/or penalties in the event the Consultant breaches the foregoing dates.

5.2 **Option Period.** The City shall have the option, at its sole discretion to extend this agreement for one (1) additional one-year term from January 1, 2020 - December 31, 2020, upon the terms and conditions as outlined herein. ("Option Period").

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

6.1. **Fee Schedule.** The fee payable to the Consultant for the Initial Term of this contract shall not exceed **Fifty-Nine Thousand Three Hundred Ninety-Nine Dollars and Twenty Cents (\$59,399.20).**

6.1.1 **Payment for the Option Period.** The fee payable to the Consultant for the City's exercise of its sole option period from January 1, 2020 through December 31, 2020 shall not exceed **Fifty-Nine Thousand Three Hundred Ninety-Nine Dollars and Twenty Cents (\$59,399.20).**

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

services, reports, plans, specifications, deliverables, etc. rendered and the compensation sought therefore in a form and with detail and clarity acceptable to the City.

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

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

**6.4. Proposal Costs.** All costs of the Consultant in preparing its proposal for **RFP No. 6098** shall be solely borne by the Consultant and are not included in the compensation to be paid by the City to the Consultant under this Contract or any other Contract.

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

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

**7. Warranty of Edgenuity**

**7.1. Professional Development and Instructional Services Warranty.** Edgenuity warrants that it will provide Professional Development and/or Instructional Services in a professional and competent manner consistent with the terms of this Agreement and under generally accepted industry standards. Edgenuity shall hold harmless and indemnify the City from any and all costs, damages including attorney's fees from all claims of infringement of any intellectual property right with respect to any hardware or third party services to be provided by Edgenuity under this Contract.

**7.2. Edgenuity service warranty.** Edgenuity warrants that it will make commercially reasonable efforts to maintain the online availability of the subscription and shall repair the non-conforming service. If Edgenuity cannot make such repair within a reasonable period of time, then the City may, at its discretion, terminate this agreement

**7.3 Disclaimers.** All third party services and hardware are provided by Edgenuity "as is." Edgenuity makes no representation or warranty of any kind, express or implied. Edgenuity transfers to customer, to the extent transferable, warranties and indemnities Edgenuity receives from the manufacturer of the hardware or third party service. Edgenuity's sole obligation with respect to hardware and third party service will be to use reasonable commercial efforts to facilitate warranty and indemnification claims that customer makes against the manufacturer of the hardware or third party service. Customer, recognizing that Edgenuity is not the manufacturer of hardware or third party service, expressly waives any claim that customer may have against Edgenuity for product liability as well as any right to indemnification from Edgenuity on account of any such claim made against customer by a third party.

**8. Passing of Title and Risk of Loss.** To the extent applicable, title to each item of, material, reports, assessments, plans, supplies, services, etc. required to be delivered to the City, if any, hereunder shall pass to City upon City payment to the Consultant for license.

**9. Indemnification.**

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

intellectual property right with respect to any service, licenses or third party services to be provided by Edgenuity under this Contract.

**9.1.1 Infringement.** Edgenuity agrees to defend or settle, at its option or discretion, any claim, action, demand, lawsuit, or proceeding (each, a "Claim") made or brought against the City alleging that any portion or aspect of any Edgenuity Licensed Content, Marks, Edgenuity Software, related Documentation, Software Maintenance, Professional Services, Deliverable, or any U.S. patent, copyright, trade secret, trademark, or other intellectual property or service made available to Client under this Agreement (each, an "Edgenuity Item") infringes any patent, copyright, trademark, or other intellectual property right of a third party, provided that: (i) the subject Edgenuity Item is used strictly as permitted by this Agreement; (ii) the Claim does not arise from any modification, alteration, or customization of the Edgenuity Item made by the Client; (iii) the Claim could not have been avoided if Client had substituted its use of the infringing Edgenuity Item with an update or release provided to Client prior to such Claim; and (iv) Client gives Edgenuity reasonable written notice of the Claim, tenders to Edgenuity the ability to defense or settlement of the Claim, at Edgenuity's expense, and cooperates with Edgenuity, at Edgenuity's expense, in defending or settling the Claim. If one or more of the conditions set forth in sub-clauses (i), (ii), (iii) or (iv) are not satisfied, then Edgenuity shall have no obligation to Client with respect to the defense of said Claim. If an Edgenuity Item becomes, or in Edgenuity's opinion likely to become, the subject of an infringement Claim, Edgenuity may, at its sole option and expense, procure for Client the right to continue using such item as provided hereunder, modify such item so that it is no longer infringing, replace such item with another item of equal or superior functional capability, or require the return or cessation of use of the item and refund Client the portion of the Fees paid that are attributable to the item.

**9.2.** In any and all claims against the City or any of its boards, agents, employees or officers by the Consultant or any employee of the Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 9.1.1 above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

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

## **10. Consultant's Insurance.**

**10.1.** The Consultant shall not commence work under this Contract until all insurance required under this Section 10 has been obtained by the Consultant and such insurance has been approved by the City. The Consultant shall not allow any subcontractor to commence

work on any subcontract until all insurance required of any such subcontractor has been so obtained and approved by the City. Insurance shall be provided by insurers that are satisfactory to the City, authorized to do business in the State of Connecticut, that have at least an "A-" Best's Rating, and are in an A.M. Best financial size category of VII or higher. The A.M. Best classifications are based on the most current A.M. Best Company ratings or an equivalent City approved rating system.

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

**10.3.** Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless. If any insurance required herein is to be issued or renewed on a claims made form as opposed to an occurrence form, the retroactive date for coverage shall be no later than the commencement date of this Contract and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims ("Tail Coverage") shall be available for at least 60 months.

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

**10.4.1 General Liability Insurance:**

**\$1,000,000.00** per occurrence,  
**\$2,000,000.00** aggregate and  
**\$2,000,000.00** Products and completed operations aggregate

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

**10.4.2 Automobile Liability Insurance:**

**\$1,000,000.00** combined single limit (CSL)

Providing coverage to protect the City with respect to claims for damage for bodily injury and or property damage arising out of ownership, maintenance, operation, use or loading and unloading of any auto including hired & non-owned autos..

**10.4.3 Workers' Compensation:** Statutory Limits within the State of Connecticut: Employers' Liability:

EL Each Accident **\$500,000.00**  
EL Disease Each Employee **\$500,000.00**  
EL Disease Policy Limit **\$500,000.00**

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

**10.4.4 Excess/Umbrella Liability Insurance:**

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

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

Excess or Umbrella insurance coverage that follows form or sits over General Liability, Automobile Liability and Workers Compensation insurances.

**10.4.5 Professional Liability Insurance:**

**\$1,000,000.00** each claim.

**\$1,000,000.00** aggregate limit

Professional liability (also known as, errors and omissions) insurance providing coverage to the Consultant.

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

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

**10.7. Certificates of Insurance:** The Consultant's General, Automobile and Excess/Umbrella Liability Insurance policies shall be endorsed to add the City and its Board of Education as an additional insured and provide a waiver of subrogation on all lines of coverage except Professional Liability. The insurance afforded the additional insured shall be primary and non-contributory insurance and the coverage and limits provided under the Consultant's policies shall not be reduced or prorated by the existence of any other insurance applicable to any loss the additional insured may have suffered. At the time the Consultant executes this Contract, it shall furnish to the City, subject to City approval, certificate(s) of insurance and Additional Insured Endorsement and Waiver of Subrogation Endorsement verifying the above coverages, including the naming of the City of Waterbury, as follows: **"The City of Waterbury and its Board of Education are listed as additional insured on all lines of coverage except Workers Compensation and Professional Liability and include a waiver of subrogation on all lines of coverage except Professional Liability as their interests may appear"**. The City's request for proposal number must be shown on the certificate of insurance. The Consultant must supply replacement/renewal certificates at least thirty (30) calendar days prior to the expiration of the policy(ies). Said certificates shall contain a provision that coverage afforded under the policies shall not be cancelled or reduced for any reasons unless notice of not less than thirty (30) calendar days has been mailed to the Office of Corporation Counsel, 235 Grand Street, Waterbury, CT 06702.

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



**11. Conformance with Federal, State and Other Jurisdictional Requirements.** By executing this Contract, the Consultant represents and warrants that, at all pertinent and relevant times to the Contract, it has been, is and will continue to be in full compliance with all applicable statutes, acts, ordinances, guidelines, resolutions, orders, judgments, decrees, injunctions, rules, and regulations of all government authorities applicable to performance by the Consultant of services hereunder, including those having jurisdiction over its registration and licensing to perform services hereunder; including, but not limited to, the following: *EQUAL EMPLOYMENT OPPORTUNITY ACT*; *COPELAND ANTI-KICKBACK ACT*, as supplemented in the Department of Labor Regulations (29 CFR Part 3); *DAVIS-BACON ACT* as supplemented by Department of Labor Regulations (29 CFR Part 5); Section 103 and 107 of the Contract Work Hours and Safety Standards Act, as supplemented by the Department of Labor Regulations (29 CFR Part 5); the *HOUSING and COMMUNITY DEVELOPMENT ACT of 1974*, as amended; TITLE 31 and Section 12-430(7) of the State of Connecticut General Statutes. All applicable sections of the City Charter and Code of Ordinances are incorporated by reference and made a part hereof.

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

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

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

**11.3.1** The Consultant is aware of the provisions of Title 31, §53 of the Connecticut General Statutes, latest revision (the "Act"), concerning the payment of minimum wages and other payments or contributions established by the State of Connecticut Labor Commissioner for work on public facilities. The provisions of the Act are incorporated by reference and made a part of this Contract. The Act provides that the Connecticut prevailing wage law applies to certain remodeling, refurbishing, alteration, repair and new construction. The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in Conn .Gen. Statute 31-53(i), shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public

works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

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

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

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

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

**13. Termination.**

**13.1. Termination of Contract for Cause.** If, through any cause, in part or in full, not the fault of the Consultant, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants,

agreements, or stipulations of this Contract , the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) business days before the effective date of such termination.

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

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

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

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

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

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

such reduced level of products, services or functions and the parties shall be afforded the rights set forth in this Contract.

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

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

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

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

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

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

**13.4.5 Delivery of Documents.** In the event of termination of this Contract, (i) the Consultant shall promptly deliver to the City, in a manner reasonably specified by the City, all labor, services, equipment, materials, reports, plans, specifications, deliverables, incidentals, etc. and other tangible items furnished by, or owned, leased, or licensed by, the City, and (ii) the City shall pay the Consultant for all services performed and deliverables completed and accepted (pro-rated for deliverables partially completed) prior to the effective date of the termination (except to the extent any invoice amount is disputed).

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

**15. Force Majeure.** Consultant shall not be held responsible for delays nor be subject to liquidated damages when such delays are caused by conditions beyond its control, including;

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

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

Consultant shall use its best efforts to immediately resume all services upon cessation of work for reason of force majeure delays.

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

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

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

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

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

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

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

**22. Independent Contractor Relationship.** The relationship between the City and the Consultant is that of client and independent contractor. No agent, employee, or servant of the Consultant shall be deemed to be an employee, agent or servant of the City. The Consultant shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract. It is the express intention of the parties hereto, and the Consultant hereby agrees and covenants, that it and any and all third party(ies) and

subcontractor(s) retained by the Consultant hereunder is/are not and shall not be deemed an employee of the City of Waterbury, but is/are and shall remain an independent contractor relative to the City and that nothing herein shall be interpreted or construed as creating or establishing the relationship of employer-employee between the City of Waterbury and the Consultant or between the City of Waterbury and any third party(ies) or subcontractor(s). Thus, the Consultant hereby covenants that it, its subcontractor(s) and third party(ies) shall not be entitled to the usual characteristics of employment, such as income tax withholding, F.I.C.A. deductions, pension or retirement privileges, Workers Compensation coverage, health benefits, etc. and that the Consultant shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants, representatives, subcontractors and third party(ies).

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

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

**25. Contract Change Orders.**

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

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

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

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

**25.2.** Notwithstanding the foregoing subsection A, a Change Order shall not include:

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

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

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

**26. Conflicts or Disputes.** This Contract represents the full and complete concurrence between the City and the Consultant and governs all disputes between them. In the instance of a conflict or dispute over issues not specifically referenced within the Contract, the following documents shall be used as historical documents. Without regard to the order of precedence, to resolve such conflicts or disputes, the historical documents are (i) the City's aforementioned RFP No. 6098 and (ii) the Consultant's proposal responding to the aforementioned RFP No.6098.

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

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

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

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

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

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



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

Consultant:	Edgenuity Inc. 8860 East Chaparral Road, Suite 100, Scottsdale, Arizona 85250
City:	City of Waterbury c/o Interim Chief Operating Officer and Chief of Staff 235 Grand Street, 1 <sup>st</sup> Floor 2 <sup>nd</sup> Floor Waterbury, CT 06702

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

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

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

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

**32.3.** It shall be a material breach of this Contract and it shall be a violation of the City's Code of Ordinances for any payment, Gratuity, or offer of employment to be made as an

inducement for the award of a subcontract or order, by or on behalf of a subcontractor, the prime Consultant or higher tier subcontractor or any Person associated therewith, under a Contract or Purchase Order to the City.

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

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

**32.6.** It shall be a material breach of this Contract and it shall be a violation of the City's Code of Ordinances for a Person to be retained, or to retain a Person, to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and every Person, before being awarded a City contract, shall deliver to the City, on a City authored form, a representation that such Person has not retained anyone in violation of this subsection 32.6, the failure to deliver said form being a material breach of this Contract and a violation of the City's Code of Ordinances. Note, however, this subsection 32.6 shall not apply to full-time Employees who, as a condition of their employment, may be entitled to bonuses or other fees in accordance with their employment relationship.

**32.7.** The Person hereby expressly represents that he/she/it has complied with those sections of the City's Code of Ordinances requiring that said Person has (i) delivered to the City an affidavit, on a City authored form, stating that the Person and its affiliates have no delinquent taxes or other financial obligations owed to the City; (ii) filed the City authored financial disclosure statement form as set forth in the City's Code of Ordinances regarding disclosure of financial interests; (iii) delivered to the City a written acknowledgement, on a City authored form, evidencing receipt of a copy of the "Ethics and Conflict of Interest" ordinance for the City of Waterbury and hereby expressly represents that said Person is in full compliance with the entirety of said Code of Ordinances; and (iv) filed a current list of all taxable personal and real property as required by the State of Connecticut General Statutes. Any violation of this subsection 32.7 shall be deemed a material breach of this Contract and shall be a violation of the City's Code of Ordinances.

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

**32.9.** The Consultant is hereby charged with the requirement that it shall have knowledge of, and shall fully comply with, all relevant provisions of the City's Charter and all relevant provisions of the City's Code of Ordinances, including without limitation Chapters 93,

titled "Discriminatory Practices", Chapter 38 titled "Centralized Procurement System", and Chapter 39 titled "Ethics and Conflict of Interest", of said Code as may be amended from time to time.

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

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

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

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

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

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

[Signature page follows.]

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

**WITNESSES:**

[Signature]  
Judith Rossini

[Signature]  
Kenneth J. Steiner

**WITNESSES:**

[Signature]  
Kasey Gray, Director of Marketing

[Signature]  
Sean Haas, Art Director

**CITY OF WATERBURY**

By: [Signature]  
Neil M. O'Leary, Mayor

Date: 3/9/19

APPROVED AS TO FORM

[Signature]  
Attorney, Corporation Counsel's Office

**EDGENIUNITY INC.**

By: [Signature]  
David Alderslade  
Its Vice President - Finance & Administration

Date: December 19, 2018

## ATTACHMENT A

- i. City of Waterbury RFP No.6098 for On-Line Learning Provider, consisting of 10 pages, excluding Contract Compliance Packet and City's Standard Agreement (sample contract) , attached hereto
- ii. Addendum #1 to City of Waterbury RFP No.6098 for On-Line Learning Provider, issued April 6, 2018, consisting of 1 page, attached hereto
- iii. Edgenuity's Response to City of Waterbury RFP No.6098 for On-Line Learning Provider, consisting of 111 pages including Edgenuity payment schedule. (incorporated by reference)
- iv. any and all amendment(s) and Change Orders, issued by the City after execution of Contract (incorporated by reference)
- v. Stockholder's Affidavit; Non-Collusion Affidavit; Debarment Certificate
- vi. Certificates of Insurance (incorporated by reference)
- vii. All applicable Federal, State and local statutes, regulations charter and ordinances (incorporated by reference)
- viii. All licenses. (incorporated by reference)

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**REQUEST FOR PROPOSAL  
BY  
THE CITY OF WATERBURY  
ON-LINE LEARNING SYSTEM PROVIDER )RFP #6098**

The City of Waterbury, Department of (hereinafter "City"), is seeking a On-line Learning System provider, no less than 120 licenses but up to 200 licenses.

**A. Background and Intent**

*In compliance with CT state law and its Alliance District application, the City seeks to provide standards-based on-line blended learning and credit retrieval opportunities in order to enhance instruction and advance student progress toward graduation.*

**B. Qualifications**

Eligible proposers will be those consultants, businesses, and institutions that have the following qualifications:

1. Experience and expertise in regard to providing the types of or similar services as those outlined in the Scope of Services in this RFP
2. A proposer with a proven track record in providing these types of or similar services for municipal governments.
3. Knowledge of federal and State laws and regulations governing the services outlined in the scope of services.

**C. Scope of Services**

**Online Curriculum Specifications**

- o Alignment of course content to the Common Core State Standards (CCSS) for all High School English Language Arts, Science and Mathematics required.
- o Online system that allows for customizable credit recovery courses aligned with CCSS in Algebra I, Algebra II, Geometry, English 9, 10, 11 and 12, Civics, U.S. History, World Civilizations, Biology, Chemistry, Physical Science, Physics, and Spanish I, II and III preferred.
- o Test preparation course options for ACT®, SAT®, PSAT, ACCUPLACER®, GED®, and capability to customize preparation options for student success on various district-based assessments preferred.
- o Multi-media use of animations, graphics and other visuals to illustrate instructional concepts preferred.
- o Interactive simulations that reinforce and extend lesson concepts preferred.

- o Multiple supports for ELL and Special-needs students such as translation and read-aloud tools to read text in multiple languages using human, not digitized-voices, is preferred.
- o Text reader function with capability to read-aloud in English and Spanish required.
- o On screen text with capability to translate into different languages such as Spanish, Albanian, Arabic, Armenian, Chinese, Filipino, French, German, Haitian Creole, Hindi, Italian, Japanese, Korean, Polish, Portuguese, Russian, Thai, and Vietnamese preferred.
- o Courses must include closed captioning and access to transcripts for students with auditory disabilities.

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### **Assessments**

- o Courses provide lesson quizzes, topic tests, midterms and final examinations, and automated scoring.
- o Assessments must automatically adjust as curriculum is customized so that assessments include only those questions related to customized content.
- o Each course must have a diagnostic pre-test option to accelerate student completion of the course based on prior knowledge.

### **Tools and Support**

- o Online access to tutorial videos to support student and staff use of the system required.
- o Course syllabi for each course and student calendar to establish pacing guides for students preferred.
- o Toolbar with supports including dictionary, graphic organizers, digital notebook, word lookup, vocabulary, highlighting, text translation, interactive periodic tables, and multiple calculators, et. al. preferred.
- o Online essay writing tool with automated grading options preferred.
- o Communication tools including secure internal email, announcements, threaded discussion, and portal to send student progress reports to identified individuals preferred.

### **Learning Management System**

- o Each license to support a minimum of 1 student-user engaged at any 1 time in any 1 course activity.
- o Learning system provides open-ended, rolling student enrollment, and must have capacity to host a minimum of 120 online student users engaged in online course activities at any one time.
- o License 'count' shall not apply to teacher/administrative users, who will have unlimited access.
- o Reports including attendance, current session activity, total enrollment, individual and group progress, course % complete, session logs required.
- o Automatic scoring of student assignments with teacher option to grade manually and/or override grades preferred.
- o Options to control passing thresholds, grade weights, and re-take opportunities preferred.
- o Options for teacher review requiring a student to "show their work" before taking assessments preferred.
- o Administrative dashboard or overview screen that shows students' progress at a glance required.
- o Family portal for parent/guardian progress checks preferred.



## Technology

- o System must have customizable, tiered levels of permissions and user access parameters.
- o Completely browser-based host solution with 24/7/365 access.
- o PC/Apple/Mobile/tablet/smartphone compatible.

## TRAINING AND SUPPORT

Must supply a minimum of 10 hrs. of in-person, train-the trainer (T.O.T.) essential product management training for up to 28 total staff; approximately 4 per high school site.

Preferred minimum of 2 hrs. of online and/or webinar training with high school staff TBD at all seven (7) school sites during the initial contract period that may be saved and re-used by the district to provide refreshers and/or new employee orientation sessions.

Must supply access to user tutorials on demand and tech support access 24/7/365.

## D. Agreement Period

The agreement period for any contract or purchase order resulting from this RFP is anticipated to be *1 calendar year from activation date with year 2 optional.*

## E. General Information

1. The City is an Equal Opportunity and Affirmative Action employer and does not discriminate in its hiring, employment, or business practices. The City is committed to complying with the Americans with Disabilities Act of 1990 (ADA) and does not discriminate on the basis of disability, in admission to, access to, or operation of its programs, services, or activities.
2. Proposers must review and be prepared to sign, prior to the execution of any contract with the City, the items and any forms included in Attachment A. (Contract Compliance Packet)
3. All questions and communications about this request for Proposal and submission requirements must be directed to the City of Waterbury eProcurement website and must be received by **2:00 PM on April 6, 2018**. Prospective proposers must limit their contact regarding this RFP to Mr. Orso or such other person otherwise designated by Mr. Orso. Responses

to questions submitted by the above date or identified at any Information Session to be held in regard to this RFP, along with any changes or amendments to this RFP, will be available via the City of Waterbury eProcurement website by April 10, 2018, 2:00 PM. It shall be the responsibility of the proposer to download this information. If you have any procedural questions in this regard, please call Mr. Orso at (203) 574-6748.

#### E. Management

Any contract or purchase order resulting from this RFP will be managed by Paul Whyte, Instructional Leadership Director.

#### G. Conditions

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

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

agreement period must be approved by the City, with the exception of personnel who have terminated employment. Replacements for personnel who have terminated employment are subject to approval by the City. At its discretion, the City may require the removal and replacement of any of the proposer's personnel who do not perform adequately, regardless of whether they were previously approved by the City.

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

15. Any contract or purchase order resulting from this RFP process will represent the entire agreement between the proposer and the City and will supersede all prior negotiations, representations or agreements, alleged or made, between the parties. The City shall assume no liability for payment of services under the terms of the contract or purchase order until the successful proposer is notified that the contract or purchase order has been accepted and approved by the City. Any contract resulting from this RFP may be amended only by means of a written instrument signed by the proposer and signed by the Mayor.

#### H. Proposal Requirements & Required Format

One original (clearly identified as such) and (3) paper copies of the proposal, as well as a copy of the original proposal in pdf format on a CD or flash drive, must be received at the following address no later than 10:30 AM on April 17, 2018.

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

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

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

1. **Proposer Information:** Please provide the following information:
  - a. Firm Name
  - b. Permanent main office address
  - c. Date firm organized.
  - d. Legal Form of ownership. If a corporation, indicate where incorporated.
  - e. How many years have you been engaged in services you provide under your present name?

- f. Names, titles, reporting relationships, and background and experience of the principal members of your organization, including officers.

2. Experience, Expertise and Capabilities

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

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

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

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

c. Personnel Listing. A complete listing of the staff identified in the work plan by job classification, along with their resumes. Each resume shall include the individual's qualifications and experience in the subject area.

d. Conflict of Interest. Disclose any current (within the last 3 years) business, financial, personal or other types of relationships which may pose a conflict of interest.

3. Statement of Qualifications and Work Plan

a. Qualifications. Please describe your firm's qualifications, experience and capabilities as they pertain to each of the areas of qualifications listed, as well as those of the personnel to be assigned to this project.

b. Work Plan. Please describe the approach that would be generally followed in undertaking the Scope of Services in Section C above.

c. Services Expected of the City. Identify the nature and scope of the services that would be generally required of the City in undertaking these projects.

4. Cost Schedule. Proposals shall include a single price for work to be performed in accordance with this RFP, inclusive of all personnel and non-personnel expenses. This price should encompass the entire Scope of Services in this RFP. The City reserves the right to negotiate costs, scope of services, and key personnel based on provider proposals. In order for the

City to evaluate the proposed cost, proposers must include for each element in the Work Plan outlined in Section H.3.b. above, the staff, hours, hourly rates and the total cost. Include details generally associated with non-personnel costs as an additional cost section.

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

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

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

Please respond to the following questions:

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

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

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

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

1. Evaluation Criteria

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

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

## 2. Selection Process

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

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

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

### **K. Federal, State and Local Employment Requirements**

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

**L. State Set-Aside Requirements**

- Not Applicable

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

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

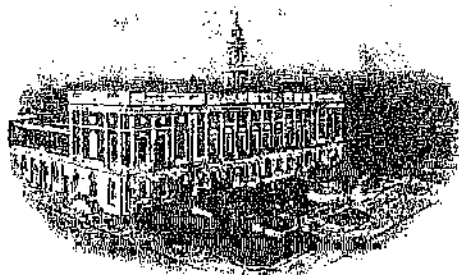
For municipal public works contracts, the contractor must file a written or electronic non-discrimination certification with the Commission on Human Rights and Opportunities.

Forms can be found at

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



**ROCCO ORSO**  
PURCHASING DIRECTOR



OFFICE OF THE DIRECTOR OF PURCHASING  
**CITY OF WATERBURY**  
CONNECTICUT  
**ADDENDUM #1**

**April 6, 2018**

**Bid: 6098**

**Project: On Line Learning System Provider**

The following questions have been received about this project.

Question: Whether companies from Outside USA can apply for this?

Answer: Yes.

Question: Whether we need to come over there for meetings?

Answer: Yes.

Question: Can we perform the tasks (related to RFP) outside USA?

Answer: Yes

Question: Can we submit the proposals via email?

Answer: No.

Question: Is the "no less than 120 licenses but up to 200 licenses" based on the number of student users per semester? If not, what is the total number of student users per semester?

Answer: No less than 120 , but up to 200, depending on school year enrollment

Question: Is the professional services agreement to be signed now and returned with the proposal or signed at the time of the award?

Answer: The professional service agreement attached to this bid is just a sample contract to show the vendor what they may need to sign. The final version of this contract will not be presented for signature until a respondent has been selected.

**Thanks**

**Kevin McCaffery**

**Buyer - City of Waterbury**