

ACES AGREEMENT FOR PROFESSIONAL SERVICES

AGREEMENT made as of "Insert Date"

BETWEEN

"Owner": AREA COOPERATIVE EDUCATIONAL SERVICES (ACES)
350 State Street
North Haven, Ct. 06473-3108

and "Consultant": TBD

The "Project" is: Whitney High School
130 Leeder Hill Drive
Hamden, Ct. 06517
State Project Number: 244-0040 SP/PE/EA

THIS AGREEMENT FOR PROFESSIONAL SERVICES

("Agreement"), effective as of the date set forth above, is between Owner and Consultant, collectively referred to herein as the "Parties," who state and agree as follows:

1. **Consultant.** In response to Owner's written Request for Qualifications and Proposals for Commissioning Services ("RFQ/P") issued date of August 4, 2016, respectively, of which is expressly incorporated herein and copies of which are attached hereto as Exhibit A, Consultant submitted its response and proposal, which is expressly incorporated herein and made a part hereof. Owner selected Consultant to provide services described in the RFQ/P and now wishes to formally retain Consultant to provide services to Owner in connection with the Project. Consultant shall perform its services pursuant to this Agreement for the benefit of Owner. Consultant is an independent contractor and not an agent, servant or representative of Owner. Consultant will have no authority legally to obligate Owner except as specified in this Agreement or as otherwise specified in writing by Owner from time to time. The Consultant's duly authorized representative for purposes of this Agreement is ?????????? ("Consultant's Representative").

2. **Scope of Services.** Exhibit A attached hereto contains the RFQ/P which, together with the other provisions set forth in Exhibit A and in this Agreement, outlines the full range of services that Consultant shall provide to Owner for the Project (the "Services").

All Services are to be conducted in a transparent manner and shall be done consistent with all

applicable federal, state and local statutes, regulations and ordinances, and Connecticut State Department of Administrative Services, Office of School Construction Grants Education Bureau of School ("DAS") requirements.

The Owner has retained the services of Silver Petrucelli and Associates ("the Architect") to provide architectural and engineering services in relation to the Project. Consultant shall coordinate its services with the Architect and its team and sub-consultants but shall advise Owner in writing of any communications Consultant has with the Architect or its team.

Consultant represents that the Services shall be carried out in a good and workmanlike manner, consistent with all applicable statutes, codes, regulations, and rules, including but in no way limited to applicable requirements set forth in Chapter 173 of the Connecticut General Statutes, without errors or omissions. Consultant acknowledges that the Owner is receiving financial assistance from the State of Connecticut for the Project pursuant to Chapter 173 of the Connecticut General Statutes and Consultant covenants to perform its services in a manner which allows the Owner to maximize the amount of financial assistance it receives from the State of Connecticut.

3. Time of Performance. TIME IS OF THE ESSENCE WITH REGARD TO CONSULTANT'S PERFORMANCE OF SERVICES FOR THE PROJECT. Consultant agrees to perform its Services, continuously, diligently, and in accordance with the Project schedule provided by Owner.

4. Further Work. If, during the course of the Services, Consultant discovers any fact or condition which would lead Consultant to recommend further analysis, evaluation or other services beyond the scope of work authorizations, Consultant shall contact Owner to discuss Consultant's findings and recommendations and give an estimate of the cost of such further work. Owner may authorize Consultant to perform such additional work only by providing written direction to Consultant specifying the work to be performed and the maximum additional fee to be added to the amount authorized in the work authorization.

5. Subconsultants; Employees.

(a) Consultant shall not contract with or otherwise engage, employ or utilize any consultants, contractors, or other third Parties (any such, a "Subconsultant") in connection with any Services without Owner's prior written consent in each instance. Consultant shall furnish Owner with a list of Subconsultants proposed to be used on the Project prior to commencing Services and shall promptly notify Owner of proposed changes to such list. Neither use of a Subconsultant by Consultant, nor Owner's consent thereto, shall relieve Consultant of its obligations under this Agreement. Consultant shall be responsible to Owner for the acts and omissions of its employees and Subconsultants, and their agents and employees. The terms, conditions, and provisions of the Consultant's agreement with each Subconsultant shall be subject and subordinate to, and not inconsistent *with, the* terms, conditions and provisions of this Agreement. Nothing contained herein shall create any relationship of contract or agency between Owner and any Subconsultant. Consultant's obligation to pay its Subconsultants is independent from Owner's obligation to pay Consultant for Services; Owner shall have no obligation to pay or enforce payment to Subconsultants. For purposes of Consultant's obligations and responsibilities under this Agreement, reference to "Consultant" shall be deemed to bind every Subconsultant of any

tier, unless the context specifically requires otherwise.

(b) Consultant's proposal includes a staffing plan from Consultant indicating the persons and corresponding titles who will perform the Services. No changes to such staffing plan shall be permitted without advance written consent from Owner. Consultant shall employ individuals for the Project to whom Owner has no reasonable objection. In the event Owner has a reasonable objection to any employee performing Services, it shall notify Consultant, which shall promptly cause the individual to be removed from the Project and replace same with an unobjectionable employee at no cost to Owner.

6. Compensation; Documentation. For its services, Consultant shall be paid the sum of "WORDS" dollars (\$?????.00), payable upon completion of the Consultant's services per the Consultants Fee Proposal included in Exhibit A section X herewith.

Consultant's reimbursable costs are, as per its proposal in Exhibit A and shall not exceed "WORDS" dollars (\$?????.00) and is included in the above fee. Consultant shall submit backup with its requisition for all approved reimbursable cost.

Upon written request by Owner, Consultant shall provide any additional services at the rates set forth in Consultant's proposal, attached hereto as Exhibit A. Consultant shall bill Owner monthly for any additional services requested by Owner and performed by Consultant.

The Consultants requisition shall be in a format acceptable to the Owner. Any additional services shall be itemize and describe the Services performed, identify personnel performing the Services and the time expended (for Services compensated on a time and expenses basis), with appropriate documentation of all of the foregoing attached thereto. Provided that Consultant delivers a four copies of its requisition, properly completed, documented invoice to Owner, payment of undisputed amounts will be due forty five (45) days from Owner's receipt of such invoice; if invoices are untimely, incomplete or improperly documented, then payment may be delayed until the forty fifth day after Owner receives a properly completed, documented invoice. Consultant agrees to provide any supporting documentation for each invoice which Owner reasonably requests. Consultant shall provide an executed statutory form of lien waiver and release that is acceptable to ACES with each invoice and upon receipt of final payment as a condition to payment. Any payment made hereunder prior to completion and acceptance of the Services shall not be construed as evidence of acceptance by Owner of any part of Consultant's Services.

For a period of six (6) years following substantial completion of the Project, Consultant shall maintain full and accurate records and books of account necessary to document: (a) all activities undertaken by or on behalf of Consultant (including by its agents and Subconsultants) in the course of performing Services hereunder; and (b) all charges, expenses and disbursements incurred by Consultant, its agents or Subconsultants in performing Services hereunder. Consultant will promptly make such books and records available to Owner during normal business hours upon prior written request.

7. Insurance. Certain insurance requirements are set forth in the RFQ/P and are incorporated herein. Consultant agrees that at all times during the life of this Agreement, it shall maintain at its own cost those insurance coverages required by this Agreement.

8. Indemnification. Consultant shall, with respect to all Services which are covered by or incidental to this Agreement, indemnify, defend, and hold Owner and its employees, agents, board, commission and building committee members harmless from and against any and all claims, liability, loss, damage, costs or expenses, including reasonable attorneys' fees, awards, fines or judgments, resulting from death or bodily injury to persons, injury to property or other loss, damage or expense, caused by or arising from Consultant's, its employee's, agent's, subconsultants, contractor's and/or subcontractor's breach of any obligation under this Agreement or the negligence or willful misconduct of any such party. The indemnified party shall have the right to approve the counsel selected by the indemnifying party to defend the indemnified party. This indemnity shall survive termination of this Agreement.

9. Dispute Resolution. Unless otherwise agreed in writing by the Parties, no dispute shall interfere with the prompt performance of their respective obligations under this Agreement. Notwithstanding a dispute, Consultant shall continue to perform its Services, and Owner shall continue to make payment of all undisputed amounts in accordance with the provisions of the Agreement.

(a) In the event of a dispute regarding the scope of work or interpretation of this Agreement, or any other claims or controversy between Owner and Consultant, the Parties agree to have their project representatives meet and attempt to resolve the disagreement as early and quickly as practicable. Such meeting shall be commenced within ten (10) business days after the meeting request for the express purpose of openly sharing information concerning the dispute and attempting in good faith to resolve the disagreement.

(b) Any claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement, and not resolved by the meetings described above, shall be submitted to nonbinding mediation prior to the initiation of any suit or other litigation. The mediation shall be administered by a mediator selected by the parties. If the parties do not agree on a mediator, the mediation shall be conducted through the American Arbitration Association. The cost of the mediation shall be split equally between both Parties. This agreement to mediate shall be specifically enforceable under the laws of the State of Connecticut.

(c) If mediation is unsuccessful, then either party may commence legal proceedings. Any dispute between Owner and Consultant pertaining to or arising out of or in connection with this Agreement or the Project shall be decided by litigation venue exclusively in Connecticut Superior Court in and for the Judicial District of New Haven at New Haven, unless the Owner, in its sole discretion, opts to arbitrate such dispute via the American Arbitration Association.

(d) The Parties agree that to the extent permitted by the contract documents, all third parties necessary to resolve a claim, dispute or controversy shall be parties to the same dispute resolution proceeding. To the extent disputes between Owner and Consultant involve, in whole or in part, disputes between Owner and any design professional or contractor or construction manager, Owner shall be entitled either to join

Consultant in the proceeding commenced by or against the design professional or contractor or construction manager or to a stay of any dispute resolution proceeding commenced by Consultant pending resolution of the claim with the design professional or contractor. Consultant shall specifically bind the Subconsultants to the terms of these dispute resolution provisions.

10. Default. If Consultant at any time refuses or fails to perform the Services in a proper or timely fashion, or a petition is filed by or against Consultant under Chapter 7 or Chapter 11 of the United States Bankruptcy Code, or makes an assignment for the benefit of creditors without Owner's written consent, or fails to make prompt payment to persons furnishing labor, equipment or materials, or becomes delinquent with respect to contributions or payments required to be made to any employee benefit program or trust, or otherwise fails to perform fully any and all of the agreements herein contained, Consultant shall be in default. If Consultant fails to cure the default within five (5) calendar days after written notice thereof, Owner may, at its sole option, (a) provide any such labor, equipment and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (b) terminate Consultant's right to proceed with the Services. If Owner elects to terminate, Consultant will deliver to Owner a complete set of the data, documents and materials previously prepared by Consultant reflecting the current state of preparation, together (if applicable) with an electronic copy containing the same and will use good faith efforts to cause an orderly transition to, and will cooperate with on a transitional basis, Owner's new consulting firm (if any) for the Project engaged to provide similar services. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Services are completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Owner in finishing the Services, such excess shall be paid by Owner to Consultant; but, if such expense shall exceed such unpaid balance, then Consultant shall promptly pay to Owner the difference. The expense referred to in the last sentence shall include expenses incurred by Owner for furnishing materials, for finishing the Services, for reasonable attorneys' fees, for additional program management or project management expense, and for any damages sustained by Owner by reason of Consultant's default. If it is determined by litigation, arbitration or otherwise that a termination by Owner for default was unjustified hereunder, the termination shall be deemed a termination for convenience under Section 11 below and Consultant shall be limited to the remedies in Section 11.

11. Termination for Convenience. Owner shall have the right to terminate this Agreement at any time in its sole discretion and with or without cause, by written notice to Consultant. Consultant shall stop work immediately upon receipt of a notice of termination and promptly deliver to Owner the results of the Services to the date of termination. Owner will compensate Consultant for Services performed prior to termination. Consultant shall not be entitled to any payment for so-called "lost profit" or any other type of consequential damage. This right to terminate shall be in addition to, and not in lieu of, any other rights and remedies Owner may have at law or in equity.

12. Intellectual Property. To the extent Consultant is preparing data,

documents or materials which may be subject to copyright or other intellectual property rights, Owner shall own such data, documents and materials and is granted those rights whether the Project is completed or not, and all work product shall be delivered to Owner on the earlier of (i) the substantial completion of the Services in a work authorization, or (ii) the date of termination of this Agreement. Consultant shall be deemed to have assigned any intellectual property rights (including copyrights) in such data, documents and materials to Owner. However, Consultant may retain a copy of its work product for its files and may revise portions thereof for other projects, provided that it not disclose any confidential information.

13. **Notices.** All notices required or permitted by this Agreement shall be in writing and may be accomplished either by personal delivery, first-class regular mail of the United States Post Office, express delivery by a reputable national carrier sent to the party at the address noted below. In addition, Consultant shall send any notices directed to the Owner to the Owner's Legal Firm. The written notice shall be effective on the date of receipt.

Owner's Legal Firm: Attn. Arnold K. Shimelman
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT. 06103-1919

The Owner: Attn. Timothy Gunn, ACES Director of Facilities at the address identified above as the Owner.

14. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Connecticut.

15. **No Third Party Obligations.** Nothing contained in the Agreement shall be deemed to create a contractual relationship with, or create a cause of action in favor of, any third party against Consultant or Owner.

16. **Entire Agreement; Modification; Waiver.** The exhibits attached to this Agreement are incorporated herein. This Agreement, including its exhibits, constitutes the entire agreement of the Parties and supersedes any and all prior or contemporaneous written or oral negotiations, correspondence, understandings and agreements between the Parties respecting the subject matter hereof. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by both Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

17. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns. Consultant shall not be entitled to assign or delegate any of its rights or obligations hereunder without the prior written consent of Owner.

18. **Savings Clause.** If any provision of this Agreement, or any part thereof,

shall be held to be invalid under any applicable federal, state, municipal or other law, ruling or regulation, then such provision shall remain in effect to the extent permitted, and the remaining provisions of this Agreement shall remain in full force and effect.

19. **Execution.** By their signature below, each of the following represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made. This Agreement may be signed in counterparts, each complete set of which shall constitute an original.

20. **Non-Discrimination.** The Consultant agrees to comply with the following provisions:

For the purposes of the following provisions “contractor” shall mean the Consultant.

(A) Compliance with Nondiscrimination and Affirmative Action in accordance with Connecticut General Statutes Section 4a-60.

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

(B) Further agreements re compliance with Nondiscrimination, in accordance with Connecticut General Statutes Section 4a-60a.

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

ACES

Consultant

By: _____
(Signature)

By: _____
(Signature)

Print Name _____

Print Name _____

Title: _____

Title: _____

Date: _____

Date: _____

Witness: _____

Witness: _____

Date: _____

Date: _____