

OWNER'S REPRESENTATIVE AGREEMENT

THIS OWNER'S REPRESENTATIVE AGREEMENT ("Agreement") is entered into on , 2018 (the "Effective Date") by and between Town of Windham ("Owner"), a Connecticut municipal corporation with an address of 979 Main Street, Willimantic, CT 06226, and , a ("Owner's Representative").

BACKGROUND

- A. The Owner intends to develop the project described in **Exhibit A** (the "Project").
- B. The Owner desires the services of the Owner's Representative, which has special expertise and experience in development involving areas relevant to the Project.
- C. The Owner desires to retain the Owner's Representative to provide comprehensive services in the organization, coordination, management and administration required for all aspects of the development of the Project, including, without limitation, planning, programming, site investigation, design, construction administration, Project closeout, warranty period and State of Connecticut audit compliance closeout.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Owner and the Owner's Representative agree as follows:

AGREEMENT

1. Term of Agreement. This Agreement is effective on the Effective Date and shall remain in effect until all obligations set forth in this Agreement have been satisfactorily fulfilled (the "Term"). Owner's Representative shall have a continuing obligation, after the Term, to comply with any provision of this Agreement intended for Owner's protection or benefit, or that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement and/or the Project, including but not limited to turnover, closeout, commissioning and State audit compliance. OWNER'S REPRESENTATIVE UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS AGREEMENT UNTIL ALL REQUIRED SIGNATURES ON THIS AGREEMENT HAVE BEEN OBTAINED. ANY WORK PERFORMED BY OWNER'S REPRESENTATIVE PRIOR TO SUCH TIME SHALL BE CONSIDERED AS HAVING BEEN PERFORMED AT OWNER'S REPRESENTATIVE'S OWN RISK AND AS A VOLUNTEER.

2. Scope of Services.

2.1. Pursuant to the terms and conditions of this Agreement, Owner hereby retains Owner's Representative to perform, and Owner's Representative shall perform and provide sufficient organization, personnel and management to perform, the services specified in this Agreement (the "Work") in a good and workmanlike manner, consistent with: (i) this Agreement; (ii) the instructions, guidance and

directions provided by the Owner to Owner's Representative; (iii) the highest prevailing applicable professional and industry standards; (iv) sound owner's representative practices; and (v) any applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction over the Project, and as expeditiously and economical as is consistent with said standard of professional skill and care and the orderly progress of the Project. The Owner's Representative shall furnish all labor, services, supplies, materials and equipment required to complete the Work using Owner's Representative's best efforts, skill, judgment, and abilities in accordance with this Agreement. The Owner's Representative accepts the fiduciary relationship of trust and confidence established between it and the Owner by this Agreement. The Owner's Representative shall at all times advance the orderly progress of the Project and cooperate with the Project Team (as defined in section 2.4 hereof) in furthering the best interests of the Owner. Owner's requirements as set forth in its request for qualifications and request for proposals shall be deemed incorporated herein by reference, provided, in the event of a conflict between this Agreement, the request for proposals and/or the request for qualifications, this Agreement shall control to the extent of such conflict.

All references in this Agreement to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Owner's Representative or referenced to any similar term shall include the constructive knowledge, inference, reliance, awareness, determination, belief, observation and/or recognition attributed to Owner's Representative, and such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and/or recognition that Owner's Representative would have obtained upon the exercise of Owner's Representative 's aforementioned standard of care as set forth in this section 2.1. The Owner's Representative shall exercise the aforementioned standard of care set forth in this Section 1 without conflict of interest, and in furthering the best interests of Owner and in performing all aspects of its Services hereunder.

2.2. Owner's Representative shall provide a project team at all times that shall have sufficient capacity, qualifications, skill and experience necessary to perform the Work ("Owner's Representative's Team"). Owner shall have the right to approve and reject all personnel on the Owner's Representative's Team, and have any such personnel removed from the Project that Owner reasonably considers unsatisfactory, regardless of whether such personnel has already commenced performing services on the Project. Owner's Representative may not, without the written consent of Owner, reassign or replace any member of the Owner's Representative Team. If a member of Owner's Representative's Team resigns, any replacement shall be subject to Owner's approval. The initial Owner's Representative Team identified in **Exhibit 2.2** is approved by Owner, subject to the terms of this Agreement.

2.3. Owner's Representative shall perform the Work in compliance with all applicable federal, state and local laws, regulations, and codes, and Owner's other applicable standards as provided by Owner, including, at a minimum compliance in all material respects with the State of Connecticut Department of Administrative Services,

Office of School Construction Grants requirements and guidelines (“Laws”). Owner’s Representative hereby acknowledges and agrees that a significant goal of Owner is to meet said requirements and guidelines so as to maximize the eligible cost reimbursement from the State of Connecticut. Owner’s Representative shall maintain and shall require that its subcontractors, if any, maintain any and all required governmental licenses, certificates, approvals, and permits in good standing at all times during the term hereof that are required of the Owner’s Representative for the performance of the Work. The Owner’s Representative agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the Term. Owner’s Representative shall notify the Owner promptly following the occurrence of any event impacting the good standing status of, and/or the revocation, impairment, suspension, rescission of, any such permit, license, certificate and/or approval.

2.4. Owner’s Representative has or will perform the Work set forth in Exhibit 2.4 in cooperation with the Owner and the “Project Team”. The Project Team includes the “Architect” and its consultants and/or subcontractors as may be appropriate, if any, who will perform those design and all other architectural services generally required of an Architect within AIA Document B101-2007, Standard Form of Agreement between Owner and Architect, as amended, including Architect’s administration of the contract between Owner and its construction manager pursuant to AIA Document A201-2007, General Conditions of the Contract for Construction, as amended; the “Construction Manager”, which means the construction manager to construct the Project and the construction manager’s trade contractors, subcontractors, suppliers, and materialmen pursuant to AIA Document A-133-2009, Standard Form of Agreement between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended; and “Consultants”, which means such other consultants and professionals that perform consulting services for the Project, including without limitation, testing laboratories and surveyors. Nothing contained in this Agreement shall create any obligation or contractual relationship between the Owner’s Representative and any third party, including without limitation any other member of the Project Team. Owner reserves the right, at any time, to amend the aforementioned AIA agreements with Architect and Construction Manager, respectively, without the requirement of Owner’s Representative’s consent or approval.

2.5. Owner may modify the Work without invalidating this Agreement. If the Owner’s Representative believes it is entitled to a change in its schedule or compensation for the change in Work, the Owner’s Representative shall promptly notify the Owner in writing, along with supporting calculations and pricing. Pricing shall be in accordance with the pricing structure set forth in this Agreement. Any change in Owner’s Representative’s schedule or compensation, if any, shall be made by a written agreement signed by both parties prior to such change being performed.

Notwithstanding the above, Owner may direct Owner’s Representative in writing to perform the change prior to reaching an agreement between Owner and Owner’s Representative on any price and schedule adjustments. If so directed, Owner’s

Representative shall not suspend performance of the Agreement during the review and negotiation of such change as long as the change is reasonably foreseeable alteration of the services originally contemplated herein. In the event Owner and Owner's Representative are unable to reach agreement regarding changes in price and/or schedule associated with a change order, the matter shall be submitted to the dispute resolution process provided in section 5.2 hereof.

[Articles 3 and 4 are for discussion purposes]

3. Owner's Responsibilities.

3.1. The Owner shall provide information regarding its design and construction requirements for the Project to the Owner's Representative, in a timely fashion.

3.2. The Owner shall designate an individual who shall have the authority to render decisions on Owner's behalf ("Owner's Contact"). The Owner may change Owner's Contact from time to time by written notice to the Owner's Representative. The initial Owner's Contact shall be _____.

4. Compensation and Terms of Payment.

4.1. The consideration for all Work performed or supplied by Owner's Representative under this Agreement shall be paid by Owner as set forth in **Exhibit 4.1**.

4.2. Subcontractor's Payment. If Owner's Representative engages any subcontractors to perform any of the Work, Owner's Representative shall not markup work performed by its subcontractors. Owner's Representative shall pay any such subcontractor within ten (10) days (or such shorter period as required by applicable law) of the Owner's Representative's receipt of payment from the Owner for undisputed services provided by the subcontractor.

4.3. Reimbursable Expenses.

4.3.1 Reimbursable expenses include the following ordinary, necessary, and reasonable expenses incurred by the Owner's Representative and its subcontractors related to the Work: **[specify, if any]**

4.3.2. All reimbursement expenses shall be at the actual expense incurred by the Owner's Representative and its subcontractors without markup.

4.3.3. If expenses are reimbursable, each request for reimbursement must be itemized and accompanied by receipts.

4.3.4. Reimbursable expenses shall not without Owner's prior written consent exceed _____ and /100 Dollars (\$) during the Term.

4.4. Frequency of Invoicing and Terms of Payment. Owner's Representative shall

submit invoices monthly, describing in reasonable detail the services (and goods, if any) provided in the preceding month. Along with each invoice, Owner's Representative shall also include: (a) a statement identifying all subcontractors who have performed all or a portion of the Work in connection with the invoice then submitted, and a certification that all subcontractors identified as having provided work or materials within all prior invoices have been paid by Owner's Representative; and (b) data, assurances or other documentation as may be reasonably required by Owner establishing performance, payment or satisfaction of Owner's Representative's obligations arising out of this Agreement due as of the then applicable invoice, such as receipts or releases and waivers of liens and/or claims, if any. Payment shall be made by Owner within forty-five (45) days after Owner's receipt of an invoice and acceptance of services rendered under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Owner may withhold payment to the Owner's Representative hereunder if and for so long as the Owner finds any of the Owner's Representative's services to be defective, untimely, unsatisfactory, incomplete or Owner's Representative otherwise fails to perform any of its obligations or is in default; provided, however, that any such holdback shall be limited to an amount sufficient in Owner's reasonable opinion to cure any such default or failure of performance by Owner's Representative or to otherwise protect Owner's interests. Owner shall notify Owner's Representative of any such holdback and the reasons therefore within forty five (45) days of its receipt of the subject invoice, and the parties shall make every effort to resolve the disputed portion of the invoice. No interest shall accrue on disputed invoices.

4.5. Final Payment. Final payment shall not be due to Owner's Representative until Owner's Representative submits to Owner the following in such form as may be required by Owner: (a) a statement identifying all subcontractors who have performed all or a portion of the Work certifying the subcontractors have been paid for their services or materials, as applicable; and (b) data, assurances or other documentation as shall be reasonably required by Owner establishing performance, payment or satisfaction of Owner's Representative's obligations arising out of this Agreement, such as receipts or releases and waivers of liens, claims, security interests or encumbrances. Owner's Representative warrants that upon submittal of an invoice, to the best of Owner's Representative's knowledge, information and belief, all work included in the Work shall be free and clear of liens, claims, security interests or encumbrances in favor of the Owner's Representative, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Owner's Representative's acceptance of such final payment shall constitute a full release of any and all Claims Owner's Representative has against Owner, if any, accruing prior to such payment.

5. General Terms and Conditions.

5.1. Termination, Suspension.

5.1.1. Termination for Convenience by Owner. Owner may terminate this Agreement in whole or in part at any time upon written notice to Owner's

Representative for Owner's convenience. In the event of a termination for Owner's convenience, Owner's Representative shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by Owner in its sole discretion, for services satisfactorily performed prior to termination, together with reimbursable expenses then due. Such payment shall be the total extent of Owner's liability. In no event shall Owner's Representative be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which could have been avoided. Owner will not pay the Owner's Representative for loss of anticipated profits or overhead on Work not performed or revenue or other economic loss arising out of or resulting from such termination. Upon receipt of notice of termination, unless the notice directs otherwise, the Owner's Representative shall do the following: discontinue all Work, placing orders, or entering into contracts for supplies, assistance, facilities, and materials, cause its suppliers and/or subcontractors to cease their work for this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the Owner with copies of all Project materials within seven (7) days of receipt of notice of termination.

5.1.2. Termination for Cause. Owner's Representative may terminate this Agreement upon not less than ninety (90) days' written notice to the Owner should the Owner fail substantially to perform in accordance with the terms of this Agreement through no fault of Owner's Representative; provided, however, if the event(s) giving rise to the termination is/are reasonably susceptible to cure, the termination shall not be effective if Owner cures the basis of the termination within the ninety (90) day period to Owner's Representative's reasonable satisfaction. Owner may terminate this Agreement upon not less than thirty (30) days' written notice to the Owner's Representative should the Owner's Representative fail substantially to perform in accordance with the terms of this Agreement through no fault of the Owner; provided, however, if in the reasonable determination of the Owner the event(s) giving rise to the termination is/are reasonably susceptible to cure, the termination shall not be effective if the Owner's Representative cures the basis of the termination within the 30 day period to the Owner's reasonable satisfaction.

When the Owner terminates this Agreement for cause, Owner's Representative shall not be entitled to receive further payment until the Work is finished, and the Owner's Representative shall be responsible for all costs, expenses and fees (including attorneys' fees) incurred by Owner's Representative by virtue of said termination, including but not limited to all reasonable out of pocket additional costs incurred by the Owner as a result of Owner hiring another owner's representative to take over the Work and prosecute same to completion by contract or otherwise. Owner's Representative shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by Owner in its sole discretion, for work or services satisfactorily performed minus all damages incurred by Owner connected with Owner's Representative's failure to perform. In no event shall Owner's Representative be paid for Work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which could have been avoided. Owner will not pay the Owner's Representative for loss of anticipated profits or overhead on unperformed Work or revenue or other economic loss

arising out of or resulting from such termination. Upon receipt of notice of termination, unless the notice directs otherwise, the Owner's Representative shall do the following: discontinue all Work, placing orders, or entering into contracts for supplies, assistance, facilities, and materials, cause its suppliers and/or subcontractors to cease their work for this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the Owner with copies of all Project materials within seven (7) days of receipt of notice of termination. Such payment for that portion of Services satisfactorily performed minus all damages shall be the total extent of the Owner's liability.

5.1.3. Suspension by Owner. Owner may, without cause, order the Owner's Representative in writing to suspend its services in whole or in part for such period of time as the Owner may determine. If the Owner suspends the Project, without cause, for more than 30 consecutive days, the Owner's Representative shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Owner's Representative shall be compensated for reasonable expenses incurred as a direct result of the interruption and resumption of the Owner's Representative's services. If appropriate, the Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted. If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Owner's Representative, the Owner's Representative may terminate this Agreement by giving not less than 30 days' written notice, which termination shall be deemed a termination for convenience pursuant to section 5.1.1.

5.1.4. Owner's Termination Rights. If at any time all or any portion of Owner's Representative's responsibilities hereunder are to be terminated or Owner's Representative otherwise is not to continue to fulfill the role of the Owner's owner's representative with respect to the Project, then Owner's Representative agrees that it will fully cooperate with Owner to ensure a smooth transition of such responsibilities to Owner or any person(s) or entity (ies) chosen by Owner to assume those responsibilities. In this regard, and without limiting the generality of the foregoing, Owner's Representatives hereby agrees that:

(a) Owner's Representatives will promptly supply Owner with copies of all purchase orders and other contracts and agreements of any kind to which Owner's Representatives or any of its contractors is a party or by which any of such entities is bound;

(b) To the extent requested by Owner, up to the applicable termination date, Owner's Representatives shall continue to fulfill all of its project management functions hereunder as if this Agreement were not about to be terminated, and, in this regard, shall continue to purchase those goods and services, and perform such other work as Owner's Representatives otherwise has, and has been required to do, during the Term hereof, and

(c) Owner's Representatives shall make copies of, and otherwise make available to Owner, any and all financial records and other documents requested by

Owner related to the Project (whether held by Owner's Representatives or its contractors), including but not limited to all finished and unfinished documents, estimates and schedules prepared by Owner's Representatives pursuant to this Agreement, and shall assist Owner in making a complete inventory of all material, equipment, personal property, fixtures and other goods, accounting for all moneys spent by Owner's Representatives and Owner to date, and identifying all accounts receivable and payable at that time.

5.2. Disputes.

5.2.1. Owner and Owner's Representative shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the time period specified by applicable law.

5.2.2. Owner and Owner's Representative shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith.

5.2.3. If negotiation fails to resolve a Dispute within 30 days after receipt of notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation (or arbitration if arbitration is elected by Owner pursuant to section 5.2.6 hereof).

5.2.4. Owner and Owner's Representative shall endeavor to resolve Disputes between them by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the American Arbitration Association Construction Industry Mediation Procedures in effect on the Effective Date. 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 a complaint but, in such event, mediation shall proceed in advance of litigation 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.

5.2.5. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Windham County, Connecticut. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5.2.6. If the parties do not resolve a Dispute through mediation pursuant to this Section, the method of binding dispute resolution shall be litigation; provided, however, if a dispute arises between Owner and any other party(ies) on its Project Team requiring arbitration, and the dispute involves common questions of law or fact involving the Project and/or allegedly relates to, arises out of or has any connection to Owner's Representative's services under this Agreement or the breach thereof, and Owner and such other party(ies) have elected to arbitrate such dispute in lieu of litigation, Owner's

Representative agrees that Owner, at its election, may join and/or cite Owner's Representative into such arbitration as a necessary or interested party and/or otherwise consolidate the respective disputes into one case so that the disputes may be simultaneously addressed in one forum and proceeding. Any such arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on Effective Date. In the event a Dispute is arbitrated hereunder, the award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event a Dispute arises out of or relates to this Agreement, the enforcement and/or breach thereof, the prevailing party shall be entitled to reimbursement of attorney's fees and costs from the non-prevailing party.

5.2.7. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Owner's Representative, in whole or in part.

5.3. Choice of Law, Forum Selection, Entire Agreement, and Amendment. This Agreement shall be construed under Connecticut law (without regard for choice of law considerations). Unless arbitration is elected by Owner pursuant to section 5.2.6 hereof, any action arising out of this Agreement shall be heard by a state court in Connecticut. For this purpose, Owner's Representative specifically consents to jurisdiction in the State Courts located within the State of Connecticut. This Agreement constitutes the entire agreement and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Owner shall not be bound by any amendment to this Agreement unless such amendment has been signed by Owner.

5.4. Insurance.

5.4.1. Owner shall maintain insurance required of it in the AIA A201-2007, as modified by Owner. Owner's Representative shall be named as an additional insured on Owner's liability insurance policy maintained with respect to the Project. Each policy shall be endorsed to provide Owner's Representative with at least 30 days advance written notice of non-renewal, reduction in coverage or cancellation. Upon request, Owner shall provide Owner's Representative certificates of insurance outlining evidence of Owner's insurance and the terms thereof.

5.4.2. Owner's Representative shall, at its sole cost and expense, procure and maintain in force at all times during the Term the following minimum coverages and limits placed with company(ies) licensed by the State of Connecticut that have at least an "A-" VIII policyholders rating according to Best Publication's latest edition Key Rating Guide.

		(Minimum Limits)
General Liability*	Each Occurrence	\$2,000,000
	General Aggregate	\$5,000,000
	Products/Completed Operations Aggregate	\$2,000,000

Auto Liability*	Combined Single Limit Each Accident	\$2,000,000
Professional Liability	Each Claim or Each Occurrence Aggregate	\$1,000,000 \$1,000,000
Umbrella* (Excess Liability)	Each Occurrence Aggregate	\$9,000,000 \$9,000,000

* “The Town of Windham” shall be named as “Additional Insured”. Coverage is to be provided on a primary, noncontributory basis.

If any policy is written on a “Claims Made” basis, the policy must be continually renewed for a minimum of two (2) years from the completion date of the contract. If the policy is replaced and/or the retroactive date is changed, then the expiring policy must be endorsed to extend the reporting period for claims for the policy in effect during the contract for two (2) years from the completion date.

Workers’ Compensation and WC Statutory Limits

Employers’ Liability	EL Each Accident	\$1,000,000
	EL Disease Each Employee	\$1,000,000
	EL Disease Policy Limit	\$1,000,000

Original, completed Certificates of Insurance must be presented to the Town prior to execution of this Agreement. Owner’s Representative agrees to provide replacement/renewal certificates at least sixty (60) days prior to the expiration of any policy. Should any of the above described policies be cancelled before the expiration date, written notice must be given to the Town thirty (30) days prior to cancellation. Owner’s Representative’s policy required herein shall waive all rights of subrogation against Owner. No provision of this paragraph shall be construed or deemed to limit respondent's obligations under this Agreement to pay damages or other costs or expenses. All of the insurance requirements set forth in this paragraph shall apply to any subcontractors hired by respondent to perform any of its obligations hereunder unless specifically requested by the respondent and approved by the Owner in a lesser amount. Owner reserves the right to require any additional insurance coverage for any specific work to be performed by any of respondent's subcontractors.

5.4.3. Owner shall cause the Construction Manager to maintain insurance as required in the AIA A201-2007 as modified by Owner. To the extent feasible, if Owner is named as an insured on any such party’s liability insurance policy, Owner’s Representative shall also be named as an additional insured.

5.5. Indemnification.

5.5.1. To the fullest extent permitted by applicable law, the Owner's Representative shall defend, indemnify and save harmless the Town and its agents, employees, boards, commissions, departments, councils, officers, officials, volunteers, independent contractors, successors and assigns, including but not limited to any of the foregoing sued in their official or personal capacities ("Owner Indemnified Parties"), from and against all proceedings, suits, actions, causes of action, claims, damages, injuries to persons (including death) and to property, awards, judgments, losses, expenses (including reasonable expert and attorney's fees and costs), claims or liabilities of any kind and nature whatsoever (collectively "Claims"), whether arising in contract, tort or otherwise, directly or indirectly arising out of or related to the malfeasance, misconduct, negligent or willful misconduct, act or omission and/or violation of Federal, State and/or local law (including but not limited to violations of Immigration Reform and Control Act) by the Owner's Representative or any of its shareholders, directors, officers, members, managers, partners, employees, volunteers, contractors, subcontractors, consultants, successors or assigns and/or anyone else for which it is responsible and/or such Owner's Representative's failure to meet its obligations under this Agreement. Owner's Representative's obligations hereunder shall not be limited by applicable insurance. The Owner's Representative shall also be required to pay any and all attorney's fees, expert fees and costs incurred by the Town Indemnified Parties in enforcing any of the Owner's Representative's obligations under this provision, whether or not a lawsuit, arbitration or other proceeding is commenced. Owner's Representative's obligations hereunder shall survive termination and/or expiration of this Agreement and/or completion of the Project.

5.5.2. Each agreement between Owner's Representative and its subcontractors shall include provisions requiring Owner's Representative's subcontractors, to the fullest extent allowed by applicable law, to indemnify, defend (with counsel reasonably acceptable to Owner), and hold harmless Owner and the Owner's Indemnified Parties from and against all Claims as defined in section 5.5.1, including costs, expenses, and attorneys' fees, whether arising in contract, tort or otherwise, directly or indirectly arising out of or related to the malfeasance, misconduct, negligent or willful misconduct, act or omission and/or violation of Federal, State and/or local law (including but not limited to violations of Immigration Reform and Control Act) by such subcontractor or any of its shareholders, directors, officers, members, managers, partners, employees, volunteers, contractors, subcontractors, consultants, successors or assigns and/or anyone else for which it is responsible in connection with the Project.

5.5.3. Prior to entering into any subcontract agreement(s) for the Work, in whole or in part, described in this Agreement, the Owner's Representative shall provide the Owner with written notice of the identity (full legal name, street address, mailing address (if different from street address), and telephone number) of each proposed subcontractor. The Owner shall have the right to object to any proposed subcontractor by providing the Owner's Representative with written notice thereof within seven (7) business days of receipt of all required information about the proposed subcontractor. If the Owner objects to a proposed subcontractor, the Owner's Representative shall not use that subcontractor for any portion of the work described in the contract.

All permitted subcontracting shall be subject to the same terms and conditions as are applicable to the Owner's Representative. The Owner's Representative shall remain fully and solely liable and responsible to the Owner for performance of the work described in the contract. The Owner's Representative also agrees to promptly pay each of its subcontractors within thirty (30) days of receipt of payment from the Owner or otherwise in accordance with law. The Owner's Representative shall assure compliance with all requirements of this Agreement. The Owner's Representative shall also be fully and solely responsible to the Owner for the acts and omissions of its subcontractors and of persons employed, whether directly or indirectly, by its subcontractor(s).

5.5.3. No consequential damages. In no event, whether as a result of breach of contract, tort liability (including negligence), strict liability, or otherwise, shall either party be liable to the other party under this Agreement for special, punitive, incidental, indirect, exemplary, or consequential damages of any nature whatsoever.

5.5.4. Cumulative Rights and Remedies. Either party may restrain any breach or threatened breach of any covenant, agreement, term, provision or condition herein contained, but the mention herein of any particular remedy shall not preclude the moving party from any other remedy it might have, either at law or in equity. The failure of either party to insist upon the strict performance of anyone of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any right, remedy or election herein contained or permitted by law, shall not constitute or be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy that either party may have at law, in equity or otherwise upon breach of any covenant, agreement, term, provision or condition in this Agreement contained upon the part of the defaulting party to be performed, shall be distinct, separate and cumulative and no right or remedy, whether exercised by the moving party or not, shall be deemed to be in exclusive of any other. No covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been waived by either party unless such waiver shall be in writing, signed by either party or either party's agent duly authorized in writing. Consent of either party to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve the defaulting party from the obligation wherever required under this Agreement to obtain the consent of moving party to any other act of matter. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

5.6. Audit and Retention of Books and Records.

5.6.1. Owner's Representative shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement as well as State of Connecticut grant audit compliance and, both during and after the Project in accordance with section 5.6.3, provide information or documentation pertaining to same to Owner at no cost and expense to Owner upon Owner's request; the accounting and control systems shall be satisfactory to the Owner.

5.6.2. Owner and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Owner's Representative's information, materials, records or data relating to this Project, including but not limited to, accounting records, written policies and procedures, subcontract files (including subcontracts, bids of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating Work sheets, correspondence, change order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records"). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where the Owner's Representative's Records have been generated from computerized data, Owner's Representative agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats. Copies shall be provided to Owner at no cost and expense to Owner upon Owner's request.

5.6.3. Owner's Representative shall preserve the Records for a period of seven years after final payment or for such longer period as required by law, provided, however, that if a Dispute is asserted during said seven year period, the Owner's Representative shall retain all such Records until the Dispute has been resolved.

5.6.4. Owner's Representative shall require all payees and subcontractors to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the Owner's Representative and the payee and/or subcontractor.

5.6.5. If an Audit discloses overpricing or overcharges (of any nature) by the Owner's Representative to the Owner in excess of 1% of the total contract billings, in addition to repayment or credit for overcharges, the reasonable, actual cost of the Audit shall be reimbursed to the Owner by the Owner's Representative. Any adjustments and/or payments that must be made as a result of any Audit shall be made within a reasonable time not to exceed 90 days from presentation of the Owner's findings to the Owner's Representative.

5.7. Data, Information.

5.7.1. Owner's Representative acknowledges and agrees that any Confidential Information disclosed to it, its subcontractors or other representatives pursuant to this Agreement shall be used only for the purposes contemplated in this Agreement, shall be kept confidential and in conformance with all state and federal laws relating to data privacy, and shall remain the Owner's property. The term "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets gained,

obtained, derived, produced, generated or otherwise acquired by the Owner's Representative and its agents, employees, subcontractors and consultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that Owner's Representative can show (by contemporaneous written records) that Owner's Representative had it in its possession before beginning the Project and before disclosure by Owner. Owner's Representative agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section. Owner's Representative agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section. Owner's Representative and its employees, agents, contractors and consultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the Owner's prior written approval.

5.7.2. Within thirty (30) days of Owner's written request, or upon earlier request of Owner, Owner's Representative shall return all Confidential Information provided by Owner to Owner's Representative, or Owner's Representative's employees or agents in connection with this Agreement. Additionally, Owner's Representative, upon the request of Owner, shall destroy all copies of such Owner provided data, documents, or information in Owner's Representative's possession or control, and provide Owner with proof of such destruction.

5.8. Ownership of Works, Intellectual Property Rights.

5.8.1. The term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are to be prepared for Owner and delivered under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by Owner. Owner's Representative agrees that all copyrightable Works shall be considered a "work made for hire" and that Owner is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17 U.S.C., Sections 101 and 201(b), Owner's Representative shall without further compensation, unconditionally assign all rights Owner's Representative may have in the Works to Owner. Owner's Representative waives any and all statutory moral rights in the Works which Owner's Representative may have arising under 17 U.S.C. 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. Owner's Representative shall, without further compensation, disclose information to Owner and execute such documents as may be reasonably necessary to assist Owner in securing and enforcing rights in the Works and related proprietary rights.

5.8.2. Owner shall be the owner of and have all common law, statutory, and other reserved rights in all representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and

the Architect's consultants under their respective professional services agreements, including, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials (the "Instruments of Service"). Owner's Representative shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights. Owner's Representative is authorized to use and reproduce the Instruments of Service provided to it solely and exclusively for execution of the work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. Owner's Representative may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the work without the specific written consent of the Owner, which the Owner may withhold in its sole discretion.

5.8.3. Notwithstanding anything in this Agreement to the contrary, Owner's Representative shall not use, publish, distribute, sell or divulge any information obtained from Owner through this Agreement for Owner's Representative's own purpose or for the benefit of any person, firm, corporation or other entity without the prior, written consent of Owner. Any reports or other work product prepared by Owner's Representative while performing services under this Agreement shall be owned solely and exclusively by Owner and if applicable, any lender or funding source of Owner, and cannot be used by Owner's Representative for any purpose beyond the scope of this Agreement without the prior consent of Owner. Any information designated by Owner in accordance with applicable law as confidential shall not be disclosed to any third parties without the consent of Owner.

5.9. Warranty. Owner's Representative expressly represents, warrants and guarantees that (a) it (i) shall comply with all applicable Laws; and (ii) is not currently debarred or suspended by any federal agency from doing business with the federal government and/or within the State of Connecticut, and Owner's Representative shall notify Owner if it becomes debarred or suspended during the Term; and (b) all services and goods (if any) provided under this Agreement: (i) are fit for the particular needs and purposes of Owner as may be communicated to Owner's Representative; (ii) comply with the highest warranties and representations expressed by Owner's Representative orally or in any written advertisement, correspondence, or other document provided to or in the possession of Owner; (iii) comply with all applicable Laws; (iv) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Owner's Representative agrees to correct all defects and nonconformities at Owner's Representative's sole expense, to be liable for all direct damages suffered by Owner and to defend, indemnify, and hold harmless Owner and Owner's Indemnified Parties from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by Owner.

5.10. Conflict of Interest. Owner's Representative affirms that, to the best of its

knowledge, no actual or potential conflict exists between Owner's Representative's family, business or financial interests and its services under this Agreement, and that it shall raise with Owner any questions regarding possible conflict of interest that may arise. Owner's Representative further affirms that it shall not hire any officer or employee of Owner to perform any service covered by this Agreement.

5.11. Taxes.

5.11.1 Owner is exempt from paying Connecticut sales and use taxes on certain purchases as provided in the Connecticut General Statutes. Owner's Representative shall not charge Owner for such sales and use taxes.

5.11.2 Intentionally Omitted.

5.11.3 Upon execution of this Agreement, Owner's Representative will provide to Owner a signed W-9.

5.12. Use of Owner Name or Logo. Owner's Representative agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with Owner or the name of any representative of Owner in any sales promotion work or advertising, or any form of publicity, without Owner's written permission in each instance.

5.13. Independent Contractor. OWNER'S REPRESENTATIVE SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF OWNER. NEITHER OWNER'S REPRESENTATIVE NOR ANY AGENT OR EMPLOYEE OF OWNER'S REPRESENTATIVE SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF OWNER. OWNER'S REPRESENTATIVE SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS AGREEMENT. OWNER'S REPRESENTATIVE ACKNOWLEDGES THAT OWNER'S REPRESENTATIVE AND ITS EMPLOYEES ARE NOT ENTITLED TO TAX WITHHOLDING, WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS, STATUTORY OR OTHERWISE. OWNER'S REPRESENTATIVE SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND OWNER TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. OWNER'S REPRESENTATIVE SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF OWNER'S REPRESENTATIVE, ITS EMPLOYEES, AND AGENTS.

5.14. Anti-Kickback Enforcement Act of 1986. This Agreement is subject to the provision of the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). Owner's Representative certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of said Act or like and/or similar provision of the Connecticut General Statutes. Owner's Representative agrees that its participation with any employee of the Owner in acts that violate said Act or like or similar provision of the Connecticut General Statutes constitutes a material default

under this Agreement entitling the Owner to terminate for cause.

5.15. Notices. Any notice provided for in or permitted under this Agreement shall be made in writing, and may be given or served by (i) delivering the same in person or by facsimile transmission to the party to be notified, or (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, or (iii) by depositing same with a reputable overnight courier service. If notice is deposited in the United States mail pursuant to clause (ii) of this Section, it will be effective from and after the day it is received by the addressee or receipt thereof is refused by the addressee, unless such day is not a business day, and then it shall be deemed received on the next business day. For the purpose of notice, the address of the party shall be, until changed as hereinafter provided for, as follows:

If to the Owner:

Attn:
Town of Windham
979 Main Street
Willimantic, CT 06226

With a copy to:

Richard S. Cody, Esq.
Suisman Shapiro
2 Union Plaza, Suite 200, PO Box 1591
New London, CT 06320

If to the Owner's Representative:

With a copy to:

or to such other address as the Owner may specify in a written notice to the Owner's Representative or the Owner's Representative may specify in a written notice to the Owner in accordance with this Section. Each party shall have the right from time to time and at any time to change its respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party.

5.16. Non-Waiver. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

5.17. Assignment. Owner's Representative may not assign any obligations of this Agreement without the prior written consent of Owner. In the event of any assignment, Owner's Representative shall remain responsible for its performance and that of any assignee under this Agreement. This Agreement shall be binding upon Owner's Representative, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void. Notwithstanding any notice of assignment, Owner's tender of payment to Owner's Representative named herein, or to

any person reasonably believed by Owner to be entitled to payment, shall satisfy Owner's obligation to pay, and in no event shall Owner be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

5.18. Severability. If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.

5.19. Survivability. The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder, shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

5.20. Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. A facsimile signature will constitute an original and binding signature of a party.

5.21. Town Council Resolution. The limitations and requirement set forth in Windham Town Council Resolution 2730, adopted March 20, 2018, as amended June 5, 2018, shall be incorporated by reference into this Agreement as requirements, except that the Council may modify or delete the LEEDS requirement by amending the Resolution. VIOLATIONS OF SUBPARAGRAPHS (d), (g) AND (h) OF SECTION 3 OF THE SAID RESOLUTION BY OWNER'S REPRESENTATIVE OR SUBCONTRACTORS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT AND SUCH AGREEMENT SHALL BE NULL AND VOID; OWNER'S REPRESENTATIVE MUST ACKNOWLEDGE ITS RESPONSIBILITIES UNDER CONNECTICUT LAW AND SECTION 3 OF THE SAID RESOLUTION AND CERTIFY IT WILL MEET THOSE RESPONSIBILITIES AS A CONDITION TO THIS AGREEMENT. Owner's Representative shall comply with any agreements entered into by Owner in respect of union preference.

5.22. Conflicts with Project Team. Owner's Representative shall fully familiarize itself with the requirements of Owner's agreements with its Architect and Construction Manager. In the event such review reveals any conflict between, or a conflict arises during the Project relating to, the duties of Owner's Representative and Architect and/or Owner's Representative and Construction Manager, Owner's Representative shall bring such conflict to the attention of the Owner as soon as practicable after the conflict is discovered, and if Owner's school building committee determines that such conflict does in fact exist, such committee's decision to resolve such conflict shall be binding on the Project Team, without adjustment to compensation or schedule. In the event any conflict between Owner's Representative and the Project Team arises during the Project

This Agreement is entered into as of the Effective Date.

OWNER'S REPRESENTATIVE

**OWNER
TOWN OF WINDHAM**

By: _____

Its
Duly Authorized

By: _____

Its
Duly Authorized

EXHIBITA
PROJECT DESCRIPTION

EXHIBIT 2.2

OWNER'S REPRESENTATIVE'S TEAM

EXHIBIT 2.4

SCOPE OF SERVICES

The scope of work of Owner's Representative shall include, but not necessarily be limited to, the following:

1. GENERAL SERVICES

1.1. On behalf of Owner, Owner's Representative will undertake the management of, and will serve as the Owner's representative for, the Project throughout each phase thereof. The Owner's Representative shall be prohibited from working on the project in additional capacities (e.g., as architect, construction manager, engineer or in the trade packages). Owner's Representative shall confirm all stakeholder's roles and responsibilities with the Owner.

1.2. Owner's Representative shall review and evaluate the overall objectives of the Program and its Project and advise as to potential engineering and construction impediments to achieving these objectives; assist in the development of Program policies with respect to bonding, insurance, dispute avoidance and resolution and other Program issues; and advise on schedules, design concepts and quality. Owner's Representative shall establish plans, policies, and procedures to enhance collaborating and overall cooperation between all members of the Project team.

1.3. Owner's Representative shall work closely and cooperatively with the Town and its School Building Committee, Board of Education, Architect, Construction Manager, Connecticut State Department of Education, Office of School Construction Grants, the Connecticut State Department of Administrative Services, Division of Construction Services Office of School Facilities and any other State Offices relevant to the project and all of their respective consultants, relevant staff and representatives, with respect to the project, to facilitate and carry out Owner's objectives for and to provide advice and project management oversight to and consultation with Owner with respect to each phase of the project, including but not limited to the grant and reimbursement application and management process, development, planning, design, construction administration, closeout and warranty period, commissioning, move management and post occupancy commissioning and State audit compliance aspects of the project. Owner reserves the right to reduce the Owner's Representative's scope of work.

1.4. Owner's Representative shall assist with the completion of, review and provide input on developing and submitting required local and State filings (with associated back up), including funding authorization requests and reimbursement requests to the State of Connecticut.

1.5. Owner's Representative shall confirm State of Connecticut grant funding requirements and procedures; develop and implement policies and procedures to maximize project reimbursement from the State of Connecticut throughout the project; track the grant approval and reimbursement process and all correspondence related to

same; review and assist with preparation of documents being submitted to the State of Connecticut to verify necessary grant requirements are being met.

1.6. Using a records keeping system pre-approved by Owner, Owner's Representative shall maintain an organized filing system for all Project documents and records. At Project completion, Owner's Representative shall certify that all Project documents and records are uploaded into the Owner's project management information system. If it is technically not possible to upload a Project document or record into the Owner's project management information system, the Owner's Representative will deliver the document(s) and record(s) to the Owner at the end of the Term or at any time during the Term at the Owner's request.

1.7. Unless otherwise requested by Owner, Owner's Representative shall schedule, attend, conduct, record, and assist and represent the Owner at all Project meetings (including without limitation meetings with the Architect, Construction Manager, Consultants, Owner's School Building Committee, Board of Education and the State of Connecticut). Owner's Representative shall direct the Architect or Construction Manager to prepare meeting minutes if the Architect or Construction Manager is contractually required to do so. In the absence of meeting minutes prepared by others, Owner's Representative will provide Owner with minutes from such meetings prepared by Owner's Representative. Owner's Representative shall review for accuracy the minutes of such meetings prepared by either the Architect, Construction Manager, or others. Owner's Representative shall clarify, amend and report any discrepancies affecting the Project. In the event minutes are to be posted by the Town Clerk, Owner's Representative shall ensure that such minutes are submitted to the Town Clerk in a timely manner for purposes of same.

1.8. Owner's Representative shall furnish to the Owner's School Building Committee reports on at least a monthly basis (or, more frequently as directed in accordance with any future instructions of the Owner's School Building Committee), which reports shall include, without limitation: (a) the status of the Project; (b) a comparison of the Project budget to costs incurred through the date of the report; (c) a comparison of the Project schedule to the work actually completed through the date of the report; (d) any revision to the Project schedule or Project budget made during the month covered by the report; (e) a summary of change orders made during the month covered by the report; (f) a list of all pending change orders and all outstanding issues requiring action or approval by Owner; (g) the status of any governmental requirements and activities required to facilitate approval of the Project; and (h) any other reports concerning the Project as Owner may reasonably request including any other schedule, design, budget, quality control, look ahead or other updates Owner may request.

1.9. Owner's Representative shall review and monitor critical path schedules for design and construction, as well as project budgets and cash flow projections. Provide owner with cash flow projections to maintain timely funding.

1.10. Owner's Representative shall be available for questions and follow up by telephone or site meetings with Owner.

1.11. Owner's Representative shall assist Owner to resolve any questions or disputes that arise during the project, including during the project design and/or construction phases.

2. PRE-CONSTRUCTION PHASE SERVICES

2.1. Owner's Representative shall review information relevant to the Project, including any applicable predesign studies, preliminary site plans, current building program/utilization, Owner research, Owner generated project concepts, proposed building program, environmental investigation and remediation reports, building systems analysis reports, if any, as well as applicable Federal, State and/or local regulations including health code, and Americans with Disabilities Act compliance.

2.2. Owner's Representative shall become familiar with, and provide services that are consistent with all applicable laws and the requirements of easements, licenses, and other pertinent agreements to the extent the foregoing are made known to Owner's Representative.

2.3. Owner's Representative shall meet with the Owner and its risk management/insurance consultants to discuss, and make recommendations regarding, the development and implementation of an effective risk management program for the Project.

2.4. Owner's Representative shall assist Owner in the compliance with the Owner's standard contracting protocol, including any women or minority enterprise program applicable to the Project, and similar applicable State and/or Federal requirements, if any, as well as all requirements of Windham Town Council resolution no. 2730, as amended.

2.5. Upon request by Owner, Owner's Representative shall consult with and advise Owner concerning appropriate construction delivery methods for some or all components of the Project.

2.6. Owner's Representative shall assist the Owner with (subject to Owner's input and final approval) the process of identifying, soliciting proposals from, selecting, and negotiating contracts with the Project Team for the completion of the Project. Owner's Representative shall advise Owner and make recommendations concerning (a) scope of services to be provided by the Project Team; (b) fees; and (c) administration of contracts with the Project Team at Owner's direction.

2.7. Owner's Representative shall monitor the Project Team on all matters relating to the planning, design, governmental approvals, construction, and other activities necessary to complete the Project. Owner shall select, hire and pay the Project Team with the consultation and advice of the Owner's Representative.

2.8. Owner's Representative shall monitor the Project Schedule and Project Budget to manage cash flow, maximize value, keep the work progressing in a logical manner, and avoid or mitigate interruptions of design and construction.

2.9. Owner's Representative shall consult with the Owner regarding the Owner's requirements and responsibilities relating to and coordinate all predevelopment site evaluation activities, including but not limited to site identification with the Owner and other relevant government agencies; obtaining and evaluating any necessary soil reports and studies and determining the need for any site soil corrections; obtaining and evaluating a site plan(s), survey, topographical survey, schematic designs and elevations for the Project; and determining the need for any property rights or other actions related to underground utilities, access, encroachments or other development limitations disclosed in the survey. Owner's Representative shall advise and assist the Owner in all activities necessary to obtain any and all property or rights-of-way necessary for development of the Project or the provision of adequate utility services and access thereto.

2.10. Owner's Representative shall coordinate any required environmental review of the Project, and advise and assist Owner in obtaining all environmental permits or approvals required for the Project, if any.

2.11. Owner's Representative shall coordinate with Owner in identifying any governmental and quasi-governmental authorities having jurisdiction over the Project, as well as any other organizations that may have an interest in the Project; assist the Architect in obtaining permits for the Project; coordinate with the various municipal and other governmental agencies having permit responsibilities for the Project; represent the Owner at meetings of the applicable governmental units; recommend to the Owner appropriate policies or decisions to be followed on public matters affecting the Project; direct the Architect to ascertain whether there are any significant building code or other governmental compliance issues; coordinate with the Contractor the obtaining of necessary building permits or other necessary construction approvals for the Project; and advise the Owner as to any material issues noted by the Architect.

2.12. Owner's Representative shall develop a critical meeting schedule, including those meetings required with the State of Connecticut. Owner's Representative shall schedule and attend regular meetings with all necessary parties during the development of conceptual and preliminary design. Review and evaluate site use and improvements, selection of materials, building systems and equipment. Review and evaluate construction feasibility; availability of materials and labor; time requirements for installation and construction; factors related to cost including costs of alternative designs or materials; preliminary budgets; and economic factors. Owner's Representative shall review and evaluate project design for compliance with Owner's project objectives and advise Owner with respect to any discrepancies or issues ascertained by Owner's Representative with regard to same.

2.13. Owner's Representative shall coordinate with the Construction Manager and provide recommendations to the Owner and Architect regarding construction

feasibility, value engineering (if requested by Owner), availability of materials and labor, time requirements for installation and construction, and factors relating to costs, including costs of alternative designs or materials in a manner consistent with the Project Program, Budget and Schedule, and, if requested by Owner, possible cost reductions and economies if and when necessary to reconcile the Project Budget, Program, and Schedule.

2.14. Owner's Representative shall review and comment on the drawings and specifications for the Project (the "Construction Documents"), as they are prepared by the Architect, and coordinate their review by the Construction Manager. Owner's Representative shall assist the Owner in the evaluation and recommendation of appropriate design alternatives in light of the Owner's Project Program and the Project Budget and Schedule, provided the Owner's Representative shall not assume any of the Architect's responsibilities for design or any of the Owner's Representative's responsibilities for construction means, methods or costs.

2.15. Upon approval by Owner of design development plans and specifications, Owner's Representative shall (a) lead the process on behalf of the Owner in reviewing and coordinating the preparation by the Architect and other Project consultants of the Construction Documents for the Project; and (b) make recommendations regarding alternative solutions whenever design details appear to (i) adversely affect construction feasibility, the Project Program, Budget or Schedule; or (ii) cause the Project to deviate from the approved drawings or requirements of Owner.

2.16. If requested by Owner, recommend, implement and require use of project management software program or programs to utilize by Owner, Owner's Representative, Architect, Construction Manager, and Consultant(s) during the project, which software may include, but not be limited to, the processing of plan reviews, purchase orders, change orders, invoices, payment applications, requests for information, and document management related to the Project. If the Owner chooses to utilize its project management software for the Project, the Owner will provide and manage a login license for Owner's Representative without charge. Owner will provide initial software training to Owner's Representative without charge. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of the project management software by the Owner's Representative.

2.17. Owner's Representative shall (i) review and advise Owner with respect to cost estimates prepared for the estimated Project costs to be incurred by Owner in designing and constructing the Project. In addition, Owner's Representative shall: assist Owner in setting a final Project Budget, based on the approved design and the Project Schedule, the Project Program, the Project Costs Estimate and financial constraints identified by Owner.

2.18. Owner's Representative shall act as Owner's representative in coordinating and assisting the Architect in the preparation of bid documents, which shall consist of, among other things, the working drawings, proposed form of construction contracts and

invitation and instructions to bidders or requests for proposals. Owner's Representative shall use Owner's standard procurement forms and manage the award of contracts in accordance with Owner's requirements.

2.19. Owner's Representative shall organize, on behalf of Owner, the division of the Project construction work into major trades for the bidding of the work. If any portions of the work are to be separated into separate bid sections, Owner's Representative shall review the working drawings and make recommendations to the Architect to (i) coordinate the work of the separate bid portions, (ii) allocate the work to the separate bid portions, (iii) attempt to minimize jurisdictional disputes, (iv) provide the proper coordination for phased construction, and (v) advise Owner with respect to whether major portions of the work should be bid as separate prime contracts.

2.20. If requested by Owner, Owner's Representative shall make recommendations for prequalification criteria for the Construction Manager.

2.21. If requested by Owner, Owner's Representative shall develop competitive bidding or proposal procedures and requirements.

2.22. Owner's Representative shall conduct prebid conferences to familiarize bidders with the bid documents and any special or unique systems, materials or methods.

2.23. Owner's Representative shall review bids, prepare analyses and make recommendations to Owner for award of a contract for the Project.

2.24. Owner's Representative shall provide recommendations regarding Construction Manager's proposed mobilization schedule, temporary Project facilities, equipment, materials and services during construction and the assignment of responsibilities relating to same.

2.25. Owner's Representative shall conduct pre-award conferences with each successful respondent for a Project construction contract, advise Owner regarding the negotiation of business terms of each Project construction contract, and advise Owner on the acceptability of Construction Manager for the Project.

2.26. Owner's Representative shall make recommendations as to the timely and economical purchases of materials and equipment; and monitor the purchase of such items.

2.27. Owner's Representative shall review and comment on all safety, health and environmental protection measures proposed by each Construction Manager, and make recommendations with respect to any changes thereto that Owner's Representative deems necessary or appropriate.

2.28. After Owner awards the Project construction management contract and

before the Construction Manager commences work on the site, Owner's Representative shall assist Owner in the preparation of all necessary site logistics plans, traffic flow diagrams and plans for the performance of the applicable work, showing the use of designated roadways or street lights, the closing of any roadways, streets and/or sidewalks, and the re-routing of any traffic; and assist in obtaining necessary government approvals required to implement such traffic plans.

2.29. Owner's Representative shall assist with the solicitation and management of Owner's consultants (special instructor, testing agency, commissioning agent, hazardous material consultant, etc).

3. CONSTRUCTION PHASE SERVICES

3.1. Owner's Representative shall be an unbiased set of eyes for the Owner in the field during construction.

3.2. Owner's Representative shall provide, on a full time basis, on-site staff to monitor construction of the project. Owner's Representative shall maintain a daily log of on-site activities. Owner's Representative will store the stamped approval documents received from the Connecticut State Department of Administrative Services, Division of Construction Services Office of School Facilities, and shall turn such documents over to the Owner for the State Audit and/or otherwise upon request by Owner.

3.3. Owner's Representative shall represent the Owner in its communications with the Architect, Construction Manager, and Consultant(s); schedule, attend, and conduct progress meetings, regular on-site meetings to review construction progress and pay requests and to provide appropriate recommendations to the Owner concerning the Owner's decisions on construction matters, including, where necessary, alternative designs or materials; and coordinate, review, advise the Owner concerning change orders, submittals, and requests for information (RFI) in consultation with the Architect.

3.4. Owner's Representative, in consultation with the Architect, shall (i) assist and review the processing of change orders (including but not limited to State Change Orders – DAS Office of School Construction Grants), (ii) advise Owner concerning the necessity for, scope of and recommended cost of change orders and maintain a detailed log of potential changes, (iii) monitor time and material issues; and (iv) negotiate, on Owner's behalf, all change orders with Construction Manager. The final Project Budget and/or Project Schedule, as applicable, will be revised to reflect approved change orders.

3.5. Owner's Representative shall implement a process with Owner, Architect and Construction Manager to develop an orderly procedure for review and payment of Project requests for payment submitted by Architect, Construction Manager and any owner consultants, and for determining and complying with the accounting, billing and reimbursement requirements established by Owner and/or the State of Connecticut relative to the project. A review of reimbursement paperwork that must be submitted to

the State of Connecticut will also be accomplished. Owner's Representative shall review, in consultation with Architect, applications for payment by the Construction Manager and consultants; review and certify certificates for payment issued by Architect; and make written recommendations to Owner concerning payment. Owner's Representative shall also review certified payrolls for reasonableness, completeness and compliance with law. Owner's Representative's certification for payment shall constitute a representation to the Owner that, to the best of the Owner's Representative's knowledge, information, and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the Contract Documents.

3.6. Owner's Representative shall direct Construction Manager (and others, where appropriate) to prepare and update a critical path schedule for completion of the applicable work. In the event of delays impacting the critical path schedule, Owner's Representative shall make recommendations to Owner for corrective action by Construction Manager.

3.7. Owner's Representative shall coordinate negotiations among the Project Team, and as applicable, the utility companies, local municipalities, and others concerning the installation of electric, sewer, water, gas, and telephone facilities required for the Project, on a schedule consistent with the Project Schedule.

3.8. Owner's Representative shall: (i) monitor and determine whether all shop drawings, site instructions, samples, product data and submittals are promptly submitted and completed by Construction Manager and approved by Architect; (ii) coordinate the Architect's review and approval of all shop drawings, site instructions, samples, product data and submittals from Construction Manager; monitor requests for information (RFI) from Construction Manager and coordinate responses for Architect.

3.9. In conjunction with the Construction Manager who has prime contractual responsibility, the Owner's Representative shall additionally review and advise the Owner concerning the adequacy of the Construction Manager's personnel and equipment, and the availability of materials and supplies to meet the Construction Manager's schedules in relation to the Project Schedule.

3.10. Owner's Representative shall develop and implement a policy and procedure to assist Owner in monitoring and reporting of Construction Manager, contractor and subcontractor compliance with local, state and federal requirements, including, CHRO and DBE requirements, equal employment opportunity, affirmative action and diversity commitments, as well as all requirements of Windham Town Council resolution no. 2730, as amended (including but not limited to the requirements that contractors give preference to local labor and material suppliers and implement apprenticeship programs through Windham Technical School or other job training and comply with any applicable project labor agreement requirements if such an agreement is entered into).

3.11. Owner's Representative shall provide oversight for efficient and comprehensive communications and tracking of critical project elements (e.g. requests for information), change orders, submittals, addendums, meeting minutes, schedules, etc. Owner's Representative shall implement a policy to require timely submission of change orders to the State of Connecticut for approval in accordance with all applicable State deadlines, procedures and requirements so as to not jeopardize Grant funding related thereto.

3.12. Owner's Representative shall review detailed project cost estimating and any required reconciliation between estimates and budgets, suggest cost control and, if requested by Owner, value management options to keep the project on budget and ensure compliance with Owner and Board of Education approvals, State reimbursement requirements and school project specifications.

3.13. Owner's Representative shall cause Construction Manager to maintain a daily log containing the number of workers, equipment, work accomplished, problems encountered and other relevant data as the Owner may require. Although Owner's Representative shall not guarantee the performance by Construction Manager, Owner's Representative shall recommend courses of action to the Owner when Owner or Owner's Representative becomes aware that requirements of any Project construction contract are not being fulfilled, or when Construction Manager falls behind in its schedule; shall communicate recommendations, as directed by the Owner, to Construction Manager on behalf of the Owner; shall monitor Construction Manager's performance of such recommendations; and shall report Construction Manager's progress to the Owner on at least a monthly basis.

3.14. Owner's Representative shall notify Owner if Owner's Representative becomes aware that the work of Construction Manager is not being performed in accordance with the requirements of the Contract Documents. As appropriate, Owner's Representative shall have authority, with written authorization from the Owner, to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is covered, installed or completed. Owner's Representative shall review any and all test reports and notify the Owner, the Architect and the Construction Manager, as appropriate, of deficiencies in the work of which Owner's Representative becomes aware and shall advise the Owner of projected consequences of such default shall make recommendations to Owner with respect thereto. With the written authorization of Owner, Owner's Representative shall reject work which does not conform to the requirements of the applicable Contract Documents.

3.15. Owner's Representative shall advise the Owner concerning the purchase of building materials by the Construction Manager.

3.16. Owner's Representative shall review and monitor the implementation of the quality assurance and quality control plan, including but not limited to review of

installation methodology and materials that are being utilized to match the specifications.

3.17. Owner's Representative shall attend on-site review of the Project to confirm substantial compliance of the construction of the Project, and notify Owner when Owner's Representative believes the work under a Project construction contract is substantially complete and that a punch list should be prepared.

3.18. Owner's Representative shall coordinate with the Architect in its review of the work to enable the Architect to determine the date of substantial completion. Upon the substantial completion by Construction Manager of the work, monitor the Architect in its inspection of the work and preparation of a detailed "punch list" specifying any items which require completion, installation, correction or repair. Owner's Representative will consult with Owner and/or Architect in connection with recommendations for the rejection and replacement of all nonconforming work, as appropriate.

3.19. Arrange for issuing substantial completion certificate.

3.20. Owner's Representative shall obtain from Construction Manager record drawings or, if required by the applicable Project construction contract, "as-built" drawings, as construction progresses.

4. CLOSEOUT PHASE

4.1. Owner's Representative will manage the closeout process on behalf of Owner.

4.2. Owner's Representative shall assist the Owner with the selection of the Commissioning agent and coordinate and administer the Project Commissioning process. Assist commissioning agent in creating a commissioning log.

4.3. Together with the Architect, Construction Manager and Owner, Owner's Representative shall monitor and observe the testing and start-up of all facilities, utilities, systems, subsystems and equipment for the Project.

4.4. Owner's Representative shall provide document management services and complete the final close-out of the Project by (i) obtaining, or causing the Construction Manager to obtain, all government approvals required for the legal use and occupancy of the Project, (ii) obtaining and review all warranties, guarantees, bonds, insurance certificates, operating maintenance manuals, installation manuals, and other items required pursuant to the Project construction contracts, (iii) obtaining and review all affidavits, waivers, and releases the Construction Manager is required to provide pursuant to the Project construction contracts to achieve final completion of the Project, (iv) analyzing all claims (including change order disputes and other claims for extra compensation) asserted by the Construction Manager and the Architect, (v) collecting

and/or otherwise resolving any and all backcharge claims that Owner may assert against any Architect or Construction Manager, including assistance with any legal proceedings instituted by Owner and/or any Architect or Construction Manager, (vi) warranty issue oversight and/or (vii) representing Owner at meetings and/or inspections scheduled by Owner and held to resolve problems relating to design, physical condition or operation of the Project to seek enforcement of warranties.

4.5. Verify that all purchase orders, contracts and subcontracts issued by Owner and/or Construction Manager have been completed and closed out.

4.6. Verify final completion and turnover to Owner of all required materials.

4.7. Conduct detailed reviews on completion of work to monitor compliance with design, performance and quality standards.

4.8. Coordinate with the Construction Manager and commissioning agent to close out all items on the punchlist and commissioning log.

4.9. Arrange for issuing final acceptance certificates and retainage releases when due.

4.10. Closeout high performance building requirements with utilities for possible incentives.

4.11. Owner's Representative shall provide Owner with a final closeout report on the Project.

4.12. Coordinate a two year follow up with commissioning agent, design team and utilities as may be required.

4.13. As applicable with regard to the facilities and/or equipment installed at the facility, coordinate training of facilities staff and video taping of such trainings for future review and use.

5. MOVE MANAGEMENT

5.1. Owner's Representative shall coordinate and manage the installation and implementation of owner-furnished-owner-installed and owner-furnished-construction manager-installed furniture, fixtures and equipment and technology (FFE).

5.2. Owner's Representative shall manage the physical move existing FFE for the school facility.

5.3. Owner's Representative shall prepare and maintain a schedule delineating move phases, new FFE receipt, coordinate and communicate with stakeholders and

manage the schedule to meet Owner's schedule and milestone requirements.

5.4. Owner's Representative shall assist Owner with preparing a request for proposals on behalf of Owner to solicit qualified movers, analyze responses and recommend the best qualified mover for execution of a contract between Owner and selected mover.

5.5. Owner's Representative shall schedule and conduct an on-site pre-bid walkthrough of the building and surrounding premises with potential movers to clarify the scope and conditions in support of mover bid proposals.

5.6. Owner's Representative shall coordinate the preparation of the mover contract with Owner. Coordinate mover comments to the contract and facilitate final execution of the contract.

5.7. Owner's Representative shall coordinate voice and data support to facilitate the respective departments including temporary space moves and final moves, as may be required.

5.8. Owner's Representative shall coordinate the relocation of existing leased FFE with the Owner to ensure vendor contracts or leases are not violated. Coordinate machine preparation for move and post move set-up with related vendors. Coordinate delivery and installation of new FFE in pre-designated and powered locations.

5.9. Owner's Representative shall coordinate the move of excess FFE to locations within the Town as identified and arranged by Owner.

5.10. Owner's Representative shall prepare packing and move instructions, review with stakeholders prior to distribution to affected parties.

5.11. Owner's Representative shall organize and facilitate move coordination meetings, including schedule, packing instructions, and coordination with the designated contact for each department prior to moving.

5.12. Owner's Representative shall coordinate move related activities with the Owner, facility stakeholders, facilities security, IT, audio/visual, design professionals, constructor(s), and FFE consultant.

5.13. Owner's Representative shall review mover's invoices and submit to Owner for approval and payment. Track payments through final close out.

5.14. Owner's Representative shall facilitate post move questions to the appropriate area for response, lost and found and resolve mover related issues with the mover.

5.15. Owner's Representative shall complete move and FFE punch list activities

within the scope of work.

5.16. Owner's Representative shall close-out budget and related move documentation

5.17. Owner's Representative shall determine disposition of surplus furniture and equipment.

5.18. Owner's Representative shall the selected mover will be responsible for protection of the premises and repairing damage caused by the mover.

5.19. Owner's Representative shall access to the buildings and the required premises will be provided during the timeframes to support the move.

6. SECURITY/SAFETY. While performing the Work, the Owner's Representative shall promptly inform the Owner if the Owner's Representative becomes aware of any security concerns and/or unsafe conditions. Owner's Representative shall conduct health and safety meetings with Construction Manager on a regular basis during construction.

7. AUDIT COMPLIANCE

If requested by Owner, Owner's Representative shall prepare for and assist in the State Department of Education project audit process.

EXHIBIT 4.1
COMPENSATION