



# REQUEST FOR QUALIFICATIONS & PROPOSALS

OWNER'S PROJECT MANAGER:  
048-0060 WINDERMERE ELEMENTARY SCHOOL  
BID #2022-01

Proposals Due: Thursday, June 23, 2022

1:00 PM

Town of Ellington  
55 Main Street  
Ellington, CT 06029  
(860) 896-2300

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# 1. Introduction

## 1.1. Invitation to Bid

The Town of Ellington is seeking qualifications and proposals from qualified firms to provide certain Project Management/Owner's Representative services in connection with the planning, design, and construction of the Renovate-to-New, Extension/Alteration project for the Windermere Elementary School (the "Project"). This solicitation is both a request for qualifications and a request for proposals (RFP/RFQ). The services to be performed are described in Section 2, Scope of Work.

The Instructions to Bidders and other bid documents may be viewed on the Town's website at the link here: <https://www.ellington-ct.gov/departments-and-services/finance/requests-for-proposals> or the Connecticut Department of Administrative Services Contracting Portal which may be accessed at: <https://portal.ct.gov/DAS> ("State Portal").

## 1.2. Project Description

The Town of Ellington is a vibrant and growing community located in the suburbs of Hartford, CT. The Town has a rich history of farming, a vibrant small business community and beautiful open spaces. The Ellington Public Schools is a dynamic district that provides a high quality education to approximately 2,700 students, with projections for elementary enrollment to grow in the next decade.

Voters in the Town have passed a referendum for an approximately 95,000 square foot Renovate-to-New, Extension/Alteration project for the Windermere Elementary School with a budget of \$61,640,000. The project concept includes an approximately 37,000 square foot addition to the existing Windermere School, with elements of the current building to be renovated or demolished to accommodate 739 students. The Town of Ellington anticipates grant commitment from the State in July or August, following the completion of the application.

# 2. Scope of Work

## 2.1. Basic Services.

The OPM shall serve as Owner's authorized representative on the Project, shall be fully acquainted with the Project, and manage specific aspects of the Project from its conception through Project Close Out within the time frame and budget limitations established by the Owner. The OPM shall report directly to the Owner's Permanent Building Committee ("PBC") and coordinate with the First Selectman/Town Administrator and their designee(s). The OPM shall also collaborate with the end-user in the Board of Education, Superintendent and designee(s) to ensure the final Project satisfies the education specifications as approved by the Board of Education.

The Basic Services are generally described in Sections 2.2 through 2.5 of the contract attached as Exhibit D.

## 3. Proposal Instructions

### 3.1. Timeline

<b>Mandatory Pre-Bid Conference:</b>	Wednesday, June 1, 2022 10:00am Ellington Town Hall Annex 57 Main Street Ellington, CT 06029
<b>Questions Due from Bidders:</b>	Wednesday, June 8, 2022
<b>Response to Questions:</b>	Monday, June 13, 2022
<b>Proposals Due:</b>	Thursday, June 23, 2022 1:00pm Ellington Town Hall 55 Main Street Ellington, CT 06029
<b>Bid-Opening:</b>	Thursday, June 23, 2022 1:15pm Ellington Town Hall Annex 57 Main Street Ellington, CT 06029
<b>Finalist Presentations:</b>	July 7, 2022 (Time TBD)

### 3.2. Questions and Communications

Bidders are hereby notified not to contact any member of the Town staff and its elected officials, except as provided herein regarding this proposal until such time as a contract has been awarded. All questions about the proposals should be directed to Tiffany Pignataro, Finance Director, by email at [tpignataro@ellington-ct.gov](mailto:tpignataro@ellington-ct.gov) by Wednesday, June 15, 2022. Answers to all received questions will be sent to Bidders attending the mandatory pre-bid conference and posted on the Town website.

### 3.3. Format

The submitted proposals must follow the rules and format established within this Request for Proposal (RFP). Failure to comply with all provisions of this RFP may result in the proposal being disqualified. All proposals must be securely bound. Proposals are limited to 25 pages in total, not including the Cover Page and section dividers (if used), Table of Contents, Insurance Certificate, and Exhibits A through C, inclusive.

Response Sections:

- **Cover Page**  
Include RFP #, Proposal Title, Firm Name, Date of Submission.
- **Table of Contents**
- **Cover Letter**
- **Approach to scope of work and timeline**  
For the scope listed in Section 2, please provide a narrative of the approach to the work. Please also submit detailed timeline of tasks and work.
- **Schedule and Budget Maintenance**

Provide data regarding the maintenance of project schedules and budgets for prior public school projects. Describe any specific cost-saving measures which were implemented on these projects.

- **Project Team & Resumes**  
Provide an organizational chart for the project team and a resume for each individual listed on the team. Please provide the estimated allocation (%) of each individual during the three phases (Pre-construction, Construction, and Post-Construction) of this Project.
- **Experience & References**  
Provide details of all work or services performed in a similar capacity for comparable projects within the past five (5) years. Provide five (5) current or former client references with whom your company has completed projects of this scope and magnitude.
- **Insurance Certificate (ACORD Form 25)**
- **Non-Collusion Affidavit (Exhibit A.)**
- **Acceptance of Terms and Conditions (Exhibit B.)**
- **Fee Proposal (Exhibit C.)** (Must be submitted in a separate sealed envelope).

### 3.4. Submission

Adherence to these rules will ensure a fair and objective analysis of all proposals. Each proposal must be submitted in a sealed envelope bearing the bid number “**#2022-01**” and titled “**OWNER’S PROJECT MANAGER: 048-0060 WINDERMERE ELEMENTARY SCHOOL**”. Fifteen (15) printed copies of the proposal and one (1) electronic copy on a USB drive must be provided. Proposals must be delivered to Ellington Town Hall, 55 Main Street, Ellington, CT 06029 by 1:00pm. Proposals submitted after this time will not be considered. Each Bidder shall be responsible for all costs incurred in order to prepare and submit their response to this RFP. All submitted materials become the property of the Town.

### 3.5. Public Opening of Proposals

The Town will hold a public bid opening for all proposals submitted. All proposals will be opened and recorded by the Town Business Office beginning at 1:15 PM on Thursday, June 30, 2022 in the Town Hall Annex located at 57 Main Street, Ellington, CT.

### 3.6. Price Guarantee

All Proposals are required to be offered and remain in effect for a term not less than 180 calendar days in duration from the submission of the proposal. A proposal may not be modified, withdrawn, or cancelled by the Bidder during the 180 day time period following the time and date designated for the receipt of proposals.

### 3.7. Bidder Pricing & Proposals

Pricing submitted with this RFP must encompass all design, implementation, support, licenses and hardware/software acquisitions necessary for development and implementation of this Project. If your price excludes certain fees or charges, either recurring or nonrecurring, you must provide a detailed list of excluded fees with a complete explanation of the nature of those fees.

In the event that information or pricing submitted by the Bidders is unclear, the Town may request further explanation and/or pricing breakdowns from the Bidders for the purpose of

evaluation and decisions. The Bidders shall answer requests for additional information or clarification in writing, and these responses will become part of the Bidder's proposal. Bidders failing to provide adequate information on any issue in a timely manner to allow a comprehensive evaluation by the Town shall be considered unresponsive, and their proposal may be subject to rejection.

### 3.8. Selection Process

The Town and its PBC will utilize a selection process consistent with Connecticut General Statutes §10-287(b), which requires a two part process. Qualifications and proposals will be reviewed and evaluation criteria shall include, but not be limited to due consideration of the Bidder's pricing for the Project, experience with work of similar size and scope as required for the order or contract, organizational and team structure, including any subconsultants to be utilized by the Bidder, for the order or contract, past performance data, including, but not limited to, adherence to project schedules and project budgets and the number of change orders for projects, the approach to the work required for the order or contract and documented contract oversight capabilities.

A pool of up to the four most qualified proposals will be determined and finalists will be required to interview with the PBC on Tuesday, July 12, 2022 at a time to-be-determined. It is anticipated that selection will occur at the PBC meeting on July 12, 2022.

The Town will not award the contract to any business that, or individual who, (1) which has been cited for three or more willful or serious violations of any occupational safety and health laws during the three (3) year period preceding the proposal, provided such violations were cited in accordance with the provisions of any state occupational safety and health laws and not abated within the time fixed by the citation and such citation has not been set aside following appeal to the appropriate agency or court having jurisdiction or (2) which has received one or more criminal convictions related to the injury or death of any employee in the three (3) year period preceding the proposal. (See Conn. Gen. Stat. §31-57b).

## 4. Terms and Conditions

### 4.1. Contract

The selected Bidder will be required to execute the form of contract attached as Exhibit D, as may be amended by the Town. By submitting a proposal, a Bidder agrees to all the terms and conditions of the attached contract (Exhibit D). A Bidder may not take exception to the terms of the contract form. Any changes or amendments to that contract form will be at the sole discretion of the Town without adjustment to price.

### 4.2. Freedom of Information Act

All Information submitted in a proposal or in response to a request for additional information is subject to disclosure under the Connecticut Freedom of Information Act as amended and judicially interpreted. A Bidder's responses may contain financial, trade secret or other data that is claims should not be public (the "Confidential Information"). A Bidder must identify specifically the pages and portions of its proposal or additional information that contain the claimed Confidential Information by visibly marking all such pages and portions. Provided

that the Bidder cooperates with the Town as described in this section, the Town shall, to the extent permitted by law, protect from unauthorized disclosure such Confidential Information.

If the Town receives a request for a Bidder's Confidential Information, it will promptly notify the Bidder in writing of such request and provide the Bidder with a copy of any written disclosure request. The Bidder may provide written consent to the disclosure or any object to the disclosure by notifying the Town in writing to withhold disclosure of the information, identifying in the notice the basis for its objection, including the statutory exemption(s) from disclosure. The Bidder shall be responsible for defending any complaint brought in connection with the nondisclosure, including but not limited to appearing before the Freedom of Information Commission and providing witnesses and documents as appropriate.

### 4.3. General Terms and Conditions

A prospective Bidder must be willing to adhere to the terms and conditions of this RFP and by submitting a proposal hereby accepts and will comply with said terms and conditions in their response to RFQ/RFP.

- Acceptance or Rejection by the Town – The Town reserves the right to accept and/or reject any or all proposals submitted for consideration to serve the best interests of the Town. Respondents whose proposals are not accepted will be notified in writing.
- Ownership of Documents – All qualification statements submitted in response to this RFQ/RFP, and any information, deliverables or other work product contained therein, are to be the sole property of the Town and subject to the provisions of Section 1-19 of the Connecticut General Statutes (re: Freedom of Information).
- Ownership of Subsequent Products – Any product, whether acceptable or unacceptable, developed under a contract awarded as a result of this RFQ/RFP is to be the sole property of the Town unless stated otherwise in the RFQ/RFP or contract.
- Timing and Sequence – Timing and sequence of events resulting from this RFQ/RFP will ultimately be determined by the Town.
- Oral Agreements – Any alleged oral agreement or arrangement made by a Bidder with any agency or employee will be superseded by the written agreement.
- Amending or Canceling Requests – The Town reserves the right to amend or cancel this RFQ/RFP at any time, if it is in the best interest of the Town to do so.
- Rejection for Default or Misrepresentation – The Town reserves the right to reject the proposal of a Bidder that is in default of any prior contract, or for misrepresentation made by the Bidder in submitting its proposal.
- Clerical Errors in Awards – The Town reserves the right to correct inaccurate awards resulting from its clerical errors
- Rejection of Proposal – Proposals will be rejected in whole or in part if they limit or modify any of the terms and conditions and/or specifications of the RFQ/RFP.
- Changes to Proposals– No additions or changes to the original RFQ/RFP will be allowed after submission of a proposal.
- Contract Requirements – A formal agreement will be entered into with the firm selected as described in this RFQ/RFP. Any portion of the contents of the proposal submitted by the successful Bidder and the RFQ/RFP will become part of any contract award, at the Town's discretion.

- Rights Reserved to the Town – The Town reserves the right to award in part, to reject any and all responses, in whole or in part, and to waive technical defects, irregularities and omissions if, in its judgment, the best interests of the Town will be served.
- Withdrawal of Submission – Negligence on the part of the Bidder in preparing the RFQ/RFP confers no right of withdrawal after the time fixed for the acceptance of the submission.
- Assigning, Transferring of Agreement – The successful Bidder is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the agreement or an award made hereunder, its rights, title or interest therein or its power to execute such agreement to any other person, company, or corporation without the prior consent and approval in writing by the Town.
- Cost of Preparing RFQ – The Town shall not be responsible for any expenses incurred by a Bidder in preparing and submitting a RFQ/RFP. A RFQ/RFP shall provide a straightforward, concise delineation of your firm's capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.
- Definition of Terms – For the purpose of this RFQ/RFP, whenever the word "Bidder" appears, it shall refer to "OPM" and whenever the word "OPM" appears, it shall refer to "Bidder."



## Exhibit A. Non-Collusion Affidavit

To the Ellington Board of Education:

**RE: Owner's Project Manager: Windermere Elementary School**

DATED: \_\_\_\_\_, 2022.

The undersigned Bidder, having fully informed himself/herself/itself regarding the accuracy of the statements made herein, certifies that:

- (a) The proposal is genuine; it is not a collusive or sham proposal;
- (b) The Bidder developed the proposal independently and submitted it without collusion with, and without any agreement, understanding, communication or planned common course of action with any other person or entity designed to limit independent competition;
- (c) The Bidder, its employees and agents have not communicated the contents of the proposal to any person not an employee or agent of the Bidder, and will not communicate the proposal to any such person prior to the official opening of the proposal; and
- (d) No elected or appointed official or other officer or employee of the Town of Ellington is directly or indirectly interested in the Bidder's proposal, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.

The undersigned Bidder further certifies that this affidavit is executed for the purpose of inducing the Town of Ellington to consider its proposal and make an award in accordance therewith.

DATED: \_\_\_\_\_, 2022.

**BIDDER:**

By \_\_\_\_\_

SUBSCRIBED and sworn to  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

## Exhibit B. Acceptance of Terms and Conditions

\_\_\_\_\_ *Insert Firm Name* \_\_\_\_\_ as a condition of satisfying the requirements of the Town of Ellington's Request for Qualifications/Proposal hereby accept the terms and conditions of the contract attached as Exhibit D to the RFQ/RFP without exception.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

## Exhibit C. Fee Proposal

For all services as outlined in the RFQ/RFP to be performed during the Windermere Building Project:

Lump Sum Fee of \$\_\_\_\_\_ allocated per Project phase as set forth below:

Pre-construction Phase	\$ _____
Construction Phase	\$ _____
Post-Construction Phase	\$ _____

**HOURLY RATES** (all-inclusive rates including, without limitation, base salary, fringe and other benefits, insurance taxes, miscellaneous personnel expenses, meals, travel, travel time, training, holidays, illness, medical leave time general and corporate supervision and management expenses, overhead and profit, legal costs and accounting costs):

<b><u>Title</u></b>	<b><u>Name</u></b>	<b><u>Rate per Hour</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Warranties and Exclusions:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Exhibit D. Contract

Please see the attached contract.

# AGREEMENT BETWEEN TOWN OF ELLINGTON AND OWNER'S PROGRAM MANAGER

THIS AGREEMENT is made effective this \_\_\_\_ day of \_\_\_\_ 2022, by and between the Town of Ellington, Connecticut ("**Owner**"), and \_\_\_\_\_ (the **OPM/Owner's Project Manager, hereinafter the "OPM"**) for Services in connection with the Project hereinafter defined.

The Owner and the OPM agree as set forth below:

## ARTICLE 1 RELATIONSHIP OF THE PARTIES AND DEFINITIONS

The OPM accepts the fiduciary relationship of trust, loyalty, good faith and fair dealing with the Owner and shall endeavor to promote harmony and cooperation among all participants on the Project. The OPM shall furnish professional skill and judgment at all times to provide its Services in furtherance of the Owner's overall project goals, including goals for program, design, budget, time and quality. The OPM shall perform its Services, as more particularly defined in Article 2 below, expeditiously in accordance with the expertise, skill and care exercised by professionals serving in a similar capacity that have successfully completed projects of comparable size and complexity and shall at all times advance the orderly progress of the Project and cooperate with the Architect, the General Contactor or Construction Manager (hereinafter the "CM") and other Consultants in furthering the interests of the Owner.

**1.1** **Definitions.** Terms capitalized in this Agreement are defined as follows:

**1.1.1** '**Architect**' means the licensed Architect or architectural firm and its Consultants, engaged by the Owner to perform design services for the Project.

**1.1.2** '**CM/Construction Manager or CM**' means the entity retained by the Owner to perform the construction Work in connection with the Project.

**1.1.3** '**Day**' shall mean calendar day unless otherwise specifically designated.

**1.1.4** '**Consultant**' means an architect, engineer, planner, landscape architect or other consultant, other than the Architect, with whom the Owner contracts to perform design or consulting services on the Project.

- 1.1.5 **'Final Completion'** occurs on the date that the Construction Manager completes its obligations under its contract with the Town, the Owner accepts the Work, and the Owner makes final payment.
  - 1.1.6 The **'Project'** means the design and construction of the Renovate-to-New, Extension/Alteration project for the Windermere Elementary School located in Ellington, Connecticut.
  - 1.1.7 **'Grant Commitment'** means the approval of The Office of School Construction Grants and Review ("**OSCG&R**") for authorization for a State grant commitment.
  - 1.1.8 **'The Office of School Construction Grants and Review ("**OSCG&R**")'** means the State of Connecticut authority responsible for school construction Grant Commitments including the selection and award of grants, monitoring and approval of all phases of construction and disbursement of grant funding.
  - 1.1.9 **'Project Budget'** means the budget for the entire Project.
  - 1.1.10 **'Project Schedule'** means the overall schedule for the entire Project.
  - 1.1.11 **'Subcontractor'** means a person or entity retained by the CM as an independent contractor to provide labor, materials, equipment and/or services necessary to complete a specific portion of the Work.
  - 1.1.12 The **'Work'** means the construction or services necessary or incidental to fulfill the CM's obligations pursuant to its agreement with the Owner.
  - 1.1.13 **'Contract Documents'** consist of the agreement between the Owner and the Construction Manager, drawings, specifications, and any addenda thereto, other documents listed in the agreement between the Owner and the CM and modifications issued after execution of the agreement between the Owner and the CM.
- 1.2 **The Construction Team.** The OPM, the Owner, the CM, Subcontractors, and the Architect and Consultants, called the "Construction Team", shall work from the beginning of design of the Project through Final Completion. The OPM shall provide oversight to the Construction Team and advise the Owner on all matters relating to design and construction.
- 1.2.1 No key project personnel of the OPM assigned to this Project and included in the Staffing Plan attached hereto as **Exhibit B** shall be replaced without prior consent of the Owner, provided that if key personnel leave the OPM's employ, or otherwise become incapacitated, the OPM shall designate replacement personnel with at least the same level of experience, subject to the prior approval of the Owner.

**1.3 Independent Contractor.** This Agreement shall not create an employee/employer relationship between the Owner and the OPM. It is the parties' intention that the OPM will be an independent contractor and not the Owner's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime requirements, Federal Insurance Contribution Act, and the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Revenue and Taxation Law, State Workers Compensation Law, and State Unemployment Insurance Law. This Agreement shall not be construed as creating any joint employment relationship between the OPM and Owner, and Owner will not be liable for any obligation incurred by the OPM, including but not limited to unpaid minimum wage and/or overtime premiums, and insurance.

**1.3.1** The OPM shall indemnify and hold Owner harmless from all losses, injuries or damages, and wages or overtime compensation due the OPM's employees in rendering Services pursuant to this Agreement including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other state or federal law.

**ARTICLE 2  
OPM SERVICES**

The OPM will perform the following services (**the "Services"**) under this Agreement:

**2.1 Basic Services.** The OPM shall serve as Owner's authorized representative on the Project, shall be fully acquainted with the Project, and manage specific aspects of the Project from its conception through Project Close Out within the time frame and budget limitations established by the Owner. The OPM shall report directly to the Owner's Permanent Building Committee ("PBC") and coordinate with the First Selectman/Town Administrator and their designee(s). The OPM shall also collaborate with the end-user in the Board of Education, Superintendent and designee(s) to ensure the final project satisfies the education specifications as approved by the Board of Education. The Basic Services are generally described in Sections 2.2 through 2.5 below, shall also consist of any other Services identified as Basic Services in this Agreement.

**2.2 Pre-Construction Services.**

**2.2.1** Recommend an Architect and all Consultants (including the CM) for the Project, coordinate the process for bidding including development of the RFQ/RFP (working in conjunction with the Town of Ellington attorney ("Town Attorney"), advise the Owner of Project delivery options, lead pre-bid and bid opening meetings, attend all pre-bid meetings on Owner's behalf, lead the Owner through the selection process for the Architect and

CM, including interviews with the four selected finalists, provide recommendations.

- 2.2.2** Review bid FF&E and Technology packages prepared by the Architect and Owner. Oversee with Architect, delivery, inspection and quality control and installation of the FF&E technology.
- 2.2.3** Review CM's bidding procedures and criteria. Attend and provide input regarding scope review to ensure that contractors and subcontractors responses satisfy the requirements of the construction contracts.
- 2.2.4** Coordinate bonding format, procedures and criteria. Coordinate insurance certificate review and approval.
- 2.2.5** Manage Owner's Architect and Consultants, including architecture, geotechnical testing, environmental, material testing, civil, surveyor, etc.
- 2.2.6** Develop overall Project Management Plan providing a budget and milestone schedule.
- 2.2.7** Assist the Owner and Town officials with negotiations with the CM for a Guaranteed Maximum Price. Review CM's detailed Guaranteed Maximum Price proposal inclusive of all costs associated with the Project construction including Contingencies and provide comment to Owner.
- 2.2.8** Attend bi-weekly, special meetings and Owner's meetings with the Architect to assist in development of the Project design.
- 2.2.9** Attend all pre-construction meetings.
- 2.2.10** Review and evaluate Project design to ensure that all requirements of the educational specifications and end-users requirements are fully incorporated into the final Project design.
- 2.2.11** Coordinate with the Architect for finalization and approval of drawings and specifications, MEP, hardscape and landscape plans. Coordinate with the OSCG&R as necessary for architectural plan approvals and submission of all required forms in a proper, complete and timely manner.
- 2.2.12** Schedule and attend regular meetings with the Architect and other Consultants during the development of conceptual and preliminary design to advise on-site use and improvements, and selection of materials, preliminary budgets, and possible alternative economic solutions. If OPM learns of actions or items or is informed by the CM of such actions or items that could improve the timing or economics of construction of the Project, then OPM will convey such recommendations to Owner. If requested, OPM will assist Owner in engaging an environmental company to perform a



Phase I environmental assessment of the Property, and a Phase II if necessary.

- 2.2.13** Ensure Architect's completion of all required environmental and hazardous materials studies and testing, if needed. Review and comment as necessary.
- 2.2.14** In conjunction with the other members of the Construction Team, assist Owner in obtaining all governmental permits and approvals necessary for the Project and the completion of the Work. Coordinate local agency approvals. Assist the Architect and represent the Owner in all aspects of the planning and zoning and conservation commission approval process, and in completing any applications and filings for all permits required on behalf of the Owner. Monitor application for and receipt of all required Project permits and approvals. Represent the Owner before all required regulatory permitting agencies and in all Project meetings.
- 2.2.15** Prepare a draft Project Budget for the entire Project as soon as major Project requirements have been identified and CM's bid(s) have been received, and update the Project Budget at least monthly for the Owner's review and approval with the understanding that the Project Budget will be finalized once construction documents have been completed and priced by CM. Ensure CM's timely input during preconstruction (if selected). If it appears that the Project Budget will not be met, make recommendations for corrective action, where corrective action is possible.
- 2.2.16** The OPM will maintain complete and accurate records related to construction for the Project and provide Owner and the OSCG&R with all reasonable financial information as may be requested to ensure all accounting and financial records maintained by Owner are supported by sufficient documentation to permit Owner and its auditors to verify that such entries related to the Project are properly and accurately recorded.
- 2.2.17** Ask the CM to attempt to identify long lead items, which may affect the Project Schedule. In order to expedite the procurement of long-lead items, recommend when necessary to maintain schedule that the CM provide such items in advance. Review and comment on CM's planned sequence of building turns. Review and evaluate the CM and Architect's phase-based designs, construction schedules, construction requirements and approvals (including incorporation of OSCG&R reviews and approvals).
- 2.2.18** Provide value engineering suggestions throughout the course of the Project.
- 2.2.19** Review all final architectural and engineering drawings and ask the architect to determine their completeness, to attempt to eliminate areas of conflict and overlapping Work, and to attempt to verify their coordination

between design disciplines and their appropriateness for permit submittal and procurement.

- 2.2.20** Coordinate with the Owner related to all land use requirements including permits, licenses, and certificates. Attend and represent the Owner in all required regulatory permitting agencies and meetings related to the Project.
- 2.2.21** For each phase of construction, ask the CM to review the design as it develops and drawings and specifications as they are prepared, and report to the OPM on design and construction details that affect construction feasibility, efficiency, and available labor and materials. Alternatives will be considered in value engineering exercises in an effort to achieve efficiencies in the Project Schedule or Project Budget.
- 2.2.22** Submit recommendations to Owner regarding the award of the Construction Contract relating to the Project.
- 2.2.23** Obtain pricing for any additional required scopes of Work including specialty equipment, signage and/or other specialty items as the Owner may direct from time to time.
- 2.2.24** Implement a process for communication among the Construction Team and other entities working on the Project to address administrative matters; procedures for processing and record keeping of shop drawings, samples and other submittals; procedures for review and processing of change orders; procedures for review and processing requests for information from the CM and the Subcontractors; procedures for processing of payment applications; and other procedures necessary or appropriate for the proper and timely performance of the Work by the Construction Team.
- 2.2.25** Verify CM has obtained required performance bonds and insurance as may be required by the Owner in the Project Contract Documents.
- 2.2.26** If and when necessary, OPM and appropriate Construction Team members will attend public meetings concerning the Project and report relevant feedback to the Owner on the results of such meetings.
- 2.2.27** The OPM is responsible for understanding and fully and timely complying with all requirements related to pre-construction phase reporting, filing requirements and approvals required by the OSCG&R pursuant to its policies for Grant Commitment.

### **2.3 Construction.**

- 2.3.1** Provide oversight of the construction of the Project by the CM, and manage the Work of the CM.

- 2.3.2** Coordinate the Work with the activities and responsibilities of the Owner, Architect and Consultants to ensure work is being completed in accordance with contract documents. Attend all PBC regularly scheduled meetings as required (minimum of two meetings per month).
- 2.3.3** Provide on-site representation to ensure that work is carried out to the Owner's standards, specifications and schedule. The OPM will be on-site during construction a sufficient amount of time or numbers of hours to administer all phases of construction in conformance with the Staffing Plan attached as Exhibit B. Duties of on-site representative include but are not limited to the following:
  - 2.3.3.1** Attend all on-site meetings including special job meetings. Review all meeting minutes prepared and distributed by the CM for accuracy.
  - 2.3.3.2** Maintain Project records including daily reports of contractor and subcontractors on-site work crews including number of workers, hours worked, daily work completed, correspondence, reports of job meetings, shop drawings, sample submissions, change orders, additional drawing clarifications, interpretations of the contract documents, progress reports and other Project-related documents and pertinent information.
  - 2.3.3.3** Verify work in progress and work not commenced.
  - 2.3.3.4** Coordinate with the CM in the administration of the inspection and testing of materials as tested on the job site. Attend all on-site third party tests and record in testing log.
  - 2.3.3.5** Ensure materials delivered to the Work site are in compliance with approved submittals and no substitutions have been made without written approval by the Architect.
  - 2.3.3.6** Maintain a log of construction deficiencies including type of deficiency, date deficiency was discovered, date contractor was notified, contractor plan of action to correct deficiency, date of planned correction, and date of actual completion of work to correct deficiency. Review and prepare report regarding the acceptability of the completed work
  - 2.3.3.7** Attend all inspections by local and State Building Officials and Fire Marshal inspections. Note inspections and results of inspections in separate inspection log.
- 2.3.4** OPM shall evaluate CM's compliance with conducting independent testing and inspections, shall review inspection and test reports and notify the Owner and CM of observed deficiencies in the Work.
- 2.3.5** Review CM's quality control and Safety Programs; Provide quality assurance / quality control of the Work.

- 2.3.6** Participate in remediation of conflict resolution should conflict arise between Architect and CM, Architect and PBC, and/or CM and PBC.
- 2.3.7** Work with the Construction Team to identify base building deficiencies, flag hidden building costs, and strengthen the understanding of existing conditions to protect Owner from a contractual and risk perspective.
- 2.3.8** Meet strict budget requirements; identify and aggressively pursue cost-saving opportunities. Review constructability items, challenge change orders (reviewing for necessity, accuracy and cost), negotiate Project costs, and proactively mitigate risks to protect Owner's financial interest including providing remedies for errors and omissions.
- 2.3.9** Require Construction Team to maintain an on-site record-keeping system which will be sufficient in detail to satisfy an audit by Owner and the OSCG&R.
- 2.3.10** Oversee and provide guidance to CM in CM's coordination of Project work involving municipal authorities, agencies, and utility companies.
- 2.3.11** Recommend and manage necessary or desirable change orders and coordinate with the OSCG&R as necessary, for approval.
- 2.3.12** Direct the CM to provide a safety plan that is in conformance with applicable health and safety laws, regulations, ordinances and codes. Coordinate with the Construction Team to attempt to ensure that the Work shall not interfere with the continuous operation of the occupied building area and Project site.
- 2.3.13** Assist Owner with any reasonable information requests from the insurance company and the OSCG&R.
- 2.3.14** Payments to the CM and Consultants. On or before the fifteenth (15th) day of each month, the OPM shall submit a Disbursement Request. The Disbursement Request will include (i) applications of the contingency (if any) or the allocation of any savings and the amounts so requested; (ii) a schedule of costs incurred to date; (iii) all pay applications and invoices along with back-up information and material received in connection with the Project and any reimbursement due to OPM in accordance with Article 5.3; (iv) certificate(s) for payment(s) received from the Architect during the previous month by OPM respecting any application(s) for payment from CM included in the Disbursement Request for the applicable month; (v) OPM's and Architect's recommendations as to payment of same by Owner, or stating its reason and grounds for recommending non-payment in whole or in part; and (vi) any additional funding required from Owner to satisfy all of the same. The Disbursement Request will include: (i) a schedule of costs to date; (ii) all pay applications and Owner shall make payment on all

approved amounts. Should any invoice be in dispute, only that portion of the invoice in dispute may be held in abeyance until resolved.

- 2.3.15** OPM must timely comply with payment request procedures required by the OSCG&R, including but not limited to, Change Order and Construction Change Directive procedures, reporting and approval requirements.
- 2.3.16** As covered by the AIA G702 and G703, establish a periodic reporting system that covers major cost and schedule aspects of the Project and deliver same to Owner including the following information: (1) Cost Status – monthly cost status report tracking budget, estimate, amount contracted, change orders, estimated cost to complete and including the monthly Disbursement Request as defined in Article 2.3.14 and Article 6.1.1 herein; (2) Payment Status – monthly payments for each major cost item in the Project tracking payments made, amounts yet to be paid, projects cash requirements and updating projections; (3) Schedule Status – monthly schedule comparing the then-current status of construction to the Project Schedule; (4) Such additional information and reports reasonably required to comply with any reporting obligations imposed by lender of the Project. Review and approve, along with the Architect, all submitted payment applications and any necessary backup invoices received from the Construction Team in order to verify that the application reflects the approximate percentage of work complete on the Project based on the current budget. Attempt to ensure all required documentation including appropriate substantiation and payment acknowledgements and lien waivers are included in the submittal as required by the Contract Documents. However, any recommendation for payment under this Agreement shall not be a representation that the OPM has (1) made exhaustive or continuous inspections or review to check the quality or quantity of the Work or the design, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) extensively reviewed copies of requisitions from Subcontractors, material suppliers, Architect’s subconsultants and other data to substantiate the right to payment, or (4) made examination to ascertain how or for what purpose the CM or Architect has used money previously paid.
- 2.3.17** Assist with preparation of progress payments from the State of Connecticut in accordance with the Grant Commitments.
- 2.3.18** Advise and provide regular updates to the First Selectman (or Town Administrator) and Finance Director regarding cash flow forecasts. Assist with preparation of progress payments from the State of Connecticut.
- 2.3.19** Oversee Commissioning Agent services. Commissioning Agent to be selected by the Owner. Coordinate with the CM and Architect to resolve identified deficiencies.

- 2.3.20** Conduct inspections as necessary to determine progress and completion of the Work.
- 2.3.21** Recommend necessary or desirable changes in the Work to the Owner and the Architect, review requests for changes, submit recommendations to the Owner and the Architect, and assist in negotiating change orders with the CM.
- 2.3.22** Review, negotiate and recommend to Owner any proposed back charges, withholdings, or other payment claims and disputes with CM.
- 2.3.23** Once OPM is made aware, notify and advise Owner in connection with any claims not resolvable in the field that are made against Owner by the CM, Subcontractors, Architect, Consultant, any adjoining property owner or any other party concerning the development and construction of the Project.
- 2.3.24** Diligently work with the relevant members of the Construction Team to resolve any design or field condition problems or disputes in a practical, constructive manner.
- 2.3.25** If required, assist the Owner in selecting and retaining professional services of a surveyor, testing laboratories and/or special consultants, and generally coordinate these services.
- 2.3.26** Make contact with all applicable utility companies, whether governmental or otherwise, and, along with the CM, coordinate the installation of all applicable utility services to the Project on a timely basis.
- 2.3.27** Direct the Construction Team to perform any tests and inspections required by any lender or governmental authority (the cost of which test and/or inspections will be paid by Owner). OPM shall be present at all inspections by local and state Building Officials and Fire Marshal inspections.
- 2.3.28** Assist Owner in filing any notices of completion required to be filed and taking reasonable action to assist Owner in obtaining required licenses or permits (the fees for which licenses and permits will be paid by Owner) during construction.
- 2.3.29** Coordinate efforts by all appropriate parties to complete the punch list items identified by the Architect, CM and Owner.
- 2.3.30** Furniture, Fixtures & Equipment management via support from Owner's Procurement Department for items such as range, stove, fridge, etc.
- 2.3.31** Once OPM is made aware, advise Owner, in writing, of any defects or deficiencies in the Work that cannot be corrected in the field, or changes which may result in the Project Budget being substantially exceeded or the Project Schedule, including milestones, not being substantially met.

- 2.3.32** Once OPM is made aware, advise Owner, in writing, of any material failures of which the OPM becomes aware by any of the other Construction Team members to perform their obligations under their respective agreements, and recommend courses of action to the Owner when requirements of a contract are not being met.
- 2.3.33** Through the period of the Work, maintain a complete Project file of all significant and relevant documents that the OPM receives or creates, including without limitation, copies of all Project contracts, construction documents, communications and correspondence, logs, manuals, reports, minutes, and other Project documents, to make available to Owner at Owner's request.
- 2.3.34** Upon Owner's written authorization, negotiate agreements in the name of on behalf of Owner for performance of certain services or delivery of certain materials or equipment for use on the Project or at the Project site.
- 2.3.35** Signage coordination, including wayfinding, branding, and marketing support.
- 2.3.36** Development and maintenance of monthly Project reports, logs and recordkeeping as articulated in the Agreement.
- 2.3.37** Attend job meetings to discuss procedures, progress, problems and scheduling including meetings with Town of Ellington employees, consultants, attorneys or other consultants, including the end-user in the Board of Education, Superintendent and designee(s) or public meetings.
- 2.3.38** Coordinate with the CM, the development and maintenance of a record of all contractors, subcontractors and major material and equipment suppliers. Information should include the following: company's name, address, telephone number, Fax number, email address and contact name and phone number.
- 2.3.39** Coordinate work with the activities and responsibilities of the Owner, Architect and Consultants to ensure work is being completed in accordance with contract documents.
- 2.3.41** Prior to Substantial Completion, coordinate with the CM and Architect, the preparation of a punch list indicating any outstanding work, require that these items be completed in an expeditious manner and monitor the completion of all punch list items.
- 2.3.42** The OPM is responsible for understanding and fully and timely complying with all requirements related to construction phase reporting, filing requirements and approvals required by the OSCG&R pursuant to its policies for Grant Commitment.

## **2.4 Post-Construction.**

- 2.4.1** Coordinate all required inspections and approvals necessary to permit occupancy and Final Completion. Attend final inspection with Architect and CM to verify completion of the Work.
- 2.4.2** Coordinate with CM, Architect and Owner's Building Official and Fire Marshal for Temporary and Final Certificates of Occupancy.
- 2.4.3** OPM will cause copies of any Temporary Certificates of Occupancy ("TCO") (if applicable) and Certificate(s) of Occupancy to be provided to the Owner (and OSCG&R, if necessary).
- 2.4.4** Inspect the Project with the Architect and the CM, and submit to Owner recommendations concerning the acceptance of the Project or any phase of the Project by Owner and the approval by Owner of completed punch list items.
- 2.4.5** Provide for the close out of all agreements; prepare a final report to Owner confirming final Project costs, close out information and related documentation.
- 2.4.6** Direct CM to facilitate the checkout, initial start-up and testing of utilities, operations systems and equipment for readiness with the Project maintenance personnel.
- 2.4.7** Coordinate bidding, selection and work of moving services for phased move requirements and final occupancy.
- 2.4.8** Assist the CM with the assembly of all documents, guarantees, warranties, manuals, certificates, parts lists, attic stock, as-built drawings, etc. required by the contract documents and ensure that all are forwarded to the Owner. Assist the CM with acquisition of all final releases, lien waivers and bonds indemnifying Owner against liens.
- 2.4.9** Verify all claim releases required to issue final certificate of completion and final payment to the Construction Team, and forward to Owner.
- 2.4.10** Coordinate with the CM and Architect to ensure that the Project's mechanical system and building system suppliers provide operating and maintenance training videos for end users.
- 2.4.11** Expedite preparation of "as-built" drawings in accordance with the terms of the specifications.
- 2.4.12** Monitor status of retainage and recommend to Owner release as applicable.



- 2.4.13** Review final Project accounting. Provide for the close out of all agreements; prepare a final report to Owner confirming final project costs, close out information and related documentation.
- 2.4.14** Assist Architect in a ten month re-inspection after Project's Substantial Completion to identify any open warranty issues. Assist the Owner in resolution of any warranty issues.
- 2.4.15** Review bonding agreements and provide recommendations regarding bond releases.
- 2.4.16** Advise Owner and Board of Education regarding timing for Project completion. Assist in the preparation of the final progress payment and SCG-049F.
- 2.4.17** The OPM is responsible for understanding and fully and timely complying with all requirements related to post-construction phase reporting, filing requirements and approvals required by the OSCG&R pursuant to its policies for Grant Commitment.
- 2.4.18** OPM is responsible for any and all services not specifically defined above which are typical and reasonable services for the design, bidding and construction provided by an OPM to an Owner for a construction project of a similar size, complexity and value.

**2.5 Additional Services.**

- 2.5.1 Additional Services.** At the request of the Owner and with written agreement from the OPM, the OPM will provide Additional Services including additions in staffing or extension to duration of Services, upon prior written authorization from the Owner defining the extent of such Additional Services and the amount and manner in which the OPM will be compensated for such Additional Services. The OPM will invoice for Additional Services pursuant to Article 6, with each invoice setting forth separately and clearly the phase or area of the Project to which the Additional Services were provided.

**ARTICLE 3  
OWNER'S RESPONSIBILITIES**

- 3.1** The Owner shall provide any reasonable and necessary information regarding the Owner's requirements for the Project, including but not limited to Project scope, programming, phasing, and schedule.

- 3.2** The Owner shall designate a representative who has authority to make decisions and approvals, and furnish information as required and upon whom the OPM may rely.
- 3.3** The Owner shall retain an Architect to design and to prepare construction documents for the Project. The Architect's services, duties and responsibilities shall be described in the agreement between the Owner and the Architect, a copy of which will be furnished without charge to the OPM. The Owner may retain other Consultants as required for the Project.
- 3.4** The Owner shall retain the CM to provide the construction services and to perform the Work for the Project. The CM will perform its services "at risk," and will enter into subcontracts with all necessary trades. The form of the agreement with the CM, including any general or supplementary conditions, shall be negotiated by the Owner and CM, with the assistance of the OPM. The Owner will provide a copy of its agreement with the CM to the OPM without charge.
- 3.5** The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.6** The Owner shall furnish such legal services as may be necessary for providing the items set forth in Section 3.5 above, and such auditing services as the Owner may require.
- 3.7** The OPM will be furnished without charge with copies of all drawings and specifications reasonably necessary for the execution of the OPM's Services.
- 3.8** The Owner shall provide its own property and liability insurance for the Project as provided in Section 7.3.
- 3.9** The Owner shall use commercially reasonable efforts to require the CM to add OPM as an additional insured on the CM's Commercial General Liability Policy.

**ARTICLE 4  
PROJECT SCHEDULE & DURATION OF  
SERVICES**

- 4.1** The Anticipated Project Milestone dates are:

Consultant Selection: July 2022 – December 2022

Design/Local and State Approvals: September 2022 – December 2023

Bidding and Award (Phase 1): July 2023

Construction: August 2023 – June 2025

Substantial Completion: TBD

Project Closeout/Final Completion: May 2025-April 2026

- 4.2** The OPM’s duration of Services shall commence upon the effective date of this Agreement, and shall conclude upon the completion of the Services to be provided by OPM pursuant to Article 2 of this Agreement. Time is of the essence with respect to the performance of the OPM’s Services under this Agreement.

**ARTICLE 5  
OPM FEE**

- 5.1** In consideration of the performance of the Agreement, the Owner agrees to pay the OPM in current funds as compensation for Basic Services as follows:
- 5.1.1** For all Basic Services performed OPM shall be paid a Fee of \$\_\_\_\_, to be invoiced in monthly installments based on the anticipated schedule and phase of the Project. This fee is based upon the assumption that the OPM will staff the Project per the Staffing Plan attached as Exhibit B,
- 5.2** The OPM's Fee includes but is not limited to the following:
- 5.2.1** General operating expenses of the OPM, including the costs of purchase or rental of any materials, supplies or equipment and the transportation, storage and maintenance thereof; and the costs of operating and maintaining any vehicles necessary to performance of the Agreement.
- 5.2.2** All staff, personnel, employees or independent contractors of OPM providing Services to the Project.
- 5.2.3** All other overhead and profit attributable to the OPM’s Services for the Project.
- 5.3** In addition to the Fee set forth in Sections 5.1.1 and 5.1.2, the Owner shall reimburse the OPM for amounts expended by OPM for reasonable and necessary expenses (“Reimbursable Expenses”) incurred by OPM in the interests of the Project, provided that any individual expense greater than \$500 (Five Hundred Dollars) must be pre-approved in writing by the Owner. The aggregate total of Reimbursable Expenses shall not exceed \$\_\_\_\_\_. As a precondition to payment for Reimbursable Expenses, OPM must provide with its invoices supporting documentation acceptable to the Owner. Reimbursable Expenses are to be billed at cost, with no markup or fee.

- 5.4 Any Additional Services will be provided pursuant to an agreed upon written Change in Services at an agreed lump sum amount or at the hourly rates identified in **Exhibit A** to this Agreement. The Change in Services will include the agreed lump sum amount (or hourly rate), and when payment is to be made.

**ARTICLE 6  
PAYMENTS TO THE OPM**

**6.1 Invoicing and Payment.**

- 6.1.1 On or before the fifth (5<sup>th</sup>) day of each month, the OPM shall submit written invoices with all supporting paperwork to the Owner for the proportion of Services performed in the immediately preceding month, plus any Reimbursable Expenses incurred during the immediately preceding month, segregated by area of work or phase of the Project in which the Services were performed. The Owner shall make payment on all approved amounts no later than thirty (30) days from the date the invoice is submitted. Should any invoice be in dispute, only that portion of the invoice in dispute may be held in abeyance until resolved, and no interest will accrue on any disputed amounts.
- 6.1.2 The OPM is obligated to continue providing Services under the Agreement notwithstanding any pending claims or amounts on its invoice(s) that are in dispute or during the dispute resolution process, provided that the Owner shall continue to honor its obligations under the Agreement, including timely payment of undisputed amounts due. The OPM will not stop, suspend or delay its Services in any manner as a result of any such claims or disputes, and will be responsible to Owner for all costs, expenses and fees (including attorneys' fees) arising from such stoppage, suspension or delay. In the event of a dispute regarding pending claims or amounts on the invoice(s), the parties shall designate individual representatives who shall meet in good faith within thirty (30) days of any such dispute arising to endeavor to resolve the dispute on their own. If the parties are unable to resolve the dispute on their own, the dispute shall be resolved pursuant to Article 9 of this Agreement.

**ARTICLE 7  
INSURANCE, INDEMNITY AND  
WAIVER OF SUBROGATION**

## **7.1 Indemnity.**

- 7.1.1** The OPM shall indemnify, defend and hold the Owner and the Owner's officers and employees and any Additional Insureds harmless from and against all damages, losses and judgments arising from any and all claims and/or causes of action, including reasonable attorneys' fees and expenses, caused by any material breach of this Agreement, violation of law, the negligent or reckless acts or omissions or the intentional misconduct of the OPM, its employees, consultants and any persons or entities for whom the OPM is responsible with respect to the OPM's performance of its obligations under this Agreement.
- 7.1.2** The Owner shall use commercially reasonable efforts to cause its CM and Architect(s) to agree to indemnify the Owner and the OPM and hold them harmless from all claims for design and construction liabilities, bodily injury and property damage (other than property insured under Section 7.3) that may arise from the CM's Work and/or the Architect's design, including OPM being named as an additional insured under the CM's and Architect's Commercial General Liability policies.

## **7.2 OPM's Liability Insurance.**

- 7.2.1** The OPM shall purchase from and maintain in a company or companies with an AM Best rating of no less than A VIII, acceptable to the Owner and lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the OPM from claims which may arise out of or result from the OPM's Services on the Project. Such insurance shall include, at a minimum, the following:
- 7.2.1.1** Workers' Compensation Insurance: Covering claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed with the following limits:
- \$1,000,000 or statutory limits, whichever is greater  
Each Occurrence.
- 7.2.1.2** Employers' Liability Insurance: Covering claims for damages because of bodily injury, occupational sickness or disease, or death of these employees under any applicable employer's liability law.
- 7.2.1.3** Commercial General Liability Insurance: Covering claims for premises and operations coverage, products and completed operations, coverage for independent contractors, personal injury coverage and blanket contractual liability. Completed Operations shall be maintained by the Owner's Representative for the greater of five (5) years or the statute of repose after Owner's Representative completes its services hereunder. The policy form shall be the then

most current Insurance Services Office Commercial General Liability Coverage Form No. CG0001, or its equivalent, with the following minimum limits:

Each Occurrence:	\$1,000,000
Personal & Advertising Injury: Products and Completed Operations	\$1,000,000
Aggregate:	\$3,000,000
General Aggregate:	\$3,000,000

**7.2.1.4** Automobile Liability Insurance: Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle with the following limits:

\$1,000,000 Each Occurrence.

**7.2.1.5** Excess (Umbrella) Liability Insurance: Shall be written on no less than a follow form basis (no more restrictive than the underlying Commercial General Liability, Employers Liability and Automobile Liability insurance) with a Limit of Liability no less than \$10,000,000 per occurrence and aggregate.

**7.2.1.6** Professional Liability Insurance: Covering claims for Professional Liability Errors and Omissions in an amount not less than \$5,000,000 each claim and \$5,000,000 annual aggregate, per project, including contractual liability coverage to the extent assumed under this Agreement. The policy shall have a retroactive date that precedes the date of this Agreement. Such policy shall be maintained in full force and effect for the greater of three (3) years from the date of a Permanent Certificate of Occupancy for the Project or the termination date of this Agreement. Such policy(ies) shall not contain a Retroactive Date or Prior Acts Exclusion with a date that is later than the initial inception date of the Term of this Agreement. Owner's Representative shall purchase an extended reporting period, or "tail coverage," if necessary, to comply with this requirement, if the policy is not kept in-force.

**7.2.2** All insurance shall be written on an occurrence basis for all liability policies (except Professional Liability, which may be maintained on a claims made basis), and shall be maintained without interruption from date of commencement of Services until date of final payment and termination of any coverage required to be maintained after final payment. Certificates of Insurance shall be issued to Owner and any other party identified by the Owner. Certificates shall list the Owner, the Owner's officers and employees, and any other entity designated by the Owner as additional insureds on a primary noncontributory basis with any insurance maintained by the then listed additional insured's on all liability policies (except

Professional Liability coverage). Certificates shall be delivered prior to commencement of Services by the OPM. Such certificates shall show any special coverage or provisions required by this Agreement and shall provide for thirty (30) days' prior written notice to the Owner of cancellation, nonrenewal or material change to any of the insurance coverages. Certificates of Insurance showing such coverage to be in force shall be filed with the Owner prior to commencement of the OPM's Services.

**7.2.3** OPM shall require any Consultant, Sub-consultant of all tiers, or any other party performing work or rendering Services on behalf of OPM in the performance of this Agreement, to maintain and provide evidence of similar coverage as stated herein or as otherwise instructed by Owner.

**7.2.4** In the event OPM maintains limits greater than set forth herein, Owner and currently listed additional insureds shall be included therein as an additional insureds to the fullest extent of all such insurance in accordance with all terms and provisions herein.

**7.2.5** The aforementioned coverage, as well as any other coverage that OPM may consider necessary, are the OPM's sole responsibility. Any deficiency in the coverage or policy limits of the OPM insurance will be the sole responsibility of the OPM.

**7.2.6** Except as otherwise provided, it is expressly agreed and understood that the cost of premiums for insurance maintained by Owner's Representative shall be at its own expense and shall not be reimbursed by Owner. Any and all deductibles and/or self-insured retentions in the above described insurance policies shall be assumed by, for the account of and at the Owner's Representative sole risk and expense as the case may be.

**7.2.7** The OPM's insurance coverage shall be primary insurance as respects the Owner's insurance.

**7.3** **Property Insurance.** The Owner shall purchase and maintain property insurance covering the Project for the full cost of replacement as of the time of any loss including builder's risk, as normally carried on projects of similar size and character as the Project. This insurance shall insure against loss from the perils of fire, extended coverage, and shall include "All Risk" insurance for physical loss or damage including without duplication of coverage theft, vandalism, malicious mischief, transit, collapse, flood, earthquake, testing, and damages resulting from defective design, workmanship or material.

The Owner shall purchase and maintain liability insurance in forms and amounts generally carried by municipalities in Connecticut.

**7.4** **Waiver of Subrogation.**

**7.4.1** The Owner and OPM waive all rights against each other for damages caused by perils covered by insurance. The Owner shall use commercially reasonable efforts to require similar waivers from the Architect, Consultants, CM and the CM's Subcontractors.

**7.4.2** If the policies of insurance referred to in this Section 7.4 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

**ARTICLE 8  
SUSPENSION AND TERMINATION**

**8.1** **Suspension.** The Owner may, without cause, suspend, delay or disrupt the Project in whole or in part for such period of time as the Owner may determine. The OPM's fee may be adjusted for increases in cost or time caused by such suspension, delay or disruption to the extent that the OPM can demonstrate that it has incurred the added costs, except to the extent the Services would have been suspended, delayed or disrupted by other cause for which the OPM is responsible.

**8.2** **Termination for Convenience.** Upon at least thirty (30) days' written notice to OPM, this Agreement may be terminated by the Owner for the Owner's convenience, or in the event that the Project is cancelled for any reason.

**8.2.1** In the event this Agreement is terminated for the Owner's convenience, the Owner will pay for that portion of the OPM's fee due on Services rendered and Reimbursable Expenses incurred by the OPM as of and through the date of termination. Such payment shall be the total extent of the Owner's liability.

**8.3** **Termination for Cause.** Upon Owner's written notice of a material default by OPM due to a material breach by OPM or failure of the OPM to perform its obligations under this Agreement to the standard of care set forth in Article 1, OPM will have ten (10) days to cure the default to the reasonable satisfaction of the Owner, provided that if OPM has commenced to cure within said 10 days, and thereafter is prosecuting same to completion, said 10 day period shall be extended, where, due to the nature of the default, it is unable to be completely cured within 10 days. If OPM fails to reasonably cure a default, the Owner may terminate this Agreement for cause. If the Owner terminates for cause, the OPM shall be responsible for all costs, expenses and fees (including attorneys' fees) incurred by the Owner by virtue of said termination. If upon reimbursement to the Owner of all costs, expenses and fees incurred by virtue of said termination any balance remains on the OPM's remaining Fee (calculated on the basis of the Project Budget as of the date of termination), the balance shall be paid to the OPM at Final Completion of the Project.



**8.3.1 Automatic Conversion.** In the event that a termination for cause by the Owner is ultimately deemed wrongful by a trier of fact, such termination shall conclusively be deemed a termination for convenience, and the OPM's sole recourse shall be as set forth in Section 8.2 of this Agreement.

**8.4 OPM Right to Terminate.** The OPM shall not have the right to terminate this Agreement unless payment has not been received for fees for Services properly performed and/or reimbursable expenses properly incurred and not disputed by Owner in good faith, for a period of sixty (60) days after the OPM has submitted its invoice or upon written notice of default by the Owner or failure of the Owner to perform its obligations under this Agreement. Owner will have thirty (30) days to cure the default (except that the Owner shall not be entitled to any additional time in which to cure payment defaults) to the reasonable satisfaction of the OPM, provided that if the Owner has commenced to cure within said 30 days, and thereafter is prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of the default, it is unable to be completely cured within 30 days. If the Owner fails to reasonably cure a default, the OPM may terminate this Agreement for cause, in which event the OPM's recourse shall be as set forth in Section 8.2 of this Agreement.

**ARTICLE 9  
DISPUTE RESOLUTION, GOVERNING  
LAW AND VENUE**

**9.1** This Agreement shall be governed by the laws of the State of Connecticut.

**9.2** All disputes arising under this Agreement shall be subject to litigation. All litigated disputes shall be subject to the exclusive jurisdiction of any state or federal court located in the Judicial District of Tolland, State of Connecticut, and each party waives any objection which it may have based upon improper venue or forum non conveniens. **THE PARTIES HEREBY WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL AND AGREE THAT ANY CLAIM FOR A JURY TRIAL SHALL BE STRICKEN BY CONSENT IF EITHER PARTY VIOLATES THIS PROVISION.**

**9.3** As a condition precedent to any lawsuit, both the Owner and OPM agree to pursue mediation. The selection of the mediator will be by mutual agreement and the cost of mediation will be split equally by the parties.

**ARTICLE 10  
MISCELLANEOUS PROVISIONS**

- 10.1 Extent of Agreement.** This Agreement represents the entire agreement between the Owner and the OPM and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and OPM.
- 10.2 Severability.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 10.3 No Waiver of Performance.** The failure of either party to insist, in any instance, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right.
- 10.4 Assignment.** Neither the Owner nor the OPM shall assign its interest in this Agreement without the written consent of the other.
- 10.5 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 not caused by the disclosure of confidential information by the OPM, information obtained from third parties not known to have an obligation of confidentiality or developed independently, and as required by law.
- 10.6 Intellectual Property.** The OPM shall be deemed the author and owner of the intellectual property and work product created by the OPM. Notwithstanding the foregoing, the Owner will be deemed the owner of all intellectual property, work product, designs, architectural works and Instruments of Service prepared or created by or on behalf of the OPM, Architect, Construction Manager and their Consultants and Subcontractors (including common law, statutory and other reserved rights, in such designs, architectural works and Instruments of Service), but only to the extent that they pertain to unique elements of the Project that are: (a) developed exclusively for this Project or (b) developed independently by the Owner (the "Limited Copyright").
- 10.6.1** For all intellectual property or work product not covered by the Limited Copyright, upon execution of this Agreement, the OPM grants to the Owner a nonexclusive, irrevocable license to use the OPM's intellectual property or work product solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, or promoting, advertising, altering and adding to the Project and its surroundings. The OPM shall not use any work product that infringes any trademark, service mark, copyright, patent or other proprietary interest held by any third-party for which it has

not obtained all necessary permissions and paid all royalties and license fees.

**10.7 Financing Cooperation.** If the Owner finances the construction of the Project, the OPM shall cooperate with the Owner and those providing financing for the Project including the OSCG&R at all times in the course of the performance of its Services hereunder, including, but not limited to, the preparation of any reports within the scope of this Agreement and as required by the OSCG&R pursuant to its policies for the Grant Commitment. Any changes or modifications to this Agreement reasonably requested by the Owner to accommodate the financing shall be agreed to by the OPM and, subject to the execution of a further written agreement. This Agreement shall be amended at the option of the Owner to include such changes or modifications. Notwithstanding the foregoing, nothing herein shall obligate the OPM to agree to any change or modification which materially increases the OPM's obligations, adversely affects OPM's compensation, benefits or rights. Nor shall the OPM's risk materially increase.

**10.8 Non-Discrimination.** OPM agrees and warrants that in the performance of this Agreement such OPM 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, mental retardation, mental disability, or physical disability, including, but not limited to, blindness, unless it is shown by such OPM 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 OPM 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, mental retardation, mental disability, or physical disability, including, but not limited to, blindness, unless it is shown by such OPM that such disability prevents performance of the work involved. The OPM agrees, in all solicitations or advertisements for employees placed by or on behalf of the OPM, to state that it is an "affirmative action-equal opportunity employer".

<b>ARTICLE 11 EXHIBITS</b>
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**11.1 Exhibits.**

**Exhibit A – Hourly Rate Schedule**

**Exhibit B – Staffing Plan**

*[The next page is the signature page]*

This Agreement was executed the day and year first written above.

**OWNER :**

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**OPM:**

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT A**

**OPM  
HOURLY RATE SCHEDULE  
Changes in Services**

<b>Level</b>	<b>Individual</b>	<b>Rate</b>
Principal		\$___ per hour
Project Manager		\$___ per hour
Asst. Project Manager		\$___ per hour
Scheduler		\$___ per hour
Cost Estimator		\$___ per hour

**EXHIBIT B**

**OPM STAFFING PLAN**