

Professional Services Agreement Between Owner and Consultant

ARTICLE 1. AGREEMENT

This Agreement is made effective as of the ____ day of _____, 2025, by and between:

1.1 Owner:

Area Cooperative Educational Services Corp.
370 James Street
New Haven, CT 06513

and

1.2 Consultant:

<Consultant>
<Address>
<Address>

for the Services provided herein in connection with:

1.3 The Project:

ACES at Chase
565 Chase Parkway
Waterbury, CT 06708
State Project No.: 244-0044 MAG

1.4 Compensation Summary. The Consultant shall be paid pursuant to and in accordance with the Commissioning Services Bid Form, and Consultant's Staffing and Standard Hourly Rates, which is attached hereto as Exhibit B.

1.5 Professionalism. The Consultant agrees to use its best skill and judgment at all times to provide the Services in furtherance of the Owner's overall Project goals, including specific goals for program, design, budget, time and quality. The Consultant shall perform the Services expeditiously in accordance with the expertise, care and skill exercised by nationally recognized firms performing similar services for projects of comparable size and complexity and shall at all times advance the orderly progress of the Project.

1.5.1 The Consultant's representations in its proposal, during the interview process, and as published in any marketing materials furnished to the Owner as to its expertise and experience are material representations upon which the Owner has relied and the Consultant hereby affirms those representations as part of this Agreement.

1.6 Designated Personnel. In carrying out its responsibilities under this Agreement, the Consultant shall use skilled employees with proven experience in projects of comparable size and complexity. Attached as Exhibit B are the Consultant's Designated Personnel, including its Designated Representative for this Project, together with a statement of their training and experience, all of whom must be approved by the Owner. The Consultant's Designated Representative shall have full authority to accept instructions, make decisions, communicate for and act on behalf of the Consultant at all times.

1.6.1 The Consultant represents that its Designated Personnel are committed to performing as Designated Personnel for the entire duration of the Project. The Consultant will not change these Designated Personnel or their responsibilities without the Owner's prior consent.

1.6.2 If, at any time, any of the Designated Personnel are not satisfactory to the Owner, the Consultant shall, if requested by the Owner, remove and replace such personnel with another person acceptable to the Owner. In the event that one or more of the Consultant's Designated Personnel leave the service of the Consultant or must be replaced for any reason, such replacement personnel shall be subject to the Owner's interview and acceptance, such acceptance being at the sole discretion of the Owner.

1.7 Owner's Designated Personnel. The Owner shall identify its Designated Personnel for this Project, including its Designated Representatives, by separate notice. The Owner may change its Designated Representatives from time to time and shall inform the Consultant when any changes affecting these designations are made. Except as otherwise expressly provided in this Agreement, the Owner's Designated Representatives are authorized to make decisions on behalf of the Owner with respect to the Project.

1.8 Communications. The Consultant shall take direction from the Owner's Representatives only. The Consultant and its Subconsultants, if any, shall cooperate with the Owner's designee(s) as provided in § 2.1.6, provided that written communications in furtherance of such cooperation shall be copied to the Owner. Communications with the Subconsultants shall be through the Designated Representatives of the Consultant. The Consultant shall have no authority to order any extra-contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under any contract.

1.9 Definitions. Terms capitalized in this Agreement are those specifically defined as follows:

1.9.1 Agreement. This Agreement including all of its Exhibits and all other documents incorporated by reference herein.

1.9.2 Applicable Law. All laws, statutes, regulations, ordinances, codes, rules, rulings, decisions and orders of Governmental Authorities relating to the work or the Services with respect to the Project.

1.9.3 CAD Standards. The Owner's requirements, as maintained and amended from time to time by the Owner and made available to the Consultant, for the preparation, organization and transfer of archive drawings and such other Instruments of Service as may be designated by the Owner from time to time.

- 1.9.4 Change in Services.** A writing signed by the Owner and Consultant setting forth their agreement as to a change in the scope of the Services or time of performance as set forth in Article 4.
- 1.9.5 Day(s).** Except as otherwise specifically stated, “Day(s)” shall mean calendar days. For time periods specified as less than 15 Days, “Day(s)” shall refer to business days, meaning any day other than Saturday, Sunday or days on which the offices of the State of Connecticut are not open for business. In the event that any time period hereunder ends on a day that is not a business day, the time period shall be extended to the next business day thereafter.
- 1.9.6 Designated Representative.** A person identified by the Owner, Consultant or their consultants or subcontractors of any tier as authorized to make decisions on their behalf with respect to the Project.
- 1.9.7 Deliverables.** Instruments of Service and other documentation, including those in electronic form, that are to be created, prepared or produced by the Consultant and furnished to the Owner in performance of the Services or part of the Services as specified hereunder.
- 1.9.8 Design Standards.** The Owner’s requirements, as maintained and amended from time to time by the Owner and made available to the Consultant, for designing and building new structures and for remodeling existing structures.
- 1.9.9 Direct Personnel Expense (DPE).** The costs set forth in § 6.1.1.3.
- 1.9.10 Drawings.** Plans, elevations, sections, details, schedules, diagrams, and all other graphic or pictorial depictions of the design, location and dimensions of the Project.
- 1.9.11 Fee.** The amount set forth in § 6.1.1.
- 1.9.12 Governmental Authorities.** Local, county, regional, state and federal governmental bodies, agencies, departments and bureaus having jurisdiction over the Work, or from whom permits, approvals or other consents are required.
- 1.9.13 Hazardous Materials.** Any pollutant, hazardous or toxic substance, waste or material, including oil products, mold, asbestos, asbestos-containing materials, lead, lead-containing materials, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid-containing polychlorinated biphenyls, flammable explosives, radioactive materials or any other material or substance designated or regulated as hazardous or as a toxic substance or waste, pollutant or contaminant under Applicable Law.
- 1.9.14 Instruments of Service.** Any tangible work product, including those in electronic form and reproductions of such tangible work product, prepared by the Consultant or its Subconsultants of any tier for the Project, including sketches, electronic data, preliminary drawings, outline specifications, calculations, studies, reports, analyses, models, and renderings.
- 1.9.15 Not To Exceed (NTE) Fees.** Portions of the Fee described in § 6.1.1.2.
- 1.9.16 Project.** The entire construction project contemplated by the Owner and identified in § 1.3, which includes construction work, professional services and any related construction or operations by the Owner and others retained by the Owner.
- 1.9.17 Project Site.** The buildings, premises and spaces on which any portion of the construction work for the Project is performed or used for the performance, or in support of the performance, of any portion of the work.
- 1.9.18 Reimbursable Expenses.** The costs set forth in § 6.1.2.

- 1.9.19 Services.** Any and all activities, services, efforts and actions required of the Consultant under this Agreement, including those that are reasonably necessary to produce the Deliverables required herein, except to the extent specifically indicated in this Agreement to be the responsibility of others.
- 1.9.20 Specifications.** The written description of the quantitative and qualitative requirements for materials, equipment, systems, standards and workmanship for the construction work on the Project.
- 1.9.21 Subconsultant Costs.** The costs set forth in § 6.1.1.4.
- 1.9.22 Subconsultants.** All persons or entities hired by the Consultant to provide services under this Agreement.

ARTICLE 2. SCOPE OF SERVICES

2.1 General Responsibilities. The Consultant shall furnish all Services and Deliverables set forth in Article 2 and Exhibit A in accordance with the standards and requirements of this Agreement.

2.1.1 Licensure. If any Governmental Authority requires licenses or registrations for the performance of the Services, or any part thereof, the Consultant and its Subconsultants shall obtain and hold, or employ persons or entities holding, such valid licenses or registrations.

2.1.2 Subconsultants. The Subconsultants to be retained by the Consultant as part of its Services for the Project are identified in Exhibit C. The use of Subconsultants other than those listed in Exhibit C shall be subject to the Owner's sole discretion and acceptance. Copies of all subconsulting agreements shall be provided to the Owner as soon as they are finalized and before including the Subconsultant's services in an invoice to the Owner. The Owner may designate specific Subconsultants to be retained by the Consultant with respect to certain elements of the Project.

- .1** The Consultant hereby assigns, transfers and conveys to the Owner all of its right, title and interest in and to any subconsulting agreement pertaining to the Project, which assignment shall only become effective as of the date of this Agreement, and which shall only become enforceable after a termination of this Agreement and only as to those agreements that the Owner expressly accepts by written notification. The Owner may, in turn, assign such agreements in its sole discretion, without recourse to any person or entity, in which event such assignee shall assume the Owner's rights and obligations under such agreements.

2.1.3 Required Information. At the earliest possible date, the Consultant shall provide the Owner with a list of information or documentation required from the Owner that is necessary for the performance of the Services. The Consultant shall gather available documents from the Owner's identified record storage location(s) and shall assemble, review and coordinate it with data furnished by the Owner.

2.1.4 Meetings. The Consultant and its Subconsultants shall attend regular meetings with representatives of the Owner and its designee(s), as required by the Owner, and shall be represented at such meetings by persons having knowledge of the matters to be addressed and authorized to act for such entities at all times.

2.1.5 Presentations. The Consultant shall attend, make presentations and participate in meetings as the Owner may direct with such public and private boards, commissions, committees, gatherings and Governmental Authorities to discuss details, review designs, provide comments, recommendations and progress reports, and obtain approvals. The Consultant shall assist the Owner in the preparation of documentation, records and submissions required by Governmental Authorities or the Owner.

2.1.6 Coordination. The Consultant shall be solely responsible for coordinating all portions of the Services, including those performed by its personnel and Subconsultants.

- .1 To the extent that any portion of the Services is interdependent upon the services of representatives of the Owner or other entities retained by the Owner on the Project or other projects identified by the Owner, the Consultant shall coordinate with such persons or entities as part of its Services.

2.1.7 Hazardous Materials. If the Consultant or its Subconsultants know or become aware of Hazardous Materials at the Project Site other than those introduced to the Project Site by those performing the work, or if they become aware of any spill or release of Hazardous Materials at the Project Site, the Consultant shall immediately notify the Owner. Unless otherwise agreed in writing, the Consultant and its Subconsultants shall have no responsibility for the presence, handling, removal or disposal of, or exposure of persons to Hazardous Materials at the Project Site unless the Consultant or those for whom it is responsible fails to provide such notice or introduces the Hazardous Materials to the Project Site.

2.1.8 Standards. The Consultant and its Subconsultants shall familiarize themselves with the Project and the Owner's requirements and perform the Services in accordance with this Agreement, Applicable Law and all of the following:

- .1 the Owner's Design Standards, to the extent applicable to the Services. If, at any point during the Project, the Consultant judges a portion of the Design Standards to be in conflict with a Project requirement or is otherwise detrimental to the Project, the Consultant shall seek written permission from the Owner to deviate from the Design Standards. If the Consultant deviates from the Design Standards without specific written permission from the Owner, the Owner may instruct the Consultant to modify the Deliverables as necessary, without additional compensation, to comply with the Design Standards.

- .2 at its option, the Consultant's own office standard software for the preparation of the Drawings, provided that such office standards do not conflict with the other applicable standards and that the Consultant shall remain responsible for timely generating archive drawings in the format required herein.
- .3 the Owner's CAD Standards for archive drawings, notwithstanding § 2.1.8.2.
- .4 the Owner's standards for surveys and benchmarking, as maintained by the Owner and made available to the Consultant.
- .5 industry practices and standards with which the Consultant and its Subconsultants must comply in order to fulfill the Consultant's duties under this Agreement, including those set forth in § 1.5.

2.1.9 Deliverables. The Consultant shall furnish the Owner with the Deliverables specified in this Agreement. If, at any time, an error, omission or deficiency is discovered in a Deliverable furnished by the Consultant or its Subconsultant of any tier, the Consultant shall cause the appropriate documents to be revised at no cost to the Owner and without delay to the Project.

ARTICLE 3. TIME

3.1 Schedule. The Consultant shall commence the Services on the effective date of this Agreement as set forth in Article 1, and shall perform the Services in strict accordance with the schedule provided by the Owner.

3.2 Progress. The Consultant shall monitor the progress of the Services for conformance with the schedule and promptly advise the Owner of any slippage in progress, actual delays and reasonably anticipated delays that may prevent the Services from being completed in accordance with such schedule.

3.3 Acceleration. The Owner may accelerate the Services for any reason, whether or not the Consultant's performance is in accordance with the schedule then in effect pursuant to this Article 3. If the Consultant's performance is timely and the Owner accelerates the Services, the Consultant's compensation shall be adjusted by a Change in Services, provided that the Consultant has complied with this Agreement in seeking such a change.

3.4 Delays. If the Consultant or its Subconsultants of any tier are delayed at any time in the commencement or performance of the Services by any wrongful act or neglect of the Owner or others retained by the Owner, by changes or suspensions ordered in the Services or by unforeseeable circumstances beyond the control of the Consultant or its Subconsultants and without their fault or negligence, then to the extent that the Consultant demonstrates cost ramifications and actual impact to the critical path of its scheduled Services, the Fee may be equitably adjusted by a Change in Services, provided that the Consultant has complied with this Agreement in seeking such a change.

3.4.1 Any request for a Change in Services based on delay shall include an impact study detailing specific activities affected by such delay and associated cost ramifications.

- 3.4.2** The Consultant and its Subconsultants of all tiers shall not be entitled to an adjustment in time or Fee for delays that they could have reasonably avoided or mitigated.

ARTICLE 4. CHANGES IN SERVICES

4.1 General. The Owner may, without invalidating this Agreement, add, delete, modify or alter the Project or the Services within the general scope of this Agreement. The Consultant shall not undertake any addition, deletion, modification or alteration in the Services without an executed Change in Services as provided in this Article 4.

4.2 Changes in Services. A Change in Services constitutes a final settlement of all matters relating to the change that is the subject of the Change in Services, including all direct and indirect costs associated with such change (and including all claims for indirect, incidental, special, punitive or consequential damages arising out of or relating to the Project, and all loss of profits or revenue, cumulative impacts, interest, loss of productivity or business interruption) and any and all adjustments in Fee, Reimbursable Expenses and schedule.

4.3 Compensation for Changes. Before commencing any services for which a Change in Services will be requested, the Consultant shall provide the Owner with a written proposal to provide such services on the basis of a fixed fee or, if the scope of the change cannot be sufficiently determined, Direct Personnel Expenses plus Subconsultant Costs up to an NTE Fee. Upon receipt of the Consultant's written proposal, the Owner may in its sole discretion accept the requested change by issuing a Change in Services to the Consultant or reject the requested change and require the Consultant to proceed with the Services as designated by the Owner, which shall constitute an event giving rise to a Claim pursuant to § 9.1.1.

4.4 Continuing Performance. Pending issuance of a Change in Services or final resolution of a Claim, the Consultant shall proceed diligently with performance of its contractual obligations.

ARTICLE 5. OWNER'S OBLIGATIONS

5.1 Owner's Design and Construction Professionals. At any time prior to or during the performance of the Services, the Owner may, in its sole discretion, retain design or construction professionals to provide services that may include design, preparation of Drawings and Specifications, budgeting, estimating, construction, scheduling, phasing and value management for the Project.

5.2 Existing Conditions. The Owner shall furnish such surveys and reports that are known by the Owner to be in its possession, that are relevant to the Services and that are readily available to the Owner's Designated Representative. The Owner makes no representations or warranties as to the accuracy of information that such surveys and reports may provide. The Consultant may rely on such surveys and reports to the extent that it would be prudent to do so in the exercise of its professional judgment. The Consultant and its Subconsultants shall notify the Owner promptly if they observe or are aware that a portion of the Services is at variance with the existing conditions, whether or not described in the information provided by the Owner.

5.3 Owner's Calendar. The Owner will provide the Consultant with a calendar of the Owner's activities and events that must be accommodated by the Project's design and construction activities. The Owner's activities and events are subject to change, and the Consultant will adjust its Services in accordance with this Agreement to accommodate any such changes.

ARTICLE 6. COMPENSATION AND PAYMENT

6.1 Compensation. The Consultant's compensation for the Services shall consist only of the Fee plus Reimbursable Expenses as set forth in § 1.4 and Exhibit B.

6.1.1 Fee. The portion of the Fee allocated to each separately priced service includes all compensation to which the Consultant is entitled for such portion of the Services, excluding Reimbursable Expenses, except as modified pursuant to Article 4 of this Agreement.

.1 Fixed Fees. Portions of the Fee designated as fixed shall be billed and paid in accordance with § 6.2.1 and shall include all of the following attributable to such portion of the Services:

(a) Direct wages and/or salaries.

(b) Payroll Taxes (FICA, FUTA and SUTA).

(c) Contributions, assessments, and benefits required by law or collective bargaining agreements. For those not covered by such agreements, customary and reasonable fringe benefits such as medical and health benefits, holidays, vacations, allowed absences, and retirement benefits.

(d) General and administrative overhead.

(e) Profit.

(f) Subconsultant Costs.

.2 NTE Fees. Portions of the Fee designated as not to exceed (NTE) shall consist of the Consultant's Direct Personnel Expense (DPE) and Subconsultant Costs directly attributable to such portion of the Services, which together shall not exceed the amount set forth in § 1.4.

(a) Attached to Exhibit B is the Consultant's Fee Proposal, Staffing Plan and Bid Form for NTE portions of the Services, which is the Consultant's good faith estimate of the level of participation required by its Designated Personnel for such portions of the Services.

.3 Direct Personnel Expense (DPE). Allowable DPE shall be limited strictly to Designated Personnel for time reasonably and necessarily required to perform the Services, at the hourly rates set forth in Exhibit B (which may be

reasonably adjusted on a yearly basis in the ordinary course of business with the approval of the Owner, which approval shall not be unreasonably withheld). The hourly rates set forth in Exhibit B include all cost items described in § 6.1.1.1(a) through (e).

- .4 Subconsultant Costs.** Payments made by the Consultant to its Subconsultants in accordance with agreements awarded in accordance herewith, without additional markup, margin, contribution or fee.

6.1.2 Reimbursable Expenses. The costs reasonably and necessarily incurred by the Consultant, its Subconsultants and their employees in the proper performance of the Services for the expenses set forth in § 6.1.2.1 only, without additional markup, margin, contribution or fee. The Consultant shall not be entitled to compensation for Reimbursable Expenses in excess of the budgeted amounts set forth in § 1.4 without the prior, written approval of the Owner.

- .1** Reimbursable Expenses shall consist of the following expenses only:

- (a)** Owner-approved travel expenses at current United States General Services Administration rates of Designated Personnel and mileage at the rate allowed by the Internal Revenue Service. Air travel, if authorized by the Owner, shall be compensated at coach fares.
- (b)** Long distance telephone and cell phone service charges.
- (c)** Postage and courier service.
- (d)** Copying and Drawing reproduction expenses. Reproduction services performed in-house shall be compensated at rates that are no higher than competitive rate generally available from outside vendors.
- (e)** Living expenses in connection with out-of-town travel, if approved by the Owner in writing.
- (f)** Fees paid by the Consultant for securing approval of Governmental Authorities for the Project, if requested by the Owner.
- (g)** Expenses of renderings, models and mock-ups beyond those required herein and requested by the Owner.
- (h)** CAD plotting of Deliverables and Instruments of Service furnished to the Subconsultants for coordination.
- (i)** Any other costs submitted by the Consultant for approval and approved by the Owner as reimbursable.

- .2** Reimbursable Expenses shall not include the following, which shall be borne by the Consultant:

- (a) Materials, supplies, reference documents and reproduction costs for the office use of the Consultant or its Subconsultants.
- (b) Computer time and CAD plotting, except as set forth in § 6.1.2.1.
- (c) Cost of the Consultant's and its Subconsultants' home and branch offices.
- (d) Costs resulting from a breach of this Agreement, negligence or willful misconduct of the Consultant or its personnel or Subconsultants.
- (e) Any portion of the Consultant's capital expenses, including interest on the capital employed for the Services.
- (f) All other costs not specifically described in § 6.1.2.1.

6.2 Progress Payments. The Consultant shall submit monthly invoices for payment in a format provided by the Owner. Payments on account of the Consultant's invoices shall be made within thirty (30) Days after the Owner receives the invoice unless the Owner has grounds to withhold payment pursuant to § 6.3. Upon payment by the Owner, the Consultant shall promptly, but in no event later than thirty (30) Days after receiving the Owner's payment, pay its Subconsultants the amounts to which they are entitled.

- 6.2.1** Portions of the Fee designated as fixed shall be computed in each invoice on the basis of the percentage of each portion of the Services that is properly completed through the period covered by the invoice, less the aggregate of previous payments made by the Owner on account of such portion of the Services.
- 6.2.2** Portions of the Fee designated as NTE and amounts invoiced on the basis of DPE shall be computed in each invoice on the basis of the number of hours actually incurred by Designated Personnel during the period covered by the invoice. Invoices containing such amounts shall be accompanied by an itemized statement of the actual tasks and hours devoted to the Project on a daily basis by Designated Personnel during the billing period.
- 6.2.3** Invoices that include Reimbursable Expenses shall be accompanied by receipts and other supporting data acceptable to the Owner with sufficient detail to enable the Owner to substantiate such Reimbursable Expenses.
- 6.2.4** The Consultant shall examine the invoices of its Subconsultants to confirm that all claimed fees and expenses are allowed under the Agreement, and shall not include ineligible amounts in its invoices to the Owner. Invoices that include fees based on NTE or DPE shall be accompanied by invoices of the Consultant's Subconsultants.
- 6.2.5** Invoices shall include only amounts actually incurred and authorized by the Owner or amounts memorialized in a written Change in Services executed by the Owner and Consultant.

6.2.6 The submission of the Consultant's invoice for payment shall constitute the Consultant's representation that:

- .1 the amounts sought are due and earned in accordance with this Agreement.
- .2 it shall use the amounts requested to discharge its financial obligations on account of services furnished for the Project and included in the invoice.
- .3 it has discharged its financial obligations on account of services furnished for the Project for which the Owner has made payment.
- .4 to the best of its knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services to the Project on its behalf.

6.2.7 The Consultant's invoices shall also be accompanied by:

- .1 Partial releases and lien waivers, in the forms attached as Exhibit D, from the Consultant and its Subconsultants for services furnished to the Project through the date covered by the preceding invoice paid by the Owner, conditioned on performance of the services and receipt of payment, and excluding any unresolved Claims submitted in accordance with this Agreement.
- .2 Such other data, accounts and receipts substantiating amounts invoiced by the Consultant as reasonably requested by the Owner.
- .3 For the Consultant's final invoice, final releases and lien waivers, in the form attached as Exhibit C, from the Consultant and its Subconsultants, conditioned on performance of the services and receipt of payment, and excluding any unresolved Claims submitted in accordance herewith.

6.3 Withholding of Payment. The Owner may in its sole discretion withhold payment from the Consultant any portion of the Fee or Reimbursable Expenses to the extent necessary to protect the Owner from the following, provided that the Owner shall promptly accompany any such withholding with a detailed, written statement documenting the good faith reasons for its action:

- 6.3.1** Loss due to defective Services not remedied, whenever discovered, or to reimburse the Owner for losses for which it is entitled to indemnity from the Consultant under this Agreement;
- 6.3.2** Persistent failure of the Consultant or its Subconsultants to perform the Services in accordance with this Agreement;
- 6.3.3** Uninsured or underinsured loss due to personal injury or damage to the Work or the work of Separate Contractors to the extent of the responsibility of the Consultant or its Subconsultants; or

6.3.4 Claims of nonpayment by persons or entities that furnished services for or on behalf of the Consultant.

6.4 Recordkeeping. The Consultant and its Subconsultants of all tiers shall keep and maintain detailed, organized documents and data relating to the Services for a period of at least eight (8) years after the completion of the Consultant's Services. The Owner or its designee shall have the right to access, inspect, audit and copy all the Consultant's and Subconsultants' documents, data, records and files, electronic or otherwise, at any reasonable time during or after completion of the Services. The Consultant shall promptly respond to any inquiries of the Owner or its designee arising out of any such inspection or audit.

ARTICLE 7. INSURANCE AND INDEMNITY

7.1 General Insurance Provisions.

7.1.1 Certificates of Insurance. For all required insurance coverages, prior to commencing any Services hereunder, the Consultant shall provide to the Owner a certificate of insurance completed by a duly authorized representative of its insurer certifying that at least the minimum insurance coverages required herein are in effect, naming the Owner and others as additional insureds as set forth herein, and specifying that the liability coverages, with the exception of Professional Liability, are written on an occurrence form and that the coverages will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without thirty (30) Days advance written notice and specifying a ten (10) Day written notice for non-payment of premium, to:

William Rice
Area Cooperative Educational Services Corp.
370 James Street
Suite 303
New Haven, CT 06513

- .1** The Owner's acceptance of a certificate of insurance does not constitute approval of coverage that is not in compliance with this Agreement.
- .2** If any of the insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the party's final invoice or application for payment.

7.1.2 Insurer Qualification. All required insurance shall be provided through companies authorized to do business in the State of Connecticut with a Best rating of A or better unless otherwise specifically approved by the Owner. A copy of all insurance policies required herein shall be made available for the Owner's review at a mutually convenient time and place within ten (10) Days of the Owner's written request.

- 7.1.3 Insurance Primary.** All insurance coverages provided by the Consultant and those for whom it is liable shall be primary, and any insurance or self-insurance program carried by the Owner will be considered excess or contingent.
- 7.1.4 No Reduction or Limit of Obligation.** By requiring insurance herein, the Owner does not represent that coverage and limits will necessarily be adequate to protect the party providing insurance. The insurance required herein shall not reduce or limit any party's contractual obligation in connection with its performance on the Project.
- 7.1.5 Additional Insureds.** Insurance coverages provided by the Consultant or those for whom it is liable shall, with the exception of workers compensation and errors and omissions, defend and include the Owner, its trustees, directors, officers, representatives, agents and employees as additional insureds on a primary basis with respect to work performed pursuant to a CG20 10 (1185) or equivalent endorsement. If the additional insured has other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurance required hereunder shall not be reduced by such other insurance.
- 7.1.6 Duration of Coverage.** All insurance coverages provided hereunder shall be maintained without interruption during the entire term of the Project and for such additional time as the Owner may require for specific types of insurance.
- 7.1.7 Continuous Operations.** The Owner and occupants of property adjacent to the Project Site will continue their activities and operations during the performance of the Work.
- 7.1.8 Retroactive Date and Extended Reporting Period.** If the Owner specifically permits any required insurance to be issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for such claims made coverage shall be no later than the commencement date of the insured party's services on the Project, and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims (Tail Coverage) shall be available for at least thirty-six (36) months.
- 7.1.9 Subrogation Waiver.** The Owner, Consultant and its Subconsultants of all tiers waive all rights against each other, their agents, officers, directors, employees and those for whom they are liable, for any damage or loss to the extent covered by insurance, and to the extent of actual recovery of insurance proceeds, excluding any applicable deductible. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- 7.1.10 Subconsultants' Insurance.** The Consultant shall cause all its Subconsultants and those for whom they are responsible to provide and maintain insurance in

compliance herewith, using good business judgment in establishing coverage limits and deductibles applicable to such insurance, and subject to the Owner's acceptance. They shall furnish to the Owner copies of certificates of insurance evidencing such coverage.

7.1.11 Adjustment of Losses. Any loss under the Owner's policies required hereunder shall be evaluated and adjusted by the Owner's insurance adjuster, and made payable to the Owner as trustee for the insureds as their interests may appear, or otherwise at the direction of the Owner, subject to the requirements of any applicable mortgagee clause.

7.1.12 Joint Ventures. If an insured party is a joint venture involving two or more entities, then either each independent entity shall satisfy the limits and coverages specified in this Article or the joint venture shall be a named insured under each policy.

7.1.13 Excluded Obligations. Except for purchasing and maintaining property insurance, the Owner shall bear no responsibility and shall provide no coverages for any obligations of the Consultant, or those for whom it is liable, under any contract.

7.1.14 ISO Forms. To the extent applicable, the types of insurance shall conform to the minimum terms, conditions, and coverages of the Insurance Service Office (ISO) policies, forms, and endorsements, or equivalent.

7.2 Consultant's Insurance Obligations.

7.2.1 Deductibles. In the event that the Consultant has any self-insured retentions or deductibles under any of the minimum required coverages, the Consultant must identify on the certificate of insurance the nature and amount of such self-insured retention or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles shall be the sole responsibility of the Consultant.

7.2.2 Commercial General Liability. The Consultant shall maintain commercial general liability insurance covering all operations by or on behalf of the Consultant on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance shall provide limits and coverage as follows:

.1 Limits:

- | | |
|-----------------|---|
| (a) \$1,000,000 | Combined Single Limit Bodily Injury and Property Damage Each Occurrence |
| (b) \$1,000,000 | Personal and Advertising Injury |
| (c) \$2,000,000 | General Aggregate |
| (d) \$2,000,000 | Products and Completed Operations Aggregate |

.2 Coverages:

- (a) 2001 (or later) ISO Commercial General Liability form (Occurrence Form)
- (b) Blanket Contractual Liability (included in 2001 ISO Form)
- (c) Broad Form Property Damage (included in 2001 ISO Form)
- (d) Severability of Interest (included in 2001 ISO Form)
- (e) Personal Injury
- (f) Blanket Waiver of Subrogation
- (g) Additional Insured Endorsement
- (h) Joint Venture as Name Insured, if applicable

7.2.3 Automobile Liability. The Consultant shall maintain business auto liability insurance covering liability arising out of any auto (including owned, hired and non-owned autos).

.1 Limits:

- (a) \$1,000,000 Combined Single Limit Each Accident

.2 Coverages:

- (a) Additional Insured Endorsement
- (b) Blanket Waiver of Subrogation
- (c) Contractual Liability

7.2.4 Workers Compensation. The Consultant shall maintain workers compensation and employers liability insurance.

.1 Limits: Workers Compensation at Statutory Limits, and United States Longshoreman and Harbor Worker's Act, if applicable

.2 Employer's Liability:

- (a) \$100,000 Bodily injury for each accident
- (b) \$100,000 Bodily injury for disease for each employee
- (c) \$500,000 Bodily injury disease aggregate

7.2.5 Umbrella/Excess Liability. The Consultant shall purchase and maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described above which is at least as broad as each and every coverage area of the underlying policies. The amounts of insurance required may be satisfied by the Consultant purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in this Paragraph.

.1 Limits:

- (a) \$3,000,000 Each combined single limit and aggregate limit

.2 Coverages:

- (a) Additional insured Endorsement
- (b) Pay on behalf of Wording
- (c) Concurrency of Effective Dates with Primary
- (d) Blanket Contractual Liability

- (e) Aggregate: apply Where Applicable in Primary
- (f) Drop Down Feature

7.2.6 Professional Liability (Errors & Omissions). The Consultant shall maintain professional liability insurance on a claims made basis with the following limits and coverages:

- .1 Limits:
 - (a) \$3,000,000 Each Claim and Annual Aggregate
- .2 Coverages:
 - (a) Insured's Interest in Joint Ventures, if applicable
 - (b) Limited Contractual Liability
 - (c) Retroactive Date Prior to Work
 - (d) Extended Reporting Period of 36 Months
 - (e) Coverage that meets or exceeds the minimum required shall be purchased annually, and maintained in full force and effect until three (3) years past completion of the construction phase unless such coverage becomes unavailable in the market or on a commercially reasonable basis.

7.3 Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend (except as noted below) and hold harmless the Owner, its agents, officers, trustees, directors and employees from and against all claims, losses, liabilities, obligations, costs, fines, penalties, expenses and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys and other professionals and court and dispute resolution costs) arising out of or resulting from the performance of or lack of performance of the Services, to the extent caused by any breach of contract or negligent or intentional act or omission of the Consultant or anyone for whose acts or omissions it may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder (with the exception only for any negligence that is prohibited from the scope of this clause by Applicable Law). The Consultant's duty to defend the Owner, its agents, officers, directors and employees, shall not extend to claims covered solely by the Consultant's professional liability policy required hereunder.

7.3.1 As to any and all claims against the Owner, its agents, officers, directors or employees by any employee of the Consultant or anyone for whose acts or omissions they may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.

7.3.2 The Consultant agrees and does hereby assume, on behalf of the Owner, the defense of any action that may be brought against the Owner, its agents, officers, directors or employees for which the Owner is entitled to indemnification and to pay on its behalf, upon demand, any judgment or award entered in any such action.

- 7.3.3** The Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Consultant. The Consultant expressly consents to the Owner's selection of legal counsel and to waive any waivable conflict.

ARTICLE 8. TERMINATION OR SUSPENSION

8.1 Suspension. The Owner may suspend or interrupt the Services in whole or in part for its convenience and without cause for such period as the Owner may require, upon not less than seven (7) Days' written notice, specifying the extent of the suspension, the effective date and, if known, the duration of the suspension. During the suspension, the Consultant and its Subconsultants may temporarily reassign their Designated Representatives and Personnel, provided that such Designated Representatives and Personnel must return to the Project promptly after the suspension is ended. An adjustment on account of such suspension to the schedule or compensation of the Consultant shall be made, provided that no adjustment shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Consultant is responsible.

8.2 Termination for Convenience. The Owner may terminate this Agreement of the Consultant in whole or in part for its convenience and without cause upon not less than seven (7) Days' written notice, specifying the extent of termination and the effective date.

8.3 Termination for Cause. The Owner may terminate this Agreement upon seven (7) Days' written notice if, through no fault of the Owner and provided such breach is not corrected within said notice period, the Consultant substantially fails to perform in accordance with the terms of this Agreement or fails to perform with the diligence that will ensure its completion within the time specified permitted.

8.4 Duties Upon Termination. Upon receipt of a written notice of termination for convenience or for cause, the Consultant shall immediately, in accordance with instructions from the Owner, proceed with the performance of the following duties regardless of any delay in determining or adjusting amounts that may be due on account of the termination:

- 8.4.1** Cease operations as specified in the notice;
- 8.4.2** Place no further orders and enter into no further agreements for services, labor, materials or equipment except as necessary to complete portions of the Services not terminated;
- 8.4.3** Except to the extent they relate to Services to be performed prior to the effective date of termination, terminate all orders and agreements to the extent they relate to the portions of the Services terminated;
- 8.4.4** Proceed as necessary to complete the portions of the Services not terminated;
- 8.4.5** Arrange for the transition of agreements to the Owner or such third party as the Owner may direct in accordance with § 2.1.2.1;

8.4.6 Provide the Owner with a written status of its performance of the portions of the Services terminated; and

8.4.7 Take all action that may be reasonably necessary, or that the Owner may direct, for the protection and preservation of the portions of the Services terminated.

8.5 Owner's Rights Upon Termination. If the Owner terminates this Agreement for convenience or cause, the Owner may, in addition to any other rights and remedies available to it:

8.5.1 Take possession of all the Consultant's Instruments of Service for use in accordance with the Owner's rights therein, as set forth in § 10.1;

8.5.2 Accept assignment of the Consultant's subconsulting agreements or provide direction on their assignment to third parties, pursuant to § 2.1.2.1;

8.5.3 Complete the portion of the Services terminated by whatever means the Owner deems expedient.

8.6 Automatic Conversion. In the event that a termination by the Owner for cause is ultimately deemed wrongful by a trier of fact under Article 9, such termination shall be conclusively deemed to be a termination for convenience by the Owner under § 8.2, and the Consultant's sole rights and remedies against the Owner shall be as set forth in § 8.7.

8.7 Termination Expenses. The Consultant's compensation for portions of the Services terminated by the Owner shall be determined in accordance with this § 8.7, and it shall not be entitled to additional payment or damages, including anticipated Fee or profit, which are hereby expressly waived.

8.7.1 If the Owner terminates some or all of the Services of the Consultant for cause, then payment shall be withheld until the Services are completed and the Owner's costs of completion are liquidated.

.1 If the unpaid balance of the Consultant's Fee payable to the effective date of termination exceeds the Owner's costs of completing the Services and other damages incurred by the Owner as a result of the termination, such excess shall be paid to the Consultant. If such costs and damages exceed the unpaid balance, the Consultant shall pay the difference to the Owner.

8.7.2 If the Owner terminates some or all of the Services for convenience, the Consultant shall receive, as its sole remedy, compensation for Services performed as of the effective date of termination together with all Reimbursable Expenses properly incurred by the Consultant as of the effective date of termination.

8.8 Services Completed. In the event of a termination or suspension pursuant to this Article, the Consultant shall not be relieved of any responsibilities for the completed portions of the Services.

8.9 Termination by Consultant. The Consultant may terminate this Agreement upon ten (10) Days advance, written notice in the event of a material breach of the terms of this Agreement by the Owner through no fault of the Consultant and provided such material breach is not corrected within said notice period. Suspension by the Owner in accordance with this Article shall not constitute just cause for termination by the Consultant under this Section.

ARTICLE 9. CLAIMS AND DISPUTE RESOLUTION

9.1 Claims. A Claim is a demand or assertion seeking adjustment in compensation, payment of money, extension of time or other relief with respect to, arising out of or relating to the terms of this Agreement. Unless otherwise specifically required by this Agreement, Claims by the Consultant and its Subconsultants of all tiers must be made by written notice within ten (10) Days after the claimant has knowledge, or reasonably should have knowledge, of the circumstances giving rise to such Claim, regardless of whether the full effect of the circumstances giving rise to the Claim are then known. It is understood that the failure to provide written notice within this time period will greatly prejudice the Owner, and the failure to submit proper and timely notice shall constitute a waiver and abandonment of the Claim.

9.1.1 A denial by the Owner of a proposed change or additional service shall constitute an event giving rise to a Claim pursuant to § 9.1.

9.1.2 Each Claim shall be submitted to the Owner with a detailed statement of the basis for the Claim, including any change request(s) that included such Claim in whole or in part and any additional information or documentation requested by the Owner in support of the Claim.

9.1.3 Persons or entities having no direct contract with the Owner shall give notice of Claims to the party with whom they have contracted, with a copy delivered contemporaneously to the Owner.

9.1.4 The Consultant shall, within ten (10) Days of the Owner's request, evaluate on a preliminary basis and advise the Owner on the merits of any Claims made by anyone involved in the Project. The Owner may defer any decision on any Claim until it can fully assess the actual effect that forms the basis of the Claim.

9.2 Claim Review. The parties have designated, or shall designate, individual representatives to act as their claim representatives. The claim representatives of the Owner and Consultant and the claimant shall meet in good faith at the Owner's request, and prior to mediation, litigation or arbitration, to endeavor to resolve the Claim on their own. If the parties are unable to resolve the Claim in this manner, the Claim shall be mediated as set forth below.

9.3 Mediation. As a condition precedent to litigation or arbitration, the parties shall endeavor to settle disputes by non-binding mediation with a mutually acceptable dispute resolution administrator. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. Any such mediation shall be administered and conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree

otherwise. The demand for mediation shall be made in no event later than the date when institution of legal or equitable proceedings based on such Claim, dispute or other matter in question would be barred by the applicable statute of limitations.

9.4 Arbitration. The Owner may, at its sole discretion and option, choose to have any or all Claims, disputes or other matters in question between the parties to agreements to furnish services, labor, materials or equipment to the Project decided by arbitration administered by a dispute resolution administrator acceptable to the Owner and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any such arbitration may include, at the Owner's sole discretion, by consolidation, joinder and in any other manner, third-parties whose interests relate to the matters in arbitration.

9.4.1 If the Owner consents to arbitration, the demand for arbitration shall be made promptly after the occurrence of the event giving rise to the Claim, and in no event later than the date when institution of legal or equitable proceedings based on such Claim, dispute or other matter in question would be barred by the applicable statute of limitation. The venue for arbitration shall be at a locale in the Greater New Haven, Connecticut area acceptable to the Owner.

9.4.2 If the Owner consents to arbitration, the award rendered by the arbitrator shall be final, and subject to appeal only as provided in the Owner's Limitations on Submissions, and judgment may be entered upon in accordance with the laws of the State of Connecticut.

9.4.3 The Consultant and its Subconsultants of all tiers shall incorporate the dispute resolution provisions of this Article 9, including the Owner's Limitations on Submissions, in substantially the same form in their agreements with persons or entities furnishing services, labor, materials or equipment to the Project.

9.5 Litigation. If the Owner does not consent to arbitration, all disputes shall be subject to adjudication by a court of competent jurisdiction, and the venue for such action shall be New Haven, Connecticut. All parties hereby waive any and all rights to a jury trial with respect to disputes arising out of the Project and agree that any claim for a jury trial shall be stricken by consent if either party violates this provision. All parties agree that this is a commercially reasonable term and that it shall be specifically enforced.

9.6 Limitation on Damages. The Consultant and its Subconsultants of all tiers expressly waive all rights, interest and Claims against the Owner for indirect, incidental, special, punitive or consequential damages arising out of or relating to the Project, including all loss of profits or revenue, cumulative impacts, interest, loss of productivity or business interruption.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 Copyrights, Patents And Royalties.

10.1.1 The Owner shall be deemed the owner of all designs, architectural works and Instruments of Service prepared or created by or on behalf of the Consultants and its

Subcontractors of all tiers (including common law, statutory and other reserved rights, in such designs, architectural works and Instruments of Service), limited to the extent that they pertain to unique elements of the Project that are: (a) developed exclusively for this Project; (b) based on unique Specifications, designs or other data provided by the Owner; or (c) developed independently by the Owner ("Limited Copyright"). All designs, architectural works and Instruments of Service covered by the Limited Copyright shall be deemed works for hire and, except as expressly set forth herein, the Consultants and its Subcontractors of all tiers hereby assign any and all rights in and to them to the Owner.

- .1 The Consultant grants to the Owner a nonexclusive, indefinite and irrevocable license to reproduce all elements of the design, architectural works and Instruments of Service they prepared or created and that are not covered by the Limited Copyright for purposes of constructing, using and maintaining the Project. The Consultant shall obtain similar nonexclusive, indefinite and irrevocable licenses and assignments for the Limited Copyright from its Subconsultants of all tiers.
- .2 Except for the licenses granted herein, no other license or right shall be deemed granted or implied. The Consultant and its Subconsultants of all tiers shall not assign, delegate, sublicense, pledge or otherwise transfer any license to the Limited Copyright granted herein to another party without the prior written agreement of the Owner.
- .3 The Consultant and its Subconsultants of all tiers may reproduce applicable portions of the Instruments of Service appropriate to and for use in their performance of the Services.
- .4 The Consultant and its Subconsultants of all tiers may use and reproduce the Instruments of Service that such party has created in the future for purposes not inconsistent with the Limited Copyright.
- .5 Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights set forth herein.
- .6 The Owner may use the Instruments of Service for the completion of the Project or for reference with respect to any future alteration or expansion, all without permission from or further compensation to the Consultant or its Subconsultants provided that all identification of the Architect shall be removed from the Instruments of Service subsequent to modification by or on behalf of the Owner. The Owner agrees to appropriately credit the Architect in any public display of the Architect's Instruments of Service. The Owner may alter or destroy any or all portions of the Project at its sole discretion and without the Consultant's consent.

- .7 The Owner shall indemnify and hold the Consultant harmless from and against liability, damage or loss arising from, and only to the extent of, any changes made to the Instruments of Service by the Owner for completion of the Project or with respect to any construction other than the Project (including any future additions to the Project).

10.1.2 Royalties and Licenses. The Consultant and its Subconsultants of all tiers shall not use a design, process or product for which they have not obtained all necessary permissions and paid all royalties and license fees.

10.2 Notices. Written notices pursuant to this Agreement shall be delivered: a) by hand, (b) by U.S. Mail, (c) by tracked, overnight delivery, or (d) by courier, and shall be addressed to the Designated Representatives of entities requiring notice. Transmissions by fax or e-mail shall not constitute written notice. Written notices delivered by hand to attendees of Project meetings shall be considered effective as to entities represented by such attendees.

10.3 Confidentiality. All information communicated or disclosed by the Owner in connection with the Project shall be deemed confidential and shall not be communicated or disclosed to any third party without the Owner's prior written authorization. Excluded from this confidentiality provision is information required to be disclosed in the performance of the Services hereunder, publicly available information, information obtained from third parties or developed independently, and as required by law.

10.4 Representations of Project and Owner's Name. No person or entity shall use (a) the name, image or a reference to the Project, (b) the Owner's name or image, (c) the name or image of any employee, student or agent of the Owner, or (d) any trademark, service mark, trade name, logo or symbol of the Owner or any of its schools or affiliates, in any manner, including in any sales, promotional, advertising or other publication (including client lists and websites), without the prior, written consent of the Owner in each instance, which may be withheld or conditioned in its sole discretion. It is acknowledged and agreed that immediate, extensive and irreparable damage will result if the provisions of this paragraph are not specifically enforced. Therefore, in addition to, and not in limitation of, any other remedy available to the Owner, the Owner may enforce this paragraph in judicial proceedings by a decree of specific performance and appropriate injunctive relief as may be applied for and granted in connection with such enforcement, and the Consultant shall pay all of the Owner's legal fees and litigation expenses incurred in enforcing this provision.

10.5 Non-Assignability. Except as permitted herein, no person or entity shall assign an agreement for the performance of any obligations to furnish services, labor, materials or equipment to the Project without the Owner's prior, written consent, which Owner may withhold in its sole discretion, and any unauthorized assignment shall be void.

10.6 Liens. In the event that liens are filed by any party in relation to the Services, the Consultant agrees to have said liens discharged by substitution of a surety bond or otherwise, within ten (10) Days of receipt of written notice from the Owner. In the event such lien is not so discharged, the Owner shall have the right to discharge said lien and recover from the Consultant

all costs associated therewith, including the Owner's attorney's fees incurred in having the lien discharged.

10.7 Continuing Duty. The Consultant shall not be relieved of its obligations to perform in accordance with this Agreement by tests, inspections or approvals required or performed by others.

10.8 Non-Waiver. Failure to insist upon strict compliance with any terms, covenants or conditions hereof will not be deemed a waiver of such terms, covenants or conditions, nor will any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time.

10.9 Severability. Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

10.10 Third Parties. All duties and responsibilities undertaken by the Consultant pursuant to this Agreement will be for the sole and exclusive benefit of the Owner and the Consultant, and not for the benefit of any other party. Nothing herein shall be construed to create, impose, or give rise to any duty owed by Owner to any other party. Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Consultant and any other party.

10.11 Setoff. The Owner shall have the right to set off against the accounts of the Consultant and its Subconsultants of all tiers any damages that may accrue by virtue of their respective defaults under agreements on this Project or any other project of the Owner, in addition to any amounts which are otherwise due and payable by the Consultant to the Owner under the terms of this Agreement, without prejudice to any other remedy Owner may have. A default by the Consultant under one agreement with the Owner shall constitute a default under all agreements with the Owner.

10.12 Responsibility. The Consultant shall be fully responsible to the Owner for acts and omissions of its employees, Subconsultants, and others directly or indirectly furnishing services, labor, materials or equipment on their behalf.

10.13 Survival. The parties' obligations under the following sections shall survive any completion, termination or suspension of this Agreement or full payment by Owner: § 6.4, § 7.3, § 8.7.1, Art. 9, § 10.1, § 10.3, § 10.4 and § 10.6.

10.14 Independent Contractor. The relationship of the Consultant to the Owner will be that of an independent contractor, provided that the Consultant shall retain all the obligations of a trusted professional as set forth in this Agreement.

10.15 Interpretation. All parties acknowledge and agree that this Agreement has been freely negotiated and that in any dispute over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no presumption whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

10.16 Integration. This Agreement contains the entire agreement between the parties concerning its subject matter and supersedes all oral or written agreements, negotiations, correspondence, documentation, and statements made before its acceptance and execution.

10.17 Governing Law. The law of the State of Connecticut (without giving effect to its conflicts of laws principles) shall govern all matters arising under or related to this Agreement.

10.18 Successors and Assigns. The Consultant binds itself, its partners, successors, assigns and legal representatives to the Owner and its successors, assigns and legal representatives with respect to all its covenants in this Agreement.

10.19 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be enforceable to the same extent as an original.

10.20 Nondiscrimination and Affirmative Action. The Consultant agrees to fully comply with the Nondiscrimination and Affirmative Action requirements of Conn. Gen. Stat. Sections 4a-60 and 4a-60a.

- .1 The Consultant agrees and warrants that in the performance of the Agreement, such Consultant will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability, or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Consultant further agrees to take affirmative action to insure that applicants with job related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability, or physical disability, including, but not limited to blindness, unless it is shown by such Consultant that such disability prevents performance of the work involved; (b) the Consultant agrees, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, to state that it is an “affirmative action-equal opportunity employer” in accordance with the regulations adopted by the CHRO; (c) the Consultant agrees to provide each labor union or representative of workers with which such Consultant has a collective bargaining agreement or other contract or understanding and each vendor with which such Consultant has a contract or understanding, a notice to be provided by the CHRO advising the labor union or worker’s representative of the Consultant’s commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (d) the Consultant agrees to comply with each provision of this Section and Conn. Gen. Stat. Sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. Sections 46a-56, 46a-68e, 46a-68f and 46a-86; (e) the Consultant agrees to provide the CHRO with such information requested by the Commission, and permit access to pertinent books, records, and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and Conn. Gen. Stat. Section 46a-56.

- .2 The Consultant agrees and warrants that in the performance of the Agreement, such Consultant will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; the Consultant agrees to provide each labor union or representative of workers with which such Consultant has a collective bargaining agreement or other contract or understanding and each vendor with which such Consultant has a contract or understanding, a notice to be provided by the CHRO advising the labor union or workers' representative of the Consultant's commitments under this Section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; the Consultant agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. Section 46a-56; the Consultant agrees to provide the CHRO with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Consultant which relate to the provisions of this Section and Conn. Gen. Stat. Section 46a-56.

10.21 Prevailing Wage. To the extent required under Conn. Gen. Stat. Section 31-53, the wages paid on a hourly basis to any person performing the work of any mechanic, laborer or worker on the Work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of Conn. Gen. Stat. Section 31-53 shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make such payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of the payment of contribution for such person's classification on each pay day.

10.22 Background Checks. The Consultant hereby agrees that it shall perform background checks on all of its employees, agents and persons under its control, including but not limited to, its subconsultants prior to any such individuals having access to the Project Site. Such background checks shall include a disclosure of any and all felony criminal convictions, including but not limited to, any sex offender registry postings. The Consultant shall use a firm to perform the background checks, such firm shall be approved by Owner which approval shall not be unreasonably withheld. The reasonable cost of each background check shall be borne by the Consultant. Individuals who have an unsatisfactory background check shall be denied access to the Project Site by the Consultant. The Consultant shall issue a badge to all individuals having access to the Project Site which shall state their name, company that they work for, their photograph and the name of the Project. Each individual shall wear a badge at all times while on the Project Site and the badge shall be easily visible.

10.23 Removal from Project Site. The Consultant hereby agrees that the Owner reserves the right, at its sole discretion, to require the immediate removal from the Project Site if any individual employee(s) or agent(s) and those of its Subcontractors has exhibited unlawful or inappropriate behavior or conduct towards any of the Owner's students or employees.

10.24 OSHA Training. To the extent required pursuant to Conn. Gen. Stat. Section 31-53b, every employee of the Consultant or its Subconsultant of any tier who will be on the Project Site during construction operations in order to perform Services interrelated with construction activities or work is required to have successfully completed, at a minimum, the OSHA 10-hour Construction Industry Outreach Training Program, and any other training required by OSHA Standards and regulations, for job related safety and health hazards. The training must have been performed by an OSHA Construction Outreach Trainer authorized to conduct 10-hour and 30-hour Outreach Training, or other specific training as applicable, and the program must have been reviewed and accepted by OSHA as being within the guidelines provided by the OSHA Office of Training and Education. Proof of training must be in the form of an OSHA Construction Safety and Health Course Completion card issued by the U. S. Department of Labor. Training must be kept current, and renewed if necessary or required.

- .1 Every employee of the Consultant or its Subconsultant of any tier who enters upon the Project Site shall comply with the requirements for personal protective equipment as required by the Owner's Constructor Health and Safety Advisory or the Project-specific Safety Plan.

ARTICLE 11. LIST OF INCORPORATED DOCUMENTS

The following are incorporated into and made fully a part of this Agreement, as if attached to or repeated herein:

Exhibit A	Consultant's Scope of Services/ Work
Exhibit B	Consultant's Fee Proposal, Staffing Plan and Completed Bid Forms
Exhibit C	Consultant Provided Information
Exhibit D	Progress Payment Lien Waiver and Release Forms
Exhibit E	Final Payment Lien Waiver and Release Forms

This Agreement is entered into as of the dates below, made effective as of the date stated in Article 1.

**AREA COOPERATIVE
EDUCATIONAL SERVICES
CORP.**

(CONSULTANT)

Thomas M. Danehy, Ed.D.
Executive Director
Date: _____

(name)
(title)
Date: _____