

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
AND
«AWARDED_VENDOR_NAME»
BEDS Code: «BEDS_CODE»
REGARDING**

**REIMBURSEMENT PROGRAM FOR QUALIFYING NONPUBLIC SCHOOLS THAT
PROCURE CERTAIN SECURITY SERVICES (2022-2025 SCHOOL YEARS)**

Memorandum of Understanding (“MOU”) dated as of «**CONTRACT_AWARDED_DATE**», between the City of New York (“City”), acting by and through its Department of Citywide Administrative Services (“DCAS” or “Department”) with offices at One Centre Street, 17th Floor, New York, New York 10007, and «**AWARDED_VENDOR_NAME**» - **BEDS Code: «BEDS_CODE»**, a nonpublic school located at «**ADDRESS1_**», «**CITY**», **New York «ZIP_CODE**», (“School”). The Department and School individually are referred to herein as a “Party” and collectively as the “Parties”.

1. PURPOSE OF MOU AND BACKGROUND

Purpose. The purpose of this MOU is to memorialize the terms and conditions and set forth the respective responsibilities associated with a program by the City to reimburse qualifying nonpublic schools for the cost of procuring certain security services pursuant to NYC Ad Code §10-172 (Local Law 2 of 2016) and Title 55, Chapter 14 of the Rules of the City of New York (the “Department Rules”).

Background. Local Law 2 of 2016 was enacted on January 5, 2016 (“the Local Law”). The Local Law empowers the Mayor of the City of New York (“the Mayor”) to authorize a program to reimburse qualifying nonpublic schools for the cost of procuring certain security services. The Mayor authorized this reimbursement program for the 2022-2023 school year and designated the Department as the Local Law’s administering agency. The Department has allocated funding for the reimbursement program in Fiscal Year 2022-2023 in the not to exceed amount of \$19,800,000.00. The Local Law authorizes the Department to promulgate rules for the administration of the reimbursement program. Pursuant to the Department Rules, the School has applied to participate in the reimbursement program and the Department has notified the School that it qualifies to participate in such program.

2. DEFINITIONS

(a) “Commissioner” means the Commissioner of the Department of Citywide Administrative Services.

(b) “PASSPort” means the electronic procurement portal that facilitates, on behalf of the Department, the application process for nonpublic schools that seek to participate in the Reimbursement Program and is the successor application portal to Health and Human Services

Accelerator.

(c) “Health and Human Services Accelerator” or “HHS Accelerator” is utilized for the payment process for qualifying nonpublic schools that participate in the Reimbursement Program.

(d) “Reasonable Costs” means administrative expenses of a Security Guard Company, including overhead, profit, equipment, supplies and uniform expenses, which are deemed reasonable by the Department. Such reasonable expenses may not exceed twenty-five percent (25%) of the wages earned by the Security Guard Company’s Security Guards at any given school in any given quarter pursuant to the Reimbursement Program.

(e) “Reimbursement Program” means the nonpublic school security guard reimbursement program authorized by the Mayor pursuant to Administrative Code §10-172(b).

(f) “School Security Administrator” means a person, appointed by the Dean, Principal, Administrator or governing body of a qualifying nonpublic school that participates in the Reimbursement Program, who provides on-campus supervision to the Security Services provided pursuant to the Reimbursement Program.

Capitalized terms used that are not specifically defined in this section or otherwise set forth as defined terms in this MOU shall have the same meanings set forth in Administrative Code §10-172(a).

3. TERM OF MOU

The term of this MOU shall commence on the date first set forth above (“Commencement Date”) and this MOU shall remain in full force and effect until June 30, 2025 unless earlier terminated as provided in the MOU or unless the Reimbursement Program set forth in this MOU is not reauthorized by the Mayor pursuant to Administrative Code §10-172(b). This MOU may be renewed for one additional three (3) year term, to be exercised at the sole discretion of the City, subject to the denial or revocation of qualification hereinafter provided at paragraph 9, *infra*. This MOU may not be renewed if revoked for cause, including, but not limited to, the failure of the School to maintain a minimum enrollment of 300 students, the failure of the School to comply with the insurance provisions set forth herein, the failure of the School to comply with annual reporting requirements, and the failure of the School to comply with auditing requirements set forth herein at paragraphs 4, 6, 10, and 11, respectively. If the Department revokes the School’s MOU for any of the aforementioned causes, the School shall submit a new application for subsequent program years, even if the current MOU had not expired. DCAS shall provide the School with sixty (60) days’ written notice of its intent to renew prior to the expiration of the Term. Upon execution of the MOU, such MOU shall take effect in accordance with applicable law.

This MOU is between the City and the School whose address and BEDS code is set forth above. In the event that the School has multiple locations, the School understands and agrees that each eligible location must enter into a separate MOU with the City in order to qualify for reimbursement under the Program.

The School shall submit three signed MOUs and the Budget Task no later than November 15 of the corresponding school year. Failure to timely return the MOUs and Budget Task to the Department shall result in the forfeiture of the School's acceptance into the Reimbursement Program for the school year at issue, and the School will need to reapply the following year if it seeks to participate in the Reimbursement Program.

4. ALLOWABLE COSTS AND REIMBURSEMENTS

(a) Number of Guards.

(i) If the School enrolls between 300 and 499 students, it may be reimbursed for Allowable Costs with regard to one (1) Security Guard; between 500 and 999 students, it may be reimbursed for Allowable Costs with regard to two (2) Security Guards; and the School may be reimbursed for Allowable Costs with regard to an additional Security Guard for each additional 500 students enrolled in the School. Reimbursement for the Security Services provided by each Security Guard during periods of school-related instruction or school-related events may include the cost of different individuals providing Security Services at different times.

(ii) When calculating the number of students enrolled at a school, each school that has been assigned a BEDS code by the New York State Education Department will be considered a distinct entity for purposes of reimbursement. The number of students at schools with distinct codes, even if such schools are contractually or otherwise related, will not be combined for the purposes of determining the number of guards assigned to an individual school pursuant to this MOU.

(iii) The Department will adjust payments, including recoupment, based on verification of the School's enrollment information by the New York State Education Department.

(b) Wages. The Department will reimburse for Security Services only if each Security Guard is paid on an hourly basis no less than the prevailing wage and supplements in the City for unarmed guards as set forth by the Comptroller of the City of New York in accordance with section 234 of the Labor Law. Schools may pay greater than the prevailing wage but any amounts the School chooses to pay above prevailing wage will be absorbed by the School.

(c) School-Related Instruction and Events. The Department shall reimburse for Security Services as defined by Administrative Code 10-172(a), and no other services, provided during school-related instruction or school-related events. School-related events do not include private functions or activities that are not primarily directed to students. The School is required to maintain records containing a description of school-related events for which reimbursement is requested. All reimbursement requests for Security Services for school-related instruction and school-related events must be pre-approved by the Department. Any subsequent requests for amendment to pre-approved school-related instruction and school-related events must be submitted by the School on a form prescribed by the Department. In the event that the School submits a request for reimbursement that has not been pre-approved by the Department, the School's request for reimbursement will be denied. The Department shall deny any request for reimbursement for activities that are not school-related instruction or school-related events.

(d) Overtime. The Department shall reimburse for overtime costs for Security Services provided during school-related instruction and school-related events that do not exceed fifteen percent (15%) of the non-overtime wages of Security Guards reimbursed to the School during any given quarter.

(e) Reasonable Costs. Each Security Guard Company may charge Reasonable Costs to each school for administrative expenses. The Department shall reimburse the School for such costs.

(f) Payments. The Department shall provide reimbursements on a quarterly basis after receiving satisfactory proof from the School of compliance with the requirements set forth in the Department Rules and Administrative Code §10-172. Satisfactory proof must be submitted through HHS Accelerator, and must include, but not be limited to, certified invoices, payroll records, timesheets, and work assignment data from Security Guard Companies and, when applicable, an annual report of incidents as required by section 14-05(f) of the Department Rules. All invoices must be signed by an authorized signatory identified in the application submitted by the School, or their successor.

The quarter end dates for the school years are:

- September 30
- December 31
- March 31
- June 30

To ensure prompt reimbursement, the School is advised to submit invoices no later than forty-five (45) days after the end of the quarters for each school year ending September 30, December 31, March 31, and June 30. Failure to submit all invoices for each school year by December 31st of the following school year will result in a delay in processing of payment to the School, absent the School's written submission of an explanation for such failure to timely submit invoices.

(g) Budget. If the Department anticipates that Qualifying Nonpublic Schools will submit reimbursement claims in excess of the authorized available funds during the term of this MOU, the Department shall reimburse each school for Allowable Costs on an equitable basis until such funds are exhausted. The Department will notify the School as soon as practicable if a determination is made that Allowable Costs must be reimbursed on an equitable basis pursuant to subdivision (j) of Administrative Code §10-172 and shall make best efforts to notify the School by February 15 where practicable.

5. APPROVED BUDGET

Pursuant to the estimated budget submitted by the School and approved by the Department set forth in Exhibit "A", the School has been authorized for reimbursement in the not to exceed amount of «**AWARD_VALUE_TEXT**» (\$«**AWARD_VALUE_»») for «**NUMBER_OF_GUARDS**» **Security Guard(s)** for the 2022-2025 school years. In the event that the School approaches its not to exceed amount, it must notify the Department, which reserves the right to increase the School's estimated budget based on the availability of funding. The Department reserves the right to reduce the School's estimated budget based on items that were disapproved, as set forth in paragraph 4(c),*supra*. Since the period**

of performance contemplated by this MOU involves reimbursement to the School in subsequent City fiscal years, funding for the Reimbursement Program is subject to the appropriation of funds by the City Council for each subsequent City fiscal year and is further subject to reauthorization by the Mayor pursuant to Administrative Code §10-172(b). The School understands that the Department is under no obligation to continue the Reimbursement Program after the expiration of the term of this MOU.

6. INSURANCE

Upon the retention of a Security Guard Company from the Qualified Provider List or a Security Guard Company licensed pursuant to Article 7-A of the General Business Law to provide security services to the School, the School shall ensure that the Security Guard Company produce to the School satisfactory proof of commercial general liability (“CGL”) insurance and workers’ compensation insurance and disability benefits insurance.

(a) CGL insurance.

- (i) The CGL insurance of the Security Guard Company must be maintained throughout the term of the School’s agreement with the Security Guard Company and be issued by a company that may lawfully issue the CGL policy. The company must have an A.M. Best rating of at least A-/VII or a Standard & Poor’s rating of at least A. The CGL insurance of the Security Guard Company must insure the Security Guard Company, the School, and the City of New York together with its officials and employees and protect them from any claims for injury (including death) or property damage that may arise from or allegedly arise from operations under the School’s agreement with the Security Guard Company. The CGL insurance of the Security Guard Company must provide coverage of at least one million dollars (\$1,000,000) per occurrence for bodily injury (including death) and property damage, one million dollars (\$1,000,000) per occurrence for personal and advertising injury, and two million dollars (\$2,000,000) aggregate, provide coverage at least as broad as that provided in the most recently issued edition of Insurance Services Office (“ISO”) Form CG 00 01 and be “occurrence” based rather than “claims-made” and name the School and the City of New York, including their respective officials and employees, as Additional Insureds with coverage at least as broad as the most recent edition ISO Form CG 2026.
- (ii) The School shall request the Security Guard Company to provide the endorsement(s) naming the School and the City as Additional Insureds and proof of CGL insurance by submission of a certificate of insurance that satisfies the requirements of the Department Rule, identifies the insurance company that issued such insurance policy, the policy number, limit(s) of insurance, and expiration date, and is accompanied by a sworn statement in a form prescribed by the Department from a licensed insurance broker or agent certifying that the certificate of insurance is accurate in all material respects. The Security Guard Company must produce such proof to the School within 10 days of its retention by the School or prior to commencing services in the School, whichever is earlier, and also upon demand by the Department. The School shall require the Security

Guard Company to ensure that its policies are current and to submit an updated certificate of insurance, additional insured endorsement, and certification by broker or agent within five days of the expiration date of the current policy.

(b) Workers' Compensation and Related Insurance.

The School shall require the Security Guard Company to maintain workers' compensation insurance, disability benefits insurance, and employer's liability insurance, in accordance with the laws of the State of New York on behalf of, or with regard to, all employees providing services to the School, and to produce satisfactory proof of maintaining workers' compensation insurance and disability benefits insurance. The Security Guard Company must produce proof of such coverage to the School within 10 days of its retention by the School or prior to commencing services in the School, whichever is earlier, and also upon demand by the Department. Satisfactory proof shall mean: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD and ISO forms are not acceptable proof of workers' compensation insurance and disability benefits insurance.

(c) The School shall verify that the CGL, workers' compensation, and disability benefits insurance policies of the Security Guard Company meet the requirements set forth above. The School shall maintain a copy of such certificates, endorsements, and certifications of insurance broker or agent and other proof of insurance in its files, to be produced upon demand by the Department. Failure by the School to produce such documentation upon demand is a material breach, which may result in revocation of its qualification to participate in the Reimbursement Program.

7. INDEMNIFICATION

To the fullest extent permitted by law, the School shall defend, indemnify and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City, including its officials and employees, may be subject to or which it may suffer or incur allegedly arising out of any operations of the School and/or the individual Security Guard or Security Guard Company under this Memorandum of Understanding to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or failure to comply with law or any of the requirements of this Memorandum of Understanding. Insofar as the facts or law relating to any of the foregoing would preclude the City, including its officials and employees, from being completely indemnified by the School, the City, including its officials and employees, shall be partially indemnified by the School to the fullest extent permitted by law.

8. INDEPENDENT CONTRACTOR

The School and DCAS agree that the School is an independent contractor and that neither the School nor its personnel are employees of the City, and that in accordance with such status as an independent

contractor, the School covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency or unit thereof, by reason hereof. This Memorandum of Understanding or any reimbursement disbursed pursuant to this Memorandum of Understanding is not intended to nor shall it make the City the employer of any School personnel or any Security Guards retained by the School.

9. DENIAL OR REVOCATION OF QUALIFICATION

(a) If the Department determines that the School is not qualified to participate in the Reimbursement Program or revokes such qualification, the School may appeal in writing to the Commissioner or the Commissioner's designee within ten (10) days of receipt of the Department's denial or revocation. Receipt of notice by the School shall be deemed to be no later than five (5) days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the Office of the Commissioner.

(b) The written appeal by the School must briefly state all the facts or other basis upon which the School contests the Department's denial or revocation. Supporting documentation must be included.

(c) The Commissioner or the Commissioner's designee shall consider the School's appeal and shall make a prompt written decision no later than sixty (60) days after receipt with respect to the merits of the appeal. The determination of the Commissioner or the Commissioner's designee shall be a final agency determination.

10. PROGRAM ADMINISTRATION

(a) Start Date. The School may seek reimbursement from the Department for the cost of Security Services beginning on the first day of classes in the school year for which the Reimbursement Program has been authorized or the date the Department determines that the School is qualified to participate in the Reimbursement Program, whichever is later.

(b) Qualified Providers. If the Qualified Provider List contains three (3) or more Security Guard Companies on the date of the execution of this MOU, the School must retain a Security Guard Company from the Qualified Provider List in order for the cost of its Security Services to be eligible for reimbursement. If the Qualified Provider List contains fewer than three (3) Security Guard Companies at such time, the School may retain any Security Guard Company that is licensed pursuant to Article 7 of the General Business Law and complies with all applicable labor and employment laws.

(c) School Security Administrator. The School Security Administrator shall be responsible for the daily administration of Security Services provided at the School, including, but not limited to, the decisions regarding the selection, retention, and replacement of Security Guards.

(d) Misconduct. The School Security Administrator must report the misconduct of a Security Guard to the administration of the School. The School Security Administrator may report any concerns regarding a Security Guard Company to the Department.

(e) Incident Reporting.

(i) The School is responsible for maintaining documentation of any criminal activity and other significant incidents related to public safety that occur while a Security Guard is on duty. The School is responsible for promptly reporting criminal activity to the New York City Police Department and other significant incidents related to public safety to any other government agency, where appropriate, for the School to be eligible to receive reimbursement from the Department.

(ii) The School Security Administrator must submit an annual report to the Department that summarizes all criminal activity and other significant incidents related to public safety that are documented by its Security Guards, for the School to be eligible to receive reimbursement from the Department.

(f) Submission of Records. The School must submit all records supporting its reimbursement claims through HHS Accelerator including, but not limited to, certified payroll records, invoices, and time sheets, which include the name, address, and unique employee identification number of each Security Guard.

(g) Notwithstanding reimbursement for Allowable Costs of a Security Guard, the City is not the employer of such Security Guard. The School will withhold, remit and report taxes and any other required government required payments of each Security Guard which are the responsibilities of an employer under applicable federal, state and local laws.

(h) Nothing in this Agreement shall preclude the School from arranging for, and funding with its own resources, security services over and above the security services funded hereunder.

11. AUDIT

(a) The School must make available all records supporting its reimbursement claims for auditing and inspection by the DCAS Internal Audit and Compliance Unit (“IA”) and/or its contractors upon demand with five (5) days prior written notice. The School must produce any and all original books, reports, financial statements, vouchers, records, payroll records, time sheets, and work assignment data pertaining to the reimbursement claims, whether those documents are maintained in hard copy or electronically. Such records must be made available for inspection at the offices of the Department or on the premises of the School. The School must gather any and all documents pertaining to its reimbursement claims, including, but not limited to, documents describing school-related activities at which Security Services were provided.

(b) Visits to School. IA may visit the School to review records and interview staff, contractors, and subcontractors in furtherance of IA’s audit of the reimbursement claims. The School must cooperate with IA during such visits which may be unannounced.

(c) Records Review. IA may review documents on the premises of the School and may make and remove copies of records for auditing purposes.

(d) Findings. IA shall report the findings of its audit and recommendations to the Department for any action it deems appropriate. The School's failure to comply with the Department Rules may result in disqualification from the Reimbursement Program. The Department may, in its sole discretion, share the findings of the audit with the School or other government entities. Nothing set forth herein shall limit the ability of the Comptroller of the City of New York or the New York City Department of Investigation to obtain and review the School's records.

12. RETENTION OF RECORDS

The School must retain all records supporting its reimbursement claims for seven (7) years from the date of the final payment made under this MOU. Such records include, but are not limited to, invoices, payroll records, timesheets, and work assignment data from Security Guard Companies and annual reports of incidents as required by section 14-05(f) of the Department Rules.

13. NOTICES

A. Other than that which is processed through the HHS Accelerator, any notice, direction, report or communication from either Party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

B. Notices shall be addressed as follows:

To School:

«BEDS_CODE»

«AWARDED_VENDOR_NAME»

«PROVIDER_CONTACT_NAME», «PROVIDER_CONTACT_TITLE»

«ADDRESS1_»

«CITY», New York «ZIP_CODE»

Email: «PROVIDER_CONTACT_EMAIL»

To the Department:

Department of Citywide Administrative Services

c/o Finance External Reimbursement

1 Centre Street, 17th Floor

New York, New York 10007

Email: contactdcas@dcas.nyc.gov

14. MODIFICATION

The terms of this MOU may be modified only by a written instrument signed by the Parties.

15. ENTIRE UNDERSTANDING AND ORDER OF PRECEDENCE

This MOU, including Exhibit A (Budget), contains the entire understanding of the Parties.

This MOU is subject to the Local Law and the Department Rules and in the event of a conflict or inconsistency with a provision of this MOU, it shall be resolved in the following descending order of precedence: the Local Law; Department Rules and this MOU.

16. COUNTERPARTS

This MOU may be executed in counterparts, each of which is deemed an original, but all constitute one and the same instrument.

**City of New York
Department of Citywide
Administrative Services**

**«AWARDED_VENDOR_NAME»
«BEDS_CODE»**

BY: _____

BY: _____

DATE: _____

DATE: _____

EXHIBIT A