

## OWNER'S PROJECT MANAGEMENT SERVICES AGREEMENT

**THIS OWNER'S PROJECT MANAGEMENT SERVICES AGREEMENT** ("Agreement") is made effective as of this 23 day of October, 2012 (the "Effective Date"), by and between **TOWN OF EAST HAMPTON**, having an address at 94 Main Street East Hampton, Connecticut 06424 ("Owner") and the **CAPITOL REGION EDUCATION COUNCIL**, a regional educational service center organized and existing under Sections 10-66a et seq. of the Connecticut General Statutes, having an address at 111 Charter Oak Avenue, Hartford, Connecticut 06106 ("Owner's Project Manager" or "CREC").

### W I T N E S S E T H:

**WHEREAS**, Owner and CREC have agreed to work collaboratively to oversee the design and construction of additions and renovations (collectively, the "Project") of the East Hampton High School located at 15 North Maple Street, East Hampton, Connecticut 06424 (the "School");

**WHEREAS**, Owner wishes to retain CREC to perform certain preliminary services in connection with the planning and funding of the Project and CREC is willing to perform such preliminary services; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Relationship of Parties.** Owner's Project Manager ("OPM") covenants with the Owner to furnish professional skill and judgment at all times to provide its services in furtherance of the Owner's overall Project goals, including facilitating goals for program, design, budget, time and quality. The OPM shall perform its services expeditiously in accordance with the expertise, skill and care exercised by professionals serving in a similar capacity that have successfully completed projects of comparable size and complexity and shall at all times advance the orderly progress of the Project and cooperate with the Project's designers, construction manager and others in furthering the interests of the Owner.
2. **Independent Contractor.** This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the OPM will be an independent contractor and not the Owner's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum age and overtime requirements, Federal Insurance Contribution Act, and the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Revenue and Taxation Law, State Workers Compensation Law, and State Unemployment Insurance Law. This Agreement shall not be construed as creating any joint employment relationship between the OPM and Owner, and Owner will not be liable for any obligation incurred by the OPM, including but not limited to unpaid minimum wage and/or overtime premiums, and insurance.
3. **Services.** CREC shall provide Owner with the services ("Services") set forth in Exhibit A (the "Proposal") attached hereto. Exhibit A is attached for purposes of articulating the scope and compensation only. To the extent of any perceived conflicts or inconsistencies between this Agreement and Exhibit A, the terms of the Agreement shall control and take precedence. In the performance of OPM's Services, the OPM shall serve as Owner's authorized representative on the Project, shall be fully acquainted with the Project, and manage specific aspects of the Project from its conception through the completion of the Pre-Referendum Phase

within the time frame and budget limitations established by the Owner. If the Owner retains CREC for services beyond the referendum, it will do so through an Amendment to this Agreement or through a new Agreement with substantially similar terms and conditions, with an updated scope.

4. Owner's Responsibility – Preliminary Phase. Owner shall identify the program requirements for the proposed construction of additions and renovations of the School and shall be solely responsible for obtaining all required state and local approvals for such construction and any related site and off-site improvements.

5. Designation as Owner's Project Manager. The Owner hereby appoints CREC, and CREC hereby accepts its appointment, as the OPM for the Project. As the OPM, CREC will assist Owner and the East Hampton Building Committee (the "Building Committee") in certain pre-design, design, construction, and other related activities as more particularly described in Exhibit A. In no event shall CREC assume the responsibility of a construction manager.

6. Compliance with Law. In providing the Services, CREC shall comply with all applicable laws, rules, regulations, ordinances, orders, directions, or other requirements of the federal or any state or municipal governments; any agencies, departments, subdivisions, bureaus, offices, and/or other authority thereof; and any other governmental, public and/or quasi-public authorities, as and to the extent any of the foregoing have jurisdiction over CREC's performance of the Services.

7. Term of Agreement. The term of this Agreement shall commence on the Effective Date and, except as otherwise expressly provided herein, shall continue until the date on which CREC completes its obligations hereunder unless earlier terminated by the parties as set forth below. Time is of the essence in the performance of CREC's obligations herein.

8. Billing and Payment of Costs. In consideration of the performance of the Agreement, the Owner agrees to pay the OPM in compensation for Services performed on an hourly basis and at the hourly rates set forth within Exhibit A. Payment by Owner for said Services shall under no circumstances exceed the monthly amounts reflected in Exhibit A. Owner further agrees to reimburse OPM for all necessary costs and expenses incurred in the performance of the Services so long as said costs and expenses were approved in advance by Owner in writing. OPM shall submit invoices monthly. OPM shall submit such supporting documentation as required by Owner for all such costs and expenses. Payment by Owner shall be made no later than thirty (30) days from the date the invoice is submitted. Should any invoice be in dispute, only that portion of the invoice in dispute may be held in abeyance until resolved and no interest will accrue on any disputed amounts.

8.1 The OPM is obligated to continue providing services under the Agreement if claims are pending or amounts on its invoice(s) are in dispute or during the dispute resolution process. The OPM will not stop, suspend or delay its services in any manner as a result of any such claims or disputes, and will be responsible to Owner for all costs, expenses and fees (including the OPM's attorneys' fees) arising from such stoppage, suspension or delay.

9. Books of Account and Maintenance of Records. Owner shall maintain fiscal control over all funds appropriated for the Project, provided that CREC shall cooperate with Owner to establish and maintain fiscal control and accounting procedures that assure the accurate, complete and otherwise proper accounting of all costs and expenses incurred and/or paid in

connection with the Project, as well as any and all funds paid by Owner to CREC pursuant to this Agreement. If CREC is retained to continue providing Owner's Project Management services through the State Audit process, CREC shall maintain in an organized fashion records relating to the Project, and shall deliver such records to a secured location, to the Owner's care, after the completion of the State Audit process. If the Owner terminates CREC's services prior to the State Audit process, CREC will turn over to the Owner all records and documents relating to the Project, in an organized fashion. If CREC maintains any of its own records relating to the Project, it will not dispose of those records until the later of eight (8) years from substantial completion of the Project, or the completion of the State Audit.

10. Indemnification and Insurance.

A. CREC shall indemnify, defend and hold harmless the Owner, its agents, officials, employees and assigns from and against any and all loss or liability (statutory or otherwise), claims, actions, suits, demands, judgments, costs, executions, interest and expense whatsoever, including, but not limited to, costs of investigation, defense and settlement and all reasonable attorneys' fees and disbursements, (hereinafter, individually and collectively, a "Claim" or "Claims") for or arising from CREC's negligence, breach, intentional misconduct or lack performance under this Agreement including, but not limited to, (i) Claims based upon (a) CREC's failure to pay for or provide goods or services as required hereunder or (b) any act or omission on the part of CREC or any of its agents, officers or employees in the acquisition or provision thereof, as well as (ii) Claims for or arising from injury to, or death of, any person or persons, or damage to real or personal property (including the loss of use thereof), which occurs under, in connection with or by reason of CREC's performance or lack thereof under this Agreement during the term hereof. In case any action or proceeding is brought against the Owner by reason of any matter which is the subject of the foregoing indemnity, CREC shall pay all costs, reasonable attorneys' fees, out-of-pocket expenses, and liabilities resulting thereof, and shall resist such action or proceeding by attorneys chosen by it and reasonably satisfactory to Owner.

B. The Owner shall indemnify, defend and hold harmless CREC, its agents, officials, employees and assigns from and against any Claims for or arising from Owner's negligence, breach, or intentional misconduct or lack of performance under this Agreement, including, but not limited to, (i) Claims based upon Owner's failure to pay for goods or services as required hereunder, as well as (ii) Claims for or arising from injury to, or death of, of any person or persons, or damage to real or personal property (including the loss of use thereof), which occurs under, in connection with or by reason of the Owner's performance or lack thereof under this Agreement during the term hereof. In case any action or proceeding is brought against CREC by reason of any matter which is the subject of the foregoing indemnity, the Owner shall pay all costs, reasonable attorneys' fees, out-of-pocket expenses, and liabilities resulting thereof, and shall resist such action or proceeding by attorneys chosen by it and reasonably satisfactory to CREC.

C. Each party's obligations to indemnify and hold harmless the other and its officials, agents and employees shall survive the expiration or earlier termination of this agreement.

D. OPM's Insurance. The OPM shall purchase and maintain the following insurances to protect it from claims which arise out of or result from the OPM's operation under this Agreement:

Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed:

\$1,000,000 or statutory limits, whichever is greater, Each occurrence.

Claims for damages because of bodily injury, occupational sickness or disease, or death of these employees under any applicable employer's liability law.

Claims for damages because of bodily injury, or death of any person other than employees, and claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use therefrom:

\$1,000,000 Each Occurrence

\$2,000,000 Aggregate

Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle:

\$1,000,000 Each Occurrence.

Comprehensive general liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

Owner shall be a named additional insured on all liability policies. The foregoing policies shall contain a provision that coverage's afforded under the policies will not be canceled nor renewed until at least thirty (30) days' prior written notice has been given to the Owner. Certificates of Insurance showing such coverage to be in force shall be filed with the Owner prior to commencement of the OPM's services.

The OPM's insurance coverage shall be primary insurance as respects the Owner and the Owner's agents.

E. Owner's Liability Insurance. The Owner may purchase and maintain its own Liability insurance as will protect it against claims that may arise from its own operations under this Agreement or on the Project.

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

G. Waiver of Subrogation. The Owner and OPM waive all rights against each other, the Architect and other Design Consultants, Construction Manager, and its Subcontractors for damages caused by perils covered by insurance. The Owner shall require similar waivers from the Architect, Design Consultants, Construction Manager and its Subcontractors. If the policies of insurance referred to in Agreement require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

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11. Suspension. The Owner may, without cause, suspend, delay or disrupt the Project in whole or in part for such period of time as the Owner may determine. The OPM's fee shall be adjusted for increases in cost or time caused by such suspension, delay or disruption, except to the extent the services would have been suspended, delayed or disrupted by other cause for which the OPM is responsible.

12. Owner's Termination Rights. If at any time all or any portion of CREC's responsibilities hereunder are to be terminated or CREC otherwise is not to continue to fulfill the role of OPM with respect to the Project, then CREC 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, CREC hereby agrees that:

(a) CREC will promptly supply Owner with copies of all purchase orders and other contracts and agreements of any kind to which CREC 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, CREC 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 CREC otherwise has, and has been required to do, during the term hereof, and

(c) CREC shall make copies of, and otherwise make available to Owner, any and all financial records and other documents requested by Owner (whether held by CREC or its contractors) and assist Owner in making a complete inventory of all material, equipment, personal property, fixtures and other goods, accounting for all moneys spent by CREC and Owner to date, and identifying all accounts receivable and payable at that time.

13. Owner's Termination for Convenience. This Agreement may be terminated by Owner for convenience, upon ten (10) days' written notice. Payment shall be made by the Owner to the OPM for that portion of its fee due, as of the date of termination. Such payment shall be the total extent of the Owner's liability.

14. Owner's Termination of Cause. Upon seven (7) days' written notice, the Owner may terminate this Agreement for cause, should OPM breach this Agreement through no fault of the Owner. If the Owner terminates for cause, no further amounts shall be due OPM, and the OPM shall be responsible for all costs, expenses and fees (including attorneys' fees) incurred by Owner by virtue of said termination.

14.1 Automatic Conversion. In the event that a termination for cause by the Owner is ultimately deemed wrongful by a trier of fact, such termination shall conclusively be deemed a termination for convenience, and the OPM's sole recourse shall be set forth in Article 13 of this Agreement.

15. OPM's Termination of Cause. Upon seven (7) days' written notice, the OPM may terminate this Agreement for cause, should Owner materially breach this Agreement through no fault of the OPM. If the OPM terminates for cause, payment shall be made by the Owner to

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*With a copy to:*

Victor N. Morganthaler, Esq.  
Mayo Crowe LLC  
185 Asylum Street  
CityPlace II  
Hartford CT 06103-3246

If a notice is hand-delivered, delivery shall be conclusively deemed effected at such time. If delivered by certified or first-class mail, delivery shall be conclusively deemed effective upon receipt or refusal.

19. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

20. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors. Neither party, however, shall have any right to assign this Agreement or their interests herein without the approval of the other, which approval may be withheld in said party's absolute discretion.

Any assignment or attempted assignment of this Agreement in violation of this provision shall be null and void *ab initio*.

21. Amendment. This Agreement may be amended by written instrument executed by the parties hereto, acting therein by their duly authorized representatives.

22. Non-Waiver. Any failure by the Owner of CREC to insist upon the strict performance by the other of any of the terms and provisions hereof shall not be a waiver, and each party hereto, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other, of any and all of the terms and provisions of the Agreement, and neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce any of the provisions of this Agreement.

23. Entire Agreement. This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior understandings, negotiations, and agreements whether written or oral, between them respecting the subject matter hereof.

24. Unavoidable Delays. For purposes of this Agreement, the term "Unavoidable Delays" shall mean and include any delay in performance as, but then only to the extent the same, is caused by strikes, lock-outs, shortages in labor or materials, civil unrest, war, Acts of God or other causes beyond the reasonable control of the party from whom such performance is due.

*(Signatures Set Forth On Next Page)*

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TOWN OF EAST HAMPTON

By:   
Name: Michael Maniscalco  
Title: Town Manager

CAPITOL REGION EDUCATION  
COUNCIL

By:   
Name: ~~Sandra Cruz-Serrano~~ DON WALSH  
Title: ~~Chief Operating Officer~~  
DEPUTY EXECUTIVE DIRECTOR

EXHIBIT A

**Pre-Referendum Services - Project Inception to an approved referendum (date of Agreement thru March 2013) which includes:**

- Management and coordination of all owner-held contracts (e.g. Architect, Construction Manager, Environmental Consulting, etc.). We provide a single point of contact for the Owner.
- Procurement of any other services required by the Building Committee including RFQ and RFP process documentation (e.g. Construction Management services) as required by the State of Connecticut's reimbursement guidelines, and public notices including State Contracting Portal.
- Contract/agreement assistance, review, and negotiation for all owner-held contracts (e.g. Construction Management).
- Coordinate and attend all Project meetings with architect, construction manager, East Hampton High School and Board of Education staff, and other project consultants. This includes the various schemes the architect will prepare and the construction manager will review for estimating and constructability.
- Coordinating effort for preliminary space programming exercises, to confirm facility size required for programmatic needs and student population.
- Review/Consolidate all estimates and cost studies prepared by the project team.
- Review of proposed designs and analyzing ineligible, limited eligible, and town share costs impacts/exposure, including space standards analysis.
- Assist in developing different cost options for building committee consideration.
- Building committee attendance.
- Assisting the building committee with clerical and administrative support (e.g. agendas, meeting minutes, communications, etc.).

**Fee Proposal**

	Pre-Referendum Services						Pre-Ref. Service		
	"2012"						Total Hours	Hourly Rate	Total
	Oct	Nov	Dec	Jan	Feb	Mar			
<b>Project Executive</b> John Mena	20	20	20	20	20	20	120	\$ 145	\$ 17,400
<b>Project Manager</b> Jim Giuliano	32	32	32	32	32	32	192	\$ 125	\$ 24,000
<b>Financial Management</b> Cindy Martinez	8	8	8	8	8	8	48	\$ 110	\$ 5,280
<b>Estimating/Scheduling</b>	0	0	0	0	0	0	0	\$ 125	\$ -
<b>Clerical/Admin. Assistance</b>	40	40	40	40	40	40	240	\$ 65	\$ 15,600
<b>Subtotals</b>							600		\$ 62,280