

Memorandum

To: Brookline Building Commission
From: Ray Masak, PE Project Manager
Regarding: Brookline High School Expansion Commissioning Agent (CxA) Selection
Date: November 8, 2018

Review of CxA Proposals

Request for Qualification (RFQ) Stage

The Town of Brookline conducted a procurement of a CxA for the Expansion of Brookline High School Project in accordance with M.G.L. 30B. On October 3, 2018 a Request For Proposals (RFP) was advertised in The Central Register, COMMBuys and a legal advertisement placed in the TAB. In accordance with M.G.L. 30B for this type of service, the RFP required a two part response: a technical proposal and a separate sealed fee proposal.

Three addendum were issued and a briefing session was held on October 18, 2018. The proposal deadline was 2 pm Thursday October 25, 2018.

The Town of Brookline received proposal packages from the following eleven (11) firms:

- *BR+A*
- *BVH*
- *Cannon Design*
- *CES*
- *Collier's International*
- *EBI Consulting*
- *Fitzmeyer and Tocci*
- *Horizon Engineering*
- *NV5*
- *RW Sullivan*
- *VanZelm*

The Town of Brookline Hill International evaluated the technical proposals during the week of November 3, 2018. EBI Consulting was disqualified because their technical proposal included their fee proposal. The ranking of the firms based on their technical proposals is as follows:

1. NV5 (27 points)
2. Horizon Engineering (23 points)
3. Cannon Design (22 points)
4. CES (20 points)

On November 6, 2018 the fee proposal envelopes were opened. The fee proposals were evaluated and cost proposal information subsequently added to the evaluation form. Based on the evaluation of the fees and comparison between firms, the top ranked firm remains NV5. A comparison of the top ranked proposals fee indicates the following:

	<u>Firm</u>	<u>Manhours</u>	<u>Cost</u>	<u>No. of Meetings</u>	<u>Comment</u>
•	NV5	1803	\$ 277,981	63	
•	Horizon	1724	\$ 219,571	32	No hours for 3 rd fl & deferred maint.
•	Cannon	1916	\$ 355,487	119	
•	CES	1805	\$ 214,140	86	
•	Colliers	1909	\$251,418	53	

Building Commission Recommendation

It is requested that the highest ranked firm, NV5 be invited to introduce their proposed team, discuss and confirm their proposal. If this meeting is satisfactory, issue a notice of selection to NV5 and obtain a signed contract from NV5 for approval at the December 11, 2018 Brookline Building Commission meeting.

TRANSMITTAL

To:	Town of Brookline 333 Washington Street Brookline, MA 02146	Date:	November 27, 2018
Attn:	Raymond Masak, P.E. Project Manager	Project:	Brookline High School Expansion CX
CC:		Project #:	000001.00
VIA:	UPS Overnight	From:	Anthony D'Arpino, Sr. Project Accountant

The following items are being forwarded: Choose an item.

Item	Quantity	For Your Use	As Requested	For Your Review
Commissioning Services Agreement	3	<input type="checkbox"/>	x	<input type="checkbox"/>
Insurance Certificate	3	<input type="checkbox"/>	X	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments: Per your request. When this is fully executed, please return a copy for our file.

Thanks.

TOWN OF BROOKLINE

333 WASHINGTON STREET
BROOKLINE, MASSACHUSETTS 02445

COMMISSIONING SERVICES AGREEMENT

This COMMISSIONING SERVICES AGREEMENT (as may be amended from time to time, the "Agreement") is made and entered into as of _____ (the "Effective Date") by and between the Town of Brookline (the "TOWN") and NV5, with a principal office at 200 Brickstone Square, Andover MA 01810, ("Contractor").

Whereas, the TOWN desires to retain Contractor to render certain services to the TOWN and Contractor desires to be so retained by the TOWN and to perform the services specified herein, all in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Certain Definitions: The following capitalized terms have the following meanings for purposes of this Agreement:

- a) "Agreement" means this Commissioning Services Agreement, including all Services entered into hereunder and attached hereto and all other referenced attachments hereto and thereto, as the same may be amended from time to time in accordance with the terms of this Agreement.
- b) "Commonwealth" means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).
- c) "Contractor" means any Person providing the services contemplated by this Agreement.
- d) "General Counsel" means the TOWN's Town Counsel
- e) "Governmental Authority" means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- f) "TOWN" means the Town of Brookline and any of its subsidiaries, subdivisions or affiliates, and the successors or assigns thereof.
- g) "Person" means any individual, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority or any other entity.
- h) "Project" means the project identified in Attachment A.
- i) "Project Personnel" means, with respect to the project hereunder, the employees or other personnel of each party responsible for such project.
- j) "Public Records Act" means the Massachusetts Public Records Act, M.G.L. Chapter 66, and any successor thereto and M.G.L. Chapter 66A.
- k) "Services" means the Standard Scope of Commissioning Services set forth in Exhibit B of the Request for Proposals (RFP), as those Services may be modified, supplemented, or reduced by the provisions of Attachment Scope of Services.

2. Scope of Services: The TOWN hereby retains Contractor to provide Services to the TOWN during the term of this Agreement and Contractor hereby accepts such engagement. Contractor represents itself as competent and qualified to accomplish the specific requirements of this Agreement to the satisfaction of the TOWN and in accordance with the terms and conditions of this Agreement and acknowledges that the TOWN is relying upon such representation in entering into this Agreement. Contractor covenants to exercise its professional skill, efforts and judgment in furthering the interests of the TOWN and the Project and shall perform the Services consistent with the interests of the TOWN and in accordance with professional standards of care used by consultants or contractors performing a similar scope of services in the Greater Boston area on projects of comparable size, scope, and complexity. This

Agreement shall apply to all Services provided from time to time by Contractor to the TOWN during the term specified in Section 4.

3. Payment: The TOWN shall compensate Contractor as set forth in the Attachment A. Contractor shall submit to the TOWN detailed monthly invoices in a format acceptable to the TOWN, which will include such information as is set forth in Attachment A or as otherwise requested by the TOWN.

4. Term of the Agreement: This Agreement shall take effect as of the Effective Date set forth in the first paragraph of this Agreement, and shall remain in effect for three years. The parties may mutually agree in writing to renew this Agreement. Individual Work Orders issued prior to the expiration of this Agreement will continue to be in force until completed unless terminated sooner under the provisions of Section 8(a).

5. Project Personnel: Subject to the provisions of Section 9, Contractor shall be responsible for the hiring of all individuals, consultants and subcontractors, including but not limited to companies necessary to perform the services and deliverables required by Attachment A, and for the professional services and accuracy and the coordination of all specifications, estimates and other work furnished by the Contractor or the Contractor's consultants and subcontractors. The Contractor shall staff its office with sufficient personnel to complete the services and deliverables required under this Agreement in a prompt and continuous manner, and shall meet the approval schedule and submittal dates established during the course of this Agreement. The relevant Project Personnel shall be set forth in Attachment A. Unless otherwise agreed by the parties, each party will use all reasonable efforts to maintain the same personnel on its project team unless replacement is necessitated by the resignation, extended illness, incapacity or death of specific Project Personnel. The TOWN may request the removal or replacement of any individual(s) from Contractor's project team, and if such a request is made, Contractor shall use all reasonable efforts to replace the relevant individual promptly.

6. Timely Performance: Contractor acknowledges that expeditious completion of Contractor's services and the expeditious delivery of the deliverables is of the utmost importance to the TOWN and that Contractor will diligently and continuously perform its Services during the term of this Agreement.

7. Notices: Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and shall be sent either (i) by facsimile or telecopier, (ii) by courier, or (iii) by first class mail, postage, prepaid, addressed to the Project Personnel listed in Attachment A at the addresses of such Persons indicated in the first paragraph of this Agreement (or to such other address as a party may provide by notice to the party pursuant to this Section 7), and shall be effective (i) if dispatched by facsimile or telecopier and delivery is electronically confirmed by said media, the day such electronic confirmation is received, (ii) if sent by courier, one business day after written confirmation by said courier of delivery, (iii) if sent by first class mail, two business days after its date of posting. A copy of each notice required to be sent pursuant to this Agreement shall also be sent to the General Counsel.

8. Termination or Suspension:

- a) This Agreement shall terminate on the date specified in Section 4, unless amended in accordance with Section 19 to extend the term hereof, or unless earlier terminated or suspended as provided in this Section 8(a). The TOWN may terminate this Agreement without cause and without penalty at any time upon provision of written notice to the Contractor. The TOWN also may terminate or suspend this Agreement if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by this Agreement, by providing written notice of termination or suspension to the Contractor.
- b) **Obligations in Event of Termination; Survival:** Upon termination of this Agreement, the parties shall have the following obligations:
 - i) **Deliverables:** Contractor shall deliver to the TOWN all work papers and all written and tangible work product identified as deliverables in Attachment A (electronic format) for which services have been performed and payment has been made, and all other property of the TOWN, and all copies thereof in the direct or indirect possession or control of Contractor, up to and including the date of termination.
 - ii) **Payment:** Contractor shall be paid for all requested and authorized services and deliverables

described in Attachment A and performed to the satisfaction of the TOWN up to and including the date of termination.

- iii) Sections 7 and Sections 9 through 23 of this Agreement shall survive termination of this Agreement.

9. Contractor's Representations: As of the date of this Agreement, Contractor hereby represents under the penalties of perjury as follows:

- a) Contractor is duly authorized to enter into this Agreement, and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order or other legal requirement by which Contractor or any of its assets is bound.
- b) Contractor and all Project Personnel of Contractor are fully capable and qualified to perform the described service(s) and Contractor's other obligations under this Agreement, and have obtained all requisite licenses and permits to perform such obligations.
- c) Contractor and all Project Personnel of Contractor are familiar with, and are and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth and other Governmental Authorities applicable or implicated by the subject matter of this Agreement, including, without limitation, the statutes referenced in Sections 9(d), 9(e), 14, 16 and 17 of this Agreement and the General Laws governing the conduct of public construction projects, including, but not limited to, M.G.L. c.149 and c.30.
- d) Contractor and its employees are independent contractors of the TOWN, and not employees, partners or joint-ventures of the TOWN. Contractor will be solely responsible for withholding and paying all applicable payroll taxes of any nature, including social security and other social welfare taxes or contributions that may be due on amounts paid to its employees. Contractor has filed and will continue to file all necessary state tax returns and reports, and has paid and will continue to pay all taxes and has complied and will continue to comply with all laws of the Commonwealth relating to Worker's Compensation, M.G.L. c. 152.
- e) Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and M.G.L. c.151B.
- f) Contractor represents and warrants that all personnel supplied under this Agreement are eligible to work in the United States at the time of execution of this Agreement and that Contractor has a continuing obligation to ensure such status for the duration of the Agreement.

10. Indemnification and Insurance:

- a) To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the TOWN and each of their respective employees, agents, officers, directors, and members of their governing boards (collectively, the "Covered Persons") from and against any and all actions, claims, liability, loss, damages, costs and expenses (including, but not limited to reasonable legal fees, court costs, fines, and penalties), judgments and awards (collectively, "Damages") sustained, incurred, or suffered by or imposed upon or for which liability is asserted against any Covered Person resulting from: (i) any breach of this Agreement or false representation, covenant, or certification of Contractor or any person or entity for whom Contractor is responsible under this Agreement, or (ii) any negligent acts or omissions or willful misconduct of Contractor or any of Contractor's agents, officers, directors, employees or subcontractors or any other person or entity for whom the Contractor is responsible. Without limiting the foregoing, Contractor shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or may be imposed because of the negligence in failing to comply with the provisions of applicable law by Contractor or any of its agents, officers, directors, employees, or subcontractors or any other person or entity for whom the Contractor is responsible.
- b) The aforesaid indemnification obligation shall not be limited in any way by any limitation on the

amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation, disability benefit acts, or other employee benefits acts.

- c) Contractor shall obtain and maintain in effect through the term of this Agreement, and shall require by contractual obligation that its sub-consultants and subcontractors obtain and maintain through the term of this Agreement, all insurance required by law and as may be required by the TOWN under this Agreement, including but not limited to, comprehensive general liability insurance (bodily injury and property damage) and professional liability insurance in amounts that may be required by the TOWN. The required insurance shall be provided at the sole expense of Contractor, sub-consultant or subcontractor as applicable and shall be in full force and effect for the full term of this Agreement and for the entire period that Contractor is providing Services for a Project. Failure by the Contractor to obtain and maintain the insurance required by this section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Agreement and shall be just cause for termination of the Services of the Contractor under this Agreement.
- d) All insurance policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts and having a financial strength rating of "A-" or better as assigned by the A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the TOWN. Contractor shall submit to the TOWN originals of the required certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid, simultaneously with the execution of this Agreement. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. Contractor shall submit updated certificates to the TOWN prior to the expiration of any of the policies referenced in the certificates. The Contractor shall provide advance written notice to the TOWN of any termination, cancellation, reduction in coverage or other material modification of any insurance required by this Agreement, whether by the insurer or the insured. Contractor shall be responsible for the payment of any and all deductibles or self-insured retentions under all of the insurance required below.
- e) Contractor shall purchase and maintain at its own expense during the life of this Agreement, and if greater, for the period of time for the performance of Services under a Work Order and for such other time period as provided herein, the following types and amounts of insurance:
 - 1. Workers' Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer's rights of subrogation against the TOWN and each of their respective employees agents and members of their governing boards (including Employers Liability Insurance with limits totaling not less than \$500,000.)
 - 2. Commercial General Liability Insurance (including Premises/Operations; Products/ Completed Operations which shall remain in effect for a minimum of one year after completion of the Contractor's Services ; Contractual Liability, including Contractor's obligation to the TOWN as provided in subparagraph (a) of this Section 10; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate and naming the TOWN and all other Covered Persons as additional insureds. Contractor shall maintain such insurance on an occurrence basis and in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the TOWN. The policy shall be endorsed to waive the insurer's rights of subrogation against the TOWN, the Owner and each of their respective employees agents, officers, directors and members of their governing boards.
 - 3. Automobile Liability Insurance (including owned, non-owned and hired vehicles) at a limit of not less than \$1,000,000 each accident for bodily injury and property damage liability.
 - 4. Professional Liability. Contractor shall maintain professional liability insurance covering negligent errors and omissions and negligent acts of the Contractor and of any person or entity for whose performance the Contractor is legally liable with coverage of not less than \$1,000,000 per claim / \$2,000,000 annual aggregate. The coverage, at the minimum limit shall be in force and available from the effective date of this Agreement to the date when all commissioning and post commissioning work designated under this Agreement and all Work Orders issued pursuant to this Agreement is completed and accepted by the TOWN. Contractor shall notify the TOWN and the Owner should coverage become unavailable, and Contractor and the TOWN shall

negotiate a Basic Services fee adjustment if coverage is no longer available. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. If the professional liability policy is in a "claims made" format, it shall include a retroactive date that is no later than the effective date of the Agreement, and an extended reporting period of six years following the term of this Agreement which requirement can be met by providing renewal certificates of professional liability insurance to TOWN and the Owner as evidence that this coverage is being maintained.

- f) The Contractor shall be and shall remain liable to the TOWN for all damages incurred by the TOWN as a result of the negligence of the Contractor or its Project Personnel in performing the Services in accordance with this Agreement.

11. Relationship of the Parties: The Contractor shall be responsible for its negligent acts or omissions but shall not have control or charge of acts or omissions of the Project Designer, Contractor or Construction Manager, Subcontractors, Owner's Project Manager or the agents or employees of any of them. Nothing in this Agreement shall be construed as an assumption by Contractor of the responsibilities or duties of the Designer, Contractor, Construction Manager, or Owner's Project Manager. It is the intention of the TOWN that Contractor's Services shall be rendered in a manner compatible with and in coordination with the services provided by the Designer and Project Manager. It is not intended that the services of the Contractor, Designer, or Owner's Project Manager be competitive or duplicative, but rather complementary.

12. Ownership of Intellectual Property: Unless provided otherwise by law, ownership and possession of all information, data, reports, computer programs, drawings, documents, designs, models, inventions, equipment, and any other documentation, product of tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by Contractor pursuant to this, other than Contractor's administrative communications, records, and files relating to this Agreement, are the sole property of, and shall vest in, the TOWN as "works made for hire" or otherwise provided the TOWN has paid all of Contractor's non-disputed monthly invoices for services rendered under this Agreement. The TOWN will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by Contractor pursuant to this Agreement, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the TOWN will have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by Contractor. The TOWN shall retain exclusive intellectual property rights in all graphics and text provided to Contractor by the TOWN for incorporation into final Materials prepared by Contractor. Contractor shall use graphics and text provided by the TOWN for the sole purpose of fulfilling contractual obligations created by this Agreement.

13. Assignment by Contractor; Subcontracting: The TOWN may assign its rights and obligations under this Agreement to any Person who succeeds to all or any portion of the TOWN's business, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. Contractor shall not assign or in any way transfer any interest in, or any of Contractor's rights or obligations under this Agreement, including by operation of law, without the prior written consent of the TOWN. The Contractor shall not subcontract any services to anyone without the prior written consent of the TOWN, and any such subcontracts shall be consistent with and subject to the provisions of this Agreement. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Agreement. The Contractor shall provide the TOWN with copies of all subcontracts.

14. Conflicts of Interest: Contractor represents that it and its subcontractors, if any, are now in full compliance with the Massachusetts Conflict of Interest Law as it relates to the subject matter of this Agreement and the Contractor further agrees that, for the duration of the term of this Agreement, it and its subcontractors, if any, shall remain in full compliance with the Massachusetts Conflict of Interest Law as it relates to the subject matter of this Agreement. Contractor and its subcontractors, if any, shall not take any action which it knows or has a reasonable basis to believe would cause any officer or employee of the TOWN to participate in any decision relating to this Agreement which affects his/her personal interest or any corporation, partnership, or association in which (s)he is directly or indirectly interested or to have any interest, direct or indirect, in this Agreement or the proceeds thereof. It is hereby acknowledged by

the TOWN and understood by all parties that individuals providing services to the TOWN under this Agreement are permitted to engage in personal or private employment during normal business hours. The Contractor further acknowledges and agrees that its failure to comply with the provisions of this section may be deemed a material breach of this Agreement.

15. Record Keeping, Audit, and Inspection of Records: Contractor shall maintain books, records and other compilations of data pertaining to its activities under this Agreement to the extent and in such detail as shall properly substantiate claims for payment and Contractor's performance of its duties under the Agreement. All such records shall be kept for a period of not less than seven (7) years or for such longer period as is specified by the TOWN (the "Retention Period"). The Retention Period starts on the first day after final payment under this Agreement is made. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. The TOWN, or its designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of data of Contractor which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not permitted under this Agreement, then Contractor shall refund to the TOWN the amount determined by such audit within thirty (30) days of Contractor's receipt of such audit and demand.

16. Confidentiality/Publicity:

- a) Contractor hereby agrees to protect the physical security and restrict access to all data compiled for, used by, or otherwise in the possession of Contractor in performance of the services hereunder in accordance with Contractor's reasonable business practices and as otherwise provided in this Agreement. Contractor shall comply with all applicable laws and regulations relating to confidentiality and privacy, including, without limitation, all requirements of M.G.L. c.66A implicated by the subject matter of this Agreement.
- b) Contractor shall collaborate with the TOWN to prepare any public statement or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which the TOWN is concerned or discussed. Contractor shall not release, make or issue any such public statement or announcement without the prior written consent of the TOWN.

17. Public Records:

- a) As a public entity, the TOWN is subject to the Massachusetts Public Records Law (M.G.L. c.66 and 66A) and thus certain documents and other materials made or received by the TOWN are subject to public disclosure unless they are specifically exempted. Contractor specifically acknowledges that it bears the risk that any material submitted by Contractor to the TOWN pursuant to this Agreement may be deemed not to qualify for a public records exemption.
- b) Furthermore, it is the intention of the parties that the TOWN will continue to exercise custody of records received or produced under the Agreement. Requests for access to said records shall be forwarded immediately to the TOWN for response. Contractor shall not release information except as authorized to deliver services under this Agreement.

18. Choice of Law: This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to the conflict of laws principles thereof. All legal actions arising out of or relating to this Agreement shall be commenced and maintained in a state court sitting in the Commonwealth. By execution and delivery of this Agreement, each of the parties accepts for such party, generally, exclusively and unconditionally, the jurisdiction of said courts. This Section 18 shall not be construed to limit any other legal rights of the parties. Contractor acknowledges and agrees that any breach or threatened breach of this Agreement by Contractor will result in substantial, continuing and irreparable damage to the TOWN. Therefore, in addition to any other remedy that may be available to the TOWN, the TOWN will be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach by Contractor of the terms of this Agreement.

19. Amendments and Waivers: No amendment to or modification of this Agreement, and no waiver of any provision hereof, shall be effective unless the same shall be in writing and shall be signed by each of the parties hereto. Any waiver by the TOWN of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

20. Severability: Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.

21. Binding Effect; Benefit; Entire Agreement and Attachments: This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the parties hereto, and *no Person shall be regarded as a third party beneficiary of this Agreement.* This Agreement embodies the entire understanding and agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. The following (together with all exhibits, schedules and attachments thereto) are hereby incorporated into this Agreement by reference:

- a) Attachment A – Scope of Services
- b) Request for Proposals – Attachment B Standard Scope of Commissioning Services including addendum.

22. Headings: The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

23. Counterparts: This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

24. Other Conditions:

- a) The TOWN does not guarantee the accuracy of information furnished to Contractor during the course of this Agreement, and Contractor must satisfy himself as to the correctness of data, except in instances where written exception to the contrary is specifically indicated by the Owner. If the above data are not available or they are in the opinion of Contractor, insufficient, Contractor, upon request, may be given authorization to obtain the services of a consultant or perform the work with its own employees. In no case shall Contractor commence such work without prior written authorization of the TOWN.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

By:

Name:

Title:

Federal Tax ID No.:

Daniel J. Wall

Daniel J. Wall

Sr. Vice President

04-150 6460

ATTACHMENT A – SCOPE OF SERVICES

Pursuant to the terms and conditions of the Agreement, the TOWN and Contractor agree as follows:

1. Locations: Contractor shall provide the Commissioning Services for the following school construction projects:

School Name: Brookline High School, 115 Greenough Street; that includes: Tappan Gym, 68 Tappan St.; Kिरrane Pool, 60 Tappan St.; 9th Grade Building, 111 Cypress St., Brookline, MA 02445

2. Scope of Services and Deliverables: Contractor shall provide the commissioning services and deliverables set forth below and as more fully described in Attachment B, Standard Scope of Commissioning Services, for the School Construction Project identified in the RFP.

- a. Contractor shall conduct Full Building Commissioning on the following major building systems:

- i. Building Envelope
- ii. Roofing Systems
- iii. HVAC Systems
- iv. Plumbing Systems
- v. Electrical Power Systems
- vi. Voice, Data and Video Systems
- vii. Life Safety Systems
- viii. Building Automation and Control Systems

3. Term of Services: Unless otherwise expressly agreed by the TOWN in writing, Contractor shall complete the Services commensurate with the overall Project schedule.

4. Payments /Services and Deliverable Schedule/Invoices:

- a. Invoices shall be submitted monthly for payment and shall be based on Contractor's good faith estimate of percentage of services actually complete at the time of the billing up to the following maximum amounts for each phase of the Project, plus any completed additional services and reimbursable expenses previously approved by the TOWN. Payments shall be made in accordance with the provisions outlined in the Agreement and with the following payment schedule included with the fee proposal attached.

Project Summary	Fee	Estimated No. Meetings
Cypress Building	\$110,992	22
Tappen Gym	\$30,837	9
STEM Wing	\$95,397	18
Third Floor Renovation	\$23,165	9
Deferred Maintenance	\$17,590	5
TOTAL	\$277,981	

- b. Travel expenses, including meal expenses, incurred by Contractor as may be required to fulfill the tasks shall be included in the fees set forth in Section 4(a) above and shall not be reimbursable.

All costs associated with providing copies of the deliverables required shall be included in the fees set forth in Section 4(a) above and shall not be reimbursable.

- c. In the event that the TOWN requests additional or reimbursable Services from the Contractor, Contractor shall be paid for any such additional and reimbursable Services and Deliverables based on the hourly rate(s) set forth below, plus reasonable out-of-pocket expenses related to such additional or reimbursable services at cost, with no mark-up to the TOWN. Invoicing for additional and reimbursable services shall be based on the following rate schedule:
 - i) Services performed by principals of the Contractor or of firms engaged as by Contractor as consultants shall be billed at a rate of \$175.00 per hour.
 - ii) Services performed by senior engineers, senior architects, project managers, registered professional engineers and architects of the Contractor or of firms engaged by Contractor as consultants shall be billed at a rate of \$150.00 per hour.
 - iii) Services performed by commissioning agents, designers (non-registered design professionals), drafters, technicians, and construction specialists of the Contractor or of firms engaged by Contractor as consultants shall be billed at a rate of \$125.00 per hour.
 - iv) Services performed by technical support and administrative personnel of the Contractor or of firms engaged by Contractor as consultants shall be billed at a rate of \$85.00 per hour.
 - v) Travel shall be a rate of \$0.55 per mile. Normal travel expenses incurred by Contractor or firms engaged by Contractor as consultants as may be required to fulfill the tasks required by the Standard Scope of Commissioning Services, shall not be reimbursable.)
 - vi) Printing at cost. (Copies of deliverables as required by the Standard Scope of Commissioning Services, shall not be reimbursable.)
 - d. The TOWN shall only pay for Services and Deliverables rendered that have been properly documented and invoiced and are to the satisfaction of the TOWN. The fee amount in Section 4(a) shall be the sole and complete compensation for Services performed by Contractor pursuant to this Work Order, including contingencies and direct and indirect expenses, except as specifically provided for in Section 4(c). The fee amount stated in Section 4(a) is a maximum amount, and the total fee amount due may be an amount less than that amount.
 - e. Contractor shall invoice the TOWN monthly. Invoices must be submitted in a format and with such detail as required by the TOWN. Payments hereunder will be made by the TOWN within forty-five (45) days following receipt of reasonably detailed invoices from Contractor and subject to the fee limitations set forth in Section 4(a). Contractor's monthly invoices shall be in a format consistent with the Services and Deliverables Schedule set forth in Section 4. All invoices submitted for payment shall provide reasonable documentation to provide evidence of costs incurred. For services provided on an hourly basis, such documentation shall include for each individual, the name, title, hours worked per task, and description of work performed.
5. Project Personnel:
- For NV5: Per RFP Submission
- For TOWN: Charlie Simmons, Director of Facilities
Mark Sacco., Energy Manager
Ray Masak PE, TOWN Project Manager
6. Contractor hereby represents and warrants that all of the representations, warranties and certifications of Contractor set forth in the Agreement are true and correct and Contractor is in compliance with all of Contractor's obligations under the Agreement between the TOWN and Contractor.

Bidding Consultant Name: NVS

REQUEST FOR QUOTATION																		
Phase	PROJECT A - CYPRESS BUILDING						PROJECT B - TAPPEN						PROJECT C - STEM					
	MEP Systems			Building Envelope			MEP Systems			Building Envelope			MEP Systems			Building Envelope		
	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings
Design & Development Phase	45	\$8,500	3	80	\$17,500	1	29	\$5,500	3				40	\$7,750	3	70	\$15,500	1
Bidding Phase	1	\$160	0	1	\$165	0	1	\$160	1				1	\$160	0	1	\$165	0
Construction Phase	150	\$19,905	8	98	\$16,190	4	62	\$10,095	3				137	\$18,465	5	91	\$15,300	3
Acceptance Phase	205	\$27,162	2	58	\$9,500	1	83	\$11,152	1				153	\$20,567	2	48	\$8,000	1
Project Closeout Phase	21	\$2,820	0	18	\$3,000	0	12	\$1,860	0				18	\$2,340	0	18	\$3,000	0
Post Occupancy Phase	18	\$1,680	2	18	\$3,000	1	6	\$720	1				8	\$1,080	2	12	\$2,000	1
Totals	435	\$60,227	15	273	\$48,265	7	213	\$30,087	9	0	\$0	0	357	\$50,382	12	240	\$43,765	6
Reimbursables		\$1,500						\$750						\$1,250				
Provide Details in RFP Response																		
Other Costs																		
Provide Detail(s) in RFP Response																		
Totals	435	\$61,727	15	273	\$49,265	7	213	\$30,837	9	0	\$0	0	357	\$51,632	12	240	\$43,765	6

REQUEST FOR QUOTATION																		
Phase	PROJECT D - THIRD FLOOR RENOVATION						PROJECT E - DEFERED MAINTENANCE						PROJECT F - OTHER					
	MEP Systems			Building Envelope			MEP Systems			Building Envelope			MEP Systems			Building Envelope		
	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings	Estimated Man Hours	Cost	No. Meetings
Design & Development Phase	22	\$4,250	3				6	\$1,300	1									
Bidding Phase	1	\$160	0				1	\$160	0									
Construction Phase	72	\$9,700	3				28	\$5,830	2									
Acceptance Phase	51	\$6,925	2				83	\$11,250	1									
Project Closeout Phase	6	\$780	0				4	\$500	0									
Post Occupancy Phase	6	\$780	1				5	\$750	1									
Totals	158	\$22,595	9	0	\$0	0	127	\$17,590	5	0	\$0	0	0	\$0	0	0	\$0	0
Reimbursables		\$570																
Provide Details in RFP Response																		
Other Costs																		
Provide Detail(s) in RFP Response																		
Totals	158	\$23,165	9	0	\$0	0	127	\$17,590	5	0	\$0	0	0	\$0	0	0	\$0	0

Town of Brookline, MA
High School Expansion
Commissioning Provider RFP

Bidding Consultant Name: RVS


SUMMARY			
Project	Estimated Man Hours	Cost	No. Meetings
PROJECT A - CYPRESS BUILDING			
MEP Systems	435	\$60,227	15
Building Envelope	273	\$46,265	7
Reimbursibles		\$1,500	
Other Costs		\$0	
SUBTOTAL A	708	\$110,992	22
PROJECT B - TAPPEN			
MEP Systems	213	\$30,087	9
Building Envelope	0	\$0	0
Reimbursibles		\$750	
Other Costs		\$0	
SUBTOTAL B	213	\$30,837	9
PROJECT C - STEM			
MEP Systems	357	\$50,382	12
Building Envelope	940	\$43,765	6
Reimbursibles		\$1,250	
Other Costs		\$0	
SUBTOTAL C	997	\$95,397	18
PROJECT D - THIRD FLOOR RENOVATION			
MEP Systems	158	\$23,593	8
Building Envelope	0	\$0	0
Reimbursibles		\$520	
Other Costs		\$0	
SUBTOTAL D	158	\$23,165	9
PROJECT E - DEFERED MAINTENANCE			
MEP Systems	117	\$17,590	5
Building Envelope	0	\$0	0
Reimbursibles		\$0	
Other Costs		\$0	
SUBTOTAL E	117	\$17,590	5
PROJECT F - OTHER			
MEP Systems	0	\$0	0
Building Envelope	0	\$0	0
Reimbursibles		\$0	
Other Costs		\$0	
SUBTOTAL OTHER	0	\$0	0
TOTAL	1,803	277,881	63

ADDENDUM TO BHS Expansion

Commissioning Agent

Article 4.4 of the Town of Brookline General By-Laws

By signing below, CONTRACTOR hereby agrees to comply with the provisions of Article 4.4 of the Town's General By-laws, *Fair Employment Practices with Regard to Contracts*, a copy of which is incorporated herein by reference, with respect to the foregoing Contract.

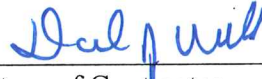


Contractor

Article 4.5 of the Town of Brookline General By-Laws

In compliance with Article 4.5 of the Town's General By-laws, CONTRACTOR hereby certifies as follows: I shall not discriminate against any individual because of the race, color, religious creed, national origin, sex, gender identity or gender expression, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age or ancestry of any Individual in fulfilling the terms of the foregoing attached contract.

Signed under the pains of penalties of perjury, on this 27th day of November, 2018.



Signature of Contractor

This Agreement entered into as of the day and year first written above

APPROVAL OF OWNER

Selectboard

Building Commission

Janet S. Ferreira

[Signature]

Carina Bonville

[Signature]

Approved as to Form

Town Counsel

School Committee

CERTIFICATION

I hereby certify in accordance with Mass. Gen. Laws ch. 44 paragraph 31 C that an appropriation in the amount of the Contract Sum has been made and is available for compensation to the Contractor for the work described in this agreement.

Town Comptroller
