

## **OWNER'S REPRESENTATIVE AGREEMENT**

This Agreement made as of the \_\_\_\_ day of \_\_\_\_\_ by and between the City of Stamford having an office located at Stamford Government Center, 888 Washington Boulevard, Stamford, CT 06901 (hereinafter "Client") and Colliers Project Leaders USA NE, LLC having an office located at 135 New Road, Madison, Connecticut (hereinafter "Owner's Representative").

### **WITNESSETH**

**WHEREAS**, Client desires to retain the advisory services of Owner's Representative ("Services") in connection with the construction of the new Westhill High School, demolition of the existing high school, and related site improvements thereto (hereinafter the "Project"), as more fully described in Exhibit A annexed hereto, and Owner's Representative desires to be so retained.

**WHEREAS**, Owner's Representative desires to furnish such advisory services during planning and implementing of the Project;

**NOW THEREFORE**, for the consideration hereinafter stated, the parties hereto, intending to be legally bound, covenant and agree as follows:

### **ARTICLE 1 – SERVICES**

1.1 Owner's Representative represents to use its best efforts to furnish Client with all the professional skill, expertise and knowledge it has concerning those matters within the scope of the Services set forth herein. Owner's Representative represents that the statements it made concerning its qualifications in its response to the Client's Request for Proposal are true and accurate and that it possesses the requisite skill, expertise and knowledge to provide the services the Request for Proposal and this Agreement require. At all times, Owner's Representative shall perform those professional services solely in the Client's interest and in strict accordance with the standard of care to which seasoned professionals similarly situated in its field are held, specific to the location and time the Services are rendered. Notwithstanding anything arguably to the contrary in this Agreement, however, the Owner's Representative's obligations under this Agreement are not in any way intended to require or imply that the Owner's Representative has assumed any of the responsibilities that the Client's design team or its construction manager will be performing on the Project; the design team and construction manager shall be solely responsible for the performance of those services, and the Owner's Representative shall not be responsible or liable for any failure, breach of duty or negligence on their part, except if and to the extent the failure, breach and/or negligence is related to the Owner's Representative's own failures, breach of duty or negligence.

1.2 The Owner's Representative's Scope of Work is as set forth in the City's Request for Proposal and in Exhibit A to this Agreement. Without in any way limiting the generality of that stated Scope of Services, the Owner's Representative shall advise Client on the status of all aspects of the Project during the preconstruction and construction phases and assist the Client in: i) developing the budget and tracking costs; ii) establishing the schedule; iii) tracking work progress; iv) monitoring the standards of quality; v) its selecting commercially reasonable

services necessary to complete the Project; (vi) given that the Project represents a critical component to the Client's Long Term Facilities Master Plan ("LTFMP"), advising the Client regarding the LTFMP's impact on the Project..

1.3 Owner's Representative shall only be required to perform services relative to the remediation, abatement or rendering harmless of any hazardous material or substances, asbestos or asbestos related products as those services are specifically set forth in Exhibit A..

1.4 Owner's Representative has the responsibility to assign personnel who, in the judgement of Owner's Representative, can and will provide the Services this Agreement requires. Marc Sklenka will act on behalf of Owner's Representative as the Managing Director to oversee and administer the Services the Owner's Representative is to provide the Client. The Owner's Representative will also assign additional personnel to the team providing the Services as needed. If the Client reasonably determines that a specific individual the Owner's Representative intends to add or has added to its Project team is not adequate to provide or is not adequately providing the Services assigned to that individual, Client shall promptly advise the Owner's Representative of same, and Owner's Representative shall promptly adjust the individual's work or replace that individual. The Owner's Representative shall not subcontract the whole or any part of the Services (other than to its affiliates or subsidiaries) without the Client's consent.

## **ARTICLE 2 – FEES**

2.1. Client shall pay Owner's Representative a total fee for the entire Project up to or equal to \$2,746,766.00 exclusive of the provision of services by Multivista which shall be a reimbursable expense subject to the provisions of §4.1 infra. The Client shall, exclusively at its own option, determine whether additional staffing is necessary to perform the stated Scope of Services pursuant to the Owner's Representative's proposal for additional staffing. Should the Client determine at any point to exercise this exclusive option, the fee for any additional staffing shall not exceed \$4,205,612.00. The Fee for the Project shall be payable on either an hourly or lump sum monthly basis, as follows:

For the Pre-Construction Phase with a projected 24-month duration, the portion of the fee the Owner's Representative shall receive will be up to and shall not exceed \$637,224.00. The Pre-Construction Phase fee shall be divided by subphases as follows:

- For the Architect Selection subphase, the Owner's Representative shall bill on the basis of agreed upon hourly rates as set forth below for the hours worked during the month with the total monthly bills for that subphase not to exceed \$79,566.00. The projected duration of this subphase is three months.
- The projected duration of the Design Phase subphase is 18 months. For that subphase, the Owner's Representative shall bill \$24,940 per month for each of those 18 months for a total of \$448,924.
- The projected duration of the Bidding subphase is four months. For that subphase, the Owner's Representative shall bill on the basis of agreed hourly rates as set forth below for hours worked during the month with the total monthly bills for that subphase not to exceed \$108,741.00.

For the Construction Phase, the projected duration is 42 months. For that Phase, the portion of the fee the Owner's Representative shall receive will be \$1,873,425.00 billed at \$44,605.36 per month for each of those 42 months.

For the FF&E and Closeout Phase, the projected duration is 6 months. For that Phase, the portion of the fee the Owner's Representative shall receive will be \$216,116.00 billed at \$36,019.33 per month for each of those 6 months.

For the OSCGR Closeout Phase, the duration of which cannot currently be projected, the Owner's Representative shall bill at agreed upon hourly rates, but the total billing for this Phase shall not exceed \$20,000.00.

The agreed upon hourly rates the Owner's Representative shall charge are set forth in Exhibit C annexed hereto. These hourly rates shall escalate 4% per calendar year beginning each new calendar year on January 1. Should the Phases in which an hourly rate is used result in a lower total value than the "Not-to-Exceed" cap provided in each Phase, the unused funds shall remain encumbered and be available to fund any additional services that may be approved by the Client later in the course of the Project. Should any unused funds remain unused through the completion of the Project, the encumbrance shall cease, and the City shall retain them.

2.2 The Fee shall be the sole compensation to Owner's Representative, and is inclusive of its general and office overhead, insurance, profit, and all other costs, except for Reimbursable Expenses as provided for in Article 4.

2.3 The Owner's Representative shall invoice the Client on a monthly basis pursuant to the terms described in Section 2.1.

2.4 Owner's Representative's Fee is based on the projected duration set forth in the Request for Proposal and as clarified in Exhibit B, Item 4. The parties agree that the projected duration is a reasonable estimate of the Project's duration. If the Project's actual duration exceeds the projected duration by more than two months without any fault on the Owner's Representative's part, the Owner's Representative shall not be obligated to continue performing services after those two months absent a written agreement between the parties providing additional compensation for those services.

### **ARTICLE 3 – INSURANCE**

3.1 Owner's Representative shall maintain with respect to the Project, Professional Liability insurance coverage of \$1,000,000.00 per claim. Such coverage shall protect Client with respect to any acts or omissions of Owner's Representative in connection with this Agreement.

3.2 Owner's Representative shall maintain with respect to the Project, General Liability insurance coverage of \$2,000,000.00 each occurrence and in the aggregate (which may be comprised of a combination of primary and umbrella/excess policies). Such coverage shall include Client as additional insured with respect to any conduct on behalf of Owner's Representative

resulting in third party bodily injury, property damage or wrongful death arising in connection with this Agreement.

3.3 Owner's Representative shall also maintain worker's compensation insurance coverage in statutorily required amounts and Employer's Liability insurance with limits of liability of no less than \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit covering all employees of Owner's Representative employed in, on or about the Project in the state where the project is to take place.

3.4 Client shall maintain primary and non-contributory Commercial General Liability Insurance with minimum per occurrence limits of \$2,000,000 inclusive for bodily injury, including death, personal injury and damage to property with blanket contractual liability, product and completed operations, non-owned auto, property damage and sudden & accidental pollution liability.

3.5 Consultant shall provide commercial automobile insurance for any owned autos (symbol 1 or equivalent) in the amount of \$1,000,000 each accident covering bodily injury and property damage on a combined single basis. Such coverage shall include hired and non-owned automobile coverage.

3.6 Each party shall provide the other with certificates of insurance evidencing the aforementioned coverages prior to commencement of this agreement and upon renewal of such policies for the duration of this agreement and any extensions thereof.

#### **ARTICLE 4 – REIMBURSABLE EXPENSES**

4.1 In addition to the Fee set forth in Article 2.1 herein, Client shall reimburse Owner's Representative for the actual cost, without markup, of reimbursable expenses such as mail, express postage, Multivista Construction Documentation services, third party printing, copying, and blueprinting costs, and Client approved out of town travel and related expenses. Mileage to and from the Client site by the Owner's Representative's personnel is included in the Fee specified in Article 2.1. Any otherwise Reimbursable Expense that would bring the total Reimbursable Expense amount above \$50,000 (the "Cap") will only be reimbursable if the Client approves the expense in advance. The costs associated with Multivista Construction Documentation services shall not be applied towards the Cap. Moreover, before contracting for Multivista Construction Documentation Services, the Owner's Representative shall consult with the Client as to the scope of services Multivista shall provide, with the client's selection of those services made in writing before the Owner's Representative's contracts with Multivista for those services.

#### **ARTICLE 5 – CLIENT'S REPRESENTATIVE**

5.1 Client shall designate the Westhill High School Project Building Committee to act for Client and Client shall be bound by any consents or approvals given by said representatives.

The designation of Client to be made hereunder shall be in writing and may be changed by Client from time to time by written notice to Owner's Representative.

#### **ARTICLE 6 – TERMINATION AND SUSPENSION**

6.1 The Client may terminate this Agreement for cause. In order to terminate for cause, the Client shall give the Owner's Representative five calendar days written notice of its intent to terminate, with the notice specifying the cause for the termination and stating that the termination shall be effective at the end of the five-day period if the Owner's Representative has not cured or otherwise eliminated the condition giving rise to the notice by then. "Cause" shall be the making by the Owner's Representative of any material misrepresentation, any material breach of this Agreement by the Owner's Representative, or if the Client determines that the Owner's Representative's conduct, including any failures to act on its part, has substantially endangered its performance of the Agreement or if the Client reasonably anticipates that such an occurrence or default will occur. The determination of whether the Owner's Representative has cured or otherwise eliminated the condition giving rise to the notice is in the Client's sole and unreviewable discretion.

6.2 The Owner's Representative may terminate this Agreement for cause. "Cause" for such a termination shall be limited to the Client's material breach of this Agreement. In order for the Owner's Representative to terminate this Agreement for cause, it must first give the Client five calendar days written notice of its intent so to terminate, with the notice specifying the claimed material breach and stating that the termination shall be effective at the end of the five day period if the Client has not cured the breach by then.

6.3 The Client may at any time terminate this Agreement solely for its convenience and without cause. It shall effect a termination for convenience by providing the Owner's Representative with written notice, and such notice shall be effective upon receipt by the Owner's Representative. If the Client terminates for convenience, the Owner's Representative shall be entitled to payment per this Agreement for the services it rendered and the Reimbursable Expenses it paid to the date of termination.

6.4 Client may, without cause, order the Owner's Representative to suspend, delay or interrupt its service, in whole or in part, for a period the Client determines. If it is reasonable to do so, the Owner's Representative's Fee and/or the time requirements for the Owner's Representative's performance may be equitably adjusted on account of the suspension, delay, or interruption.

#### **ARTICLE 7 – MISCELLANEOUS**

7.1. All notices required by or permitted to be given pursuant to this Agreement shall be by email to the respective representatives and shall be deemed valid when the email is received as noted herein to the parties as follows:

**TO CLIENT:**

Westhill High School Project Building Committee

with copies to:

Christopher Dellaselva, Esq, Assistant Corporation Counsel  
CDellaselva@StamfordCT.gov

Lou Casolo, City Engineer  
LCasolo@StamfordCT.gov

and

Richard C. Robinson, Esq.  
rrobinson@pullcom.com  
Thomas S. Lambert, Esq.  
tlambert@pullcom.com

**TO OWNER'S REPRESENTATIVE:**

Colliers Project Leaders USA NE, LLC  
135 New Road  
Madison, Connecticut  
Attention: Jonathan Winikur, [Jonathan.winikur@collierseng.com](mailto:Jonathan.winikur@collierseng.com)

with a copy to:

Colliers Engineering and Design  
101 Crawfords Corner Rd. Suite 3400  
Holmdel, NJ 07733  
Attention: Legal Department

7.2 The captions and subheadings contained herein are for information only and shall in no way modify or limit terms, provisions or conditions hereof.

7.3 This Agreement constitutes the entire agreement between the parties with respect to the Services. No provisions of this Agreement shall be changed or modified, nor shall this Agreement be discharged, in whole or in part, except by an agreement in writing signed by the party against whom the change, modification or discharge is claimed or sought to be enforced.

7.4 No waiver of any of the conditions or provisions of this Agreement or of any of the rights of either party hereunder shall be effective or binding unless such waiver shall be given in writing and signed by the party claimed to have given, consented or suffered the waiver.

7.5 The Owner's Representative shall indemnify, hold harmless, the Client, its officers, agents and employees, from any third party claims against them for loss, cost, damage, liability,

and/or injury to or death of a person, including the Owner's Representative's agents and employees, or for loss of or damage to property, to the extent resulting from the Owner's Representative's or its officers', agent' or employees negligent performance or their negligent failure to perform any of the duties imposed this Agreement or the law imposes on them. The indemnity shall include reasonable attorney's fees and costs of suit or arbitration, if applicable, and shall not be limited by reason of any insurance coverage this Agreement requires. This promise of indemnity shall survive the termination of this Agreement. In the event of a claim, the parties agree to: (i) give the indemnifying party prompt notice (ii) cooperate with the indemnifying party's reasonable requests in defense of the claim, at no cost to the indemnified party; (iii) permit the indemnifying party to choose counsel to defend, subject to the reasonable approval of the indemnified party and (iv) not settle any claim without the indemnifying party's written consent.

7.6 Nothing contained in this Agreement shall be construed to mean that Owner's Representative and Client are joint venturers or partners.

7.7 It is expressly agreed that Owner's Representative is not responsible for Project design services which will be the responsibility of the architect and that architect's consultants, nor will it be responsible for the actions of the construction manager or the subcontractors that construction manager selects or for any means and methods used in the construction of the Project unless the Owner's Representative was a factor in the selection of those means and methods.

7.8 (a.) This Agreement shall be governed by the laws of the state of Connecticut both as to its interpretation and performance. In the event of a dispute arising out of or related to this Agreement and/or the Project, the parties shall negotiate in good faith to resolve the dispute. If the dispute remains unresolved despite good faith negotiations, mediation shall be the next step in the dispute resolution process. Either party may initiate the mediation. If the parties are unable to agree on a private mediator, they shall seek mediation under the American Arbitration Association's Construction Industry Rules and a mediator will be selected using the Association's procedure. If mediation fails to resolve the dispute, arbitration administered by the Association under its Construction Industry Rules shall be the method for obtaining a final and binding resolution. Either party may demand the arbitration. The locale for the arbitration shall be in Fairfield County, Connecticut. Either party may consolidate an arbitration initiated under this Agreement with any other arbitration to which it is a party so long as the arbitration agreement governing the other arbitration permits the consolidation, the arbitrations to be consolidated involve common questions of law or fact and the arbitrations use substantially similar methods for selecting arbitrators.

(b.) Neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other any special, indirect, incidental, consequential, punitive or exemplary damages in connection with disputes arising out of or related to this Agreement or the Project. The parties expressly agree, however, that the damages the Client will suffer due to its inability to occupy the Project by the substantial completion date established in the Client's agreement with its Construction Manager are direct, not consequential damages.

(c.) In an arbitration brought pursuant to this Article 7.8, the arbitrator may award reasonable attorneys' fees and costs to the prevailing party.

7.9 Owner's Representative affirms that, to the best of its knowledge, no actual or potential conflict of interest exists between its family, business or financial interests and the services it is to provide under this Agreement, and that it shall promptly raise with the Client any questions regarding possible conflicts of interest as they arise.

7.10 Client, or Contractor, will provide a temporary office for Owner's Representative's use to conduct the Services on or near the Project site during the construction phase. The office space will be mutually agreed by Client and Owner's Representative within an existing building on the campus or through provision of a temporary structure such as an office trailer. This temporary office will be secured and provided with lighting, heating and cooling and furnishings for Owner's Representative's use for the duration of the Project(s). In addition, the office will be equipped with the following: cable internet 16mb download/2mb upload speeds, wireless N-router, 10/100 Network Switch and 5+ ports, telephone service to land lines for the duration of the Project, surge protectors (3) and an all-in-one printer (Printer/Copier/Fax/Scanner). This office is where record file materials will be collected and maintained by Owner's Representative for transmittal to Client at the conclusion of the Project. Owner's Representative will have the authority to retain copies of these files as it deems appropriate for project services record purposes.

7.11 Client hereby grants Owner's Representative the nonexclusive right and license to use and display Client's name ("Client Marks") (a) to the extent any customization or implementation of the Services involve the incorporation of Client Marks in furtherance of this Agreement and (b) on its website, advertising and marketing collateral identifying Client as a customer of Owner's Representative. Owner's Representative obtains no rights in the Client Marks except for the limited right described in the preceding sentence, and Client retains all right, title and interest in the Client Marks. All use of the Client Marks by Owner's Representative will inure to Client.

7.12 Pursuant to the City of Stamford Code of Ordinances Section 23-18.4.1 and Section 12-146b of the Connecticut General Statutes, as amended, the Client shall have the right to set-off or withhold any payment, or portion thereof, due to the Owner's Representative pursuant to this Agreement if any taxes levied by the City of Stamford against any property, both real and personal, owned by the Owner's Representative are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from the Owner's Representative pursuant to this section shall be applied to the Owner's Representative's delinquent taxes, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding.

7.13 The Owner's Representative's sole remedy for Client-caused delays shall be an extension of time.

7.14 The Owner's Representative promises to the extent they are applicable to comply with Client's Code of Ordinances, §§1-3-1-103-10 concerning consultants in general. Failure to do so shall be a material breach of this Agreement. The referenced provisions can be found at [www.municode.com](http://www.municode.com). The Project Manager shall also comply with the Client's Code of Ethics and



promises to refrain from making any gifts to the Client or its Board of Education officials or employees.

7.15 Neither the Owner's Representative nor any of its key personnel assigned to the Project shall commit any act or do anything which might reasonably be considered: (i) immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage, or otherwise negatively affect the community and/or the reputation and good will associated with the Client. If the Owner's Representative or any of these key individuals is accused of an act involving moral or ethical issues, dishonesty, theft or misappropriation, under any law, or any act which casts unfavorable light upon their association with the community and/or the Client or the Owner's Representative is accused of performing or committing an act which could adversely impact the Representative's services or reputation, the Client has a special right to terminate the Agreement under this provision in addition to any termination rights it has under Article 6, by giving fifteen (15) days written notice specifying the reason. If the Owner's Representative cures the offense within the fifteen (15) day notice period, the termination will not become effective. The determination of whether and to what extent the offense has been cured shall be made by the City in its sole and unreviewable discretion.

7.16 The Owner's Representative is acting as an independent contractor and is not an employee of the Client. This Agreement is for services only and does not create a partnership or joint venture between the Owner's Representative and the Client. The Client shall not be required to pay, or make any contribution to, any social security, local, state or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for the Owner's Representative during the Term of this Agreement. The Owner's Representative shall be responsible for paying, and complying with reporting requirements for, all state, local, and federal taxes related to payments made to the Owner's Representative pursuant to this Agreement.

7.17 Client shall have the right to audit and make copies of the books, records and computations pertaining to Owner's Representative's performance of this Agreement. Any use, or re-use of the Owner's Representatives books, records and computations prepared in connection with the Project, by Client without the professional involvement of Owner's Representative, shall be at the sole risk of Client without liability to Owner's Representative. Owner's Representative shall retain such books, records and documents, including electronically-stored information for six years after it has completed its service to the City under this Agreement. Should the Client terminate the Owner's Representative pursuant to Article 6, the Owner's Representative must, upon demand from the Client after full payment for services rendered, provide the Client with the Owner's Representatives books, records, and computations prepared in connection with the Project.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective the day and year first above written:

Client:

By: \_\_\_\_\_  
Name: Caroline Simmons  
Title: Mayor  
Date: \_\_\_\_\_

**Owner's Representative: Colliers Project Leaders USA NE, LLC**

By: [Signature]  
Name: Jonathan F. Winikur  
Title: Division Director  
Date: 4/19/23

Approved as to Form  
Corporation Counsel  
By: [Signature]  
Date: April 19 2023

**Approved as to insurance requirements.**  
By: [Signature] APRIL 20 2023  
**Risk Manager, City of Stamford**

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Provide Owner's Representative Services as specified in the Request for Proposal No. 887 titled Owner's Representative for the New Westhill High School issued on September 29, 2022, and addenda thereto as well as all documents listed in Exhibit B that are incorporated as part of this Agreement.

## EXHIBIT B

### **DOCUMENTS INCORPORATED AS PART OF THIS AGREEMENT**

1. Request for Proposal No. 887 – Owner’s Representative for New Westhill High School issued on September 29, 2022 (Based RFP included in the Agreement. Refer to Owner’s files for full RFP including attachments)
2. Addendum No. 1 to RFP No. 887 issued on October 20, 2022
3. Colliers Project Leaders’ proposal dated October 27, 2022
4. Colliers Project Leaders’ fee proposal dated October 27, 2022
5. Email from the City of Stamford Purchasing Agent, Mr. Erik Larson, to Mr. Charles Warrington (Director, Colliers Project Leaders) dated December 14, 2022, including attachment CPL Stamford Westhill HS Pre-Interview Questions.pdf
6. Letter from Colliers Project Leaders dated December 28, 2022, including enclosures thereto
7. Colliers’ Stamford Westhill Presentation dated January 10, 2023
8. Email from the City of Stamford Purchasing Agent, Mr. Erik Larson, to Mr. Charles Warrington (Director, Colliers Project Leaders) dated January 19, 2023, including Post-Interview Follow-Up Question Table
9. Letter from Colliers Project Leaders dated January 25, 2023, including enclosures thereto

# Hourly Rates

Colliers

Project Leaders

Exhibit C

Colliers Project Leaders

## 2023 Hourly Rates for Stamford Westhill High School

2023 Hourly Rates	
Category	Hourly Rate
Market Leader/Regional Director	\$350
Senior Director	\$285
Director	\$260
Subject Matter Expert	\$240
Associate Director	\$220
Senior Project Manager	\$215
Senior Technical Specialist	\$200
Senior Construction Representative	\$190
Project Manager	\$180
Construction Representative	\$175
Technical Specialist	\$160
Assistant Project Manager	\$155
Financial Specialist	\$145
Project Coordinator	\$135
Administrative Support	\$120

**Note:** The above rates are for 2023 only and are subject to 4% annual escalation each year beyond 2023.