

OWNER'S REPRESENTATIVE AGREEMENT

This agreement dated _____ ("Agreement") made by and between Regional School District No. 18, 49 Lyme Street, Old Lyme, CT 06371 hereinafter referred to as ("Owner"), and _____ hereinafter referred to as ("Owner's Representative") _____ for certain services related to the design and construction of Lyme-Old Lyme Middle School, Center School, Lyme Consolidated School and Mile Creek School Renovation Project. (the "Project").

The Owner and the Owner's Representative in consideration of the mutual covenants herein set forth, agree as follows:

SECTION I

BASIC SERVICES

A. General Terms

1. The "Owner." For purposes of this Agreement, the term Owner herein refers to Regional School District No. 18, its authorized designee (including but not limited to the building committee for the Project) and any successor and/or assign of this Agreement. The initial designated contact for the Owner is Ronald Turner (the "Owner Contact").

2. The "Architect" The Project Architect shall be TBD

3. The "Construction Manager" or "CM" The Construction Manager shall be TBD.

4. The "Owner's Representative." The Owner's Representative referred to in this Agreement is _____. The Project Managers for the Owner's Representative are _____.

5. The "Project Team." The Project Team referred to in this Agreement is the Owner, the Project Architect(s), Owner's Representative, Construction Manager, all contractors and/or subcontractors.

6. The "RFQ" shall mean the Owner's Request for Qualifications dated _____.

7. Standard of Care. The Owner's Representative shall perform its services consistent with the professional skill and care ordinarily provided by owner's representatives practicing in the same or similar locality under the same or similar circumstances. The Owner's Representative shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and set forth in this Agreement.

B. Design, Preconstruction, Construction, and Post Construction

1. **Design.** The Owner's Representative shall serve as the advisor to the Owner during the design phase.

a. Design Development

1. Attend regular and special meetings between building committee, the Architect (when retained), and the Construction Manager (when retained) to assist in development of the design for the Project. Attend all pre-construction meetings.
2. Further develop Owner's contingencies for inclusion in Project detailed estimate.
3. Monitor the schedule of design and report to Owner any delays.

2. **Preconstruction.** The Owner's Representative shall serve as the advisor to the Owner during this phase including coordination between the Architect and CM.

a. Bidding – After Retention of the Construction Manager

1. Attend pre-bid meetings with the CM, Architect, contractors, and subcontractors to represent the Owner.
2. Review the CM's bidding format, procedures and criteria proposed by the CM to be utilized in the bid process for compliance with applicable bidding and CHRO regulations.
3. Review bid packages prepared by the Architect/CM.
4. Review the CM's scope reviews and recommendations for the award of bid packages to trade contractors and advise the Owner of the results and concerns
5. Assist the Owner in negotiating the Guaranteed Maximum Price with the CM.
6. Review and make recommendations to the Owner regarding detailed Guaranteed Maximum Price proposal prepared by the CM inclusive of all costs associated with the construction of the Project and contingencies.
7. Attend all pre-construction meetings.
8. With the Architect, attend and represent the Owner in front of all required regulatory permitting agencies and meetings on the Project. Coordinate local agency approval process (e.g. Planning & Zoning and Wetlands Commission).
9. Review the CM/Architect detailed project phasing, construction scheduling and construction requirements and advise the Owner concerning the same.
10. Review the CM's quality control and safety programs and advise the Owner concerning the same.
11. Review bonding format, procedures and criteria with CM and advise the Owner concerning the same.
12. Review insurance certificates and insurance endorsements and advise the Owner concerning the same.

13. Review Project master schedule with Architect and CM and advise the Owner concerning the same.

3. **Construction Phase.** The Owner's Representative shall serve as the advisor to the Owner during this phase.

a. Participate in remediation of conflict resolution should conflict arise between or among some or all of the Architect, CM and the Owner and/or building committee.

b. For the testing of materials and inspection services relating to independent inspection and testing agencies, the Owner's Representative shall;

1. Evaluate compliance by testing and inspection agencies with the required scope, standards, procedures and frequency.

2. Review inspection and test reports and notify Owner and CM of observed deficiencies in the work.

c. Review all change order requests for necessity, accuracy and cost. Provide remedies for errors and omissions.

d. Along with the Architect, conduct inspections as necessary to determine progress and completion of work.

e. Coordinate with the CM in maintaining an updated list of all contractors, subcontractors and major suppliers of materials and equipment. The list shall include the company name, address, telephone number, email address, and a contact person's name and address.

f. Advise the Owner and/or building committee upon any special construction problems that may arise in carrying out the work.

g. Advise and update the Owner regarding cash flow forecasts.

h. Throughout construction, verify work in progress and work not commenced.

i. Make final reviews and reports on the acceptability of completed work.

j. Oversee commissioning agent services. Commissioning agent to be selected by the Owner. Coordinate with CM and Architect to resolve identified deficiencies.

k. Advise the Owner in determining the final acceptance and completion of the work, and confirm that all documents, warranties, manuals, bonds, as-built drawings, etc. have been turned over to the Owner.

l. Coordinate with the Architect and CM in preparing a punch list prior to "substantial completion" and follow up with the CM on completion of same.

m. Inspection(s) with the Architect upon notice by the CM that the work for each of phase of the Project is ready for final inspection and acceptance.

- n. Review and advise the Owner concerning schedules and schedule updates prepared by the CM.
- o. Monitor compliance by the CM and the CM's contractors and subcontractors regarding certified payroll and minority utilization requirements.
- p. Ensure that all financial reporting systems, documents, change orders, etc. are in proper and correct form and are submitted in a timely fashion to ensure maximum reimbursement to the Owner by the State of Connecticut Office of School Construction Grants and Review ("OSCG&R").

4. Post Construction Phase

- a. Final Inspection with the Architect and CM to verify final completion of the work for the Project.
 - b. Assist the CM in the receipt and transmittal of warranties, affidavits, receipts, releases and waivers of lien and claims or bonds indemnifying the Owner against claims.
 - c. Coordinate with the CM in assembling instructions, guarantees, certificates, parts lists and attic stock submitted by the CM and contractors for compliance to the contract documents for the Project.
 - d. Coordinate with the Architect and CM to ensure mechanical system and building system suppliers provide operating and maintenance training videos for the end users.
 - e. Monitor status of retainage and recommend to the Owner and/or building committee the release thereof when applicable.
 - f. Review final project accounting for the Project and assist the Owner with State of Connecticut and/or OSCG&R audit and close out requirements.
 - g. Coordinate with the Architect, the CM, the building official and fire marshal and other authorities with jurisdiction for temporary and final certificates of occupancy.
 - h. Assist the Architect in a re-inspection of the Project eleven (11) months after substantial completion of the entirety of the Project to identify any open warranty issues. Assist the Owner in resolution of warranty issues.
 - i. Review bonding agreements and tender recommendations regarding bond releases.
 - j. Any and all other services not specifically delineated above that would be considered normal and reasonable services to be provided to a client by an Owner's Representative for the final design, bidding and construction of a construction project of the scope and magnitude of the Project.
- 5. Other Services.** To the extent not defined above, the Owner's Representative shall:
- a. Work closely with and facilitate communications between and among the Owner, the building committee, the Architect, the CM, the Town, the Regional School District No. 18

Board of Education (“BOE”), the Connecticut Department of Administrative Services (“DAS”) and its Office of School Construction Grants and Review (OSCG&R), their respective officials, employees and representatives, and the community at large in connection with the Project including, without limitation, planning, project development, design, project management, estimating, construction, commissioning and close-out.

b. Assist with the completion of and review and provide input on development and submission of the required town and state filings and permit applications (with associated back-up), including the DAS school construction grant and reimbursement application and management process.

c. Work closely with the DAS, the OSCG&R, members of the building committee, and all appropriate Town and BOE staff on all aspects of the Project, including the grant application process, reimbursement applications and management process.

d. Make required presentations to all appropriate Town bodies (including but not limited to the building committee, the BOE, the town council, the planning and zoning Commission, the inland wetlands commission, and others) in conjunction with the Architect and the CM, where appropriate.

e. Review and oversee critical path schedules for design and construction of the Project.

f. Review and oversee project budgets, schedules and cash flow projections. Oversee and coordinate detailed Project cost estimating and any required reconciliation between estimates and budgets. Identify cost control and value management options to keep the Project within budget and ensure compliance with Town and BOE approvals, DAS reimbursement requirements and Project specifications.

g. Provide oversight for efficient and comprehensive communications and tracking of critical project elements, for example, requests for information, procurement of subcontractors by CM, change orders, submittals, addendums, tracking of shop drawings and safety manuals, long lead items, meeting minutes, schedules, insurance certificates, guaranteed maximum price development and negotiations, etc.

h. Assist in the monitoring and reporting on CM’s and subcontractor compliance with all local, state and federal requirements including, without limitation the requirements of the DAS and OSCG&R in connection with the grant funding for the Project.

i. Assist the Owner, the building committee, and the BOE to resolve any issues that arise during the Project design and construction.

j. Prepare and maintain a system for reporting to the DAS/OSCG&R, including all grant management duties such as reimbursement requests and the project audit process.

k. Provide value management/value engineering oversight.

l. Assist with State of Connecticut High Performing Building Certification Process.

m. Participate in litigation support to the extent any disputes arise by and between the Owner and or Architect and/or CM if the services of the Owner's Representative are alleged to be the cause of the dispute, in whole or in part.

SECTION II

TERMINATION, SUSPENSION OR ABANDONMENT

A. Termination Without Cause. This Agreement may be terminated at any time by the Owner without cause upon seven (7) days written notice. If the Owner elects to terminate for its convenience, the Owner's Representative shall be paid for all services properly performed up to and including the date of termination. All notices referenced in this paragraph shall be sent to the address of the Owner's Representative set forth in this Agreement. The Owner's Representative waives any and all other claims for additional compensation or damages of any kind or nature.

B. Suspension of the Project. In the event the Owner suspends the Project for the convenience of the Owner, this Agreement may also be suspended for a like period of time without penalty.

C. Termination for Cause. Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

SECTION III

COMPENSATION AND PAYMENT

A. For the Owner's Representative's Basic Services described in this Agreement, the Owner shall compensate the Owner's Representative as follows: The fee submitted for Final Design through construction close out is: _____, to be billed out at intervals throughout the construction process, but not more frequently than once monthly, based upon the percentage of services completed by phase or task. This fee is inclusive of both administration and construction oversight and based on a duration of ___ months.

B. Additional Work directed by the Owner shall be mutually agreed upon and be based upon rates set forth below:

C. The Owner shall pay the Owner's Representative for services properly performed thirty (30) days after the Owner receives the Owner's Representative's invoice. In the event the Owner disputes all or part of the invoice the Owner will provide written notice of such dispute within seven (7) days. In all events, the Owner shall pay all undisputed amounts as provided herein.

SECTION IV

DISPUTE RESOLUTION

A. Claims, disputes, or other matters in controversy arising out of or related to or arising from this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. The Owner may compel or request other parties to participate in mediation.

B. The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Dispute Resolution Center, Danbury, CT ("ADRC") in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

C. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

D. Any claim or dispute not resolved by mediation shall be resolved in a court of competent jurisdiction in the State of Connecticut. Connecticut law shall apply.

SECTION V

INSURANCE, INDEMNIFICATION, AND DEFENSE PROVISIONS

A. To the fullest extent permitted by law the Owner's Representative shall indemnify, defend and hold harmless the Owner, the Regional School District No. 18 Board of Education, and agents and the officers, members, committees, owners, trustees, directors, agents and employees of any of them from and against third party claims, damages, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from Owner's Representative's performance of the services hereunder, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Owner's Representative, anyone directly or indirectly employed or retained by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section.

B. To the fullest extent permitted by law, the Owner's Representative shall indemnify, defend and hold harmless the Owner, the Regional School District No. 18 Board of Education, and the officers, members, committees, owners, trustees, directors, agents and employees of any of them from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, which may at any time be instituted, made, tendered or recovered against the Owner, arising out of or resulting from any breach or failure of the Owner's Representative to comply with the terms and conditions of this Agreement to the extent caused by the negligence of the Owner's Representative, anyone directly or indirectly employed or retained by them or anyone for whose acts they may be liable.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section.

C. In claims against any person or entity indemnified under this Section by an employee of the Owner’s Representative, anyone directly or indirectly employed or retained by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Owner’s Representative under workers’ compensation acts, disability benefit acts or other employee benefit acts.

D. Insurance. Owner’s Representative shall purchase and maintain throughout the duration of this Agreement, at its sole cost and expense, the insurances below. Owner’s Representative shall name the Owner, Regional School District No. 18 Board of Education and the officers, members, committees, owners, trustees, directors, agents and employees of any of them as Additional Insured on a primary and non-contributory basis to its Commercial General Liability and Automotive Liability policies for claims caused in whole or in part by the Owner’s Representative’s negligent acts or omissions during the Owner’s Representative’s services set forth in this agreement. These requirements shall be clearly stated in the remarks section on the Certificate of Insurance. Insurance shall be written with carriers approved in the State of Connecticut and with a minimum Best's Rating of A-. In addition, all Carriers are subject to approval by the Owner.

		(Minimum Limits)
General Liability	Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000	
Products/Completed Operations Aggregate	\$2,000,000	
Auto Liability	Combined Single Limit	
Each Accident	\$1,000,000	
Professional Liability	Each Claim or Each Occurrence	\$1,000,000
Aggregate	\$1,000,000	
Umbrella	Each Occurrence	\$5,000,000
(Excess Liability)	Aggregate	\$5,000,000
Worker’s Compensation and	WC Statutory Limits	

Employer's Liability	EL Each Accident	\$100,000
	EL Disease Each Employee	\$100,000
	EL Disease Policy Limit	\$500,000

E. Original, completed Certificates of Insurance must be presented to the Owner prior to purchase order/contract issuance. Owner's Representative shall provide replacement/renewal certificates at least 60 days prior to the expiration of any policy.

F. The Owner's Representative shall, before commencement of its services, submit to the Owner evidence of the aforementioned requirements via endorsements either specifically naming the additional insureds or a blanket additional insured endorsement acceptable to the Owner. Failure by the Owner's Representative to provide the endorsements required in this section shall entitle the Owner to withhold payment from any invoice then due or to become due until such time as the endorsements are provided. The insurance of the Owner's Representative shall be primary, with respects to the Owner's Representative's negligence with regards to the services agreed under this contract, as laid out above, to any insurance that may be available to the Owner, the Regional School District No. 18 Board of Education and any insurance available to the Owner, Regional School District No. 18 Board of Education is secondary and non-contributory. The Owner's Representative shall cause its insurers endeavor to directly provide the Owner with thirty (30) days advance notice of cancellation or the Owner's Representative shall provide such direct notice of cancellation.

G. The Owner's Representative waives all rights of subrogation against the Owner, Regional School District No. 18 Board of Education and any insurance available to the Owner, Regional School District No. 18 Board of Education and their respective insurance carriers.

H. The insurance, defense and indemnification obligations provided herein shall survive the termination and/or cancellation and/or full or partial performance of this Agreement.

SECTION V

MISCELLANEOUS AND GENERAL PROVISIONS

A. Force Majeure. Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

B. Independent Contractor. The Owner's Representative shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the Owner for any purpose. Nothing in this Agreement shall be interpreted as authorizing Owner's Representative or its agents and/or employees to act as an agent or representative of or on behalf of the Owner or to incur any obligation of any kind on behalf of the Owner beyond the scope of services set forth in this

Agreement. Owner's Representative agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to the Owner's employees will extend to the benefit of Owner's Representative or the Owner's Representative's agents and/or employees as a result of this Agreement.

C. Notice. All notices or invoices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

D. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

E. Successors and Assigns. Each of the parties to this Agreement binds its successors and assigns with respect to all covenants of the Agreement.

F. Governing Law. This Agreement shall be governed by the laws of the State of Connecticut.

G. Entire Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Owner's Representative and supersedes all prior negotiations, representations or agreements on the matter, either written or oral.

H. Term of Contract. The term of this Agreement shall be for a period beginning the date of the execution of this Agreement by the Owner and continuing through the occurrence of one of the following events, whichever occurs first in time: (1) Final completion and close out of the Project including the one-year post construction inspection; or (2) the termination of this Agreement at any time according to its terms.

I. If the Owner, for any reason or for no reason, elects not to continue with Owner's Representative, the Owner may terminate this agreement for its convenience and without cause in accordance with Section II. Upon termination the Owner shall pay Owner's Representative for all services properly performed and accepted by the Owner in accordance with the terms of this Agreement. The Owner's Representative waives any and all other claims for additional compensation or damages of any kind or nature.

J. Any additional services to be provided by the Owner's Representative after the aforementioned date(s) shall be determined by a separate contract or addendum to this Agreement. This Agreement shall not create a continuing contract for Owner's Representative services for future building projects or any other services beyond the terms of this paragraph.

SIGNATURE PAGE

This Agreement entered into as of the day and year affixed to the signature of each party.

REGIONAL SCHOOL DISTRICT NO. 18

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date _____