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HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

This HOLD HARMLESS AND INDEMNIFICATION AGREEMENT (the "Agreement") is made and entered into this 14 th day of February in 2023 by and between **THE YONKERS PUBLIC SCHOOLS** acting by and through its Board of Education, a school district established pursuant to New York Education Law, ("School District" and/or "YPS") and **YONKERS PARTNERS IN EDUCATION** located at 92 Main Street, Suite 101, Yonkers, New York 10701 hereinafter called the "Contractor";

WITNESSETH:

WHEREAS YPS desires to obtain the services of Contractor to provide clothing collection/donation containers on School District property as indicated below, and WHEREAS, it is acknowledged and agreed that pursuant to the terms of that certain intermunicipal agreement ("IMA") by and between YPS, acting by through its Board of Education ("BOE") and the City of Yonkers ("City") as filed in the Office of the City Clerk on June 16, 2014, the terms of the agreement are subject to review and revision by the City's Corporation Counsel, as well as approval, if applicable, by the City's Board of Contract and Supply ("BOCS");

That the YPS and the Contractor for the consideration stated herein mutually agree as follows:

1. Description of Work. Contractor shall and will well and sufficiently furnish and provide, or shall utilize a subcontractor and/or agent to provide: one or more clothing collection/donation containers on School District property as exclusively determined by the School District.
2. Indemnification. Contractor agrees to protect, defend, indemnify, and hold the School District, the City of Yonkers, and the Yonkers Board of Education and their employees/agents free and harmless from and against any and all losses, claims, liens, demands and causes of action of every kind and character. This includes the amount of judgments, penalties, interest, court cost(s) and legal fees incurred by the School District, Yonkers Board of Education, and the City of Yonkers in defense of same arising in favor of claims, liens, debts, and/or personal injuries sustained by employees of the School District, Yonkers Board of Education, and the City of Yonkers, from death or damage to property, including property of the School District, Yonkers Board of Education, and the City of Yonkers, and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to the following work being performed by the Contractor:

Contractor, at their expense, agrees to investigate, handle, respond to, provide the defense for and defend any claim made against the School District, Yonkers Board of Education, and the City of Yonkers of for which it is, in whole or part, liable and it agrees to bear all cost and expenses related thereto, including attorney's fees and costs even if such claim is groundless, false or fraudulent. Contractor further agrees to procure and maintain insurance naming the School District, Yonkers Board of Education, and the City of Yonkers as additional insured (including without limitation, a waiver of subrogation) as more fully described in Schedule "A," entitled Standard Insurance Provisions, which is attached hereto and made a part hereof.

3. Labor Law Provisions. The Contractor agrees, as required by Labor Law Sections 220 and 220-d, as amended, that:
 - a. no laborer, worker or mechanic in the employ of the Contractor or any Subcontractor employed by the Contractor in the performance of this Contract shall be permitted or required to work more than eight (8) hours

- in any one (1) calendar day or more than five (5) days in any one week except in cases of extraordinary emergency, as defined in the Labor Law;
- b. the wages paid for a legal day's work to each laborer, worker or mechanic employed by the Contractor or any Subcontractor in the performance of this Contract shall not be less than the prevailing rate of wages as defined by law;
 - c. each laborer, worker or mechanic employed by the Contractor or any Subcontractor in the performance of this Contract shall be provided the prevailing supplements as defined by law;
 - d. the minimum hourly rate of wages to be paid and the minimum supplement to be provided to the laborers, workmen or mechanics employed in the performance of this Contract, either by the Contractor or any Subcontractor, shall not be less than that which shall be designated by the Commissioner of Labor of the State of New York; and
 - e. the Contractor and any Subcontractor shall pay all employees engaged in the performance of this Contract in full, less legally required deductions, in accordance with Labor Law Section 220.3. All such payments shall be made in cash, except payment may be made by check to the extent permitted by law.
 - f. The Contractor agrees that as required by Labor Law Section 220-e, in case of underpayment of wages or supplements to any worker engaged in the performance of this Contract by the Contractor or any Subcontractor, the City may withhold from the Contractor out of payments due any amount sufficient to pay such worker the differences between the wages and supplements required to be paid by the Labor Law and wages and supplements actually paid such worker for the total number of hours worked plus interest as provided in the Labor Law, and that the City may disburse such amount so withheld by the City for and on account of the Contractor to the employees to whom such amount is due. The Contractor further agrees that the amount to be withheld pursuant to this Paragraph B may be in addition to any other amounts permitted to be retained by the City.
 - g. The Contractor agrees to pay for the cost of any investigation conducted by or on behalf of the City which discovers a failure to pay prevailing wages by the Contractor or its subcontractor(s). The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the City is hereby authorized to deduct from the Contractor's account an amount equal to the cost of such investigation.
 - h. Each day of the Contract Work, the Contractor and its subcontractors shall complete a Daily Sign-Out Log acceptable to the City for all their hourly employees performing work on the Project. In addition, the Contractor and its subcontractors shall insure that all employees listed on the daily log verify the information on the log applicable to them by signing next to their name.
 - i. The Contractor and its subcontractors shall deliver the Daily Sign-Out Log originals to the Engineer or his representative at a frequency acceptable to that representative. However, the Contractor's and its subcontractors' log submissions must be current before the City will process the Contractor's Requests for Payments for any particular period.
 - j. If during the performance of the work a harmful dust hazard is created for the elimination of which appliances or methods have been approved by the Industrial Board of Appeals of the State of New York, such appliances and methods shall be installed, maintained and effectively operated by the Contractor in compliance with Labor Law Section 222-a. If Labor Law Section 222-a is not complied with, the City may void this Contract in which event the City shall have the same rights and remedies as it would have in the case of termination under this Contract in addition to any other rights and remedies of the City.
4. Termination. The School District, upon two (2) days' written notice to the Contractor, may terminate this Agreement in whole or in part at no cost whatsoever to the School District when the School District deems it to be in its best interest.
 5. Non-Discrimination Provisions. The Contractor agrees, as required by Labor Law Section 220-e of the Labor Law, and the City's Equal Employment Opportunity Policy, as amended, that by signing this Agreement, the Contractor agrees that it, or any person acting on its behalf:
 - 1) will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation or gender identity with respect to all employment decisions including, but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff, termination, and all other terms and conditions of employment;
 - 2) will not discriminate in the selection of Subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, or sexual orientation; and
 - 3) will permit the City to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such requirements.

- 4) The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any such requirements, such noncompliance shall constitute a material breach of this Contract. The Contractor further understands that, as provided in Section 220-e of the Labor Law, as amended, there may be deducted from the amount payable to it by the City under this Contract a penalty of fifty dollars (\$50.00) for each person for each calendar day during which said person was discriminated against or intimidated by reason of race, creed, color, disability, sex, or national origin in violation of the provisions of this contract. The City may impose any or all of the following sanctions:
- a) disapproval of the Contractor;
 - b) suspension or termination of this Contract;
 - c) declaring the Contractor in default; or
 - d) adoption and adherence to an employment program.
- 5) The Contractor understands that, as provided in Section 220-e of the Labor Law, as amended, this Contract may be cancelled or terminated by the City, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms and conditions of this Contract with regard to discrimination on the basis of race, creed, color, disability, sex or national origin. The City may declare any contractor who has repeatedly failed to comply with Section 220-e of the Labor Law non-responsible.
6. No Claim Against Officials, Officers, Agents or Employees. The Contractor agrees that no claim whatsoever shall be made by the Contractor against any official, officer, agent, or employee of the School District, City of Yonkers, and/or Yonkers Board of Education for, or on account of, anything done or omitted to be done in connection with this Contract.

IN WITNESS WHEREOF, the School District and the Contractor have caused this Agreement to be executed.

SCHOOL DISTRICT

CONTRACTOR

By: _____
 Name: Dr. Edwin M. Quezada
 Title: Superintendent
 Date: _____

By: Samuel Wallis
 Name: Samuel Wallis
 Title: Executive Director
 Date: 02/14/2023

By: _____
 Name: Rev. Steve Lopez
 Title: President
 Date: _____

Sworn to before me this 14 day of
February 2023
Kristine E. Crotty
 Notary Public

APPROVED AS TO FORM

 Yonkers Senior Associate Counsel

KRISTINE E. CROTTY
 Notary Public, State of New York
 No. 4994838
 Qualified in Putnam County
 Commission Expires April 13, ~~2025~~
2026

SCHEDULE "A"
STANDARD INSURANCE PROVISIONS
(Contractor)

1. Prior to commencing work, and throughout the term of the Agreement, the Contractor shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Contractor shall provide evidence of such insurance to the City of Yonkers and the City's School District, acting by and through its Board of Education (together the "City"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Purchasing ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Contractor and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Contractor shall upon notice to that effect from the City, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Purchasing Bureau of the City for approval by the Director. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Agreement, at the election of the City, may be declared suspended, discontinued or terminated.

Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor concerning indemnification.

All property losses shall be made payable to the "City of Yonkers" and adjusted with the appropriate City personnel.

In the event that claims, for which the City may be liable, in excess of the insured amounts provided herein are filed by reason of Contractor's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Contractor maintains broader coverage and/or higher limits than the minimums identified herein, the City shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

2. The Contractor shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "City of Yonkers" and, if applicable, the "City of Yonkers School District, acting by and through its Board of Education" as additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:

- i. Premises - Operations.
- ii. Broad Form Contractual.
- iii. Independent Contractor and Sub-Contractor.
- iv. Products and Completed Operations.

c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "City of Yonkers" and, if applicable, the "City of Yonkers School District, acting by and through its Board of Education" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the "City of Yonkers" and, if applicable, the "City of Yonkers School District, acting by and through its Board of Education" for both on-going and completed operations.

All Contracts involving the use of explosives, demolition and/or underground work shall provide proof that XCU is covered.

d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "City of Yonkers" and, if applicable, the "City of Yonkers School District, acting by and through its Board of Education" as additional insured:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

e) Cyber Liability insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "City of Yonkers" and, if applicable, the "City of Yonkers School District, acting by and through its Board of Education" as an additional insured on a primary and non-contributory basis.

3. All policies of the Contractor shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the City (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the City is named as an insured, shall not apply to the City.

(c) The insurance companies issuing the policy or policies shall have no recourse against the City (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor.