



Christopher J. Gagliastro, MCPPO
Purchasing Agent

RFP NO. CR-8165-W4
ISSUANCE DATE: 3/7/24

BUYER: Christopher J. Gagliastro, MCPPO

**AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER
REQUEST FOR PROPOSALS
NOTICE TO PROPOSERS**

RFP TITLE: Health Screener, U.S.E.B. / WPS

REFER TO PAGE 7 FOR PROPOSAL SUBMISSION INFORMATION

General Conditions:

All proposals are subject to the terms, conditions and specifications herein set forth:

1. **Scope: Provide a universal social-emotional-behavioral health screener / system for students per the attached requirements and specifications of the City of Worcester Public Schools.**
2. A certified check or bid bond made payable to the "City Treasurer, City of Worcester" in the amount of N/A must accompany this proposal. This must be submitted under separate sealed cover marked "Proposal Security." In the case of default, the surety shall be forfeited to the City as liquidated damages.
3. All terms and conditions are applicable to this proposal except the following section(s) which are hereby deleted from this RFP: 4, 22, 23, 27
4. A performance bond in the amount of not applicable will be required. If this proposal is accepted by the City and the Proposer shall fail to contract as set forth in these requirements and to give a bond in the aforementioned amount, within ten (10) days, (not including Sundays, Saturdays, or a legal Holiday) from the date of the mailing of a notice from the City to the Proposer, according to the address given herewith, that the contract is ready for signature, the City may by option determine that the proposer has abandoned the contract and thereupon the proposal and acceptance shall be null and void and the proposal security accompanying this proposal shall become the property of the City as liquidated damages. Performance bond shall be on the City's form only (see sample on pages 12-13).

Any prospective proposer requesting a change in or interpretation of existing specifications or terms and conditions must do so within 5 days (Saturdays, Sundays, and Legal Holidays excluded) before scheduled proposal opening date. All requests are to be in writing to the Purchasing Division. No changes will be considered nor will any interpretation issued unless request is in our hands within 5 days (Saturdays, Sundays, and Legal Holidays excluded) before scheduled proposal submission date.

Any inquiries related to technical or contractual matters must be submitted in writing to:

**Christopher J. Gagliastro, MCPPO
Purchasing Director
City of Worcester, City Hall
455 Main Street, Room 201
Worcester, MA 01608
gagliastroc@worcesterma.gov**

5. Nothing herein is intended to exclude any responsible Proposer or in any way restrain competition. All responsible Proposers are encouraged to submit proposals. The City encourages participation by Minority and Women Owned Business Enterprises (M/WBE).
6. The following meanings are attached to the defined words when used in this RFP.
 - a) The word "City" means The City of Worcester, Massachusetts.
 - b) The word "Proposer" or "Respondent" means the person, firm or corporation submitting proposal on these specifications or any part thereof.
 - c) The word "Contractor" means the person, firm or corporation with whom the contract is made by carrying out the provisions of these specifications and the contract.
 - d) The words "Firm Price" shall mean a guarantee against price increase during the life of the contract.
7. All proposals and other documents relating to this RFP are subject to the public records provisions of M.G.L. c.30B and shall remain confidential until the time specified in c.30B section 6 (d).
8. All material submitted by vendors becomes the property of the City. The City is under no obligations to return any of the material submitted by a vendor in response to this RFP.
9. Each vendor's proposal must remain in effect for at least 120 days from the deadline for its submission. The City will decide upon acceptance within 120 days of submission.
10. It is understood and agreed that it shall be a material breach of any contract resulting from this RFP for the Contractor to engage in any practice which shall violate any provision of Massachusetts General Laws, Chapter 151B, relative to discrimination in hiring, discharge, compensation, or terms, conditions or privileges of employment because of race, color,

religious creed, national origin, sex, age or ancestry.

11. The City reserves the right to accept or reject any or all proposals submitted and waive informalities and technicalities.
12. The City will review and analyze each proposal and reserve the right to interview selected proposers. The City shall select the proposer, which in the City's opinion, has made the proposal best suited to the needs and goals of the City and its operations and deemed to be in compliance with the terms of this RFP.
13. The Contractor will be required to indemnify and save harmless the City of Worcester for all damages to life and property that may occur due to his or her negligence or that of his or her employees, subcontractors, etc. during the contract derived from this RFP.
14. The Contract Agreement will be drafted by the City's Law Department in compliance with the terms of the RFP and may incorporate the terms of this RFP and of the proposal selected.
15. The Proposer must certify that no official or employee of the City of Worcester, Massachusetts, is pecuniarily interested in this proposal or in the contract which the proposer offers to execute or in expected profits to arise therefrom, unless there has been compliance with the provisions of G.L.C. 43 section 27, and that this proposal is made in good faith without fraud or collusion or connection with any other person submitting a proposal.
16. Any proposal withdrawn after time and date specified, the proposer shall forfeit deposit on proposal as liquidated damages.
17. A vendor conference will be held as follows: n / a
18. The Contractor shall not assign, transfer, sublet, convey or otherwise dispose of any contract which results from this RFP, or its right, title or interest therein or its power to execute the same to any other person, firm, partnership, company or corporation without the previous consent in writing of the City. Should the Contractor attempt any of the above without the written consent of the City, the City reserves the right to declare the Contractor in default and terminate the contract for cause.
19. The Contractor shall obtain and maintain in force at all times during the term of the contract derived from this RFP, insurance coverage pertaining to Public Liability, Property Damage and Worker's Compensation as outlined in Section IV. INSURANCE REQUIREMENTS of this RFP.
20. The Contractor shall carry Public Liability Insurance with an insurance company satisfactory to the City so as to save the City harmless from any and all claims for damages arising out of bodily injury to or death of any person or persons, and for all claims for damages arising out of injury to or destruction of property caused by accident resulting from the use of implements, equipment or labor used in the performance of the contract or from any neglect, default or omission, or want of proper care, or misconduct on the part of the Contractor or for anyone in his or her employ during the execution of the contract derived from this RFP.
21. Prior to starting on the contract derived from this RFP, the Contractor shall deposit with the Purchasing Division, certificate from the insurer to the effect that the insurance policies

required in the above paragraph have been issued to the Contractor. The certificates must be on a form satisfactory to the City.

22. All prices quoted must include inside delivery, and set-up in place F.O.B. destination to pre-designated City of Worcester departments.
23. No special charges will be allowed for rigging, packing, crating, freight, express, or carriage unless specifically stated and included in the vendor's proposal.
24. The award to the successful proposer may be cancelled in the event of vendor nonperformance as may be determined by the City.
25. The successful proposer shall comply with all applicable federal, state and local laws, ordinances, and regulations. The awarded contract shall be governed under the laws of the Commonwealth of Massachusetts.
26. Purchases made by the City are exempt from Federal and Massachusetts state taxes and proposal prices must exclude any such taxes. Tax exemption certificates will be furnished upon request.
27. When the contract is executed, a performance bond, in the full amount of the contract, is required. See paragraph 4. The bond will be of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts. The cost of this bond is the vendor's responsibility. Bonds shall remain in force and effect thru the performance of the contract.
28. Expenditures by the City and authorization to spend for particular purposes are made on fiscal year basis. The City's fiscal year is the twelve-month period ending June 30 of each year. The obligations of the City under any agreement to be reached are subject to the appropriation or authorization of the necessary funds. The City agrees to make reasonable efforts to obtain funding and all necessary authorization.
29. No amendment to the contract shall be effective unless it is in writing and signed by authorized representatives of both parties and is accepted by the City of Worcester.
30. The vendor (and its insurers, if any) shall bear all risk of loss or damage to the equipment which occurs in transit to the user site. The risk of loss or damage to purchased equipment shall remain with the vendor until the purchase price has been paid and title has passed. The vendor shall also bear the risk of loss or damage to leased or rented equipment during the City of Worcester's possession and use thereof subject, however to such conditions and limitations as may be stated elsewhere in the contract.
31. The vendor shall not assign or in any way transfer any interest in the contract without the prior written consent of the City provided, however, that claims for money due or to become due to vendor from the City may be assigned to a bank, trust company, or other financial institution without such consent so long as notice of such assignment is furnished promptly to the City. Any such assignment shall be expressly made subject to all defenses, setoffs, or counterclaims which would have been available to the City against the vendor in the absence of such assignment.
32. None of the services to be provided by the vendor pursuant to the contract shall be

subcontracted or delegated to any other organization, association, individual, corporation, partnership or other such entity without the prior written consent of the City. No subcontract or delegation shall relieve or discharge the vendor from any obligation or liability under the contract except as specifically set forth in the instrument of consent. Any subcontract to which the City has consented shall be attached to the original of the contract on file in the City of Worcester.

33. Neither party will be liable to the other or be deemed to be in breach of the contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather. If the vendor's failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the reasonable control of both the vendor and the subcontractor, and without the fault or negligence of either of them, the vendor shall not be liable for any excess costs for failure to perform, unless the equipment or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. Dates or times of performance will be extended to the extent of delays excused in this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
34. The vendor shall provide to the City of Worcester a warranty and a commitment which clearly states that all equipment and services proposed and supplied by the Vendor, and/or its subcontractors, performs as expected and promised by the Vendor.
35. The vendor represents that no person other than bona fide employees working solely for the vendor, have been employed or retained to solicit or secure this agreement upon an arrangement or understanding for a commission, percentage, brokerage fee, gift or any other consideration contingent upon the award or making of this contract. For breach or violation of the representation, the City shall have the right to annul the contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage fee or other consideration.
36. Any contract made by the City in which the Purchasing Agent or any employee of his/her department, the heads of using agencies or any other officer or employee of the City having a part in the placing of such contract is financially interested, directly or indirectly, shall be void.
37. The vendor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion or medical handicap. The vendor agrees to comply with all applicable Federal and State Statutes, rules and regulations prohibiting discrimination in employment including: Title VII of the Civil Rights Acts of 1964; The Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; Massachusetts General Laws Chapter 151B, Section 4 (1) and all relevant administrative orders and executive orders.

If a complaint or claim alleging violation by the vendor of such statutes, rules or regulations is presented to the Massachusetts Commission Against

Discrimination (MCAD), the vendor agrees to cooperate with MCAD in the investigation and disposition of such complaint or claim.

In the event of vendor noncompliance with the provisions of this section, the City shall impose such sanctions as it deems appropriate, including but limited to:

- 1) Withholding of payments due vendor under the contract until vendor complies.
- 2) Termination or suspension of the contract.

SUBMISSION OF PROPOSALS

38. Proposals must be submitted in two (2) packages according to the instructions below. The City intends to consider responses in the Technical Proposal evaluation requirements before considering costs. *Therefore, no reference to pricing may be made in the Technical Proposal.*

A sealed package containing **the original, 3 copies, plus 1 PDF copy on USB drive** of the proposal **must** be labeled as follows:

Purchasing Agent, City of Worcester

Health Screener, U.S.E.B. / WPS – Technical Proposal

**455 Main Street, Room 201
Worcester, MA 01608**

Re: RFP No. CR-8165-W4

A sealed package containing **the original copy** of the proposal **must** be labeled as follows:

Purchasing Agent, City of Worcester

Health Screener, U.S.E.B. / WPS – Price Proposal

**455 Main Street, Room 201
Worcester, MA 01608**

Re: RFP No. CR-8165-W4

PRICE PROPOSAL PAGE IS LOCATED AT END OF SPECIFICATIONS

<p>Proposals must be delivered no later than <u>Wednesday, April 3, 2024 at 10:00 AM LOCAL TIME.</u> <i>Late submissions will be rejected, regardless of circumstances.</i> The City is not responsible for submittals not properly marked.</p>
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The evaluation and cost proposals will remain confidential until a formal and finalized contract has been executed.

RFP EVALUATION

39. The City of Worcester Purchasing Agent will assign an evaluation team, hereafter referred to as the Selection Committee, to perform a full and complete evaluation of RFP submittals. The Purchasing Agent will ultimately forward a formal recommendation of award to the City Manager who has final award authority.
40. RFP evaluation responses will be evaluated by the Selection Committee based directly upon vendor's response to mandatory and comparative evaluation criteria. Vendors must meet or exceed the mandatory criteria requirements or be rejected as non-responsive.

Comparative criteria will be evaluated by use of four (4) rating categories as set forth by M.G.L. Chapter 30B:

- 1) HIGHLY ADVANTAGEOUS - Vendor's submittal meets all the stated requirements and offers significant performance above the stated requirements.
- 2) ADVANTAGEOUS - Vendor's submittal meets the stated requirements without risk or disadvantage.
- 3) NOT ADVANTAGEOUS - Vendor's submittal contains some risk or disadvantage but is not unacceptable.
- 4) UNACCEPTABLE - Vendor's submittal fails to meet the standards of the stated requirements.

After proposals have been assigned ratings on the basis of each evaluation criterion, a composite rating will be established by the Selection Committee. Submittals will then be ranked based upon finalized composite rating.

41. The Purchasing Agent will identify the most advantageous proposal based upon the rankings of the Selection Committee and an evaluation of the price proposals received. The Purchasing Agent will forward a recommendation for award to the City Manager based upon the most advantageous proposal received considering evaluation rankings and price proposals received.

GIVE FULL NAMES AND RESIDENCES OF ALL PERSONS INTERESTED IN THE FOREGOING PROPOSAL.

(NOTICE: Give first and last name in full; in case of corporations, give corporate name and names of President, Treasurer, and Manager; and in case of firms give names of the individual members)

Name	Address	Zip Code
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KINDLY FURNISH THE FOLLOWING INFORMATION REGARDING BIDDER:

(1)	If an Individual or Proprietorship
Name of Owner:	_____
Business Address:	_____
Zip Code	_____ Telephone No.
Email	_____
Home Address	_____
Zip Code	_____ Telephone No.

(2)	If a Partnership, Full names and addresses of all partners	
<u>Name</u>	<u>Address</u>	<u>Zip Code</u>
Business Address	_____ Zip Code	_____
	Tel. No.	_____

(3) If a Corporation

Full Legal Name: _____

State of Incorporation: _____ Qualified in Massachusetts? Yes _____ No _____

Principal Place of Business _____
Street P.O. Box

City/Town State Zip

Email: _____

Telephone No. _____

Place of Business in Massachusetts _____
Street P.O. Box

City/Town State Zip

Telephone No. _____

GIVE THE FOLLOWING INFORMATION REGARDING SURETY COMPANY

Full Legal Name of Surety Company _____

State of Incorporation _____ Admitted in Massachusetts? Yes _____ No _____

Principal Place of Business _____
Street P.O. Box

City/Town State Zip

Place of Business in Massachusetts _____
Street P.O. Box

City/Town State Zip

Telephone No. _____

NOTE:

The Office of the Attorney General, Washington, D.C. requires the following information on all bid proposals amounting to \$1,000.00 or more.

E.I. Number of bidder _____

This number is regularly used by companies when filing their "EMPLOYER'S FEDERAL TAX RETURN, U.S." Treasury Department Form 941.

AUTHORIZED SIGNATURE OF BIDDER _____

TITLE _____

DATE _____

UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 30B: SECTION 10,
THE FOLLOWING CERTIFICATION MUST BE PROVIDED:

Section 10. A person submitting a bid or a proposal for the procurement or disposal of supplies, or services to any governmental body shall certify in writing, on the bid or proposal, as follows:

"The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals."

(Please Print)

Name of Person Signing Bid

Signature of Person Signing Bid

Company

No award will be made without vendor certification of the above.

- **Proposers must sign and submit the above form with their proposal submission.**

HEALTH SCREENER, UNIVERSAL SOCIAL-EMOTIONAL-BEHAVIORAL / WPS
RFP #: CR-8165-W4

OVERVIEW

The Worcester Public Schools (WPS) seeks a universal social-emotional-behavioral health (SEBH) screener as a foundational component of a multi-tiered system of supports (MTSS). It provides a means for early identification of those children who may be at-risk of developing SEBH concerns and may benefit from early intervention. It can also help school systems determine how all children are responding to universal practices. The purpose of this request for proposals is to provide WPS with information in order to evaluate universal SEBH screening systems/measures for K-12 grade students.

GOALS

WPS seeks to provide a continuum of health and wellness services in an effort to strengthen scholars' social and emotional competencies on behalf of improving educational outcomes.

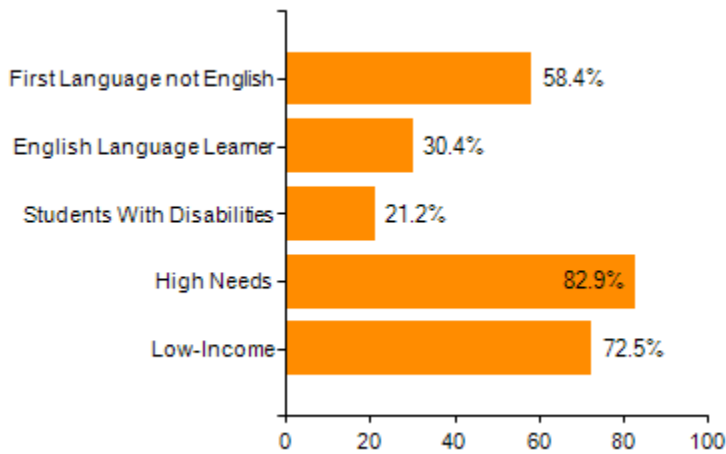
COMMUNITY AND DEMOGRAPHICS

WPS serves grades PreK - 12 and is home to nearly 25,000 students in 46 schools in addition to four alternative schools. Following is our enrollment by race/ethnicity, gender, multilingual learners, students with disabilities, socioeconomic status and by specific school.

Enrollment by Race/Ethnicity 2022-2023		
Race	% of District	% of State
African American	16.7	9.4
Asian	6.2	7.3
Hispanic	45.8	24.2
Native American	0.2	0.2
White	26.9	54.4
Native Hawaiian, Pacific Islander	0.0	0.1
Multi-Race, Non-Hispanic	4.1	4.4

Enrollment by Gender (2022-23)		
	District	State
Female	11,798	442,564

Male	12,511	469,563
Non-Binary	9	1,608
Total	24,318	913,735



School	Grades Served	Total Enrollment
Belmont Street Community	Pre-K - 6	585
Burncoat Middle School	7-8	712
Burncoat Senior High	9-12, SP	1,179
Burncoat Street	K-6	240
Canterbury	Pre-K-6	294
Chandler Elementary Community	K-6	426
Chandler Magnet	Pre-K-6	402
City View	Pre-K-6	430
Claremont Academy	7-12, SP	488
Clark St Community	Pre-K-6	268
Columbus Park	Pre-K-6	386
Doherty Memorial High	9-12, SP	1,344
Elm Park Community	K-6	415

Flagg Street	K-6	359
Forest Grove Middle	7-8	897
Francis J McGrath Elementary	Pre-K-6	208
Gates Lane	Pre-K-6	544
Goddard School/Science Technical	Pre-K-6	380
Grafton Street	K-6	427
Head Start	Pre-K	407
Heard Street	K-6	246
Jacob Hiatt Magnet	Pre-K-6	372
La Familia Dual Language School	Pre-K-6	172
Lake View	K-6	308
Lincoln Street	K-6	242
May Street	K-6	295
Midland Street	K-6	206
Nelson Place	Pre-K-6	575
Norrback Avenue	Pre-K-6	507
North High	9-12, SP	1,377
Quinsigamond	Pre-K-6	713
Rice Square	K-6	458
Roosevelt	Pre-K-6	566
South High Community	9-12, SP	1,667
Sullivan Middle	6-8	827
Tatnuck	Pre-K-6	385
Thorndyke Road	K-6	363
Union Hill School	K-6	390
University Pk Campus School	7-12	224

Vernon Hill School	Pre-K-6	474
Wawecus Road School	K-6	133
West Tatnuck	Pre-K-6	364
Woodland Academy	K-6	487
Worcester Arts Magnet School	Pre-K-6	368
Worcester East Middle	7-8	740
Worcester Technical High	9-12, SP	1,469

SCOPE OF SERVICES

The selected Vendor will work directly with the Director of Research and Accountability and/or his/her designee. The selected Vendor will also consult with the Office of Culture and Climate, grounded in the School District's work around Universal Screeners for Social-Emotional-Behavioral Learning.

Proposals must include a specific plan for providing the deliverables and consultations along with a timeline for each activity.

The universal SEBH shall include, at a minimum:

1. Versatility and be used as a brief screener
2. Treatment monitoring for student and program evaluation
3. Multi-tiered system of support that will support the entire WPS student population
4. Differentiation between student with no behavior concerns from those that experience emotional/behavioral difficulties
5. A dual-view of data interpretation
6. Insight into behavior concerns (such as conduct, negative affect, cognitive/attention), and adaptive skills (such as, social and academic functioning).
7. Distinctive student descriptors to classify the level of intervention needed

WPS also seeks proposals that offer additional features including, but limited to, the items below.

1. A system that has been subject to extensive statistical analysis, using a sample of at least 3,000 respondents.
2. A system that contains a strengths-based component, consisting of at least 30 change-sensitive items on 5 subscales with forms for parents and teachers to complete for the younger students, and youth to complete with both standardized scale-level and item-level norms established from a US national sample closely matching the Worcester census.
3. A system that can be utilized by all WPS school adjustment counselors and other staff as pertinent, to easily analyze data collected, identify and provide targeted interventions, and monitor progress to ensure positive outcomes.

MINIMUM QUALIFICATIONS

The following are the minimum qualifications the Vendor must meet or exceed, at the time of submission, in order for WPS to accept a proposal as responsive. Each Vendor must address how it meets each of the below minimum qualifications when submitting its Proposal. If a Vendor fails to respond to each qualification, or if WPS determines from the response that a Vendor does not meet any one of the minimum qualifications, its proposal may be deemed non-responsive and disqualified from further consideration.

1. Respondents must have experience in other large K-12 districts with at least 25,000 students where the product has been utilized successfully.
2. Respondents should be familiar with urban schools and communities and provide an explanation of their background/experience with schools in urban communities.
3. Respondents must provide a minimum of 3 references from other districts that have utilized the product successfully, with emphasis on districts similar to WPS. At least one of the references must be from a K-12 School district greater than 20,000 students.
4. Describe the product and the methodology utilized in order to respond to the areas identified and questions posed.
5. Describe how you intend to work with the school staff and others, as appropriate during the acquisition of the product.
6. The Vendor must have at least five years continuous successful experience in providing services within the scope of this RFP to K-12 school districts.
7. Respondents must be a vendor that follows evidence-based and/or informed practices and have a proven record of providing high-quality mental health screening.

DELIVERABLES

1. 11,000 student licenses and WPS staff access to the software program to review data.
2. Professional development provided to WPS staff throughout the year.

PROPOSAL SUBMISSION REQUIREMENTS

In addition to the minimum criteria noted above, proposers must include the following documents / information with submission.

- A work plan describing methodologies as well as roles and responsibilities within the team
- Sample reports demonstrating capacity to meet the needs of the district under Scope of Services
- Provide a cover letter with a brief history of the Vendor and its organization. The letter will indicate the principal or officer of the Vendor who will be WPS' primary point of contact during negotiations. This individual must have the authority to negotiate all aspects of the scope of services and provisions on behalf of the Vendor. An officer authorized to bind the Vendor to the terms and conditions of this RFP must sign the cover letter transmitting the proposal.
- Personnel: Full-time and part-time staff, proposed consultants and subcontractors who may be

assigned direct work on this project should be identified. Information is required which will show the composition of the task or work group, its specific qualifications, and recent relevant experience. Special mention shall be made of direct technical supervisors and key technical personnel, and approximate percentage of the total time each will be available for this project. The technical areas, character and extent of participation by any subcontractor or consultant activity must be indicated and the anticipated sources will be identified.

Resumes of staff and proposed consultants are required indicating education, background, recent relevant experience with the subject matter of the project. Current telephone numbers must be included.

PAYMENT

The vendor shall be paid after a review of invoices submitted for services. All items shall be documented and itemized on any invoice as requested by the department. All invoices must be sent to: wpsacctspayable@worcesterschools.net

CONTRACT

The vendor agrees to contract with the WPS using the City's software agreement template. Documents to be finalized with the vendor selected for award as the most advantageous proposer. Software agreement template is located at the end of these specifications.

COMPARATIVE EVALUATION CRITERIA

Once the District has determined that the Minimum Evaluation Criteria has been met, each proposal will be evaluated based on the following comparative criteria.

	Highly Advantageous	Advantageous	Not Advantageous
Experience of the Vendor	Vendor has extensive experience, specifically with this product, working in large (over 20K students) urban K-12 public education as well as in other sectors, is well-versed in current research, and demonstrated commitment to promoting compliance, equity and affording all students with access and equity to a high-quality education.	Vendor has adequate experience specifically with this product working in large (over 20K students) K-12 public Education, but not with urban school districts, is versed in current research, and has demonstrated commitment to promoting compliance, equity and affording all students with access and equity to a high-quality education.	Vendor has some limited experience specifically with this product working in K-12 public education but not with urban school districts.
Continuous Work Experience of the Vendor	Vendor has ten (10) or more years continuous successful experience in providing similar services to K-12 school districts	Vendor has six (6) to nine (9) years continuous successful experience in providing similar services to K-12 school districts	Vendor has the minimum of five (5) years continuous successful experience in providing similar services to K-12 school districts
Quality of Sample Reports	Sample reports demonstrate detailed data analysis, clear summarization and prioritized, specific recommendations. Communication is clear, direct and concise.	Sample reports demonstrate some data analysis, summarization and recommendations. Communication is clear.	Sample reports demonstrate little data analysis, limited summarization and few recommendations. Communication is somewhat clear.
Identification of students for general social and emotional behaviors	The system identifies children's general social and emotional behaviors using at least four descriptors with adaptive scales.	The system identifies children's general social and emotional behaviors using at least three descriptors with adaptive scales.	The system identifies children's general social and emotional behaviors using at least three descriptors without adaptive scales.
Work Plan	The vendor's work plan is clear, concise and includes a detailed description of the methodologies to be used in the course of this work. All roles and responsibilities are well-defined and identified with specificity.	The vendor's work plan is clear and includes a description of the methodologies to be used in the course of this work. Most roles and responsibilities are defined and identified with some specificity.	The work plan is not clear or concise and includes limited information relative to the roles and responsibilities of the vendor.

References	The vendor has supplied 7 or more references from other school districts that currently use the proposed solution. References are positive and all would request using the vendor again.	The vendor has supplied 4-6 references from other school districts that currently use the proposed solution. References are positive and all would request using the vendor again.	The vendor has supplied the minimum of 3 references from other school districts that currently use the proposed solution. References are positive and all would request using the vendor again.
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CONTRACT PERIOD AND RENEWAL:

This contract will begin on the date of contract execution and upon delivery of product, and shall terminate twelve months later.

Automatic contract renewals are prohibited. This contract may be renewed at the expiration of its term, at the sole discretion of the City. Contract renewals must be authorized by and coordinated through the Office of Procurement Services and the City's Purchasing Division. WPS reserves the right to renew the contract for two (2) additional one-year periods. The City will issue an amendment to the contract for any renewal period.

COST PROPOSAL INSTRUCTIONS:

The Vendor must submit an itemized cost proposal that includes:

1. License fees with unlimited screening and progress monitoring plans for each license;
2. Data processing set-up fee, if applicable;
3. Account set-up fee, if applicable;
4. Annual maintenance agreement, if applicable; and
5. Professional Development.

PRICING:

The subsequent contract will be a firm-fixed price agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of the contract during the first 365 days.

PRICING PAGE - UNIVERSAL SCREENER / WPS
Bid # CR-8165-W4

Furnish and deliver Universal Social Emotional Behavioral Health Screener and associated services to:

Worcester Public Schools
Durkin Administration Building
20 Irving Street
Worcester, MA 01609

Item #	QTY	Item	Unit Price	Total
		Year One		
1	11,000	Software license fees	\$	\$
2	1	Data Processing set-up fee	\$	\$
3	1	Account set-up fee	\$	\$
4	1	Annual Maintenance Agreement fee	\$	\$
5	1	Professional Development fee	\$	\$
		Year Two		
1	11,000	Software license fees	\$	\$
2	1	Data Processing set-up fee	\$	\$
3	1	Account set-up fee	\$	\$
4	1	Annual Maintenance Agreement fee	\$	\$
5	1	Professional Development fee	\$	\$
		Year Three		

1	11,000	Software licenses	\$	\$
2	1	Data Processing set-up fee	\$	\$
3	1	Account set-up fee	\$	\$
4	1	Annual Maintenance Agreement fee	\$	\$
5	1	Professional Development fee	\$	\$
		Total Cost ---*	\$	\$

*low proposal price to be based on the total cost for all three years

SOFTWARE LICENSE AND SERVICE AGREEMENT

This Agreement made this _____ day of _____, 2022, by and between the City of Worcester, a Massachusetts municipal corporation with an address of 455 Main Street, Worcester, Massachusetts, 01608, acting through its _____ Department ("City"), and _____, a _____ with a principal place of business at _____ ("Licensor").

W I T N E S S E T H:

WHEREAS, the City seeks to license _____ software for the _____ Department ("Project"); and

WHEREAS, Licensor is the successful proposer, and represents that it has the expertise, experience and capacity to perform the services sought; and

NOW THEREFORE, the parties hereto mutually agree as follows:

Article 1. LICENSE OF SOFTWARE AND DESCRIPTION OF SERVICES

1.1 Grant of License. Subject to the terms and conditions herein, including the Recitals above, Licensor hereby grants City a non-exclusive, non-transferable, license and right to use the _____ ("Software"). The City shall be entitled to use the Software for municipal purposes, including to copy, display, perform, modify, and otherwise use (and permit others to use) any City Data, all purposes set forth in the RFP (defined below) and the Proposal (defined below), those purposes required by law, and the purposes for which such Software was designed.

1.2 Summary of Services. Licensor shall furnish and perform implementation, testing, training, support, management and maintenance of said Software and related services, equipment and materials, if any, as set forth herein and in Exhibit A, "Scope of Services," ("SOS") as attached hereto and incorporated herein, and as further set forth in the RFP and the Proposal (defined below).

1.3 RFP and Proposal. The Project requirements are set forth at the Statement of Work, Exhibit A, City's Request for Proposals issued _____, 20__, No. _____ ("RFP"), and Licensor's Proposal, dated _____, 20__, ("Proposal"), each of which are incorporated herein by this reference. The Parties each acknowledge familiarity and possession of said RFP and Proposal. Notwithstanding any provision to the contrary, no legal terms or conditions contained in the Proposal (including any proposed license or contract) shall be incorporated by this reference. Any such legal terms and conditions in the Proposal shall be, by the execution of this Agreement, deemed fully withdrawn and of no force or effect. In the event of a conflict that cannot be harmonized, (a) this Agreement, including its attached exhibits, shall take precedence over the RFP and the Proposal, and (b) the RFP shall take precedence over the Proposal.

1.4 Equipment. To the extent Licensor is furnishing hardware, equipment and/or materials (collectively "Equipment") for this Project, Licensor shall bear all risk of loss to and/or damage for such Equipment that occurs in transit to the City's site(s) and during its installation. The risk of loss and/or damage to purchased Equipment further remains with Licensor until the purchase price for such Equipment is paid and title has passed. Licensor shall bear the risk of loss and/or damage to any licensed or rented Equipment during the City's possession and use thereof except to the extent of the City's negligence or wrongful misconduct; provided however, the express provisions set forth in the RFP shall control such risk of loss and/or damage to the extent of a conflict which cannot be reconciled.

1.5 Hosted Services. Licensor shall provide City with US domestic hosting services more particularly described in the SOS and the RFP ("Hosted Services").

1.6 Security. In addition to satisfying the security requirements set forth in the RFP, Licensor shall employ reasonable security measures which shall in no event be less than that required by all applicable federal and state laws and regulations regarding data security and privacy, including but not limited to that required for provision of the Hosted Service. Further, Licensor's security frameworks shall comply with generally accepted security frameworks, such as NIST or CIS.

1.6.1 In addition to other security requirements set forth elsewhere in this Agreement, Licensor shall conduct annual penetration testing. Licensor shall maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. Licensor shall promptly provide the City with a written or electronic record of the actions taken by Licensor in the event that any unauthorized access to the City's database(s) is detected as a result of Licensor's security protocols. Upon the City's reasonable request, Licensor shall undertake an additional security audit, on terms and timing agreed by the Parties. Licensor shall maintain an unqualified SOC 2 audit report and an attestation of compliance to PCI DSS and shall make the same available to the City or its designee upon request.

1.6.2 Data Encryption at Rest. Licensor (or its Hosted Services provider) shall salt/hash using Password Based Key Derivative Function, also known as PBKDF2, all sensitive credentialing data, such as passwords. In addition to the hashing of credentialing data, Licensor shall encrypt all other databases at rest in data center hardware using AES-256 encryption.

1.6.3 Data Encryption in Transit. All user communication with Licensor applications is through current securely encrypted TLS/SSL communication channels (https). Licensor shall use the most current technology for its SSL certificates. Insecure cipher keys are not used.

1.6.4 City data uploads are performed using secure FTP (SFTP) connections. IPSec VPN tunnels and TLS\SSL are used to transfer data between locations for disaster recovery and offsite backup.

1.7 Licensor's Subcontractors. If Licensor selects and/or engages any subcontractor or other third party (e.g., subcontractor, service provider) to provide any portion or component of the

Services (including the Software), Equipment hereunder, Licensor shall be responsible to the same extent as if such Service were provided by Licensor directly. Without limiting the generality of the foregoing, Licensor shall be liable for the acts and omissions of such third parties to the same extent as if such acts or omissions were performed by Licensor and shall require such third parties to enter into a written agreement with Licensor requiring that such third parties abide by terms that are as protective of City Data (and other confidential information) as in this Agreement.

1.8 Third Party Equipment and Software. Licensor shall be responsible for the purchase of, and entering into appropriate licensing agreements concerning, the Software, any third party equipment, materials and/or other software, including but not limited to that necessary for the performance of the Hosted Service. Ownership and/or licenses for the third party equipment and software shall be in the name of Licensor.

1.9 Service Levels. Licensor shall satisfy the security requirements set forth in the RFP.

1.10 Disaster Recovery. Licensor (or Hosted Services provider) shall maintain fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Services, including City Data, in the event of a disaster or component failure. Licensor shall maintain a disaster recovery plan for resumption of Services and shall provide a Recovery Point Objective ("RPO") of twenty-four (24) hours or better and a Recovery Time Objective ("RTO") of not more than twenty-four (24) hours (or such shorter time as set forth in the RFP or the Proposal). RPO is the maximum duration of time between the most recent recoverable copy of the City Data and subsequent data center failure. RTO is the maximum duration of time following data center failure within which the City's access to the Service must be restored. Licensor shall maintain backups of the City Data in accordance with its backup and retention policies (which shall be not less than nightly and monthly) to meet the RPO and RTO commitments contained herein. License shall test its disaster recovery plan annually and, upon the City's reasonable request, shall schedule and execute a customer-specific disaster recovery test. Upon the City's reasonable request, Licensor shall provide the City with disaster recovery test results.

1.11 Upgrades. Licensor shall timely support its Software and Service by furnishing Subscriber with the implementation of upgrades, updates, patches, bug fixes and other enhancements and modifications to the Software.

Article 2. TERM AND SCHEDULE

2.1 Term. This Agreement shall be effective upon the date set forth in the first paragraph above and terminate upon _____ () years thereafter, unless earlier terminated as set forth herein and/or unless otherwise extended in writing by the parties.

2.2 Schedule. Licensor shall commence and complete implementation of the Project and make the Software available to the City in compliance with the schedule set forth at Exhibit C, attached and incorporated by reference.

Article 3. FEE

3.1 Fee. The City shall pay Licensor an amount not to exceed _____ (\$_____) (“Fee”) in accordance with the procedures set forth herein. The above sum includes payment in full for all labor, services, software licenses, hosting, Equipment, professional service fees, overhead, profit, travel, and all other costs and/or expenses. The City shall pay Licensor solely on the basis of written invoices evidencing in complete detail the propriety of the charges. For the Software license fee, Licensor shall invoice annually for the amount of license fee for the relevant annual period. For all other payments, Licensor shall submit invoices periodically, but not more than monthly, reflecting services rendered and/or Equipment received. Licensor shall provide such additional detail and/or back up regarding any invoice that the City reasonably determines lacks in sufficient detail. The City shall make payments (except those amounts subject to good faith dispute) within forty five (45) calendar days after receipt of a sufficient invoice. The City shall not be subject to additional charges for late payments. The City’s payment obligations are contingent upon an appropriation.

3.2 City Tax Exempt. City represents to Licensor that it is a tax exempt entity. Licensor shall not include any taxes in invoices and shall not be entitled to recover any such amount from City. City shall provide its tax exempt information to Licensor upon request.

3.3 Fee Breakdown. The fee breakdown and related details are set forth in Exhibit B, attached hereto and incorporated herein.

Article 4. INFORMATION FURNISHED BY CITY

The City shall, to the extent the Services under this Agreement may require, furnish Licensor with any relevant information it may have concerning this Agreement. The City does not guarantee the accuracy or completeness of such information.

Article 5. PROPRIETARY RIGHTS AND CONFIDENTIALITY**5.1 City Ownership.**

5.1.1 As between Licensor (and its licensors, licensees, subcontractors and affiliates) and the City, the City owns and shall retain ownership of its City Data (including any documents, information, as well as any extract or aggregation thereof, in whatever nature or form (collectively, “City Data”). For clarity, said City Data shall include but not be limited to any data that is licensed or made available to the City through a third party, including but not limited to personal and private information. By this Agreement, City does not convey any right, title or interest in City Data (including but not limited to any rights owned by or licensed from any third party). Notwithstanding any provision to the contrary, Licensor is prohibited from retaining or using any City Data for any reason other than its performance under this Agreement, even if said City Data is aggregated, de-identified, pseudonymized or anonymized. Without limiting the

scope of Section 12.10 below, the requirements of this provision shall survive the termination of this Agreement.

In addition to City Data, any deliverables furnished by Licensor for the City's use shall be instruments of service and property of the City, whether the work for which they are made be executed or not, and are not to be used on other work except by agreement with the City.

5.1.2 City may, from time to time, engage or contract with contractors, consultants or other third parties (collectively for this Article "City Consultants") to provide separate software, services or products that relate to (and/or interact with) the Software and/or Services provided by this Agreement. Licensor will provide reasonable cooperation and work in good faith with City and City Consultants as reasonably requested by City. Further, to the extent Licensor has access to information of such City Consultant(s) that is marked as or may reasonably be understood to be confidential information, License shall, except as otherwise required by law, use such confidential information only for the purposes set forth in this Agreement and shall protect such confidential information in the same manner that it protects its own similar confidential information, but in no event using less than a reasonable standard of care.

5.1.3 At the termination of this Agreement, Licensor shall promptly (not less than five (5) calendar days) allow City to extract a copy of City Data at no cost for a period of one hundred twenty (120) calendar days, or such greater period as the Parties may agree. Within fifteen (15) calendar days of a written request by the City, Licensor shall return or destroy, at the City's option, all City Data, of whatever nature or form, including but not limited to all City Data received from or on behalf of the City or any City authorized user that is within Licensor's possession or control and shall (within five (5) calendar days following such destruction or return) certify in writing to the City that all City Data in its possession or control (including in the possession or control of Licensor's subcontractors, licensees, licensors, and other agents) has been destroyed or returned to City.

5.2 Licensor Ownership

5.2.1 Licensor represents that it (or its licensors) own all right, title and interest in and to the Software (including but not limited to all source code, object code, class libraries, user interface screens, algorithms, development frameworks, repository, system designs, system logic flow, and processing techniques and procedures related thereto), technical and non-technical documentation, and other Licensor intellectual property rights (copyright, patent, trademark, trade secret and other proprietary rights in any of the foregoing), and subject to the limited license and other rights expressly granted hereunder, Licensor reserves all rights, title and interest thereto.

Additionally, reports or other data generated by Licensor regarding its traffic flow, feature use, system loads and/or product installation, and/or similar information, are the exclusive property of Licensor; expressly excluding however personally identifiable information (PII), which Licensor shall neither collect (except to the limited extent necessary to perform its obligations under this Agreement), nor retain.

5.2.2 Restrictions. Except as otherwise required by law or order of a court with competent jurisdiction, or exempted by Section 5.3.3 or elsewhere in this Agreement, City agrees that it will not

- (i) modify the Software or technical documentation or create any derivative works based on the Software or technical documentation beyond changes necessary to support intended functions and integrations;
- (ii) copy the Software or technical documentation (except for archival copies of the technical documentation for use consistent with this Agreement, copies required as a step in the use of the Software or Service);
- (iii) license, sublicense, sell, resell, rent, lease, assign, distribute, time share, offer in a service bureau, or otherwise make the Software or technical documentation available to any third party, other than to authorized user as permitted herein;
- (iv) reverse engineer or decompile any portion of the Software or documentation;
- (v) access the Software or documentation for the purpose of establishing a competing commercially available product or Service; or
- (vi) modify, or create derivative works of any features, functions, integrations, interfaces or graphics of the Software or technical documentation.

For clarity, for purposes of this Agreement, (a) reports or other documents created from City Data and (b) configurations and customizations performed within the terms of the Agreement shall not be defined as derivative works and shall be available to the City for municipal uses, including public disclosure, in its discretion.

5.3 Confidential Information.

5.3.1 Licensor represents to the City that its Software and technical documentation contains proprietary information that are the exclusive property of Licensor (or the licensors of Licensor) ("Licensor Confidential Information"). Neither party shall disclose or use any confidential information of the other Party except (i) as reasonably necessary to perform its obligations or exercise its rights pursuant to this Agreement, or (ii) to comply with applicable law or order of any court of competent jurisdiction. Subject to said first sentence, the Parties agree to protect the confidential information of the other Party in the same manner that it protects its own confidential information of like kind, but in no event using less than a reasonable standard of care. Notwithstanding any provision to the contrary, however, this Section 5.3.1 shall not affect the limits or exclusions to confidential information set forth elsewhere in this Agreement, including but not limited to Section 5.3.3.

5.3.2 Remedies. If a party discloses or uses (or threatens to disclose or use) any confidential information of the other party in breach of confidentiality protections hereunder, the other party shall have the right, in addition to any other remedies available, to seek injunctive relief to enjoin such acts.

5.3.3 Exclusions. The definition of confidential information, including Licensor Confidential Information, shall not include any information (in any form) that: (i) is or becomes generally known to the public without breach of any obligation owed to the other party; (ii) was known to

a party prior to its disclosure by the other party without breach of any obligation owed to the other party; (iii) was independently developed by a party without breach of any obligation owed to the other party; or (iv) is received from a third party without breach of any obligation owed to the other party. Notwithstanding any provision to the contrary in this Agreement, City Data (including but not limited to Personal Data) shall not be subject to the exclusions (i)-(iii) set forth in this Section 5.3.3. Notwithstanding any provision to the contrary in this Agreement, **expressly excluded from the Licensor Confidential Information provisions** shall be (a) this Agreement, as it may be amended (whether by change order, work order, order form, amendment or otherwise), and its appendices, addendum, order forms, exhibits, and (b) all other incorporated or referenced documents/attachments, including the RFP and the Proposal, (c) correspondence with the City by or on behalf of Licensor, (d) invoices and related details, (collectively for this Section “non-confidential documents and information”). City shall have the right to disclose publicly such non-confidential documents and information, in whatever form, for any municipal purpose consistent with the City’s usual practices and activities. Without limiting the generality of Section 12.10, the requirements of this Section shall survive termination of this Agreement.

Additionally and for the avoidance of doubt, none of the requirements of this Agreement shall be interpreted to impede, limit or prohibit the City from disclosing Licensor’s (or licensor, subcontractor, licensees, and affiliates) Confidential Information or other proprietary information, including trade secrets, to the extent that such information is required to be disclosed pursuant to any applicable law, including but not limited to Massachusetts public records law, open meeting law, or any other local public disclosure law applicable to City or pursuant to any order by a court of competent jurisdiction.

5.3.4 FERPA/COPPA. To the extent City is an educational institution subject to the Family Educational Rights and Privacy Act (“FERPA”) and to the extent Licensor may have access to student information during the performance of this Agreement, Licensor agrees that it is a “School Official” (as that term is used in FERPA) with a “legitimate educational interest” in any City Data that is protected by FERPA and, therefore, Licensor agrees that with respect to all City Data that is protected by FERPA, to the extent that Licensor accesses unencrypted City Data that is subject to FERPA, Licensor shall comply with any and all obligations of a School Official with respect to such access. Without limiting the foregoing, Licensor shall use education records only for the purposes of fulfilling its duties under this Agreement. Except as required by law or court order, Licensor shall not disclose or share education records with any third party except to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of Licensor and only to the extent such education records are needed to fulfill said subcontractor’s duties under this Agreement. Additionally, and to the full extent applicable, Licensor shall comply with the requirements of the Children’s Online Privacy Protection Act (“COPPA”) and SHALL NOT KNOWINGLY COLLECT ANY PERSONALLY IDENTIFYING INFORMATION FROM CHILDREN UNDER THE AGE OF 13 THROUGH THE SOFTWARE AND/OR OTHER PRODUCT EXCEPT IN COMPLIANCE WITH COPPA.

Article 6. STANDARD OF CARE

6.1 Licensor shall provide all professional Services in a good, timely, thorough, and workmanlike manner, in accordance with the standard of care, skill, training, diligence, and

judgment provided by highly competent providers and licensors performing services of a similar nature. Licensor shall be responsible for the security of the data (including City Data) during any implementation, configuration and integration, and it shall be responsible for non-interference with those aspects of the City's existing computer and related systems that are not intended to be replaced or changed by this Project. Licensor shall be responsible for the professional and technical accuracy and the coordination of all work furnished under this Agreement. Licensor shall furnish duly qualified personnel with the degree of training and expertise required to provide such Services for each aspect and task so that detailed checking or reviewing by the City is not necessary.

6.2 Notwithstanding any provision to the contrary, the City's review, approval, testing, acceptance or payment for any of the software, deliverables, Equipment, labor, and/or services furnished shall not be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement.

6.3 Without limiting the generality of other provisions of this Agreement, in the event that any aspect of Licensor's performance fails to comply with applicable law due to Licensor's negligence or breach of this Agreement, Licensor shall make all necessary corrections at no cost whatsoever to the City.

Article 7. INDEMNIFICATION

7.1 Licensor shall indemnify, defend and hold harmless the City and its officials, employees, agents, and attorneys against any third party claims, demands, actions, arbitrations, losses and liabilities resulting from any injury, death or damage to property, caused by Licensor's employees or subcontractors in performing the obligations under this Agreement. The City agrees to promptly provide Licensor notice thereof (although a delay of notice will not relieve Licensor of its obligations except to the extent that Licensor is materially prejudiced by such delay) and to provide reasonable cooperation, information, and assistance in connection therewith. If Licensor's indemnification is provided without reservation, Licensor shall have sole control and authority to defend, settle or compromise such claim, *provided* that any settlement/compromise shall unconditionally release City of all liability by all claimants *and further* that Licensor shall nevertheless obtain City's prior written consent prior to making any admission or statement of City breach, error or negligence.

7.2 Without limiting the generality of the foregoing, Licensor shall defend, hold harmless and indemnify the City, and its officials, employees, agents and attorneys against any damages or amounts paid in settlement, as well as any attorney fees and costs, as a result of any claim or threat of claim brought by a third party against the City alleging that: (i) the use of the Software, the documentation (including for this Article 7, technical and non-technical documentation) and/or other products, Equipment that City has licensed or otherwise received from Licensor infringes or misappropriates any patent, copyright, trademark, trade secret or other proprietary right of a third party, or (ii) the Software, documentation and/or other products, Equipment, which City has licensed or otherwise received from Licensor caused damage or injury (including death), to the extent that such damage was not caused by the City through a change in said Software, documentation and/or other products, Equipment, except as performed or authorized

by Licensor. The City agrees to promptly provide Licensor notice thereof (although a delay of notice will not relieve Licensor of its obligations except to the extent that Licensor is materially prejudiced by such delay) and to provide reasonable cooperation, information, and assistance in connection therewith. If Licensor's indemnification is provided without reservation, Licensor shall have sole control and authority to defend, settle or compromise such claim, *provided* that any settlement/compromise shall unconditionally release City of all liability by all claimants *and further* that Licensor shall nevertheless obtain City's prior written consent prior to making any admission or statement of City breach, error or negligence.

7.2.1 If the City is enjoined or otherwise prevented from using Software, documentation and/or other products, Equipment for any reason not the material breach of this Agreement by the City, Licensor shall make all reasonable efforts to obtain for the City (at no additional cost) the right to continue use of such Software, Equipment, documentation and/or other products, so that the City is no longer infringing. If neither of the foregoing options is reasonably available to Licensor, then Licensor shall equitably refund any payments made for the applicable Software, Equipment, documentation and/or other products, as of the last date the City was able to normally use said Software, Equipment, documentation and/or other products, and if the City determines that the functionality of the Software is materially reduced, the City may terminate this Agreement pursuant to Section 11.1.

7.3 Any and all costs of defense (e.g. reasonable attorney's fees and costs, any award, any settlement) related to Sections 7.1 and 7.2 shall be deemed direct damages for purposes of Section 9.1 and shall not be subject to the Limitation of Liability set forth in Section 9.2.

7.4 The City shall have no obligation to indemnify the Licensor. Without limiting the generality of Section 12.12, and notwithstanding any provision to the contrary, the City shall have no obligation to indemnify any third party, whether Licensor's affiliate, partner, licensor or otherwise.

7.5 Without limiting the generality of Section 12.10, the provisions of this Section shall survive the expiration or termination of the Agreement.

Article 8. WARRANTIES AND DISCLAIMERS

8.1 Full Term Warranties. For the full Term of this Agreement, including any extension thereof, Licensor warrants that it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, shall comply with all applicable laws. Licensor further warrants that Licensor is fully authorized by and shall not violate any agreement that Licensor has with any third-party in any manner that may increase the City's liability or cost, or decrease functionality or security of the Software, hardware or any Service provided by Licensor hereunder. Licensor further warrants to the City that it owns or is fully authorized to grant a license to the Software.

8.2 Licensor warrants that the Software shall perform in substantial compliance with its specifications, be free of material defects, and shall not infringe upon the intellectual property rights of any third party. In the event of a breach of this warranty, Licensor either shall promptly

correct defects to the Software, or if that is not reasonable, Licensor shall refund the City's prorated license fee, provided however that if the City determines that such breach materially reduces the functionality of the Software or related Services, the City may terminate this Agreement pursuant to Section 11.1. The remedies set forth in this Article shall be in addition to those set forth elsewhere in this Agreement, including but not limited to Article 7. This warranty does not cover any material defect or infringement resulting from the City's misuse or misapplication of the Software, including that caused by the City's employees or contractors.

8.3 Licensor thereby warrants that any and all Services, including but not limited to the integration of software and the integration of hardware (as applicable) supplied by Licensor will (a) perform in accordance with the RFP and, to the extent additional functionality is offered, the Licensor's Proposal, and (b) is free from defects in material, design, and workmanship and otherwise satisfy the requirements and provide the remedies set forth in this Agreement, including but not limited to Section 6.1. Licensor shall provide such warrantee(s) at no additional cost to the City, commencing on the date of final system acceptance. Said warrantee(s) shall cover all parts, labor, and travel, and such additional costs as required by the RFP and/or offered by the Proposal (resulting in the most inclusive) related to all the hardware and software supplied under this Agreement.

8.4 EXCEPT FOR WARRANTIES SET FORTH ELSEWHERE IN THIS AGREEMENT OR REQUIRED BY THE RFP, APPLICABLE LAW, OR OFFERED BY THE PROPOSAL, LICENSOR DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR THAT ANY NETWORK-ACCESSIBLE FEATURES OF THE SOFTWARE WILL BE CONTINUALLY ACCESSIBLE OR ACCESSIBLE AT ANY TIME.

Article 9. LIMITATIONS OF LIABILITY

9.1 EXCEPT FOR EXPRESS EXCLUSIONS SET FORTH ELSEWHERE IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE, SUCH AS LOST PROFITS AND LOST OPPORTUNITY, PROVIDED HOWEVER THAT LICENSOR'S INDEMNIFICATION OBLIGATIONS SHALL BE DEEMED DIRECT DAMAGES.

9.2 TO THE FULL EXTENT PERMITTED BY LAW, AND EXCEPT WITH RESPECT TO (a) LICENSOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS AGREEMENT, (b) THE CITY'S PAYMENT OBLIGATIONS SET FORTH IN ARTICLE 3, (c) AMOUNTS PAID FOR FINES AND PENALTIES IMPOSED BY ANY GOVERNMENTAL AUTHORITY ARISING FROM THE OTHER PARTIES' BREACH, (d) EITHER PARTY'S RECKLESS MISCONDUCT, GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR FRAUD, THE MAXIMUM LIABILITY OF EITHER PARTY ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO TWO TIMES (2X) THE AGGREGATED SOFTWARE LICENSE FEES ACTUALLY PAID BY THE CITY TO LICENSOR (OR ITS AGENT) DURING THE IMMEDIATELY PRIOR TWELVE (12) MONTH PERIOD (OR FOR

A CLAIM(S) ARISING BEFORE THE FIRST ANNIVERSARY OF THE EFFECTIVE DATE, THE AMOUNT PAID OR PAYABLE FOR THE FIRST TWELVE (12) MONTH PERIOD). NOTWITHSTANDING ANY PROVISION OF THIS SECTION 9.2 TO THE CONTRARY, THE MAXIMUM LIABILITY FOR EITHER PARTY SHALL NOT BE LESS THAN FIFTY THOUSAND DOLLARS (\$50,000). SAID AMOUNT SHALL BE RESET AT THE START OF ANY EXTENDED TERM.

9.3 If Licensor experiences an actual or suspected security breach that may affect the City, Licensor shall notify the City within 72 hours (or earlier if required by law) and shall take immediate steps to limit and mitigate such security breach to the extent possible and, in any event, as required by law. Notwithstanding the foregoing sentence, if any other applicable law requires a more rapid or additional action, Licensor shall comply with the most rigorous requirements.

9.3.1 In the event of any material breach by Licensor of the security, privacy and/or confidentiality obligations set forth in this Agreement may, at City's discretion, result in termination of this Agreement for cause including but not limited to the immediate termination of any and all rights Licensor may have to receive City Data or other information from the City.

9.3.2 In the event of a security breach, Licensor shall pay reasonably necessary, documented costs incurred by the City, including but not limited to: (a) costs of any reasonably required forensic investigation to determine the cause of the breach, (b) the cost of providing legally required notice of the breach to individuals affected by the unauthorized acquisition and/or misuse of the City Data; (c) providing one year (or the greater period required by law) of credit monitoring service to individuals whose personal information may have been accessed or acquired and who elect such a service, (d) operating a call center for a period of one year (or the greater period required by law) to respond to questions from individuals whose personal information may have been accessed or acquired, and (f) reasonable attorney's fees and defense costs incurred by the City with respect to such data breach and notification. Licensor shall indemnify, defend and hold City harmless for any loss, cost, damage or expense suffered by City, including but not limited to the cost of notification of affected persons, as a result of Licensor's unauthorized disclosure of education records that are subject to FERPA, or any other confidentiality/privacy provision, whether federal, state or administrative in nature. The limitation of liability set forth in Sections 9.1 and 9.2 shall not apply to Licensor's costs associated with this Section 9.3. Notwithstanding the foregoing, Licensor shall have no responsibility to pay such costs to the extent that such costs are incurred due to the reckless misconduct, gross negligence, willful misconduct or fraud of the City.

9.4 Right to Seek Injunction. Notwithstanding any provision to the contrary, either Party shall have the right to seek injunctive relief as against the other Party to enforce the provisions of this Agreement.

Article 10. INSURANCE

10.1 Licensor shall maintain liability insurance sufficient to fulfill its obligations pursuant to this Agreement, and not less than set forth in this Article. Such insurance shall not be cancelled

or reduced during the Term of this Agreement or for such additional period required below. Neither insurance amounts below nor actual coverage shall serve to limit Licensor's liability arising under this Agreement.

10.2 Licensor shall obtain and maintain professional liability/errors and omissions insurance at its sole expense, sufficient to cover any claims, damages, liabilities, costs and expenses (including attorney's fees) arising out of or in connection with Licensor's fulfillment of any of its obligations under this Agreement. Errors and omissions insurance shall cover professional errors and omissions of Licensor, its employees, and officers and professional subcontractors. Coverage under each policy will be a minimum of Five Million Dollars (\$5,000,000) for each occurrence (if on a claims made basis, then with a 6 year extended coverage ("tail" coverage)); provided however that if Licensor's network security/data privacy/cyber liability coverage is included within such policy each shall be not less than the amount set forth for that coverage below.

10.3 Licensor shall also obtain and maintain in force at all times during the term of this Agreement, insurance coverages pertaining to Personal Injury, Property Damage, Motor Vehicle and Worker's Compensation in the following amounts:

- i. Commercial General Liability (including property damage) - \$1,000,000 per occurrence and \$3,000,000 in aggregate. Commercial General Liability insurance shall include within its coverage Licensor's indemnity obligations.
- ii. Automobile Liability/Combined Single Limit (all owned, scheduled, hired, and non-owned autos) - \$1,000,000.
- iii. Workers Compensation - MA Statutory Requirements

10.4 Licensor shall also obtain and maintain in force at all times during the term of this Agreement Excess/Umbrella Liability coverage at not less than \$5,000,000 per occurrence.

10.5 Licensor shall also obtain and maintain in force at all times during the term of this Agreement data breach coverage at not less than \$5,000,000 per occurrence; and cyber liability policy which includes internet liability and computer security and privacy liability at not less than \$5,000,000 per occurrence.

10.6 A waiver of subrogation favoring the City shall be included in the policy(ies) for all coverage (except workers compensation). Licensor is solely responsible for payment of deductible or retention amounts.

10.7 Licensor shall furnish certificates of insurance evidencing that it has coverage of the types and amounts required above, to the City, prior to the execution of this Agreement in a form satisfactory to the City. The City of Worcester shall be named as an additional insured on all coverage and certificates, except for workers compensation and errors and omissions coverage in Section 10.2. The Certificate Holder shall be Purchasing Agent, City Hall, 455 Main Street, Worcester, Massachusetts 01608. Licensor shall require its insurance company(ies) to notify the Certificate Holder of any reduction or cancellation of the insurance at least thirty (30) days prior to the effective date of such reduction or cancellation.

10.8 Licensor's required insurance coverage set forth above shall not be construed as a limitation or waiver of any potential liability or satisfaction of Licensor's indemnification obligation.

10.9 Licensor shall require its insurer to waive subrogation on claims under its Commercial General Liability and Automobile Liability policies that arise out of or relate to this Agreement. Licensor is solely responsible for payment of deductible or retention amounts relating to its insurance coverage. Licensor's insurance shall be primary and non-contributory to any coverage by the City.

10.10 The City reserves the right to self funded/self insured and shall not be required to obtain commercial insurance coverage.

Article 11. TERMINATION OF CONTRACT

11.1 Termination of Contract for Cause If either party fails to fulfill in a timely and proper manner its obligations under this Agreement for any cause, or if either party violates any of the terms, covenants and conditions of this Agreement, then in such event the offended party shall have the right to terminate this Agreement by giving written notice to the breaching party of such termination and specifying the effective date thereof, said written notice to be given not less than thirty (30) days before the effective date of such termination. Unless the Party receiving such notice cures within said thirty (30) days (or such longer period as the parties may agree in writing), termination of this Agreement shall occur on the effective date without additional notice by the offended party. In the event of such termination, City shall be obligated to pay for such Equipment, if any, licenses and/or Services received and accepted, but no termination fees, expenses or payment for all or any portion of the remainder of the Term. Licensor shall refund the pro-rata portion of any pre-paid license fees, and Licensor shall be obligated to provide the transition Services set forth in Section 5.1.3 and 11.4. Neither Party shall be relieved of liability to the other for damages sustained as a result of negligence or breach occurring prior to the termination of this Agreement, subject to Article 9. Notwithstanding the notice period and opportunity to cure above, either party may terminate immediately if the other party ceases business, becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. The Parties may, but shall not be required to, use arbitration and/or mediation to resolve disputes.

11.2 Termination for Non Appropriation. The City may terminate this Agreement, without penalty or additional fee, after giving Licensor not less than thirty (30) days prior written notice, if it does not obtain sufficient funding for this Agreement after a good faith request. Notwithstanding the foregoing, City shall be obligated to pay for such Equipment and/or Services already received, but no termination expenses or payment for all or any portion of the remainder of the Term. Neither Party shall be relieved of liability to the other for damages sustained as a result of negligence or breach occurring prior to the termination of this Agreement.

11.3 Termination for Convenience. Either Party may terminate this Agreement at any time, without penalty or additional fee, by giving at least ninety (90) days' notice in writing to the other. In the event of such termination, City shall be obligated to pay for such Equipment, if any,

licenses and/or Services received and accepted, but no termination fee, expenses or payment for all or any portion of the remainder of the Term. Licensor shall refund the pro-rata portion of any pre-paid license fees, and Licensor shall be obligated to provide the transition Services set forth in Section 5.1.3 and 11.4. Neither Party shall be relieved of liability to the other for damages sustained as a result of negligence or breach occurring prior to the termination of this Agreement.

11.4 Responsibilities in the Event of Termination.

11.4.1 Upon any termination of this Agreement, the City shall cease to use the Software and shall have no obligations to make any payment for any period after the date of termination, except as set forth in Section 5.1.3 regarding transition. Licensor shall, upon the City's request, provide reasonable cooperation and assistance as City may reasonably request to support an orderly transition to another provider of similar software, services, or to City's internal operations.

11.4.2 Licensor shall fully comply with any and all FERPA requirements, which shall control over the requirements in this Section 11.4.1 and Section 5.1.3, above, to the extent FERPA is more protective of data. If Licensor is requested to return City Data, Licensor shall furnish City such City Data in a form agreed to by the Parties at a cost of not more its then market rate pursuant to an amendment to this Agreement.

Article 12. MISCELLANEOUS

12.1 Successors and Assignments. The City and Licensor each bind itself, its partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement.

12.2 Contractors, Subcontracting, Successors & Assignments

Licensor shall not engage subcontractors or consultants to perform any part of its Services or obligations specifically pursuant to this Agreement (directly or indirectly) without the prior written consent of the City. The written consent shall not in any way relieve Licensor from its obligations and duties set forth in the Agreement.

Neither Party may assign the Agreement, or any portion thereof, without the prior written consent of the other, which consent will not be unreasonably withheld or delayed. The Agreement shall be binding on each Party's permitted assignee. If Licensor assigns this Agreement to any subsidiary or affiliate, Licensor shall nevertheless retain responsibility for all liabilities and obligations set forth in this Agreement. Licensor and assignee shall provide the City written confirmation of such assignment and assignees financial capacity to meet said obligations in a form acceptable to the City. Notwithstanding the foregoing, either party may assign this Agreement in its entirety as the result of a sale of all or substantially all of its assets without having to obtain the other party's consent, provided that it promptly informs the City of the transfer, provides contact information for the assignee, as well as evidence reasonably acceptable to the City of the assignee's capacity to satisfy the obligations of this Agreement, and

further provided that the assignee accepts in writing in a form reasonably acceptable to the City all the rights, duties and obligations of the Licensor.

12.3 Records Licensor shall maintain records with respect to all matters covered by this Agreement for a period of six (6) years from the date of receipt of final payment under this Agreement.

12.4 Independent Contractor Licensor is an independent contractor and not an employee of the City.

12.5 Coordination with other Contractors. Licensor may have access to information of City's consultants, contractors, license holders and the like that is marked as or may reasonably be understood to be confidential information related (whether directly or indirectly) to this Agreement. In such an event, Licensor agrees that, except as required by law, such confidential information may be used only for the purposes set forth in this Agreement and that Licensor shall protect such confidential information in the same manner that it protects its own similar confidential information, but in no event using less than a reasonable standard of care.

12.5 Discrimination Prohibited

A. In all hiring or employment made possible by or resulting from this Agreement, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin, and (2) affirmative action will be taken to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

B. No person in the United States shall, on the ground of race, color, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from the contract. Licensor shall comply with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964.

12.6 Compliance with Laws In the performance of this Agreement, each Party shall comply with all applicable federal, state and local laws, rules, ordinances, regulations and administrative requirements.

12.7 Conflict of Interest Licensor certifies that it has complied with all provisions of law regarding the award of this Agreement and that it, or its employees, agents, officers, directors or trustees have not offered or attempted to offer anything of any value to any employee of the City in connection with this Agreement. Licensor further certifies that no employee of the city of Worcester, including unpaid members of City boards and commissions, serves as an officer, director, trustee or employee of Licensor, and that no employees of the City have or will have a direct or indirect financial interest in this Agreement. Violation of this Section shall be a material breach of this Agreement and shall be grounds for immediate termination of this Agreement by the City without regard to any enforcement activities undertaken or completed by any enforcement agency. Termination of this Agreement pursuant to this Section shall not waive any

claims for damages the City may have against Licensor resulting from Licensor's violation of the terms of this Section.

12.8 Certifications Required by Law. Licensor, by executing this document, certifies the following:

- (a) it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement;
- (b) that no consultant to or subcontractor for Licensor has given, offered or agreed to give any gift, contribution or offer of employment to Licensor, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by Licensor;
- (c) that no person, corporation or other entity, other than a bona fide full time employee of Licensor, has been retained or hired by Licensor to solicit for or in any way assist Licensor in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to Licensor; and
- (d) with respect to contracts which exceed ten thousand dollars or which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars, that Licensor has internal accounting controls as required by subsection (c) of thirty-nine R of chapter thirty of the General Laws and that Licensor has filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R.
- (e) that Licensor, and any consultant to or subcontractor for Licensor, represents, warrants and certifies that it has complied with all laws of the commonwealth of Massachusetts relating to taxes and all Ordinances and Orders of the city of Worcester relating to taxes, fees and charges, or is lawfully contesting the validity of the same. Licensor, and any consultant to or subcontractor for Licensor, further represents, warrants and certifies that it will remain in such compliance during the term of this Agreement, including any amendments or extensions hereto. Breach of any of these provisions shall be deemed a material breach which shall entitle the City to immediately terminate this contract pursuant to Article 11 and take any other action authorized by law to collect any amounts due the City.

12.9 Applicable Law The laws of the commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance of this Agreement, without giving effect to its provisions regarding choice of laws. Any suit brought hereunder shall be brought in the state or federal courts sitting in the Worcester County, Massachusetts, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Massachusetts law. In no event does the City waive any of the applicable protections granted it by federal or Massachusetts law, including but not limited to G.L. c. 258.

12.10 Survivorship. Those sections that by their nature survive expiration or termination of this Agreement will survive such expiration or termination.

12.11 Notices. Any formal notices necessary under this Agreement shall be given by certified mail, return receipt requested, or by hand delivery or overnight mail by a nationally recognized carrier to the address set forth below for the Parties, and addressed to the City at the City Manager, Room 306, City Hall, Worcester, Massachusetts 01608 and addressed to Licensor at the address appearing in the first paragraph of page 1 of this Agreement.

12.12 No Third Party Beneficiary. This Agreement is by and between the parties that have executed it. The Parties state that the Agreement is intended for their mutual benefit alone and is not intended to confer any express or implied benefits on any other person, including but not limited any third party identified herein.

12.13 Severability If any provision of this Agreement is held invalid by any court or body of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

12.14 Headings The article and section headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

12.15 Amendments This Agreement may be amended or modified only by a written amendment hereto duly executed by the parties.

12.16 Exhibits The exhibits referenced herein are hereby incorporated and made a part of this Agreement.

12.17 Entire Agreement This Agreement contains the entire understanding of the parties and supersedes all prior agreements, representations, proposals and undertakings of the parties. Any additional or contrary terms or conditions contained in any invoice, proposal, purchase order, order form or other document issued by either Party shall be null and void unless expressly agreed to in an amendment to this Agreement.

[remainder of page intentionally blank – signature page to follow]

RFP:

Contract #:

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed as a sealed instrument by their duly authorized representatives the day and year first above written.

RECOMMENDED:

[_____]

Name

Title

Christopher Gagliastro, Purchasing Director

Approved as to Form:

CITY OF WORCESTER

Assistant City Solicitor

Eric D. Batista
City Manager

I certify that funds are available in Account No. _____

Budget Analyst, Department of Administration and Finance

RFP:

Contract #:

EXHIBIT A
SCOPE OF SERVICES

RFP:

Contract #:

**EXHIBIT B
FEE BREAKDOWN
(LICENSOR's PRICE PROPOSAL)**

The City shall pay Licensor for all licenses and all Services rendered pursuant to this Agreement in an amount not to exceed the amount set forth in Article 3 of the Agreement, in accordance with the following fee breakdown:

RFP:

Contract #:

EXHIBIT C SCHEDULE

Licensors shall comply with the following Project Management- Implementation and Timeline:

RFP:

Contract #:

EXHIBIT D
Service Level Agreement

Licensors shall provide service and support as follows:

RFP:

Contract #:

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the _____ held
on _____ Directors were present or waived
(name of corporation) (date)

notice, it was voted that _____ of this company be and hereby
(officer and title)

is authorized to execute contracts and bonds in the name and behalf of said company, and affix its
Corporate Seal thereto, and such execution of any contract or bond of obligation in this company's name
shall be valid and binding upon this company.

A TRUE COPY,

ATTEST:

Place of Business:

I hereby certify that I am the _____ of the _____
(Title) (Name of Corporation)
that _____ is the duly elected _____
(Name of Officer) (Title)

of said company, and the above vote has not been amended or rescinded and remains in full force and effect
as of the date of this contract.

Signature: _____

Name/Title: _____

Date: _____

(Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

On this ____ day of _____, 20____, before me the undersigned notary public, personally appeared
_____, who proved to me through satisfactory evidence of identification, which
was/were _____, to be the person whose name is signed on the preceding or
attached document, and acknowledged to me he/she signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

RFP:

Contract #:

TAX CERTIFICATION

DATE: _____

Pursuant to Mass. G.L. c. 62C, Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature: _____

Print below signature line name and title
of Individual or Corporate Officer (as applicable)

Company Name

Address: _____

Tel No. _____

SOCIAL SECURITY NUMBER
OR
FEDERAL IDENTIFICATION NUMBER